Peace by Design? Self-determination and Power-sharing in Divided Societies

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ABSTRACT

Examining self-governing regimes in 11 cases in Africa, Asia and Europe, I evaluate the particular structures of state construction in each case and contextualise them briefly in the nature and dynamics of each individual self-determination conflict. Following this empirical overview, I then assess the significance of self-governance institutions by comparing and contrasting all cases from the perspective of the types of institutional structures; the combination of vertical and horizontal power-sharing mechanisms; the distribution of powers at and between different vertical layers of authority; the types of coordination between different vertical layers of authority; the constitutional and legal entrenchment of the institutions created; and territory and population as boundaries of authority. Following this thematic comparison, I examine three common and potentially problematic issues relating to institutions of self-governance: the relationship between vertical and horizontal layers of power-sharing, the coordination of government activities at and between these different layers, and the overall political institutional settlement within which vertically and horizontally structured institutions have to operate. Synthesising this discussion, I conclude by outlining the role that self-governance can play as part of a conflict resolution 'toolkit'.

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Between the two ends of the spectrum of ending a self-determination conflict—(military) victory of either the rebel group (leading to secession or state capture) or of the state (successful repression), a range of regimes based on (a combination of) federal designs, integrative and/or consociational power-sharing and the protection of minority rights exist, many of which require the establishment of some form of self-governance regime, which can be defined as "the legally entrenched power of ethnic or territorial communities 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" (Wolff and Weller 2005: 13). The forms such regimes can take thus include a wide range institutional structures from enhanced local self-government to full-fledged symmetrical or asymmetrical federal arrangements, as well as non-territorial (cultural or personal) autonomy.

Self-determination conflicts to which such institutional designs have been applied include a number of very recent cases, such as Sudan, but also more distant ones, such as South Tyrol and the Åland Islands. One could even travel back further in history and trace regimes of (limited) self-governance back to the Austro-Hungarian and Ottoman empires, which, in different forms, pioneered ideas that are now more commonly referred to as personal or cultural autonomy. While such historical antecedents exist and remain a worthwhile subject of academic inquiry, they were, in their time, considered the exception rather than the rule. The prevailing wisdom was that those autonomy regimes that did exist owed their establishment to very specific local, historical or geographic circumstances and whose replication elsewhere was difficult if not outright dangerous.[1] Central governments rarely volunteered the devolution of power to territories and/or the groups inhabiting them unless they found themselves under pressure from (potentially) violent insurgent movements[2] or outside powers[3].

While there are few signs that the willingness of central governments to grant higher levels of self-government prior to violent conflict escalation and/or external pressure has increased, the period since the end of the Cold War has seen a remarkable turn-around in the appreciation of self-governance regimes from slippery slopes toward the break-up of existing states to almost universally recommended remedies to square the circle of demands for independent statehood, on the part of self-determination movements, and for the preservation of the territorial integrity of states, on the part of central governments. Recent evidence for this trend can be found in Central and South America (Panama, Colombia, Ecuador and Nicaragua), Africa (Sudan), Asia (Iraq, Indonesia, Papua New Guinea and Philippines), and Europe (Belgium, Bosnia and Herzegovina, Macedonia, Moldova, Russia, Serbia and Montenegro, Ukraine and United Kingdom).[4]

These and other cases can be analysed in a variety of different ways: in their origins, their institutional design, their effectiveness to address the underlying conflicts they are meant to settle, and their long-term stability. While it is beyond the scope of a single paper to examine all recent settlements which establish self-

[1] A distinction was also made between 'genuine' autonomy regimes, such as those in South Tyrol or the Åland Islands and the ethnofederal regimes of communist states.
[2] This has, for example, been the case in the reform of the South Tyrol autonomy statute in the 1960s and in the attempts to restore devolved government to Northern Ireland after 1972.
[3] This often occurred autonomously (Åland Islands 1921), or in conjunction with the (potential) violent escalation of conflicts (South Tyrol autonomy statutes of 1948 and 1972).
[4] For an analysis of cases and general trends in this respect, see various contributions in Weller and Wolff (2005).

governance regimes in all of these dimensions, I shall focus on a limited number of cases and compare and contrast them primarily in terms of their origin and institutional design. Given the fact that many of these cases are very recent, it would be premature to assess whether this general trend towards the establishment of self-governance regimes in response to demands for self-determination bears sufficient promise as a remedy for the settlement of self-determination conflicts more generally. However, some of the cases examined in the following will allow some initial observations regarding the prospects for longer-term stability.

Examining self-governing regimes in Brussels, Bosnia and Herzegovina, Bougainville, Crimea, Gagauzia, Kosovo, Macedonia, Mindanao, Northern Ireland, Southern Sudan and South Tyrol, I begin by evaluating the particular structures of state construction in each case and contextualise them briefly in the nature and dynamics of each individual self-determination conflict. The sequence of case studies is determined by the complexity of the institutional structures. I begin with Belgium and Bosnia and Herzegovina, where power-sharing exists at regional and central levels, and is complemented by elements of devolution of powers to cantonal and municipal levels. At the next level of complexity, regional consociations exist in Mindanao, Northern Ireland, South Tyrol[5] and Southern Sudan[6]. Here two traditional conflict resolution techniques combine – territorial autonomy and consociational power-sharing. Although similar in this particular aspect, the cases can be further distinguished according to their institutional structures. In Northern Ireland, extensive arrangements for cross-border cooperation between Northern Ireland and the Republic of Ireland, as well as between these two entities and a range of others within the British Isles form part of the 1998 Agreement; in Mindanao, the co-optation of regional officials to corresponding central institutions again provides for limited co-decision making, and in South Tyrol, provincial and regional power-sharing co-exist within a federalising state and provisions for cross-border cooperation involving Austria have been made within the framework of the EU. Of the remaining cases, three are examples of territorial autonomy (Gagauzia, Crimea, Bougainville[7]), and another one falls in the category of enhanced local self-administration (Macedonia). Kosovo presents a special case of quasi-independent parallel state structures whose final status remains to be resolved.

Following this empirical overview, I then assess the significance of self-governance institutions by comparing and contrasting all cases from the perspective of the types of institutional structures; the combination of vertical and horizontal power-sharing mechanisms; the distribution of powers at and between different vertical layers of authority; the types of coordination between different vertical layers of authority; the constitutional and legal entrenchment of the institutions created; and territory and population as boundaries of authority. Following this thematic comparison, I examine three common and potentially problematic issues relating to institutions of self-governance: the relationship between vertical and horizontal layers of power-sharing, the coordination of government activities at and between these different layers, and the overall political institutional settlement within which vertically and horizontally structured institutions have to operate. Synthesising this discussion, I conclude by outlining the role that self-governance can play as part of a conflict resolution 'toolkit'.

[5] For a comparison of Brussels, Northern Ireland and South Tyrol, see Wolff (2004).

[6] Prior to elections which are scheduled within three years of the peace agreement concluded in January 2005, the settlement for Southern Sudan exhibits some quite rigid consociational features in terms of legislative representation and executive power-sharing at the level of State governments, the government of Southern Sudan, and the central government.

[7] The arrangements for Bougainville include limited power-sharing (co-decision making) between the regional and central authorities. In addition, depending on the outcome of negotiations on the constitution for Bougainville, this could also become a case of a regional consociation.

I. Self-governance Regimes in the Context of Self-determination Conflicts

The use self-governance regimes to resolve self-determination conflicts reflects the assumption, but not necessarily the reality, that such regimes can contribute to local, regional and international stability. In ethnically, linguistically and/or religiously heterogeneous societies, the degree of self-governance enjoyed by different segments of society is often seen as more or less directly proportional to the level of acceptance of an overall institutional framework within which these different segments come together. While different ethnic identities, native languages and religious beliefs distinguish individuals and groups from one another, self-governance arrangements are predominantly established in relation to territorial entities, and only rarely apply to individuals or groups per se. While there are a number of arrangements that combine territorial and group-level forms of self-governance, even these proceed, most of the time, from a territorial starting point. This is so for mainly three reasons: territorial claims figure prominently among demands for self-determination; territorially based self-determination movements are the most potent ones;[8] and the traditional administrative organisation of modern states is based on territorial principles.[9]

From this perspective, self-determination conflicts are, at one level, also conflicts between competing views of how decision-making powers should be allocated to different, territorially-defined layers of authority within a state, and thus how the state as a whole should be constructed. Traditionally, powers have been, and still are, distributed between different vertical layers of authority, for example, between central and local governments in unitary states, or between federal and federated governments in federations and federacies. While the territorial organisation of the state enables the vertical layering of authority, it also necessitates in many cases additional mechanisms to accommodate conflicting interests.[10] Most commonly, forms of power-sharing that are horizontal, i.e., where powers are (mandatorily) shared or divided between different agents at the same level, are used to accomplish this. While the level of such horizontal power-sharing can be the region and/or the central government, the precise mechanisms and rules differ from case to case, and can be rigidly consociational, as in Northern Ireland, or voluntary, as in Macedonia, where they are facilitated by the ethnic demography, the structure of the country's party system and the rules of the electoral system.

Self-governance regimes thus can also be looked at as specific types of power-sharing arrangements. Depending on the complexity of a given power-sharing system, it comprises one or more of the following mechanisms: co-decision making (e.g., executive power-sharing), split decision-making (e.g., territorial arrangements, such as federacy or federalism; or corporate arrangements, such as cultural autonomy), and a range of pre-determined decisions (e.g., proportionality rules for representation for different communities in legislatures and the civil service) or pre-determined procedures (e.g., qualified majority voting or parallel consent regulations in legislatures).[11] Territorial arrangements

[8] On the specific nature of territorial conflicts, see Walter (2003).

[9] This is not to deny that non-territorial forms of self-governance do not exist. The Ottoman millet system, the arrangements for cultural autonomy in inter-war and post-communist Estonia, and certain provisions in Hungary's 1993 minority law are among the most frequently cited examples. On non-territorial autonomy in particular, cf. Wolff (1997).

[10] Between different ethnic groups (e.g., Northern Ireland, South Tyrol) or between different political factions of the same ethnic group (e.g., Bougainville).

[11] Another way of looking at power-sharing would be from the perspective condominium arrangements. This would be applicable at the internal level in the case of Brussels and the Brcko District in Bosnia and Herzegovina, and at the external level in the case of Northern Ireland and South Tyrol. More generally on condominium status as a mechanism to resolve self-determination conflicts, see Wolff (2003).

of self-governance imply a requirement for the vertical layering of authority, which, on the one hand, adds to the overall complexity of the process and outcome of state construction, but, on the other hand, provides opportunities for instituting formal and informal mechanisms of power-sharing at different levels of the political process—from the central government level down to that of local communities. The implicit aim of such arrangements is, of course, to resolve an underlying self-determination conflict by creating a political process which can accommodate the conflicting interests and demands of the conflict parties. Yet, it can only accomplish this if two conditions are fulfilled: the institutions and institutional structures created must be internally viable and externally recognisable. That is, they must be capable in a technical sense of delivering the outcomes they are set up to achieve (e.g., effectiveness and representativeness of the political process) and the institutions and the outcomes they produce must be recognised by the agents participating in them as, if not desirable, at least preferable over continued violent conflict. Under these conditions, vertically layered institutions of self-governance and the individual agents operating in and through them will be capable of establishing a political process that is predictable and stable. This in turn will facilitate, and over time be facilitated by, an increasing belief in the authority of the institutions and institutional structures thus created.

II. The Origins of Self-governance Regimes

In their authoritative taxonomy of macropolitical forms of ethnic conflict regulation, McGarry and O'Leary (1993: 4) identify eight methods to manage or eliminate the differences at the bottom of ethnic conflicts. The methods for eliminating differences are genocide, forced mass-population transfers, partition and/or secession, and integration and/or assimilation; those for managing differences are hegemonic control, arbitration, cantonisation and/or federalisation, and consociationalism and/or power-sharing. Self-governance regimes, as understood in this paper, overlap cantonisation and federalisation and may involve different mechanisms of integrative and consociational power-sharing.

The self-determination conflicts that are meant to be resolved through self-governance regimes are above all about substantive issues, and only subsequently about institutional forms through which they can be resolved. Given the importance of control over territory among these substantive issues, it is not surprising that most self-governance regimes involve some kind of regional (or territorial) autonomy as a mechanism to empower a specific group to exercise a greater degree of self-governance over its own affairs. This requires that powers, as Daftary (2000: 5) rightly asserts, "are not merely delegated but transferred; they may thus not be revoked without consulting with the autonomous entity. … the central government may only interfere with the acts of the autonomous entity in extreme cases (for example when national security is threatened or its powers have been exceeded)."[12]

Reasons for the establishment of territorial self-governance regimes as conflict settlements can be identified in different ways. As already noted, specific local, historical or geographic circumstances have been variously identified in the literature as contributing to the emergence of such regimes (e.g., Henders 1997,

[12] Transfer of power from centre to region (i.e., devolution/home rule) happens in the case of established states, that is, when the central government is the source of authority. However, one also needs to consider cases in which no such central authority exists or where it is not able to enforce its claim to authority in a credible way. In this case, powers are delegated upwards, and any regional/territorial self-governance entity would then have to *retain* a sufficient degree of competences that make the application of self-governance worthwhile and meaningful in the context of a particular self-determination conflict (as, for example, in the case of the Bosnian-Croat Federation in Bosnia and Herzegovina).

Wolff 2004, McGarry 2005). Henders (1997) identifies five different paths by which, what she terms cantonisation arrangements, emerge: international settlements, authoritarian regimes consolidating or expanding their territorial reach, negotiated transitions from authoritarian rule, democracies confronted by unassimilated 'regional cultural communities', and decolonisation. McGarry (2005) suggests three distinct contexts—outside intervention, minority military rebellion, and democracies—in which asymmetrical federal arrangements are instituted. In order to explain the variance within the context of democracies, he offers eight further factors that are likely to determine whether specific asymmetrical territorial self-governance regimes emerge. These include the degree of commitment that a state and its population have to a particular territory (i.e., how much they care about whether it remains tightly integrated in the state or not), the relative share of the country's population potentially to be granted self-governance, the existence of a tradition of 'plurinational accommodation', the geographic location of the territory in question, the presence of differential demands for self-governance, the degree of homogeneity of the territory concerned, and the (greater) ability of unitary states to grant and revoke self-governance status.

Another way of looking at the origins of self-governance regimes is to look, first, at the claims made by the different conflict parties. Demands of a group seeking to exercise a right to self-determination within a state that does not contemplate secession from, or partition of its territory can only be accommodated within a territorial framework of self-governance. Falling short of independence, territorially administered self-governance means the transfer of control over territory and people, as well as assigned legislative and executive competences in a range of policy areas to the population of the given territorial entity who then elect a government to discharge these functions. The right to self-determination is thus exercised 'internally' by the group claiming entitlement to it at several levels: through participating in the election of a regional and central government and through the relative independence of this regional government in legislating and executing policy in assigned areas of competence. Compromises thus emerge as a result of internal pressure on central governments (i.e., potentially or actually violent self-determination movements) and the government's inability to defeat them completely.

Yet, because of the fact that it requires significant compromises (relinquishing partial control over part of its territory by the state in question; withdrawing or postponing claims to independence and accepting the need to share power with other groups on the part of the self-determination movement), territorial self-governance regimes are only attractive in the absence of alternatives. Constraints faced by self-determination movements and central governments have their origins primarily in the fact that the organised international community has taken a far more active interest in the settlement of such conflicts of late. The international community remains reluctant to accept changes to international boundaries, which serves as a stumbling bloc for self-determination movements. However, non-democratic or majoritarian democratic states, including some with questionable past records of conflict management, are equally constrained in their pursuit of strategies aimed at eliminating differences by means of genocide or ethnic cleansing or at managing them by means of hegemonic control. Integration as a mechanism of conflict regulation is unlikely to be acceptable in many cases to those who would be integrated (let alone assimilated) or to the international community in cases where integration means majoritarian democracy and perpetuation of a given self-determination conflict. In other words, emerging international norms on the treatment of minority populations and an increasing willingness to enforce them encourage the application of territorial elf-governance regimes as mechanism to resolve self-determination conflicts. This is clearly

facilitated by the fact that international mediation in self-determination conflicts is often pre-disposed towards such settlements.

Other factors mentioned by Henders (1997) and McGarry (2005), including geography and a context of regime change, may facilitate the application of territorial self-governance regimes, but they are not in a strict sense causal factors. The same applies to existing state structures and their ability to accommodate new or reformed arrangements of self-governance, the homogeneity of the territory in question, its size and political, economic and/or cultural significance to the majority population. The relevance of these factors across the case studies discussed in this paper is assessed in Table 1.

Table 1: The Origins of Self-governance Regimes

	External Pressure	Internal Pressure	Transition to Democracy	Tradition of Accommodation	Peripheral Location	Small Size of Population	Low political, economic, cultural significance	High Degree of Homogeneity	Pre-existing Unitary State Structures
BiH	X	X	X	X				X	
Bougainville	X	X			X	X			
Brussels		X		X					
Crimea	X	X	X		X				X
Gagauzia	X	X	X		X	X	X	X	X
Kosovo	X	X	X	X	X			X	
Macedonia	X	X	X	X				X	X
Mindanao	X	X			X	X			
Northern Ireland	X	X			X	X	X		X
South Sudan	X	X			X	X		X	
South Tyrol	X	X			X	X			X

These findings present a clear, but not unproblematic case for the importance of internal and external pressure in the origins of self-governance regimes. The problem is one of endogeneity—as all but one of the cases surveyed involve external pressure and all of them internal pressure, it is unclear whether self-governance settlements arose because of this or whether other outcomes would have been possible too, but were not pursued because of other factors, such as peripheral location, size, significance, etc. For example, if one were to include the cases of Cyprus and the Basque country into this survey, in both of which external and internal pressures were present at comparable levels to some of the other cases, in neither case an internal compromise has been reached so far. The same applies, for example, to the Kurdish regions of Turkey, Transdniestria, Chechnya, South Ossetia, Abkhazia and Nagorno Karabakh.

Further research is therefore necessary to determine precisely under which conditions external and internal pressures will result in the establishment of self-governance regimes. This will have to include an analysis of the use of pressures and incentives, the nature and type of the external actor, the intensity and duration of pressure, etc. Additionally, further work will also need to examine whether specific self-governance regimes emerge under particular circumstances, e.g., whether regional consociations are more likely in the context of certain factors than regimes of enhanced local self-governance or territorial autonomy. One important step into the direction of 'clustering' specific outcomes is of course the careful analysis of the institutional structures of various self-governance regimes to which I turn now.

III. Self-governance Regimes in Practice: A Brief Review of the Case Studies

In order to assess similarities and differences between different arrangements of self-governance and their significance in the construction of state institutions, empirical data are required. Given the focus of this paper, the following case studies do not attempt to provide a comprehensive analysis of each conflict and its settlement, but rather concentrate on how executive, legislative and judicial institutions are constructed in the state overall and at multiple levels of authority.

A. Belgium/Brussels[13]

When Belgium gained its independence in 1830, it was very much a country dominated linguistically, culturally, economically and politically by a French-speaking minority. Flemish nationalism was a feature of Belgian politics from the middle of the 19th century onwards and managed to gain important concessions, initially in the field of language use, by the end of that century. Demands for federalism and greater autonomy of the language communities increased, first on the Flemish side, and subsequently also among the Francophone population. While Flemish nationalism was primarily offensive, and at times militant, Francophone nationalism developed as a defensive movement after the Second World War. Regardless of their direction and agenda, the two converged from the late 1960s onwards in a process that saw several major constitutional reforms in Belgium in 1970, 1980, 1988 and 1993 which created a federal and consociational regime in the country, as embodied in the 1994 constitution.

In contrast to Northern Ireland and South Tyrol, Brussels is thus a regional consociation within the consociational framework of the Belgian federal state. Not only is Brussels the capital of Belgium and seat of major EU and NATO institutions but it is also the largest mixed area within Belgium and highly symbolic for the two predominant linguistic communities in the country – Dutch-speakers and French-speakers. In addition to the symbolic value of Brussels, its status and governance have been, and continue to be, highly sensitive issues in Belgian politics. Although Flemish-speakers are overall in a 60% majority, they are outnumbered in Brussels, thus giving French-speakers a potential 2:1 majority on the level of regional governments. For a long time, the consequent fear of Flemish-speakers that they would become a dominated majority in an increasingly federalised Belgian state prevented a resolution of the Brussels issue. It was only finally dealt with in the latest set of constitutional reforms in 1988 and 1993, while it had been previously avoided or marginalised as an issue in institutional reform processes in 1970 and 1980.

The institutional structure of the Belgian federal state is extremely complex. This is the result of a long process of institutional reforms which sought to accommodate the various social, political, cultural, economic and territorial claims of three linguistic communities living on the territory of Belgium. This institutional complexity is reflected in the structure of the Brussels-Capital Region, the only of the three regions in Belgium which is bilingual (Flemish and French).

Figure 1: Self-governance Arrangements in Belgium
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Geographically, Brussels is an enclave of approximately ten square miles within the Flemish region, while, demographically, it is an area of just under one million people, who are in their majority French-speaking, with a large number of foreigners working for one of the many European or international governmental

[13] Examples of useful scholarly overviews and analyses of the institutional structures in Belgium and Brussels are Detant (1997), Peeters (1994) and Schneckener (2002).

and non-governmental organisations present in the city. The key compromise reached over the course of several constitutional reforms from 1970 onwards turned Belgium into a federal state and made Brussels a constituent component (one of three regions) within it.

As throughout the Belgian polity, the institutions of Brussels can be divided into regional and community institutions. The regional institutions are the council and the government of the Brussels-Capital Region. In addition, there are three community institutions: the Joint, the French and Flemish Community Commissions. The regional council consists of 75 members, directly elected through separate electoral rolls within each community and according to the linguistic proportions among the city's population (currently 64 French-speaking and 11 Dutch-speaking members). The main function of the council is to legislate and to approve budgets. Seven permanent legislative commissions within the Council, covering different policy areas, exist to scrutinise legislative proposals before they are discussed in the council and a vote is taken. In addition to its legislative function, the council also elects the government and the three regional secretaries of state. The council is also charged to hold the elected government to account and has the right to dismiss it by a constructive vote of no confidence. The power-sharing features of the council are that both linguistic groups, i.e., all members elected on the French and Flemish lists respectively, must be represented in the presidency of the council (president and vice-president), and that each committee must have at least one member from the Flemish linguistic group within the Council. There are no specific voting or veto procedures, but the mandatory presence of at least one member of the minority linguistic community in each of the legislative commissions ensures the functioning of the so-called 'alarm bell procedure' according to Article 54 of the Belgian constitution.[14]

The regional government has executive authority in all areas in which the council has legislative competence, namely urban and regional planning, housing, public infrastructure and utilities, public transport, economic policy and external trade, labour market policy, environment, control of local authorities, scientific research, and international relations in these policy areas. In addition, the government has acquired the authority to execute policy in areas formerly in the competence of the Brussels district, namely fire fighting, medical aid, waste management, and taxis.

There are five ministers in the regional government, two from each linguistic group and a President. Only the latter's appointment must be ratified by the monarch. The election process of the government can occur according to two procedures. If there is agreement between the linguistic groups on the composition of the regional government, a single list is presented, signed by a majority of members of each linguistic group. If such a joint list cannot be produced, the council elects the president with a simple majority, and each linguistic group elects its own two ministers. In addition to the five government ministers, there are three regional secretaries of state, one of which must be from the Flemish-speaking group. They are either elected by simple majority in

[14] Article 54 of the Belgian constitution states: 'With the exception of budgets and laws requiring a special majority, a justified motion, signed by at least three-quarters of the members of one of the linguistic groups and introduced following the introduction of the report and prior to the final vote in a public session, can declare that the provisions of a draft bill or of a motion are of a nature to gravely damage relations between the communities.
In this case, the parliamentary procedure is suspended and the motion referred to the Council of Ministers which, within thirty days, gives its justified recommendations on the motion and invites the implicated Chamber to express its opinion on these recommendations or on the draft bill or motion that has been revised if need be.
This procedure can only be applied once by the members of a linguistic group with regard to the same bill or motion.'

the council following a consensual proposal by the regional government, or, in the absence of such a proposal, the council only determines the distribution of seats among the linguistic groups, and the latter then elect their secretaries of state separately.

Power-sharing procedures are also apparent in the distribution of competences among members of the regional government and in the way in which ministers can be dismissed from office. As for the assignment of portfolios, unless there is consensus among the five government members, the president has the first choice, the ministers representing the numerically stronger linguistic group in the council have the second and fourth choice, and those representing the numerically weaker group have the third and fifth choice of portfolio. The government as a whole can only be dismissed by a constructive vote-of-no-confidence with parallel majorities in both linguistic groups, individual ministers can only be dismissed with the consent of a majority of their own linguistic group, and for the president a simple majority in the council as a whole is required.

Apart from mandatory executive power-sharing, proportionality and minority veto, consociational settlements are also characterised by segmental autonomy for the communities participating in them. In Brussels, this is realised through the presence of separate French and Flemish community commissions. They have competences in a wide range of areas extending far beyond the traditional areas of culture, language and education delegated to community institutions, as for example in South Tyrol and, to a lesser extent, in Northern Ireland. However, because of the overall structure of the Belgian polity, the two commissions do not have original authority of their own, but are dependent in their executive and legislative functions on the degree to which the French and Flemish community (i.e., two of the three constituent communities of the Belgian federal state) delegate and transfer competences to the French and Flemish community commissions in Brussels. Thus far, only the French Community Council (i.e., the parliament of the French community) has transferred significant competences to the French Community Commission in Brussels, enabling the latter to legislate and execute policy in the areas of private facilities for physical education; sports and life in the outdoors; tourism; social advancement; job retraining and continuing professional education; school transportation; health and advisory services. In addition, the French community commission also has the authority, in conjunction with the French community, to establish, finance and control certain institutions in the area of primary and secondary education.

The Flemish and French Community Commissions are each made up of a legislative assembly (i.e., the respective members of the Flemish-speaking and French-speaking linguistic groups in the regional council) and an executive college (the respective Flemish-speaking and French-speaking ministers and state secretaries of the regional government). Independent of the degree of powers transferred to the commissions, they have administrative competences in the areas where powers are assigned to the communities at the federal level, namely culture, education, language use, as well as healthcare and a range of social services (so-called person-related matters).

The Joint Community Commission has a coordinating role between the two communities and that part of the public sector in Brussels which is not part of either of the community sectors. The Joint Community Commission has the same structure as the French and Flemish community commissions, consisting of a legislative assembly (the so-called United Assembly) and an executive college. The membership of the assembly is identical with that of the regional council. Its legislative powers extend to those institutions that do not clearly belong to either one of the two linguistic communities and to personal matters related to

healthcare and certain social services. Each decision made by the United Assembly requires parallel consent in both linguistic groups. The legislative process is identical to that in the regional council. However, given the distinct areas of competence which the United Assembly enjoys, it has only three committees (health, social affairs and a united committee on health and social affairs). The executive college of the Joint Community Commission is made up of the four ordinary ministers of the regional government, who have full voting powers, the president of the regional government, who has a consulting vote, and two members each from the French and Flemish community government who are inhabitants of Brussels and also have a consulting vote only.

A final, but nevertheless important dimension of power-sharing in Brussels is related to the influence that the federal government has retained over laws passed by the regional council or policies implemented by the regional government in the areas of urban development, territorial organisation, public transport and public infrastructure, i.e., in areas relevant to the role of Brussels as the capital city of Belgium and host to a range of international organisations. The federal Council of Ministers may suspend any council law or government regulation within 60 days after its publication. There is then a compulsory consultation procedure in the Committee of Cooperation, a body specifically created for this purpose. If no resolution is agreed, the Council of Ministers may then ask the federal Chamber of Representatives to permanently cancel the relevant law or regulation, which is dependent on parallel consent from both the French and Flemish community groups in the Chamber of Representatives. In addition, if the Council of Ministers is of the opinion that the regional council or government do not fulfil their obligations with respect to the relevant policy areas mentioned above, it can propose measures that it deems suitable to address this situation. Again, a compulsory consultation procedure follows, and failing agreement at the end of it, the Council of Ministers may obtain the relevant power from the Chamber of Representatives to implement itself the policies it deems necessary (again, subject to parallel consent). This not only limits the autonomy of the Brussels-Capital Region, but it also creates an asymmetry between Brussels as a region and the two other regions of Belgium, Flanders and the Walloon region.

In summary, the nature of power-sharing at the level of the regional legislature and executive in Brussels is that of a structurally complete and formalised consociation: cross-community executive power-sharing is mandatory, proportionality in the council and the government is guaranteed, segmental autonomy is far-reaching and provisions for minority veto exist, albeit only in a very limited way and on selected decisions in the regional council (principally the appointment and dismissal of government ministers representing the minority). In addition, the so-called 'alarm bell procedure' serves as a mechanism that can either start a process the result of which is the accommodation of concerns of any of the linguistic communities or that at least delays the implementation of a particular law. The parallel consent requirement for all decisions taken by the legislative assembly of the Joint Community Commission, gives the Flemish minority a further guarantee to exercise veto powers over all matters in the competence of this institution.

The complexity of the consociational structures in Brussels is easily matched by that of the institutions of the Belgian state as a whole. Consequently, power-sharing in Belgium is not only a concept that applies horizontally at different layers of authority (principally the federal and Brussels regional levels), but also vertically by means of a clear division of competences between different layers of authority and different constituent elements of the Belgian federal state. The principal vertical layers of authority are the federal level, the regional level and

the community, the provinces, and the level of local governments. Leaving aside the largely ceremonial role of the monarch, Belgium thus has a four-layered structure of public authority (see Figure 1). The nature of the constitutional compromises leading up to this current institutional framework being one of compromise between two ethnolinguistic groups, the division of powers between these layers is clearly regulated and laid down in the constitution as well as a variety of laws passed with parallel consent in the federal parliament.

Since the 1993 state reform, the main constituent elements of the Belgian state are the three regions (Flanders, Walloon region, and Brussels) and the three communities (Flemish, French and German). Regions are geographically defined; communities are defined on the basis of cultural and linguistic markers. Belgium thus incorporates a complex system of territorial and non-territorial autonomies. The distribution of competences reflects the different 'boundaries' of each of these constituent components. To begin with, however, the federal level has exclusive legislative and executive competence in the following areas: foreign relations (except where this competence has been devolved in specific areas to the regions); defence; policing; justice; welfare; public health; debt; public services administration. In addition, the federal government also has a variety of reserved competences in those policy areas where powers have been mostly devolved to regions (e.g., environment, utility management, public infrastructure) and communities (education, culture, person-related matters). It also has concurrent competences in the fields of scientific research and export promotion.

Communities, as they are defined in personal terms, have their executive and legislative competences in the fields of education, cultural and language policy, and the whole area of personal matters, which include primarily healthcare and other social services. Regional competences include the policy areas of urban and rural planning, environment, economics, agriculture and industry, energy, labour market, public transport and infrastructure, as well as foreign affairs in these areas.

All communities and regions have their own legislature and executive, in the case of the Flemish community/Flanders, regional and community institutions have been merged into one. Thus, there is one Flemish council and government, exercising both communal and regional powers at once. The French community and Walloon region keep separate institutions.

There are ten provinces in Belgium, five in each region, except in Brussels which only has 19 local government units as further administrative division. Provinces have no original authority of their own and remain under the supervision of their regional council and the federal government, the latter of which is represented by a provincial governor, appointed by the King. Competences of the provinces are minimal and relate primarily to financial management of public infrastructure.

There are a total of 579 local government units in Belgium. Like at other layers of authority, power is divided between a council and an executive. Although the self-government of local communities is constitutionally guaranteed, few real powers have remained with them within the Belgian system, only planning, schools administration, local amenities and roads, and social services administration.

Unsurprisingly, such a complex system of institutional structures requires significant policy coordination and mechanisms to avoid and manage conflicts. This is formally regulated within the constitution (Chapter V) and a range of specific laws. The principal institutions are the Standing Language Commission, the State Council and the Court of Arbitration. In addition, there are a number of consultative bodies between the federal government and the regional and

community institutions, as well as between regions and communities. These take the nature of permanent bodies as well as ad hoc ones. Furthermore, six members of the Flemish-speaking group of the Brussels regional council are also members of the parliament of the Flemish community, and 19 members of the French-speaking group are members of the council of the French community. As regards the representation of Brussels within the executive bodies of each of the relevant two communities, at least one member of each of the two community executives must be from the region of Brussels. In the case of the French community, this is the president of the Brussels regional council, in the case of the Flemish community, the Brussels member of the executive is not a minister in the Brussels regional council, but is normally responsible, in the Flemish community council for coordinating the latter's policy towards Brussels and supervising the Flemish Community Commission in the region of Brussels.

B. Bosnia and Herzegovina

The war in Bosnia and Herzegovina was part of a wider regional conflict – the disintegration of Yugoslavia. Over three-and-a-half years, between 1992 and 1995, three main conflict parties – Serbs in Bosnia (and their supporters in Serbia), Croats in Bosnia (and their supporters in Croatia) and Bosnian Muslims – fought each other in shifting alliances with different aims. Serbs sought secession and unification with Serbia, as they felt threatened in a state potentially dominated by a Muslim or Muslim/Croat majority hostile to them. To some extent, Croats shared this goal of secession and unification (with Croatia), while Muslims fought to prevent the disintegration of what they perceived as their ancestral homeland. The intensity of the conflict prompted the UN to declare six safe areas for Muslims and to despatch a peacekeeping force for their protection. Following the breakdown of a four-month ceasefire between Muslims and Serbs, the latter launched an intensive campaign against Muslim safe areas between May and August 1994 in which large numbers of civilians were deliberately targeted and killed. In response, NATO intensified its air strikes against the (regular and irregular) armed forces of the Bosnian Serbs and eventually forced all three conflict parties to the negotiating table in Dayton, Ohio in September 1994.

The Dayton Peace Agreement of 1995 provides the legal foundation upon which the post-war Bosnian state has been constructed. It establishes several layers of authority: principally, the state level, the entity level and the local level. Within the Bosnian-Croat Federation, cantons provide a further layer of authority. All four layers of authority have their competences clearly laid out in the Dayton Peace Agreement, its various annexes and follow-on documents, as well as various subsequent amendments. A significant change to this structure was made in 1997 when the so-called Peace Implementation Council, uniting almost sixty states and governmental and non-governmental organisations involved in the implementation of the Dayton Peace Agreement, decided to endow the Office of the High Representative with the authority to dismiss elected and unelected officials in Bosnia and Herzegovina if they were deemed to obstruct the implementation of the Dayton Peace Agreement, and to make legally binding decisions (i.e., to pass laws) in any area in which the state or entity parliaments were unable or unwilling to legislate. This establishes the High Representative not only as the ultimate arbiter in any cases of difficulties in implementing the Dayton Peace Agreement and in coordinating policy between the institutions it established, but endows the office, similar to that of the Special Representative of the UN Secretary-General in Kosovo, with significant legislative and executive powers. This is comparable only to the powers of the Secretary of State for Northern Ireland, who, through subsequent amendment to the original Agreement, is able to suspend Northern Ireland's power-sharing institutions and assume their executive and most of their legislative powers.

What is striking about the construction of the Bosnian state is the almost excessive degree of decentralisation (see Figure 2). Powers at the level of state institutions are very few. They include foreign relations, foreign trade, customs, monetary policy, immigration, international and inter-entity criminal law enforcement, communications infrastructure, inter-entity transportation, air traffic control and inter-entity coordination. Any other power or part thereof, not explicitly mentioned, is by default allocated to the entities which thus become the sources of original authority. Whereas there is further devolution to cantons and eventually to municipal authorities in the Bosnian-Croat Federation, the Republika Srpska is an almost oddly centralised entity in the context of Bosnia, retaining most powers at the level of the entity government and endowing municipalities primarily with administrative functions in the areas of development, urban planning, budget, local infrastructure, and specific local needs of citizens in the areas of culture, education, health and social welfare, etc.

Figure 2: Self-governance Arrangements in Bosnia and Herzegovina
<<Figure 2 about here>>

This particular layering of authority reflects the balance of power within Bosnia and Herzegovina as a whole and within the two entities. The entities gained wide-ranging autonomy in almost all functions of government, including defence and a significant part of foreign policy, and were thus able to assert their independence from a weak central government at the state level. This distribution of power at the state-entity nexus is mirrored within the Bosnian-Croat Federation: cantonal and municipal authorities are strengthened at the expense of the Federation government.

Bosnia and Herzegovina, thus, could be characterised as an asymmetric federation in the sense that there are significant differences in how authority is layered within each entity. Under different circumstances, the existence of cantons in the Federation but not in the Republika Srpska, might have resulted in policy coordination problems within the overall structure of the Bosnian state, similar to those in Gagauzia and Mindanao. However, the fact that very few powers remain at the centre, which would require coordination, counteracts this problem, as does the existence of the Office of the High Representative who retains key powers that enable him to enforce compliance of, and coordination between, different layers of authority within each entity and across entities, if only by dismissing elected and unelected officials unable or unwilling to cooperate and by passing by decree laws and regulations deemed necessary for the functioning of institutions at all layers of public authority in Bosnia and Herzegovina.

In the context of the ethnic demography of Bosnia and Herzegovina, this layering of public authority has several implications. Firstly, most powers are located at the inter-ethnically least contentious level – the entity in the case of Republika Srpska, the cantons in the case of the federation. This institutional design absolves elites from substantive cooperation as significant powers mostly lie at levels where there is significant ethnic homogeneity. For this very reason, there is, secondly, little or no need for segmental autonomy: virtually monoethnic levels of government have authority over (usually segmented) policy areas such as culture and education. Thirdly, because of the degree to which power has been retained at the entity level, especially in the federation, and the because of the fact that there remain certain powers in the competence of the state-level institutions, there is a greater need for mandatory horizontal elements of power-sharing (proportionality, qualified majority voting procedures in legislative assemblies, etc.), which are provided for in great detail in the Dayton Peace Agreement and other relevant constitutional documents and their subsequent

amendments. The devolution of power to ever-lower levels of government, approximating almost perfect subsidiarity in the federation is not a substitute for horizontal power-sharing, in contrast to what can be observed in relation to Gagauzia, Kosovo and Macedonia (see below). On the one hand, the need for horizontal power-sharing exists as long as there is politically significant ethnic mix of the population at the relevant level of government. Related to this, on the other hand, the issue of who exercises authority in which policy area does not become less problematic if power is devolved further and further down from the centre. For the exercise of power to be legitimate, i.e., for power to become authority, the very institutions of government need to be recognised as legitimate – and this is as true at the level of municipal government as it is as that of state government in Bosnia and Herzegovina and elsewhere.

C. ***South Sudan***

Sudan occupies 2.4 million square kilometres of territory in North Africa and has an estimated population of just under 40 million people. Sudan borders nine other African countries and the Red Sea. Its population is highly diverse with some 500 tribes and ethnic groups, 70 per cent of which are Sunni Muslims, 25 per cent belong to indigenous beliefs and 5 per cent are Christians. The conflict between north and south traces its origins back to colonial times and the period immediately prior and after independence. It had ravaged the country for all but ten years since independence when a ceasefire was concluded in 2002 and peace negotiations led to formal agreements in 2004 and 2005.

Throughout the last years of the period of colonial rule, southern Sudan had been administered separately as Britain, the dominant colonial power, sought to protect Christian Southerners from discrimination and exploitation by the Muslim Northerners. Administrative structures established to this effect, however, were gradually removed when Sudan moved closer to independence from the late 1940s onwards. Southern representatives in the Sudanese parliamentary assembly supported a declaration of independence in 1955 hoping for generous self-governance rights. As these were not forthcoming as envisaged, a rebellion in the South began in the late 1950s and quickly gained significant strength and momentum. Between 1973 and 1983, some progress was made toward a settlement with a new constitution. Again, self-governance rights were not as broad and far-reaching as Southern rebels had envisaged, and when Islamic law was introduced throughout the country, the armed conflict started anew and grew in intensity and viciousness. Renewed attempts at peace were made in the 1990s under the auspices of the regional Intergovernmental Authority on Development (IGAD) leading to a formal Peace Agreement in 1997. Even though this was never implemented as some of the Southern parties did not accept the arrangements made, the Sudanese government accepted that the maintenance of the territorial unity of Sudan during an interim period would eventually be followed by a referendum on independence in the South.

With increased US pressure on Sudan after the terrorist attacks of 9/11 2001, new prospects for a settlement emerged and a formal cease-fire was soon established. Intensive negotiations led to the Machakos Protocol of 2002 followed by another six further protocols by 2004 and a formal peace agreement signed in January 2005.

While clearly establishing an unconditional right of self-determination to the people of the South, the Machakos Protocol is rather vague on state structures during the interim period and only confirms that there will be a central government and that religiously-based law will be of limited reach. Further protocols were therefore subsequently adopted to provide substance to this more

general framework structure, of which the Protocol on Power-sharing is the most significant.

In the Protocol on Power-sharing the conflict parties commit themselves to a four-layered structure of government in relation to the status of Southern Sudan, comprising the central level of Government 'which shall exercise authority so as to protect and promote the national sovereignty of Sudan and the welfare of its people' , the Southern Sudan level of Government 'which shall exercise authority in respect of the people and States in the South', the States throughout Sudan 'which shall exercise authority at the state level and render public services through the level of government close to the people', and the level of local government throughout the Sudan (see Figure 3).

Figure 3: Self-governance Arrangements in Sudan
<<Figure 3 about here>>

The Interim National Constitution is considered 'the Supreme Law of the land and the Southern Sudan Constitution, state constitutions, and the laws of all levels of government must comply with it'. Importantly, the government of Southern Sudan is established as a formal entity also in relation to the link between the central government and the states in the Southern Sudan, thus ensuring that no parallel structures of authority emerge that could potentially sideline or marginalise it.

At the central level of government, the Protocol establishes a bicameral legislature, executive and an independent judiciary, as well as further 'Institutions and Commissions specified in this Agreement and the Interim National Constitution'. Prior to elections, there are clearly determined arrangements for executive power-sharing between northern and southern parties. As for the court structure at the level of central government, a Constitutional Court, a National Supreme Court, National Courts of Appeal are established and provisions are made to create '[a]ny other National Courts or tribunals as deemed necessary'. Southern Sudan is to be adequately represented in the Constitutional Court, the National Supreme Court and other national courts, but in contrast to provisions for executive power-sharing, no specific quota is established.

At the level of the Southern Sudan government, the same three branches of government are established. Prior to elections, clear power-sharing quotas are established for the representation of the various Southern parties in their assembly and executive. The Protocol makes it explicit that '[t]he Government of Southern Sudan shall discharge its obligations and exercise such rights and powers in regard to administration, security, financial, and development issues as is set forth in the Southern Sudan Constitution, the Interim National Constitution, the Peace Agreement and any other agreement relating to the reconstruction and development of the Southern Sudan.' The powers of the government are determined in separate schedules appended to the Protocol, in conjunction with the Interim National Constitution, Southern Sudan Constitution, and the Peace Agreement. Similar to provisions on state structure referred to earlier, one of the primary responsibilities of the Government of Southern Sudan is determined as acting 'as an authority in respect of the States of Southern Sudan, … as a link with the National Government'.

As for the judiciary bodies in Southern Sudan, a Supreme Court, Courts of Appeal, as well as other courts or tribunals as deemed necessary' are established. The Supreme Court for Southern Sudan is the highest court in the South and is to hear 'appeals from Southern state courts or other Courts of Southern Sudan on

matters brought under or relating to Southern state, Southern Sudan or National law, as may be determined by the Constitution of Southern Sudan'.

Institutions at the State level are again legislature, executive and judiciary, 'which shall function in accordance with this Agreement, the Interim National Constitution and, in respect of the states of Southern Sudan, also with the Constitution of Southern Sudan'. In relation to state legislatures, it is interesting to note that the two main conflict parties, the National Congress Party and the Sudanese People's Liberation Movement, agreed to allocate each other 70% of seats respectively in their territories in the north and south while conceding 10% of seats to each other in the other's states (including one nominee for state governor and one for deputy governor), with 20% of seats remaining available for other local parties. The same provisions are made for representation in state executives, thus enshrining the principles of power-sharing also at the level of state governments. State judicial institutions are to be established by State constitutions.

Six schedules are appended to the protocol on power-sharing. These detail the powers exclusive to the central government, the Government of Southern Sudan, and State governments, as well as concurrent powers. As far as residual powers are concerned, the Protocol establishes that 'The residual powers shall be dealt with according to its nature (e.g., if the power pertains to a national matter, requires a national standard, or is a matter which cannot be regulated by a single state, it shall be exercised by the National Government. If the power pertains to a matter that is usually exercised by the state or local government, it shall be exercised by the state). Where a matter is susceptible to Southern Sudan regulation, in respect of the states of Southern Sudan, it shall be exercised by the Government of Southern Sudan.' If a conflict occurs in the exercise of concurrent powers because the provisions of Southern Sudan law and/or a State law and/or a central state law are contradictory, the protocol establishes that 'the law of the level of government which shall prevail shall be that which most effectively deals with the subject matter of the law', but subjects this general ruling to four principles: 'the need to recognize the sovereignty of the Nation while accommodating the autonomy of Southern Sudan or of the States', 'whether there is a need for National or Southern Sudan norms and standards', subsidiarity, and the 'need to promote the welfare of the people and to protect each person's human rights and fundamental freedoms'.

D. Mindanao

The self-determination conflict in Mindanao is characterised by the parallelism of internal and external conflicts. Within Mindanao, the conflict between a predominantly indigenous Muslim population and a predominantly migrant Christian population is about the control of what Muslims perceive as their ancestral homelands. An additional complication in this territorial dispute arises from the fact that Muslims have become a marginalised minority as a result of massive immigration of Christian settlers multiplying Mindanao's population over the past century by more than fifteen times and turning what was once a three-quarters majority of Muslims into a less than one-quarter minority. Superimposed on this ethno-religious regional conflict, there is a conflict between Muslim militants and the national government of the Philippines over the secessionist aspirations of a considerable section of Mindanao Muslims. Both conflicts combined from the 1960s onwards into a civil war and general state of lawlessness in Mindanao that saw tens thousands of people killed and hundreds of thousands displaced or turned into refugees. The two main insurgent agents are the Moro National Liberation Front (MNLF) and one of its break-away groups, the Moro Islamic Liberation Front (MILF). This has added a third dimension to the conflict, namely an intra-Muslim divide along ethnic and political lines.

Efforts to bring peace to Mindanao in the 1970s and 1980s failed, despite an agreement being signed in Tripoli in 1976 and the 1987 approval of a new Constitution by referendum providing Mindanao with its own autonomous structures. The failure of these two earlier attempts to resolve the conflict peacefully was primarily due to the obstructionist attitudes of the two main rebel groups, which, among other things, resulted in only four out of thirteen eligible provinces in Mindanao opting for membership in the Autonomous Region of Muslim Mindanao (ARMM). Following new efforts by the Philippines government, an agreement was concluded with the MNLF that was designed to bring the decades old violent self-determination conflict to an end by fully implementing the 1976 agreement and all subsequent legislation for autonomy arrangements in the ARMM. A subsequent referendum on membership in the ARMM resulted in only one additional province and one further town joining the autonomous region.

As a layer of authority, the ARMM was 'inserted' into an existing four-tier structure in the Philippines, consisting of the national government and provincial, municipal and local authorities (see Figure 4). At each level, the traditional three branches of government – legislature, executive and judicial system – exist, even though their competences extend to different areas. The particularity of the autonomous region not only arises from the fact that it is an additional structure in the Philippine political system or that it is made up of five, territorially non-contiguous provinces, but also in that it prescribes a power-sharing regional administration consisting of a cabinet and executive council, controlled by a Regional Governor and a Deputy Governor. Equally, the Regional Assembly is unique within the Philippines in that it comprises both popularly and corporately elected members. The judicial system in the region is distinct from other national judicial institutions in that it allows Muslim Shari'ah courts and tribal courts to practice, albeit only in areas of family and religious matters, alongside national judicial institutions. Authority between the national government and the ARMM government is clearly divided according to policy areas. Foreign affairs, defence, security, postal service, fiscal and monetary affairs, administration of justice, foreign trade, customs and tariffs, citizenship and immigration, communication and auditing remain the exclusive domain of the national government, while health, education, human resources, science and technology, people empowerment, intra-regional communication and economic development are in the domain of the ARMM government.

Figure 4: Self-governance Arrangements in the Philippines
<<Figure 4 about here>>

The key problem that remains to be resolved is not the separation of competences between the national government and the government of the autonomous region, but rather how authority is layered in the relationship between the ARMM government and the three pre-existing lower levels of government upon which the ARMM structure was superimposed, a situation that is similar to that of Gagauzia in Moldova. The nature of this problem is one of coordination within the specific system of institutions established with the creation of the autonomous region as an additional layer of authority. From this perspective, the allocation of specific areas of competence to the ARMM government proves both advantageous and disadvantageous at the same time. Its advantage is the clearly defined degree of autonomy that the autonomous region has thus achieved from the national government. However, this clear definition of powers at the same time may prove limiting in its dealings with provincial, municipal and local levels of government which have specific competences of their own that do not derive from the autonomous region as their original source of authority, but from the national government, and which, at the

same time, report directly to the national rather than to the regional government. Rather than establishing a clear vertical division of power between national government and autonomous region, a dual structure is beginning to emerge. The ARMM has autonomy from the national government in some policy areas, but provincial, municipal and local governments have competences in other areas where authority overall remains with the national government, thus bypassing ARMM and being accountable directly to the national government. As in Gagauzia, this situation has the potential to undermine the whole idea of autonomy for a specific region and render it meaningless, thereby providing fuel for renewed conflict.

E. Northern Ireland

The conflict in Northern Ireland is essentially about competing conceptions of national belonging. The Nationalist vision of a united Ireland is diametrically opposed to the desire of a Unionist community to retain strong constitutional links with Great Britain in the United Kingdom. Since its creation in 1921, the province of Northern Ireland has seen more than one resounding failure of attempts to resolve this self-determination conflict. For the first fifty years after the partition of Ireland, the province enjoyed wide-ranging autonomy within the United Kingdom, having its own parliament, government, civil service, and judicial system. This, however, exacerbated ethnic tensions more than it contributed to calming them. Northern Ireland was run as a majoritarian democracy, with a Unionist majority heavily discriminating in all spheres of public life – from employment and housing to education and culture – against the Nationalist minority. When the Nationalist community, from the mid-1960s onwards, began to push for equal rights, the political system set up to protect the status and privileges of the Unionist community proved utterly unsuitable to handling the ensuing conflict. Escalating violence prompted the deployment of the British Army in the province in 1969 and the later suspension of the system of self-government in Northern Ireland in 1972. However, within a year of the suspension, the moderate political parties in Northern Ireland and the British and Irish governments had agreed on a new institutional framework that provided mechanisms for power-sharing between the two communities and a formal involvement of the Republic of Ireland in the governing of the province as the Nationalist community's kin-state, the so-called Sunningdale Agreement, which failed within months of its inauguration. Throughout the next two-and-a-half decades, several initiatives to resolve the conflict failed. It was only when the Belfast/Good Friday Agreement, which replicates many of the key features of the 1973 Sunningdale Agreement, was concluded in 1998 after an inclusive negotiation process that the prospect of sustainable conflict settlement arose anew.

The power-sharing institutions in Northern Ireland slot in between the central government in Westminster and the twenty-six local councils within Northern Ireland (see Figure 5), and are, as a layer of public authority, by-and-large comparable to the institutional structures established in Scotland and Wales since 1997. The national government remains the residual source of all public authority. This appears to include, contrary to the original agreement of 1998, the power to suspend the power-sharing institutions in Northern Ireland unilaterally. In this respect, Northern Ireland is unique among the cases considered here in that its autonomy can be revoked at any time by the central government. When the power-sharing institutions in Northern Ireland are operational they have powers in all presently devolved matters, i.e., economic development, education, health and social services, agriculture, environment, and finance. Depending on a future assessment by the British government, further powers may be devolved to the institutions in Northern Ireland. These are, at the moment, so-called reserved matters and include criminal law, criminal justice and policing. A third category of

powers is to remain with the British government indefinitely. These excepted matters are foreign and defence policy, the Crown and monetary policy.

Figure 5: Self-governance Arrangements in the United Kingdom of Great Britain and Northern Ireland
<<Figure 5 about here>>

Similar to the provisions relating to Gagauzia and Bougainville, the 1998 agreement foresees the possibility of constitutional change through a referendum. Should a majority of the people of Northern Ireland express the wish to unite with the Republic of Ireland at some stage in the future, both governments have committed themselves to respect such an expression of the popular will and the British government is to provide for referenda at regular intervals to gauge public opinion on this issue. A crucial difference in the case of Northern Ireland, however, is that for Irish unification to happen, a majority of the population in the Republic of Ireland also needs to approve such a change in international boundaries by referendum. Thus, in fact, secession itself is not an option, only an irredenta, i.e., unification with the kin-state.

The structure of institutions in Northern Ireland mirrors the classical division of powers between legislature, executive and judiciary. The directly-elected Assembly has full legislative competence over all devolved matters. The power-sharing executive, which enjoys full executive competence over all devolved matters, is comprised of a First and Deputy First Minister (elected on a joint ticket) with coordinating executive functions, Ministers (selected according to the d'Hondt rule) who formulate and execute policy and enact assembly legislation within the remits of their portfolios, and Executive Committees who scrutinise ministerial departments. Legislature and executive are complemented by an extensive judicial system consisting of a High Court, County Courts and Magistrates Courts, an Attorney General, an Advocate General, a Public Prosecution Service, a Chief Inspector of Criminal Justice and a Law Commission.

The third layer of public authority relevant in the case of Northern Ireland is that of local authorities. Here, twenty-six local councils, also referred to as boroughs, have competences in a range of areas including development, tourism, community relations and the environment. Local authorities have a directly-elected Council and a Town Clerk and Chief Executive who are responsible for running day-to-day affairs.

F. South Tyrol

South Tyrol – a mountainous, trilingual area in northern Italy where speakers of German are in a two-thirds majority over about thirty per cent Italians and four per cent Ladins – had for centuries been part of the Habsburg Empire before it was annexed to Italy in the peace settlement of St. Germain in 1919. Initial promises for far-reaching autonomy made by the Italian government to the sizable German-speaking community in the area were not kept in full, and the fascist takeover in 1922 saw the beginning of a comprehensive campaign of forced assimilation carried out against the German-speakers of South Tyrol. After the Second World War, South Tyrol remained with Italy, and Austria, the kin-state of the German-speaking community, ceded all territorial claims to the province in exchange for Italian promises of substantive autonomy in the so-called Gruber-De Gasperri Agreement, annexed to the Paris Peace Treaty of 1946.

In contrast to the conflict in Northern Ireland, the dispute in and over South Tyrol is no longer about different conceptions of national belonging, but about control over the territory of South Tyrol. It was, and is, primarily a conflict between German-speakers and the central government in Rome, but remained in nature

an ethno-national conflict. In an effort to resolve the conflict, which briefly turned violent in the early 1960s, a special autonomy statute of 1972 (and its revised version of 2001) granted wide-ranging legislative and administrative powers to the province, and the influence of the central government has been reduced in some crucial areas compared to an earlier autonomy statute dating back to 1948. The constitutional status of the province is now very similar to that of a state in a federal country (i.e., its relation with the Italian state is that of a federacy; see below), allowing for the free and protected development of all three ethnic groups.

The autonomy statute, which is the central part of the 1969 Austro-Italian package deal, passed all the parliamentary hurdles in Italy and came into force on 20 January 1972. Its official name – 'Measures in Favour of the Population of South Tyrol' – emphasises that minority protection is only one part within a whole set of measures and regulations, dealing with the distribution of powers between different levels of government and between the two ethnic groups –Germans and Italians. Only 15 articles are specifically and exclusively aimed at the German-speaking population within the province (and thus, by extension, at inter-ethnic relations), while the rest of the articles strengthened provincial autonomy *vis-à-vis* the region and the central government as a whole and introduced procedures to mediate between all ethnic groups in South Tyrol.

At the heart of the reorganisation of ethnic relations in the province and the region are formalised mechanisms of power-sharing (see Figure 6). Going far beyond the original provisions of the 1948 autonomy statute, these mechanisms can be found in relation to three distinct dimensions at both regional and provincial levels: voting procedures in the two assemblies, rotation of high offices between the ethnic groups, and coalition government.

Figure 6: Self-governance Arrangements in Italy
<< Figure 6 about here>>

To begin with the latter, the government of South Tyrol has to reflect the ethnic proportions of the provincial assembly. Therefore, a simple majority of votes in the assembly is not sufficient to establish the government unless this majority consists of votes from both Italian and German representatives, i.e., the autonomy statute, in practice, requires a German-Italian coalition government. This 'implicit' coalition requirement is complemented by a more explicit one deriving from the compulsory equitable distribution of the offices of the two vice-presidents of the provincial government between the German and Italian ethnic groups.

Another feature of power-sharing in South Tyrol established by the 1972 autonomy statute is the compulsory rotation of offices in the presidency of the provincial assembly. Elected by the assembly, the presidency consists of one president and one vice-president as well as three deputies, who act as secretaries. In the first half of every five-year legislative period an elected representative of the German-speaking group must be chosen as president, and an Italian as vice-president; in the second half, their roles reverse.

All legislation emanating from the provincial assembly, is prepared by legislative commissions. Their members are the president, vice-president and one of the presidency's secretaries, as well as between four and five 'ordinary' members chosen by government and opposition parties in the assembly, thus again reflecting ethnic proportions in the assembly.

At regional level, similar provisions were made to ensure adequate representation of the German and Italian ethnic groups, and thus, by extension, a functioning system of power-sharing. The regional assembly, which is made up of the entire cohort of elected deputies from both provincial assemblies (i.e., South Tyrol and Trentino) operates the same principle of rotating offices between president and vice-president; in addition, it also changes the location of its sessions between Trient/Trento (first half) and Bozen/Bolzano (second half). As for the regional government, the same principles operate that are in force at provincial level.

In order to give each ethnic group additional leverage, and incentives, to make the power-sharing arrangements work, specific voting procedures and other mechanisms for the adoption of provincial laws were established. When any bill is put before parliament that is considered to affect the rights of a particular ethnic group in South Tyrol, a majority of the deputies of this ethnic group may request 'separate voting', i.e., a determination of support for the specific bill among each ethnic group. If this request is denied, or the bill is passed against the vote of two-thirds of representatives of one ethnic group, the group opposing the bill may take the matter to the Italian constitutional court in Rome. Thus, there is no formal veto-power enshrined in the arrangements. While defending democratic decision-making procedures against a blockade of the political process, nevertheless, a mechanism exists that potentially offers legal redress outside the political process. Only in one respect has a more or less formal veto right been established – in relation to the provincial and regional budgets. Here, separate majorities are required from within both the German and Italian ethnic groups. If this is not forthcoming, all chapters of the budget are voted on individually. Those failing to receive the required double majority (parallel consent) are referred to a special commission of the assembly, and if no agreement is reached there either, the administrative court in Bozen/Bolzano makes a final and binding decision.

The focus on the German-Italian dichotomy in respect of power-sharing and in a number of other areas, where the principle of proportional rather than equal representation of all ethnic groups, was in force, clearly disadvantaged the Ladin-speaking group. Most of these traditional disadvantages experienced by the Ladins have been formally addressed during the implementation process of the 1972 autonomy statute, and more drastically in its reform in 2001.

The formal settlement of the South Tyrol conflict between Austria and Italy in 1992 according to the procedures set out in the operational calendar did not mean an end to the further development of the autonomy and power-sharing regulations. Led by the South Tyrolese People's Party (the dominant political party among German-speakers), the provincial government sought to improve and extend the regulations of the 1972 statute further in order to increase the province's autonomy and with it to improve the quality of life for all three ethnic groups. From the mid-1990s onwards, the provincial government was granted an extension of its powers in, among others, the sectors of education, employment, transport, finance, privatisation of state-owned properties, energy and European integration.

As part of these and other significant changes, a revised autonomy statute came into effect on 16 February 2001, marking the third autonomy statute for the province since the end of the Second World War. In it, the status and powers of the two provinces Trentino and South Tyrol has been greatly enhanced so that South Tyrol and Trentino no longer constitute subordinate units of the region of Trentino-South Tyrol and have individually more legislative and administrative powers than the region itself. In particular, the following new regulations have increased the degree of autonomy enjoyed by both provinces:

- In contrast to the previous autonomy statute, the revised version of 2001 now explicitly recognises the internationally guaranteed nature of South Tyrol's autonomy. By nature of its being a constitutional law, the new autonomy statute gives an even firmer guarantee for the inviolability of South Tyrol's autonomous status.
- All legislation in relation to elections is now in the competence of the provinces, allowing them to determine, for example, whether the president of the provincial government should be elected directly or not. Respective legislation no longer requires the approval of the government commissioner.
- Amendments to the autonomy statute can in future also be developed by the two provinces, without involvement of the region.
- If the Italian parliament intends to change or amend the current statute, representatives of the province have now to be consulted, instead of, as was previously the case, those of the region.
- Members of the provincial government can be appointed with a two-thirds majority in the provincial assembly without having to be its members.
- Representation of the Ladins in the presidency of the regional and provincial assemblies and in the regional government is now part of the power-sharing arrangement, and members of the Ladin ethnic group can be co-opted into the South Tyrol provincial government.
- In addition, for the first time ever, the term 'South Tyrol' has been officially incorporated in its German version in the Italian constitution as part of the Constitutional Law on Federalism, which was adopted in March 2001.

From the perspective of vertical layering of authority, the case of South Tyrol represents a four-layered structure: the government in Rome, the Region of Trentino-South Tyrol, the Province of Bozen/Bolzano-South Tyrol and the local communities within the province. This is structurally broadly similar to the rest of Italy, with the exception that the region and its two provinces have traditionally since 1948 had a so-called special autonomy statute (a feature shared with four other ethnically or geographically distinct regions of Italy) that gave them a set of powers distinct from that of other regions.

The central government is represented in the province by a government commissioner whose job it is to coordinate central government functions (primarily taxation, military and police matters, and judicial affairs) within the province, to monitor the exercise of devolved powers by the provincial government, to oversee local government and to appoint commissioners to take over local governments who have been suspended from discharging their duties on grounds of public order and security.

The region, which has been much diminished in status by the 2001 reform of the autonomy statute, is now no longer a body superior to the provinces, but rather the two provinces are considered constituent entities of the region with their own distinct powers. While the 1948 and 1972 autonomy statutes were essentially meant to devolve powers to the region, from where they were then further devolved to the provinces, the provinces now have original authority in an increased number of areas. Nevertheless, the regional layer of authority remains significant and constitutes its own level of government, comprising a power-sharing executive, the presidency of the executive and a legislative assembly (made up of the representatives of the two provincial diets). Regional competences extend to regional budgetary and financial matters, policy coordination between the provinces, relations with the European Union, language policy, regional administration, and social welfare.

At the provincial level, the power-sharing government consists of a directly elected legislature and an executive. The government has primary and secondary

competences, the former giving it complete legislative and executive freedom, subject only to the Italian constitution and any international obligations Italy has entered into, while the latter allow the province to legislate and regulate in accordance with existing Italian laws. In all areas of primary competence, the province also has the right to implement relevant EU legislation directly and to conduct its own external relations.

Local governments exercise powers according to the principle of subsidiarity. Even though they do not have original authority, there is a constitutional guarantee of administrative autonomy. Their responsibilities cover all matters of local interest, from social services, to planning and economic and cultural development. Local communities also have a limited tax-raising ability in order to ensure that they can raise sufficient funds in addition to grants from the provincial government to discharge all their duties adequately. With the 2001 constitutional reform, the status of local communities has been raised: they are now, alongside the regions, provinces and metropolitan cities constituent elements of the Italian state and their administrative autonomy has been enshrined in the constitution.

All of the 117 local communities in the province have joined up in so-called *Bezirksgemeinschaften* (district associations). Two provincial laws from 1991 recognised these interest groups as corporate bodies under public law. Member communities have used the opportunity since 1993 to delegate certain of their responsibilities to district associations, especially in the area of social services provision. In addition, district associations have been charged by the provincial government with responsibilities of their own, especially in the area of environmental protection and social, economic and cultural development of the under-developed mountain regions that they represent.

Policy coordination and conflict avoidance and management are ensured relatively effectively through a Standing Commission at the Office of the Italian Prime Minister, and two standing commissions on regional and provincial affairs that need to be consulted prior to any decision affecting provincial or regional matters. In addition, the heads of the regional and provincial governments have the right to participate in sessions of the Italian government whenever it debates matters relevant to the province or region. There is also an arbitration commission for budgetary disputes at provincial level. People in both region and province elect deputies to the Italian parliament and senate and are thus involved in the national political process as representatives of their electorates as well. Additional institutions of dispute resolution are the administrative courts in Bozen/Bolzano and Rome can adjudicate in disputes between the provincial, regional and national governments.

G. Gagauzia

The territory of today's Republic of Gagauzia, an autonomous republic in the Republic of Moldova, has belonged to a variety of rulers and states in its history. It was part of the Ottoman empire until 1812 when it was annexed by Russia. In the middle of the 19th century, it came under Romanian administration as part of the Romanian province of Moldova. After the Second World War it became part of the Moldavian Soviet Republic and remained as such after the dissolution of the Soviet Union. A Gagauz self-determination movement began to develop from around 1980 onwards, but only gained significant momentum when the Moldovan Supreme Soviet passed a discriminatory language law in 1989. In November 1989, the Gagauz, who make up more than eighty per cent of the population in their homelands, formed an ethnically based organisation, *Gagauz Halkî* (Gagauz People), to represent their particular interests. This process of increasingly

political self-assertion culminated in 1990 in the unilateral declaration of an independent Republic of Gagauzia, which, although it was not recognised either internally or externally, signified a new stage of escalation in the long-standing conflict. Although comparatively little violence was involved, this escalation prompted intense negotiations between Gagauz and Moldovan officials over the future status of their relationship. These were successfully concluded in 1994, resulting in the status of the Republic of Gagauzia as an autonomous republic within Moldova being formally recognised.

The layering of public authority in Moldova follows a three-tiered system (see Figure 7). The central institutions of the state are the original source of all authority except for those powers that are explicitly and fully devolved to Gagauz autonomous institutions or to the third layer of authority, the so-called *rayons*.

Figure 7: Self-governance Arrangements in Moldova
<<Figure 7 about here>>

The autonomous institutions of Gagauzia have devolved powers in the areas of science, culture and education; housing and urban planning; health; sports; budgetary and taxation policy; economic policy; environment; industrial relations; and social security. As in most other democratic systems, the institutional system in Gagauzia is characterised by the separation of powers between the legislature (People's Assembly), the executive (Governor and Executive Committee of Gagauzia) and a judicial system (comprising the Tribunal of Gagauzia and lower-order courts). The areas in which the elected People's Assembly is competent to legislate include most public policy areas, except defence and foreign affairs, as well as matters relating to the territorial organisation of Gagauzia and the organisation of local administration, elections and referenda. The directly-elected Governor of Gagauzia issues decrees and regulations and proposes to the Assembly the Executive Committee, which is charged with implementing and enforcing laws passed by the Assembly, and with formulating and implementing policies within the remit of Gagauzia's competences.

The *rayons* in Moldova enjoy self-rule on local matters. Before 2003, the *rayons* were run by a Head of Administration who was, in all *rayons* falling into the jurisdiction of Gagauzia, directly appointed by the Governor of Gagauzia. Since 2003, the *rayons* have been run by an elected council that reports directly to the Moldovan central government. At worst, this may potentially render the autonomous institutions of Gagauzia superfluous. Even a slightly more optimistic perspective promises at best a rather muddled arrangement and increases the demand for coordination between the different layers of authority that are no longer ordered in a clear hierarchy. Similar to the Autonomous Region of Muslim Mindanao, there thus exists a problem with the autonomy arrangements in Moldova in that the Republic of Gagauzia has now become a unique layer of authority in an otherwise (still) unitary state, but it does not have the authority to structure itself and the relations between its own layers of authority (i.e., Gagauz republican government and local governments in the territory of Gagauzia), as Bougainville, for example, is able to do by virtue of its own constitutional powers and as determined in the Bougainville Peace Agreement.

Another feature of the Gagauz autonomy with direct relevance for the layering of public authority is the fact that Gagauzia has, in law, no clear territorial demarcation. The fact that local communities can decide individually, by referendum, whether they want to become part of the autonomous region has meant in practice that Gagauzia itself is not a territorially contiguous entity. This has not (yet) caused any noticeable administrative difficulties. At a theoretical level, however, it offers an interesting new perspective on the design of

autonomous entities that lies somewhere between, and yet combines elements of, territorial and personal autonomy.

Finally one should note that the process of state construction in Moldova itself is far from complete. Another unresolved self-determination conflict (Transdniestria) will require substantial reform of the current state structure and in all likelihood will also affect the status of Gagauzia. At present, the most likely outcome of such state-wide institutional reform is a trilateral federation with Gagauzia as a constituent element in it, but probably less powerful and less autonomous than the other two.

H. Bougainville

Similar to the conflict in Mindanao and Northern Ireland, and, with some qualifications, Kosovo, the self-determination dispute in Bougainville has two dimensions – one internal to Bougainville, and one between Bougainville and Papua New Guinea (of which Bougainville is still a part). The internal dimension of the conflict is characterised by the, at times, violent confrontation between those who favour the integration of Bougainville into Papua New Guinea, albeit with substantial autonomy granted to the province, and those who argue for independence. Because of the ethnic and linguistic mix of population groups in Bougainville, it is difficult to classify this internal dispute as an ethnic conflict, particularly as there is evidence that an overarching Bougainvillean 'ethnic' identity has developed over past decades that bridges the existing cultural (but not political) differences. The conflict between Bougainville and Papua New Guinea is a manifestation of a secessionist conflict – a peripheral region seeking independent statehood – with the national government rejecting this demand for economic reasons (when it was operating the Bougainville copper mine generated about one-sixth of Papua New Guinea's tax revenue) as well as out of fear that accepting the secessionists' demands might unleash further secessionist claims elsewhere in the country.

Intense conflict from the late 1980s to the mid-1990s, initially between secessionist Bougainville forces and national government security forces, and subsequently between pro- and anti-independence groups in Bougainville, led to several thousand people being killed and many times more forcibly displaced. Even though peace initiatives were launched almost from the day the conflict escalated violently, it was particularly from 1994 onwards that measurable progress was made in negotiating a comprehensive agreement with the help of the United Nations and some key regional states (primarily Australia, New Zealand and the Solomon Islands). Yet, because of the duality of the internal and external conflicts, and the complexities arising from this, the Bougainville Peace Agreement was only concluded in 2001. It provides for an autonomous Bougainville government with clearly defined powers entrenched in and limited by the national constitution and operating according to principles established by a future Bougainville constitution. While the institutional structures thereby provided are the central concern of this chapter, it is also worth noting that the agreement specifies a future, albeit non-binding, referendum on independence in Bougainville and a weapons disposal plan to be co-monitored by the United Nations Observer Mission on Bougainville. Bougainville thus shares with Kosovo, Northern Ireland and Southern Sudan the characteristic that a final status decision has been postponed or not made. However, as a formal agreement exists between national and provincial leaders laying down the principles of institutional design for the interim period, Bougainville's situation more closely resembles that of Northern Ireland, where the Agreement of 1998 provides for referenda to be held on the so-called 'border question', i.e., whether a majority of people in Northern Ireland and the Republic of Ireland express their desire for a change in sovereignty in separate, parallel referenda.

Examining the institutional structures relevant to the question of how a resolution of the Bougainville self-determination conflict was attempted requires examination of three different dimensions: the overall construction of the Papua New Guinean state, the distribution of powers between, and how they are exercised by, the central and provincial governments, and the design of provincial institutions aimed at resolving intra-Bougainville conflict between pro- and anti-secessionist factions. Although details of the last will depend on the outcome of constitutional negotiations among different political and other groups in Bougainville, the main parameters of the post-conflict Bougainville government have been laid down in the Bougainville Peace Agreement. Of particular relevance for this chapter is the fact that the national constitution of Papua New Guinea (as revised in accordance with the Bougainville Peace Agreement) will retain primacy over any Bougainville constitution in the sense that Bougainville constitutional law has to be compatible with Papua New Guinea constitutional law. Consequently, the Head of State will only endorse the Bougainville constitution once he or she is satisfied that the proposed regional constitution is compatible with the national one and with any international obligations into which Papua New Guinea has previously entered. However, the Bougainville constitution will have supreme status in all areas of Bougainville's jurisdiction and will be enforceable in the Supreme Court of Papua New Guinea and, to the extent that it provides for this, any Bougainville courts.

Although the precise nature of the institutional arrangements in Bougainville itself are thus not yet clear at the time of writing, the division of functions between national and autonomous provincial government is laid down in significant detail in the Bougainville Peace Agreement. Leaving aside the fact that there is a (largely ceremonial) Head of State (i.e., the reigning monarch of the United Kingdom of Great Britain and Northern Ireland) who appoints a Governor-General, there is a three-tiered system of public authority in Papua New Guinea consisting of the national government, provincial governments and local governments (see Figure 8). As a province in its own right, Bougainville therefore fits neatly into the existing (symmetric) structure of the state of Papua New Guinea, but acquires, as a result of the Bougainville Peace Agreement, significant additional powers compared to those enjoyed by other provincial governments. Although there is very little evidence to the contrary at this early stage of implementation of the Agreement, it is unlikely that Bougainville will be plagued by the same uncertainties and difficulties in coordinating the exercise of powers and functions by different layers of authority that have been identified in the Gagauz and Mindanao cases where additional layers of authority were created that did not fit in the pre-existing structure of the respective states. This is all the more likely as the Bougainville Peace Agreement foresees quite extensive arbitration mechanisms in case of disputes between the national and provincial government.

Figure 8: Self-governance Arrangements in Papua New Guinea
<<Figure 8 about here>>

The distribution of powers and functions between the national and autonomous Bougainville governments is regulated according to a system of two comprehensive lists. The government list details the following powers and functions that are to be exercised exclusively by the national government: defence, foreign relations, immigration, highly migratory and straddling fish stocks, central banking, currency, international civil aviation, international shipping, international trade, posts, telecommunications, and all other powers either assigned to the national government under the Bougainville Peace Agreement or which it requires in the process of implementation. The list for the

autonomous Bougainville government is less explicit and more 'open-ended', but simply includes all known or identifiable powers not on the national government's list. In the area of foreign relations, special provisions are made to account for the distinct relationship between the central government and the Bougainville autonomous government, as well as for particular interests that Bougainville has. Thus, representatives of the Bougainville government may be included in delegations of Papua New Guinea to regional meetings and organisations; and before the conclusion of any future treaties affecting Bougainville directly or indirectly, such as border issues or fishing rights, a consultation process between the national and Bougainvillean governments has to be conducted.

The list of powers and functions available to either government can be amended or altered in the future. Amendments are likely to occur whenever new powers and functions are identified, and in such cases the parties are obliged to inform one another of their intention to claim a particular function or power and to submit to agreed arbitration mechanisms if no consensus can be reached. Further alterations are possible where one of the two governments delegates powers and functions originally allocated to it to the other. Initially all powers and functions are held by the national government, and their devolution occurs only after a process of notification and consultation initiated by the autonomous Bougainville government. That is, the Bougainville government will assume the powers and functions allocated to it in the peace agreement gradually, and there is only a limited automatism in the transfer of powers in the sense that any power or function not explicitly reserved for the national government has to be devolved to Bougainville upon request from the autonomous government.

As the structure of institutions in Bougainville itself is subject to the outcome of negotiations on a new provincial constitution, little can yet be said about the layering of public authority in the autonomous province itself. Parallel local government structures had developed through the years of intra-Bougainville conflict (Council of Elders and Council of Chiefs) and will have to be integrated into subsequent new structures of local authority. However, the Bougainville Peace Agreement does not exactly prescribe this as necessary, but merely points out that under a Bougainville constitution such local structures of government may be created. What is, however, quite explicit in the agreement is that the Bougainville government will consist of three branches – a legislature, an executive and a judicial system.

I. Crimea[15]

Crimea is unique among the examples of self-governance structures examined in this paper because it presents a case in which three self-determination movements lay claim to an identical stretch of territory—Ukrainian nationalism Russian separatism and to some extent irredentism, and the national aspirations of indigenous Crimean Tatars collide in this small peninsula and have had a historically difficult relationship. While there is no strong drive at present to change the status of Crimea from an autonomous republic in Ukraine to either an independent state, a part of Russia or a 'regular' part of Ukraine without the level of self-governance the territory has attained in the 1990s, the peninsula remains a potential hotspot in the region.

Ukraine's boundaries were subject to shifts throughout its history—parts of western Ukraine remained part of the Austro-Hungarian Empire until the end of the First World War, and thereafter became part of Poland before being annexed to the now Socialist Soviet Republic of Ukraine at the end of the Second World

[15] In this section I am drawing significantly on Bowring (2005), to whom I am also grateful for further clarifications and advice.

War. While traditionally nationalist conflict was always more intense in the Ukrainian-Polish borderlands, Crimea only became an object of open Russian and Ukrainian nationalist disputes when the Soviet Union dissolved. From the late 15th century on part of the Ottoman empire, Crimea was annexed by Russia in 1783. The Peace Treaty of Brest-Litovsk in 1918, which allowed Russia to disengage from the battlefields of the First World War, awarded Crimea initially to Ukraine. When the Bolsheviks regained control over Ukraine and Crimea, they created a Crimean Autonomous Soviet Socialist Republic which they annexed in 1921 to the Russian Socialist Federated Soviet Republic (RSFSR). In 1945, Crimea's autonomous status within the RSFSR was abolished, and in 1954, commemorating the 300th anniversary of the Treaty of Pereyaslav which established the union between Russia and Ukraine, Crimea was presented to Ukraine as a 'gift' by Nikita Khrushchev.

The dissolution of the Soviet Union not only re-opened the question whether Crimea was Russian or Ukrainian but also whether Crimean Tatars, deported to Siberia and Central Asia under Stalin, should be allowed to return home to their traditional homeland. Thus, even though Ukraine became an independent state in December 1991, it took four-and-a-half years for a new constitution to be adopted, not least because resolving the status of Crimea proved more difficult than initially expected, despite the fact that in a referendum held in January 1991, the overwhelming majority of Crimean residents approved spoke out in favour of renewed autonomous status of their peninsula within Ukraine and the fact that Ukrainian Supreme Soviet adopted a law providing autonomous status for Crimea within the borders of Ukraine less than one month later.

Yet, this honeymoon was soon to be over. The Russian majority in the Crimean Supreme Soviet adopted a Constitution in 1992 in which they gave themselves the right to secede from Ukraine. In May of the same year, the Russian State Duma declared the transfer of Crimea to Ukraine in 1954 to have been illegal, and in July 1993 it resolved that Crimea remained a part of Russia. Only in the summer of 1994 did the situation began to calm down. In the wake of the election of a pro-Russian president in Ukraine, Leonid Kuchma, Russian President Yeltsin publicly recognized Ukraine's territorial integrity. With Russia making the signing of a Treaty of Friendship and Co-operation with Ukraine conditional upon a favourable settlement of the status of Crimea, the Ukrainian parliament, the Verkhovna Rada, finally adopted a law in March 1995 'On the Status of Crimea'. This resolved any ambiguity in terms of the status of Crimea by abolishing the Crimean Constitution of 1992, all laws and decrees in contravention of Ukrainian legislation and Crimean Presidency. In autumn 1995, a new and less radical Crimean constitution was adopted, Crimea's autonomous status was recognized in the new Ukrainian Constitution of June 1996, and the Crimean constitution was ratified by the Ukrainian parliament finally in December 1998.

From the perspective structures of self-governance, Chapters IX-XI of the Constitution of Ukraine are of particular importance. They establish a two-layered structure of authority throughout the state, with the exception of Crimea where a three-layered structure applies (see Figure 9).

Figure 9: Self-governance Arrangements in Ukraine
<<Figure 9 about here>>

Chapter IX clarifies the country's territorial structure as 'based on the principles of unity and indivisibility of the state territory, the combination of centralisation and decentralisation in the exercise of state power, and the balanced socio-economic development of regions that takes into account their historical, economic, ecological, geographical and demographic characteristics, and ethnic and cultural

traditions' (Article 132). Article 133 then establishes 'the Autonomous Republic of Crimea, oblasts, districts, cities, city districts, settlements and villages' as the elements of Ukraine's administrative and territorial structure. Chapter X is dedicated to the Autonomous Republic of Crimea, which is established, by Article 134, as an 'inseparable constituent part of Ukraine' with the powers to decide 'on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine'. Article 135 clarifies the status of the Crimean constitution as 'adopted by the Verkhovna Rada of the Autonomous Republic of Crimea and approved by the Verkhovna Rada of Ukraine by no less than one-half of the [members] of the Verkhovna Rada of Ukraine'. It also makes clear that Crimean legislation and executive decisions must comply with 'the Constitution of Ukraine, the laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine'. The Crimean Verkhovna Rada, within the limits of its authority, has the right to 'adopt decisions and resolutions that are mandatory for execution in the Autonomous Republic of Crimea' while the Council of Ministers acts as the government of the Autonomous Republic of Crimea (Article 136). There is no separate legal system in Crimea where 'justice is administered by courts that belong to the unified system of courts of Ukraine' (ibid.). The powers of the Autonomous Republic of Crimea are specified in Article 137 and 138. It has law-making powers in the areas of agriculture and forestry; land reclamation and mining; public works, crafts and trades; charity; city construction and housing management; tourism, hotel business, fairs; museums, libraries, theatres, other cultural establishments, historical and cultural preserves; public transportation, roadways, water supply; hunting and fishing; and sanitary and hospital services. Importantly, this article also states that '[f]or reasons of nonconformity of normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea with the Constitution of Ukraine and the laws of Ukraine, the President of Ukraine may suspend these normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea with a simultaneous appeal to the Constitutional Court of Ukraine in regard to their constitutionality'. Executive competences of the Autonomous Republic of Crimea comprise designating elections of deputies to the Verkhovna Rada of the Autonomous Republic of Crimea, approving the composition of the electoral commission of the Autonomous Republic of Crimea; organising and conducting local referendums; managing property that belongs to the Autonomous Republic of Crimea; elaborating, approving and implementing the budget of the Autonomous Republic of Crimea on the basis of the uniform tax and budget policy of Ukraine; elaborating, approving and realising programmes of the Autonomous Republic of Crimea for socio-economic and cultural development, the rational utilisation of nature, and environmental protection in accordance with national programmes; recognising the status of localities as resorts; establishing zones for the sanitary protection of resorts; participating in ensuring the rights and freedoms of citizens, national harmony, the promotion of the protection of legal order and public security; ensuring the operation and development of the state language and national languages and cultures in the Autonomous Republic of Crimea; protection and use of historical monuments; participating in the development and realisation of state programmes for the return of deported peoples; initiating the introduction of a state of emergency and the establishment of zones of an ecological emergency situation in the Autonomous Republic of Crimea or in its particular areas (article 138). There is an additional provision that opens up the possibility that '[o]ther powers may also be delegated to the Autonomous Republic of Crimea by the laws of Ukraine'.

Throughout Ukraine, including the Autonomous Republic of Crimea, a system of local self-government operates, established in Chapter XI of the Constitution of Ukraine. Local self-government is defined as the right of a territorial community 'to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine'. It is exercised 'by a territorial community

by the procedure established by law, both directly and through bodies of local self-government: village, settlement and city councils, and their executive bodies' (Article 140). Village, settlement and city councils are composed of elected deputies (Article 141). The directly elected head of the village, settlement and city is the chief executive who leads the executive body of the relevant council (ibid.). The bodies of local self-government have the right to adopt decisions that are mandatory for execution throughout the respective territory, but which can, 'for reasons of nonconformity with the Constitution or the laws of Ukraine, [be] suspended by the procedure established by law with a simultaneous appeal to a court' (Article 144).

The Constitution of the Autonomous Republic of Crimea[16] was adopted at the Second Session of the Crimean parliament in October 1998, and subsequently approved by the Ukrainian parliament, and signed into force by then President Leonid Kuchma in December 1998. Several earlier submitted to the Ukrainian parliament had been rejected there because of their incompatibility with the constitution of the country. The first three articles of the Crimean constitution finally approved, thus, unsurprisingly, endorse the territorial integrity of Ukraine, the supremacy of its constitution and the uniformity of Crimean and general Ukrainian interests.

The Crimean constitution provides for a separate legislature and executive in the autonomous republic, while the judiciary remains part of the unified Ukrainian court system. There are no special provisions for power-sharing between the three main ethnic groups—Russians, Ukrainians, and Crimean Tatars—but election outcomes so far have favoured inter-ethnic coalition governments involving the Crimean Tatars.

J. Macedonia

Although Macedonia's independence from Yugoslavia came about peacefully, the country has experienced serious ethnic tensions, in particular between ethnic Macedonians and ethnic Albanians, but also between these two groups and the country's sizable Roma minority. While the latter tensions were relatively minor, at least compared to other countries in Central and Eastern Europe with large Roma populations, they have increased since the conclusion of the Ohrid Agreement in 2001 which is seen by many Albanian leaders as threatening to establish a binational state.[17]

Albanians in Macedonia live territorially concentrated in the west of the state. Upon Macedonian independence they organised an unofficial referendum, which, at a turnout of ninety per cent of the ethnic Albanian electorate in Macedonia, showed that roughly three-quarters supported the idea of their own political and territorial autonomous structures. On this basis, ethnic Albanian parties argued for changes in Macedonia's constitution to elevate the ethnic Albanian population to the status of a 'constituent people' of Macedonia, for improvements in the Albanian language situation, the establishment of an Albanian university, and the inclusion of ethnic Albanians in the administration. These tensions simmered for most of the 1990s at a level below the threshold of violence, but escalated in the aftermath of NATO's intervention in the Kosovo conflict in neighbouring Yugoslavia. The emergence of the ethnic-Albanian National Liberation Army significantly increased the stakes in the latent conflict, which duly erupted into a short, but relatively intense violent confrontation in 2001. Intervention by the European Union and the facilitation of negotiations between ethnic Albanian representatives and the Macedonian government resulted in an agreement on

[16] See the Russian text at http://www.rada.crimea.ua/konstit/
[17] I am grateful to Eben Friedman for pointing this out to me.

constitutional and administrative changes to the structure of the Macedonian state aimed at providing greater autonomy to all local communities.

In addition to this internal dimension, the complex nature of the relationships between Macedonia on the one hand, and Albania, Bulgaria and Greece with their various territorial, ethnic and political claims, on the other, has complicated the dispute between ethnic Albanians and ethnic Macedonians within the country. At several stages, there appeared a very clear and imminent danger that Macedonia would turn into a source of grave instability in an already volatile region. The acceptability of the settlement reached with the 2001 Ohrid Agreement to both the conflict parties in Macedonia and the relevant external agents (EU, US, neighbouring states) was therefore as important as its technical viability, i.e., the capacity of the new institutional structures thus created to live up to the expectations that the two conflict parties in particular had.

According to the Ohrid Agreement, Macedonia retains its two-layered system of authority. The powers between the two levels – the national government and the municipalities – are now more clearly divided and the municipalities enjoy a substantive degree of autonomy within this system (see Figure 10). The national government – comprised of a unicameral assembly, an executive with a President and cabinet government, and a judicial branch with a constitutional court and lower-order courts as well as a public attorney with decentralised offices at the local level – is the residual source of all public authority in the country. At the local level, 124 municipalities and the capital city of Skopje have enhanced local self-administration powers in the areas of public services, culture, education, social welfare, health care, environment, urban and rural planning, economic development and local finance. Municipal institutions comprise a Council whose competences include the budget and other financial matters, the establishment and control of public services, institutions and enterprises, and the establishment and supervision of governing and administrative organs at the municipal level. The municipal executive is made up of an elected Mayor who is responsible for the appointment and dismissal of all officers of the governing and administrative organs and services in the municipality and for their overall management. The governing and administrative organs and services draft and implement individual acts and supervise activities in their areas of competence.

Figure 10: Self-governance Arrangements in Macedonia
<<Figure 10 about here>>

In addition to these two layers of public authority that exist throughout Macedonia, citizens have the opportunity to establish so-called 'neighbourhood' self-governments within the municipalities in which they live. The precise nature of their jurisdiction and organisation depends on the by-laws of the respective municipality, and thus leaves significant room to address specific local concerns in ways that are felt most appropriate by those immediately concerned.

K. Kosovo

Kosovo has a complex history with an array of different rulers and states claiming sovereignty over the area over time. With the exception of a brief interlude during World War II Kosovo has been a province of Serbia for most of the twentieth century despite the fact that it is now inhabited by an overwhelming majority of Albanians and borders the Republic of Albania. Throughout most of this period, Kosovo had some form of autonomy within Serbia and/or the various configurations of the Yugoslav state. Created on 3 September 1945 as a constituent part of Serbia, the status of Kosovo as an autonomous province with limited self-government was confirmed in the Yugoslav constitutions of 1946, 1953 and 1963, and in the Serbian constitution of 1963, before the Yugoslav

constitutional reform of 1974 significantly enhanced the status of Kosovo as an autonomous entity in Serbia and Yugoslavia and gave it *de facto* equality with all Yugoslav Republics at the federal level, except for the right to secede. The inter-ethnic tensions between Serbs and Albanians in the province increased under the 1974 autonomy arrangement, as it led to an ever-stronger perception among Serbs of discrimination at the hands of the Albanian majority in the province. After the death of Tito in 1980, inter-ethnic tensions across Yugoslavia began to increase, particularly in Kosovo, where protesters began to demand republican status for the province (with the implication of subsequent secession). These protests were quickly suppressed by Yugoslav security forces, yet tension continued and occasionally escalated into violence. While more and more Serbs and Montenegrins left Kosovo, Serbian repression of Albanians in Kosovo increased, and public sentiment in Serbia turned increasingly anti-Albanian. By 1990, both sides had become even more radicalised so that the 1990 removal of all elements of sovereignty enjoyed by Kosovo under the 1974 constitution and the (unrecognised) 1991 Kosovo Albanian referendum on independence were only logical steps along a path of further alienation between the two communities and of escalation of the Kosovo conflict. This process culminated in the events of the second half of the 1990s which saw a violent ethnic conflict in Kosovo and eventually NATO's air campaign against Serbia establishing Kosovo as a quasi-protectorate of the UN in 1999.

Within the institutional structure that has emerged since 1999 (see Figure 11), the Special Representative of the Secretary-General of the United Nations (SRSG) retains the full authority given by UN Security Council Resolution 1244. On this basis, the SRSG also retains full decision-making authority regarding any aspect of provisional self-government in Kosovo and can unilaterally effect any change to the existing Constitutional Framework. While the powers of the international community in Kosovo are thus broadly similar to, albeit somewhat more extensive than, those in Bosnia and Herzegovina, the design of Kosovo's self-government institutions is less complex than there. Apart from the SRSG, a two-layered system provides the backbone for the exercising of public authority in Kosovo. The Kosovo central authority has a wide range of competences in almost all sectors of public policy. These include: economic, financial and budgetary policy; customs; trade, industry and investment; education, science and technology; youth, sport and culture; health and family policy; agriculture; environment; tourism; labour; social welfare; transport; media; communication; statistics; spatial planning; good governance; non-resident affairs; local administration; and judicial affairs. In coordination with the SRSG, the Kosovo Central Authority also has certain competences in the area of external affairs.

Figure 11: Self-governance Arrangements in Kosovo
<<Figure 11 about here>>

The directly-elected Assembly of Kosovo is, among other things, responsible for the adoption of laws within the specified remit of Kosovo's authority, for electing the President of Kosovo, and for approving the Prime Minister, as well as for endorsing any international agreements that fall within the remit of its competence. The executive branch of government in Kosovo is comprised of the President, who conducts Kosovo's foreign policy in coordination with the SRSG, and the Government of Kosovo, which exercises executive authority and is charged with implementing any laws passed by the Assembly. There is also a fully-developed court system, which is made up of the Supreme Court of Kosovo, District Courts, Municipal Courts and Minor Offence Courts. In addition to these 'traditional' branches of government, Kosovo's institutional structure also includes a set of independent bodies and offices, such as the Central Election Commission, the Judicial and Prosecutorial Council, the Auditor-General, the Banking and

Payments Authority, the Media Commission, the Board of Public Broadcasters, and the Housing and Property Directorate/Claims Commission. A specially-appointed Ombudsperson is charged with receiving and investigating complaints about human rights violations and abuse of authority by any public body and thus provides an additional form of checks and balances at the central level of Kosovo.

The third layer of public authority in Kosovo are the municipalities that have powers in all areas of *local* administration that are not expressly reserved for the Kosovo Central Authority. Horizontally, power is divided between a municipal assembly, an executive branch that comprises a President and Deputy President of the municipality (who perform general oversight functions) and a Chief Executive Officer and Board of Directors (who implement all municipal decisions), and a judicial system that consists of Municipal Courts and the so-called Minor Offence Courts. The Municipal Assembly has competences in budgetary and financial matters; is charged with the election of President and Deputy President, the appointment of officers and the establishment of committees; and is to resolve any disputes within the executive branch between Chief Executive Officer and President.

As a quasi-protectorate of the United Nations, Kosovo shares with a number of the other cases studied the fact that its final status remains to be determined. However, one crucial difference between Kosovo on the one hand, and Bougainville, Gagauzia, Sudan and Northern Ireland on the other, is that the latter three are institutionally integrated into larger state structures for the period until a change in their political status may occur, while Kosovo is not. From an institutional perspective, this merely means that at some point in the future there may have to be changes to existing structures, but these are primarily technical matters. What is a potentially more difficult issue therefore is not that Kosovo institutions may have to be reintegrated into a wider institutional framework of the Union of Serbia and Montenegro and Georgia respectively, but that this process of reintegration and the institutions emerging from it need to be recognised by the relevant political agents in these now quasi-independent entities and need to be technically viable at and between all levels of government.

IV. The vertical layering of authority in self-governance regimes

The brief overview of institutions and institutional structures given above illustrates the broad range of constitutional designs available to state builders in addressing the specific conditions of particular conflict situations, the varied interests of conflict parties and other external agents connected with the conflict, individual parties involved, or other agents with political, economic or other interests in the region. This is a true, albeit trivial, observation. However, what is more important for conflict resolution is to examine the nature of commonalities between these cases, to analyse the impact of particularities on specific institutional designs encountered, and to study recurring problems, and how, and with what degree of success, they have been addressed in different instances. The remaining two sections of this paper will therefore first look at a number of general structural aspects of institutional design and then (to the extent that this is possible given the often recent conclusion of some of the agreements) draw some conclusions as to the role that the vertical layering of authority has in the conflict resolution 'toolkit'.

A. Types of institutional structures

The first element to consider in this comparative analysis of how vertical authority is layered in self-governance regimes is the number of layers of authority that actually exist across the eight case studies (Table 2).

Table 2: Variation in the vertical layering of authority[18]

Two-layered Structures	Three-layered Structures	Multi-layered Structures
Macedonia	Bougainville Crimea Gagauzia Kosovo Northern Ireland	BiH Brussels Mindanao Southern Sudan South Tyrol

Table 2 illustrates that self-governance regimes rely predominantly on more than two layers of authority. In the cases of Bougainville, Gagauzia, Northern Ireland and Crimea, these three layers are central, regional and local government. In the case of Kosovo, central government functions are presently exercised by the Special Representative of the Secretary General who derives his or her authority from UN Security Council Resolution 1244 (1999). Unless Kosovo is granted independence in a future final status settlement, the Special Representative will be replaced at some point, and with significantly reduced powers, by the central government in Belgrade, thus preserving the three-layered structure of authority.

In Macedonia, 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, Mindanao, Southern Sudan and South Tyrol, more than three levels of government exist. In Bosnia and Herzegovina, this is a result of the interplay of domestic, 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, 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-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. This is similar to the case of Sudan (and for that matter, Ukraine/Crimea and UK/Northern Ireland), where a three-layered structure was altered in relation to Southern Sudan which 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 3–5), as this perspective provides a more comprehensive picture of the structure of the entire polity concerned and the place and status of self-governance institutions within it.

[18] 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.

Table 3: Structural symmetry and asymmetry of institutions

Structural Symmetry	Structural Asymmetry	
	Single Asymmetry	Multiple Asymmetry
Bougainville Brussels Kosovo Macedonia South Tyrol	Crimea Gagauzia Mindanao Sudan	BiH Northern Ireland

Table 4: Functional symmetry and asymmetry of institutions

Functional Symmetry	Functional Asymmetry
Kosovo Macedonia	BiH Bougainville Brussels Crimea Gagauzia Mindanao Northern Ireland Southern Sudan South Tyrol

Table 5: Structural and functional symmetry and asymmetry of institutions compared

	Structures			Functions	
	Symmetric	Single asymmetric	Multiple asymmetric	Symmetric	Asymmetric
BiH			X		X
Brussels	X				X
Bougainville	X				X
Crimea		X			X
Gagauzia		X			X
Kosovo	X			X	
Macedonia	X			X	
Mindanao		X			X
Northern Ireland			X		X
Southern Sudan		X			X
South Tyrol	X				X

Tables 3 and 4 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 demonstrated in Table 5, which illustrates that, while symmetric structures and symmetric functions correlate more frequently (Kosovo, Macedonia), symmetric structures do not preclude asymmetric functional capacities (Bougainville).

B. The combination of vertical and horizontal 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 and vertical power-sharing. All the cases examined in this paper 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 6).[19]

Table 6: Combinations of Horizontal and Vertical Power-sharing

No horizontal power-sharing	Horizontal power-sharing at the centre	Horizontal power-sharing at regional level only	Horizontal power-sharing at the centre and regional level
Kosovo	Macedonia[20] Moldova[21]	Crimea[22] Northern Ireland South Tyrol[23]	BiH[24] Bougainville[25] Brussels Mindanao[26] Southern Sudan[27]

As the cases of Macedonia, Mindanao and Moldova 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[28]). In Mindanao and Moldova, on the other hand, there is a somewhat greater degree of formality in power-sharing arrangements at the centre as members of the regional governments are co-opted into respective branches of the national government. Co-optation, however, limits the extent of the influence that can be exercised by the region at the centre as in both cases regional co-optees are outnumbered by other members of the national government and have little, if any, leverage compared to situations in which a regional party is a member of a governing coalition and can potentially exercise veto powers.

Horizontal power-sharing at the regional 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 national level. This is clearly the case in Bosnia and Herzegovina (Federation level), Brussels, Mindanao, Northern Ireland and South Tyrol.[29] The

[19] It is very likely that any resolution of Kosovo's final status short of independence will result in a power-sharing deal, presumably both at the level of the central government in Belgrade and that of the regional government in Pristina.
[20] 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, and Macedonia has been governed by such coalitions for several years.
[21] To the extent that certain members of the Gagauz government are co-opted into structures of the national government, there is a certain degree of power-sharing at the national level.
[22] Power-sharing at regional level is not mandatory, but a likely outcome of the regional demographic and power balances.
[23] 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).
[24] Mandatory power-sharing at regional level only applies to the federation.
[25] A regional constitution is yet to determine the details of horizontal power-sharing in Bougainville.
[26] To the extent that certain members of the government of the Autonomous Region of Muslim Mindanao are co-opted into structures of the national government, there is a certain degree of power-sharing at the national level as well as the mandatory power-sharing at regional level.
[27] In the period prior to elections.
[28] Cf. Friedman (2005-forthcoming).
[29] 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.

absence of regional horizontal power-sharing in Kosovo, Macedonia and Moldova has different causes. In Kosovo, apart from the fact that no final status has been agreed yet, the only numerically significant minority group – ethnic Serbs – is relatively concentrated in the northern parts of Kosovo, and thus benefits directly from the significant degree of authority located at the municipal level. Additionally, reserved seats in the Kosovo Assembly for Serbs and members of other minorities ensures their presence and influence in the legislature. In Macedonia, 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 national parliament and makes 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 federal solution less attractive for ethnic Macedonians, as it could be construed as a first step to the partition of the country. In Moldova, the relative ethnic homogeneity of Gagauzia, the ability of residents in districts to determine by referendum whether they want to be part of the autonomous territory, and the fact that local affairs in these districts are run locally are all meant to combine to provide sufficient autonomy for individuals and communities to make formal regional power-sharing unnecessary. This means that under certain conditions – relative territorial concentration of ethnic communities, sufficient levels of devolution and a minimum degree of representation at the centre – vertical layering of authority can function as a useful substitute for formal structures of horizontal power-sharing both at national and regional level and suffice in addressing institutional dimensions of power (re)distribution in self-determination conflicts. The fact that vertically layered authority can only substitute for horizontal levels of power-sharing under very specific conditions is also highlighted by the example of Bosnia and Herzegovina where despite wide-ranging devolution, horizontal power-sharing remains mandatory at the level of state institutions and at the level of the Bosnian-Croat Federation.

C. Distribution 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, Southern Sudan and South Tyrol) or they can be specific for one or more layers and 'open-ended' for others (Bosnia and Herzegovina, Crimea, Gagauzia, Kosovo, 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 holds original authority competence for any partly devolved power or any other policy area not explicitly allocated elsewhere (see Table 7).

Table 7: 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[30] Southern Sudan	Brussels Crimea Moldova Macedonia South Tryol	BiH Kosovo

In Brussels, Crimea, Gagauzia, Macedonia and South Tyrol, the national level holds original authority over all matters not expressly devolved to the lower layers of authority, while in Bosnia and Herzegovina the two entities retain all the competences not explicitly delegated to the level of state institutions (with the qualification that in the Federation cantonal institutions assume most of these powers from the Federation entity). Similarly, in Kosovo, the current system is more 'open-ended' with regard to the municipal institutions that retain powers in all areas of *local* administration not expressly reserved to the Central Authority.

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. 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 Southern Sudan, notably, specific lists of powers exist for the centre, the government of Southern 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.

An unambiguous distribution of powers should indicate that the most important issues of the underlying self-determination conflict have either been resolved or postponed (e.g., future referendum on independence) and that the potential for conflict re-erupting should be minimal and limited to disputes over emerging new policy areas not covered by the provisions of the original agreement between the conflict parties (provided that the institutions established discharge their functions properly). Where such an unambiguous allocation of powers is missing in the sense that one layer of authority automatically retains all powers not explicitly allocated elsewhere (and thus implicitly also the competence over all emerging new policy areas in the future), renewed conflict over the distribution of power between different layers of authority is more likely, even though there is no automatism in this. In cases where the central authority retains all the powers not expressly devolved, autonomous areas may, over time, seek renegotiation of past agreements or the allocation of additional powers. In the reverse case, central authorities may be continuously weakened, potentially leading to the break-up of the central state. This is obviously not on the agenda in the near future for three of the cases where no such unambiguous allocation of powers has

[30] 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.

taken place (Bougainville, Mindanao, Northern Ireland), but it is an issue worthy of consideration in the construction of states within complex power-sharing institutional frameworks. Renegotiation may, however, become an issue in Southern Sudan in the context of drafting a final constitution, and conflict potential also exists here in the shape of the list of concurrent powers.

D. Types of coordination

Coordination of law and policy-making and their implementation is an important issue in the operation of any multi-layered system of government. In the context of self-determination conflicts and self-governance regimes 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 a particular institutional structure designed to resolve a self-determination 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 8).

Table 8: Coordination Mechanisms in Self-governance Regimes

Co-optation	Joint Committees and Implementation Bodies (including ad-hoc bodies sponsored by international organisations)	Judicial Review and Arbitration	Direct Intervention by the International Community
Brussels Mindanao Gagauzia	Bougainville Brussels Macedonia Mindanao Gagauzia Northern Ireland Southern Sudan South Tyrol	BiH Bougainville Brussels Crimea Kosovo Macedonia Mindanao Gagauzia Northern Ireland Southern Sudan South Tyrol	BiH Kosovo

As Table 8 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. 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, the Philippines and Moldova, is a mechanism to ensure the representation of regional officials (from Brussels, the ARMM and Gagauzia, respectively) at the centre. In all cases, regional and officials are *ex officio* members of relevant national government departments. This arrangement is symbolic and emphasises the special relationship between central government and autonomous region. In the case of Mindanao and gagauzia it is also necessary as in both of these cases the autonomous entities are artificial constructions from an administrative point of

view and do not fit into the pre-existing structures of authority in either country. Co-optation thus becomes a potential mechanism to overcome this kind of administrative 'abnormality' and ensure that the special circumstances of the autonomous regions are borne in mind in the process of national law and policy-making. Co-optation is notably absent in the similar cases of Crimea and Southern 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 no 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 national and regional levels. An example of the former is Bougainville, while the latter can be found in Macedonia (inter-ethnic relations), Mindanao (development), Gagauzia (fiscal and budgetary policy, property legislation), Northern Ireland (cooperation between Northern Ireland and the Republic of Ireland and among all entities party to the British-Irish Council) and Southern Sudan (constitutional review, application of Shari'a law, human rights, elections, referendum, fiscal and financial allocation). Such bodies can hold one-off (Moldova) or regular meetings (Bougainville, Macedonia, Mindanao, Northern Ireland, Southern Sudan); and they can be in their nature domestic, centre-periphery bodies (Bougainville, Macedonia, Mindanao, Southern 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, Southern Sudan) or arise from actual needs (Macedonia, Gagauzia).

Unique to two case studies – Kosovo and Bosnia and Herzegovina – is the direct intervention of the international community as a mechanism to coordinate law and policy-making. In both cases, 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 two underlying self-determination conflicts 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.

E. Entrenchment of institutional structures

Guarantees of institutional structures of horizontal and vertical power-sharing 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 Gagauzia, Bougainville, Northern Ireland and Southern 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 9). 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 9: Guarantees of Self-governance Institutions

International Guarantees		Domestic Guarantees	
'Hard'	**'Soft'**	**Constitutional Guarantees**	**Guarantees in Specific Laws**
BiH Kosovo Northern Ireland South Tyrol	Bougainville Macedonia Gagauzia Mindanao Southern Sudan	BiH Bougainville Brussels Crimea Gagauzia Kosovo Macedonia Northern Ireland[31] South Tyrol	Bougainville Brussels Crimea Gagauzia Macedonia Mindanao Northern Ireland South Tyrol

Table 9 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 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 Kosovo and 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, institution-building and institutional reform. Whereas in Bosnia and Herzegovina and Kosovo there exist international bodies with a clear mandate (the multi-national 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 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 Kosovo and Macedonia, an international troop presence, as well as the

[31] 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.

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; while in Gagauzia, the OSCE has played an important role in facilitating the coordination of policies and laws between regional and national government. In Southern 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 national constitutions is a common way of realising constitutional guarantees and has occurred in Bosnia and Herzegovina, Bougainville, Brussels, Crimea, Moldova, Macedonia, South Tyrol and, bearing in mind its provisional status, in Kosovo. 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. 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.[32]

F. 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. A national 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 national 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. Regional, 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.[33]

[32] I am grateful to Brendan O'Leary for clarifying this point for me.

[33] 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.

These observations are relevant in three of the cases examined here. The territories of Gagauzia and of the Autonomous Region of Muslim Mindanao were determined by 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 regional 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. 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. 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 national 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 Southern Sudan, The relevant territory comprises the Southern States as they existed at Sudan's independence. Special 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 Southern Sudan and have different options in this referendum.[34]

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 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,[35] but it is reasonable to assume that their implications would be even more severe in cases where

[34] For further analysis of this issue, see Weller (2005).
[35] I am grateful to Tom Trier for pointing this out to me.

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.

G. The functioning and stability of institutions in vertically layered self-governance systems: design vs. context

Now that the key structural aspects of the case studies have been compared and contrasted, I will address three sets of issues that have a bearing on the functioning and stability of institutions within a system of vertically layered authority. Two of these issues – the relationship between vertical and horizontal layers of self-governance regimes and the coordination of government activities at and between different vertical layers of authority – are structural issues and thus more easily subject to modification. The third one – the overall political institutional settlement within which vertically and horizontally structured institutions have to operate – is more of a contextual aspect depending on the interplay of a larger number of factors. Although contexts can also be shaped by interventions, the complexity of their make-up often means that interventions have intended and unintended consequences. In some instances, contexts will have to be changed in order to make any kind of conflict settlement at all possible, but more often will it be institutional structures that have to be adapted While these three sets of issues are clearly inter-related, they are sufficiently distinct from one another to warrant separate treatment.

In all the case studies, the vertical structures of authority are different in one of two, and sometimes both, ways: there are differences in the numbers of layers of authority in the polity concerned and in the way in which powers are distributed between them. The specificity of each individual self-determination conflict partly accounts for the variance encountered, but this does not mean that there are no general lessons to be drawn.

Inasmuch as any practice has developed yet, the number of layers of authority seems to be less critical than the question of whether additional layers are superimposed on pre-existing ones, as is the case with Mindanao, Gagauzia and Southern Sudan (and in some way, Crimea). In order for these layers of authority to be meaningful, vertical hierarchies have to be restructured, making lower levels of authority accountable to the newly created autonomous governments and subjecting them to their political agendas, rather than those of the centre. This is quite problematic in ethnically heterogeneous regions, especially where there are no formal or informal structures of power-sharing at the regional level. This is equally true in cases in which the traditional vertical structure of the state has been preserved, but the competences of one entity in it have been significantly increased leading to a 'special relationship' between this entity and the centre, as is the case in Bougainville, and to some extent in Northern Ireland and South Tyrol. While in both cases (additional layer of authority and increased competences for a pre-existing layer) the distribution of powers between centre and region is more-or-less a technical matter, it raises the issue of what status this particular region assumes within the overall structure of the state and how it relates to other layers of authority, both vertically and horizontally. Within such a context of domestic political dynamics, asymmetrical state construction, either in terms of vertical layers and/or in terms of different competences devolved from the central government to regional authorities may not be sustainable, especially if regions with fewer powers demand more equity; or if additional layers of (regional) government created within pre-existing structures of a state are undermined in their authority because lower levels of government are unwilling to

give up powers previously held, to submit to a new regional authority or maintain 'parallel' reporting structures within the traditional vertical hierarchy.

The second set of issues is the need for adequate coordination of government activity at and between different layers of authority. Again, the key issue here is to retain institutional legitimacy and ensure a smooth process of government throughout a given polity. The two are obviously not mutually exclusive, but what to some may be a matter of efficiency-driven decision-making, may appear to others as (and may in fact be) undermining institutions created to resolve a self-determination conflict. The first aspect to consider here is the powers that central governments (or the equivalent international institutions in Bosnia and Herzegovina and Kosovo) have to enforce coordination and compliance of lower-level layers of authority. Suspending the power-sharing institutions in Northern Ireland on several occasions may have prevented their collapse but did little to create a sense of responsibility among the political elites or to assure people in either community of the sustainability of the peace process. The almost excessive powers that the High Representative in Bosnia and Herzegovina and the Special Representative of Secretary General in Kosovo have, and use, creates similar problems in that the very idea of democracy, i.e., government by elected officials who are accountable to the people who voted them into office, is distorted. This is not to say that such interventions are not justifiable or, in fact, necessary to facilitate the growth of genuinely home-grown democratic institutions and their proper functioning. However, it is important that such interventions by the international community can be subjected to a legal review process. Where accountability and transparency are missing, institutional legitimacy within a vertical hierarchy of power-sharing institutions may be fatally undermined. This potentially includes all those cases where coordination of government policy extends to far-reaching powers on the part of the central government (or equivalent) to interfere with policies of lower-level authorities, as in Northern Ireland, Kosovo and Bosnia and Herzegovina, because regional elites are unlikely to develop a full sense of responsibility for sustaining their own institutions and/or their electorates may become increasingly frustrated and disenchanted with the lack of 'real' autonomy of the institutions that they accepted as part of a conflict settlement.

Likewise, the restructuring of the Moldovan polity, which resulted in Gagauzia becoming an additional layer of authority without equivalent elsewhere in Moldova, may have been a reasonable decision from the perspective of institutional efficiency, but it is questionable as to whether it has not begun to undermine Gagauzia as an autonomous region in its own right. The resulting coordination problems are not unique to Moldova, and Mindanao and Southern Sudan may face problems similar to those Gagauzia is encountering. In Macedonia, on the other hand, the fact that there is a very simple two-layered institutional structure and hence straightforward and uniform mechanisms of coordination bodes well for retaining institutional legitimacy from this particular point of view. It is, however, important to bear in mind that this is very much facilitated by the territorial concentration of the Albanian community in the west of the country and the fact that electoral demographics encourage inter-ethnic power-sharing at the centre. Thus, the Macedonian experience cannot readily be translated into a blueprint for other cases. Rather, the important point to emphasise is that what is needed is *both* legitimacy and technical viability of the institutions established to ensure their sustainability and their ability to contribute to the settlement of a specific self-determination conflict.

Finally, there can be no question that the overall political institutional design of the polity in question and the presence or absence of a final settlement of the conflict has a bearing on the structure of vertical layers of authority and the

coordination between them, as well as their stability. Where institutional hierarchies are muddled and competences not clearly assigned (as is the case in Gagauzia and Mindanao), there is a danger that malign (future) governments will use the opportunities thus created in order to undermine regional autonomies. This emphasises, once again, the need for a clear hierarchy of vertically layered institutions and the legal entrenchment of their powers.

Equally serious is the lack of a final overall settlement for a particular conflict (see Table 10). Especially where interim structures are set up (as in Kosovo) or develop out of a conflict stalemate that give regional authorities significant powers, there are serious long-term political implications for achieving a final settlement, i.e., to construct a viable state out of constituent components that had a prior existence as 'quasi-states'. Post-conflict state building following state failure or collapse requires the creation of a power base at the centre to establish the authority of the state internally as well as externally. This is not to advocate strong centralised, unitary states, but to point out that, in the context of self-determination conflicts (i.e., where structure and boundaries of the state are contested), the reverse procedure, namely to create strong regional power bases before a national or central one, often implies renewed conflict or bears the potential of ultimate state disintegration (just imagine Bosnia and Herzegovina without the presence and involvement of the international community). Why would regional elites give up a degree of independence achieved and submit to a central government, regardless of whether they would share power at the central level? Interim status, and especially the longer it persists and the more permanent it becomes, is therefore potentially detrimental to conflict resolution and, by extension, state construction and survival. Similarly, the future option of a constitutional change by way of referendum may have equally destabilising consequences as such options are interpreted as both a promise and a threat and cannot but have a polarising effect on the communities affected by them.[36]

Table 10: Provisions for final status settlement

Final Status Agreed	Final Status to be Determined by		
	One-off referendum	Referenda at regular intervals	Negotiations
BiH Brussels Crimea Macedonia Mindanao South Tyrol	Bougainville Gagauzia Southern Sudan	Northern Ireland	Kosovo

However, one should also note that postponing final status settlement is a legitimate strategy for conflict management. It enables political elites to focus on crucial issues affecting people's every-day lives without being side-tracked by aspects of the conflict in which finding compromises is exceedingly hard or close to impossible. In such cases, and Kosovo would fall into this category, delaying a final status agreement is vital to establish political processes which are, by-and-large, stable and free from violence. While this clearly does not *resolve* a given conflict, it makes it more manageable and less costly for those involved.

H. Federation, federacy or unitary state

All of the previous comparative issues in this section lead to one final question namely what the relation between the different layers of authority is in the cases considered here. In addition to unitary states, Elazar (n.d.: 9-10) distinguishes nine different forms of states with federalist components: confederation,

[36] For amore general analysis of interim settlements, cf. also Weller (2005) and Wolff (2003b).

federation, federacy, associated state, consociation, union, league, joint functional authority, and condominium. Of these, only two are relevant for the discussion here: federation and federacy (see Table 11).[37] For only one is the classification straightforward: Macedonia is a unitary state. Belgium and Bosnia and Herzegovina are the cases that most closely resemble a federation, i.e., a "polity compounded of strong constituent entities and a strong general government each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers" (Elazar n.d.: 10). Both possess all of Elazar's criteria for a federation with the sole exception of having a strong central government. While the weakness of the central government and the limited powers it has retained would normally point to a confederal arrangement, they fail the confederal test as they, strictly speaking, are not made up of "pre-existing polities" (Elazar n.d.: 10).

Table 11: Forms of State

	Unitary	Federation	Federacy	Undetermined
Brussels (Belgium)		X		
Bosnia and Herzegovina		X		
Papua New Guinea (Bougainville)			X	
Ukraine (Crimea)			X	
Moldova (Gagauzia)			X	
Kosovo				X
Macedonia	X			
Philippines (Mindanao)			X	
United Kingdom (Northern Ireland)			X	
Sudan (Southern Sudan)			X	
Italy (South Tyrol)			X	

Elazar's (n.d.: 10) definition of a federacy is that "a larger power and a smaller power are linked asymmetrically in a federal relationship in which the latter has substantial autonomy and in return has a minimal role in the governance of the larger power" and that "the relationship between them can be resolved only by mutual agreement". This is most clearly the case for Bougainville, Gagauzia and Southern Sudan, but arguably, and to a more limited extent, also for Northern Ireland. In the latter case, the asymmetric link and substantial autonomy are clearly present. As for the dissolution of the relationship only by mutual agreement, matters are more complicated. The secession of Northern Ireland from the United Kingdom can only happen as the result of a referendum in the province (and a corresponding referendum in the Republic of Ireland), which then will require acceptance by the government in Westminster. However, it could also be argued that suspending the autonomous power-sharing institutions in Northern Ireland constitutes a case of dissolving this special kind of federalist relationship. In this case, no matter what the reading of the British-Irish Agreement, Northern Ireland's consent is not required. As discussed above, the limited and insufficient constitutional entrenchment of Northern Ireland's status as an autonomous entity in the United Kingdom gives it a weaker position than both Bougainville and Gagauzia. Nevertheless, Northern Ireland has a different position from that of a region in a decentralised unitary state in that it has a full system of governing institutions and original authority in a range of policy fields,

[37] Further analysis is needed to establish the exact relevance of condominium-style arrangements to these and possibly other examples of self-governance regimes.

neither of which is enjoyed by regions in a decentralised unitary state. Depending on how the criterion of "a minimal role in the governance of the larger power" is interpreted, the fact that Northern Ireland sends eighteen representatives to the House of Commons in Westminster could be seen as such minimal involvement. This, however, is clearly a lesser form of participation than in Bougainville (joint [executive] committees), Gagauzia (co-optation) and Southern Sudan (executive power-sharing at the centre). Mindanao's status as a federacy is similarly ambiguous. Unlike Northern Ireland, Mindanao's participation in central government is more formally regulated through co-optation arrangements between the regional and national government. However, like Northern Ireland and unlike Gagauzia and Bougainville, Mindanao lacks full constitutional guarantees of its status, but a comprehensive peace agreement negotiated and signed with international involvement provides some compensation for this. Its status as the Philippines's 'fifteenth province' is regulated in an organic law and endows the area with significant autonomous powers that are different and go beyond those enjoyed by any other province in the country. From this perspective, the Autonomous Region of Muslim Mindanao fulfils all but one of Elazar's criteria for a federacy.

The yet-undetermined status of Kosovo stems from the fact that no final overall legal-political arrangements have been agreed in either of these cases. The most likely scenario for Kosovo is that of a future status as a constituent component of a federation of Serbia, Montenegro and Kosovo.[38]

V. Self-governance Regimes as Part of the Conflict Resolution Toolkit

Clearly, there is no single blueprint for the design of self-governance regimes that could be applied to all self-determination conflicts alike. At the same time, these case studies highlight that constitutional designers have a wide range of different options at their disposal for the construction of technically viable institutional structures in response to self-determination conflicts that may be recognised as legitimate by the conflict parties.

In such designs, self-governance regimes that combine forms of vertical and horizontal power-sharing in attempts to establish stable political and institutional processes conducive to resolving self-determination conflicts. In fact, vertical layering of authority is a necessary condition in two ways: self-governance regimes cannot be established in specific territorial entities without it and unless a region (or regions) becomes a locus of power, no power can be shared at the sub-national level. Power-sharing in the Bosnian-Croat Federation, in Bougainville, in Brussels, in the Autonomous Region of Muslim Mindanao, in Northern Ireland, Southern 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. At the same time, it is important to bear in mind that horizontal power-sharing at the regional level is not a necessary consequence of vertically layered authority. In Crimea, Gagauzia, Kosovo, Macedonia and the Republika Srpska sub-national layers of authority have not led to the establishment of formal power-sharing institutions at these levels.[39] The 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 Southern Sudan, required constitutional

[38] A future federation may also be on the cards for Moldova in which case Gagauzia and Transdniestria may become equal partners alongside Moldova.
[39] This, however, does not preclude the emergence over time of informal or spontaneous forms of power-sharing at the regional level, as is the case in Crimea.

designers to devise mechanisms of conflict regulation below the national level and beyond traditional notions of subsidiarity and devolution. Context-dependence continues at this level as well, as becomes evident from, among others, the differences in strength that regional 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 Southern Sudan.

Where regional or national (formal) horizontal structures of power-sharing are missing, demography and the vertical layering of authority has combined favourably in ways that make them superfluous. In Kosovo, for example, ethnic Serbs remain a sizable minority, but their territorial concentration and the relative homogeneity of the areas in which they reside means that the devolution of substantial powers to municipal authorities affords ethnic Serbs a reasonable degree of autonomy from the central authority in Kosovo, while a system of reserved seats guarantees them representation in parliament at the centre. 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 Moldova, where horizontal power-sharing is absent at the regional and, with some qualifications, national levels, the creation of the Gagauz autonomous territory and the fact that referenda were held at the district level over whether particular local communities wanted to belong to the Gagauz territory helped create a reasonably homogeneous territory within which horizontal power-sharing was not deemed necessary. Formalised structures of horizontal power-sharing at the national level exist only in a limited way in the form of co-optation of regional officials to corresponding national bodies.

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 major 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 overall satisfaction that both major ethnic groups derive from this settlement.

This degree of variation across the case studies suggests four important conclusions for the role that self-governance regimes have in the power-sharing toolkit. First, dividing power along a vertical structure of institutions can serve as a useful substitute for formal horizontal power-sharing at either national or regional levels, provided that national or regional ethnic demographies 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 co-decision making as foreseen by power-sharing institutions. Moreover, a certain degree of representation of minority groups at the relevant central level (regional in the cases of Crimea and Kosovo, national in the cases of Macedonia and Moldova), in addition to these other two conditions, also seems to facilitate this kind of institutional structure.

Second, while the vertical layering of authority may under certain conditions be able to substitute for the creation of horizontal power-sharing institutions, the reverse is empirically *not* the case. Even where power is shared at the national level (as in Bosnia and Herzegovina, Bougainville, Brussels and Southern Sudan)

or at the regional level (Bosnian-Croat Federation, Bougainville, Brussels, Mindanao, Northern Ireland, Southern Sudan and South Tyrol), authority remains vertically layered and lower levels of authority enjoy different degrees of autonomy in the local decision-making process.

Third, coordination between different vertical layers of authority and the establishment of clear hierarchies 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 regions and their populations created as a particular layer of authority with the specific purpose of conflict resolution (such as Gagauzia, Mindanao, Southern Sudan, and with some qualifications, Crimea), conflict settlements may not be sustainable in the long term.

This means, 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. The power to suspend devolved government in Northern Ireland may on several occasions have prevented the collapse of the power-sharing institutions in the province, but it has also reduced the willingness of the conflict parties to commit to working together, and develop a shared sense of responsibility for sustaining the institutional structures created by the 1998 Agreement. Legal and constitutional entrenchment, possibly alongside international guarantees, is thus one important mechanism for the stabilisation of institutional structures. 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, if Moldova at some point decided to unite with Romania, Gagauzia has the opportunity to hold a referendum on its independence; Bougainville has a future option for a referendum on its independence from Papua New Guinea; in Northern Ireland the popular will regarding unification with the Republic of Ireland is to be gauged at regular intervals; and Southern 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 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 self-governance 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. Self-governance regimes *do* depend upon on 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.

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