Power-sharing and the Vertical Layering of Authority: A Review of Current Practices

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I. The Context of Self-determination Conflicts and Power-sharing

Self-determination conflicts are, at one level, also conflicts between competing views of how decision-making powers should be allocated to different 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. In addition to such vertical layering of authority, the resolution of self-determination conflicts often requires additional mechanisms of power-sharing that are horizontal, i.e., where power is (mandatorily) shared between different parties at one-and-the-same level. While the level of such horizontal power-sharing can be the region and/or the central government, the precise mechanisms and rules of such horizontal power-sharing 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.

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).

Within systems of power-sharing the vertical layering of authority acquires extra importance, often necessitating specific new institutional structures, thus adding to the overall complexity of the process and outcome of state construction. However, the vertical layering of authority also 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. 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 outcomes 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 power-sharing institutions 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.

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With these preliminary considerations in mind, this chapter analyses state construction in complex power-sharing systems from the perspective of how authority is distributed at and between vertical layers of authority. The empirical basis for this analysis is provided by eight recent cases of self-determination conflicts where attempts have been made to resolve them by establishing complex power-sharing institutions. Examining the vertical layering of authority in Bosnia and Herzegovina, Bougainville, Gagauzia, Kosovo, Macedonia, Mindanao, Northern Ireland and South Ossetia, I initially evaluate the particular vertical 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 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 Bougainville, Mindanao and Northern Ireland. Here two traditional conflict resolution techniques combine – territorial autonomy and consociational power-sharing. Although similar in this particular aspect, the three cases can be further distinguished according to their institutional structures. The arrangements for Bougainville include limited power-sharing (co-decision making) between the regional and central authorities; 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; and in Mindanao, the co-optation of regional officials to corresponding central institutions again provides for limited co-decision making. The remaining four cases are examples of territorial autonomy (Gagauzia), enhanced local self-administration (Macedonia and, pending the resolution of its final status, Kosovo), and a quasi-sovereign parallel entity (South Ossetia).

Following this description of the empirical basis of this chapter, I then assess the relevance of the vertical layering of authority within complex power-sharing systems by comparing and contrasting all eight 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 the vertical layering of public authority in complex power-sharing systems: 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 the vertical layering of authority can play as part of a power-sharing 'toolkit' by examining the main types of institutional structures and mechanisms of policy coordination and by assessing their context-dependence.

II. Multiple Layers of Authority in Practice: A Brief Review of Eight Case Studies of Complex Power-sharing

In order to assess similarities and differences and their significance in the vertical construction of state institutions, empirical data are required. Given the focus of this chapter, 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.[1]

A. 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.

[1] For detailed background on the eight case studies of self-determination conflicts, refer to Vol. 1 ** CROSS-REF

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 (Figure 1). 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 1: Vertical Layers of Public Authority in Bosnia and Herzegovina

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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.

B. 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 and South Ossetia 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 (June 2003), 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 (Figure 2). 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 2: Vertical Layers of Public Authority in Papua New Guinea

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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.

C. 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 (Figure 3). 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 3: Vertical Layers of Public Authority in the Philippines

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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.

D. 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 (Figure 4), 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 4: Vertical Layers of Public Authority in the United Kingdom in relation to Northern Ireland

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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.

E. 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 (Figure 5). 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 5: Vertical Layers of Public Authority in Moldova

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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 (mid-2003), 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.

F. 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 (Figure 6), 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 (Figure 1). 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 6: Vertical Layers of Public Authority in Kosovo

<<Figure 6 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 (and, for that matter, South Ossetia) on the one hand, and Bougainville, Gagauzia 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 (and South Ossetia) are 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 and South Ossetian 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.

G. 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.[2]

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

[2] I am grateful to Eben Friedman for pointing this out to me.

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 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 (Figure 7). 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 7: Vertical Layers of Public Authority in Macedonia

<<Figure 7 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.

H. South Ossetia

Of all the case studies reviewed here, South Ossetia is the one where formal structures of vertically layered authority are the least developed. This is largely due to the fact that no final settlement of the conflict has been agreed upon by the main parties to the dispute – Georgia, South Ossetia and Russia – and the OSCE who acts as the principal mediator.

The conflict in South Ossetia is best analysed against the background of the dissolution of the Soviet Union and the subsequent problems of state-building in Georgia. A politically and economically disadvantaged part of the Georgian Soviet Socialist Republic during the Soviet era, political leaders in South Ossetia sought to use Georgian independence as a catalyst to improve the status of their region within Georgia. Already confronted with one major threat to the emerging country's territorial integrity in Abkhazia, the Georgian state was intent on strengthening the central government and forging a Georgian national identity along the lines of an ethnically Georgian culture. Unsurprisingly, rhetoric escalated on both sides into tit-for-tat discrimination and eventually violent confrontation. Initially sporadic clashes developed into serious military confrontation, accompanied by an increase in the stakes on both sides – South Ossetians began to demand republic status (implying secession), Georgia abolished the existing autonomy of South Ossetia. A further two years of violence eventually subsided into a stalemate, but not before around 1,000 people had been killed and some 60,000 been displaced within South Ossetia and Georgia and across the border to North Ossetia. Kinship links between South Ossetians and North Ossetians, who live in the Russian Federation, and Russia's own geopolitical interest in maintaining influence in the Caucasus region after the end of the Soviet empire added another dimension to the conflict that initially proved to be of an escalating rather than calming nature. Russia's predominance in the region and concerns

with regional instability due to the conflict in Chechnya and the tensions in Dagestan were recognised by other agents in the international community, which meant that, while the conflict was noticed, no formal intervention took place during its violent phase.

Subsequently, however, international mediation efforts and development programmes have helped establish something akin to institutional structures that allow for a minimum of coordination between the conflict parties and for concrete approaches to the pressing social, political, economic and military problems of the region. Probably most important of these bodies is the so-called Joint Control Commission (JCC) and its various organs, including a Working Group on Military and Security Issues and a Joint Law Enforcement Coordination Centre. The JCC and its members (Georgia, South Ossetia, Russia and OSCE) provide the only permanent administrative institution to coordinate issues of common interest (trade, transportation, organised crime, etc.) among the conflict parties. The Joint Peace-Keeping Force (Russia, Georgia, South Ossetia) established under the 1992 ceasefire agreement is a partner along with Georgia, South Ossetia and the OSCE in the Working Group on Military and Security Issues. In addition, there are bilateral institutions, such as the Georgian-Russian Intergovernmental Body, also created under the JCC. Muddled and informal as these structures may be, they have been fairly successful in providing a minimum of regular coordination and joint decision-making among the conflict parties, and most crucially they have helped maintain the 1992 ceasefire for more than ten years. However, because of the nature of the arrangements on the ground, they cannot be classified in any sense as a manifestation of layered authority. Rather, in the absence of a comprehensive settlement, Georgia and South Ossetia are both quasi-sovereign in the territories under their control, bearing in mind the fragility, weakness and often informality of institutional structures in both entities.

III. The vertical layering of authority and its relevance to complex power-sharing arrangements

The brief overview of institutions and institutional structures given above illustrates the broad range of institutional 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 the examination of the nature of commonalities between these cases, analysing 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 chapter 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 power-sharing 'toolkit'.

A. Types of institutional structures

The first element to consider in this comparative analysis of how vertical authority is layered in complex power-sharing systems is the number of layers of authority that actually exist across the eight case studies (Table 1).

Table 1: Variation in the vertical layering of authority

Two-layered Structures	Three-layered Structures	Multi-layered Structures
Macedonia	Bougainville[3] Gagauzia Kosovo Northern Ireland[4]	Bosnia and Herzegovina Mindanao

Table 1 illustrates the predominance of three-layered structures of government in more than half of the cases (bearing in mind that South Ossetia cannot be properly categorised as a result of the absence of proper formal institutional structures). In the cases of Bougainville, Gagauzia and Northern Ireland 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 national 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 a 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.

[3] This ignores the fact that, from a purely technical point of view, the monarch of the United Kingdom of Great Britain and Northern Ireland is the official, albeit largely ceremonial, head of state and is represented in Papua New Guinea by a Governor General.

[4] This ignores the fact that the monarch of the United Kingdom of Great Britain and Northern Ireland is the official, albeit largely ceremonial, head of state.

In the cases of Mindanao and Bosnia and Herzegovina, multiple 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. 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.

Another way of looking at structural types of vertically layered authority is to examine the degree to which the eight cases represent institutions that are structurally and/or functionally symmetric or asymmetric (Tables 2–4), as this perspective provides a more comprehensive picture of the structure of the entire polity concerned and the place and status of complex power-sharing institutions within it.

Table 2: Structural symmetry and asymmetry of institutions

Structural Symmetry	**Structural Asymmetry**	
	Single Asymmetry	**Multiple Asymmetry**
Macedonia Bougainville Kosovo	Gagauzia Mindanao	Bosnia and Herzegovina Northern Ireland

Table 3: Functional symmetry and asymmetry of institutions

Functional Symmetry	**Functional Asymmetry**
Kosovo Macedonia	Bosnia and Herzegovina Bougainville Gagauzia Mindanao Northern Ireland

Table 4: Structural and functional symmetry and asymmetry of institutions compared

	Structures			**Functions**	
	Symmetric	**Single asymmetric**	**Multiple asymmetric**	**Symmetric**	**Asymmetric**
Bosnia and Herzegovina			**X**		**X**
Bougainville	**X**				**X**
Gagauzia		**X**			**X**
Kosovo	**X**			**X**	
Macedonia	**X**			**X**	
Mindanao		**X**			**X**

Northern Ireland			**X**		**X**

Tables 2 and 3 indicate that there is no clear-cut predominance of symmetric or asymmetric forms of institutional structures across the case studies (again, leaving aside South Ossetia), 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 4, 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 power-sharing 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. While all the cases examined in this chapter are examples of state structures characterised by multiple vertical layers of authority, formal horizontal structures of power-sharing exist only in some of them, and where they do exist they always involve power-sharing at the regional level (Table 5).

Table 5: Combinations of Horizontal and Vertical Power-sharing

No horizontal power-sharing	Horizontal power-sharing at national level only	Horizontal power-sharing at regional level only	Horizontal power-sharing at national and regional level
Kosovo South Ossetia	Macedonia[5] Moldova[6]	Northern Ireland	Bosnia and Herzegovina[7] Bougainville[8] Mindanao[9]

[5] 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.
[6] 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.
[7] Mandatory power-sharing at regional level only applies to the federation.
[8] A regional constitution is yet to determine the details of horizontal power-sharing in Bougainville.
[9] 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.

As the cases of Macedonia, Mindanao and Moldova demonstrate, the absence of formal structures of power-sharing at the national level 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). 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.

Formal 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 (Federation level), Mindanao and Northern Ireland. The 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 (once relevant national legislation has been passed), 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 vertically layered system of authority 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 eight cases of complex power-sharing 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, Northern Ireland) or they can be specific for one or more layers and 'open-ended' for others (Bosnia and Herzegovina, Gagauzia/Moldova, Kosovo, Macedonia). 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 (Table 6). South Ossetia, given the particularities of the situation there, cannot yet be categorised in any of these mechanisms of power distribution.

Table 6: Power Allocation in Vertically Layered Systems of Public Authority

Specific Lists	Combination of Specific and 'Open-ended' Lists

	Open-ended list at centre	Specific list at centre
Bougainville Mindanao Northern Ireland[10]	Moldova Macedonia	Bosnia and Herzegovina Kosovo

In Gagauzia/Moldova and Macedonia, 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 the Philippines/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/Papua New Guinea, 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.

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

[10] 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.

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 any of the three cases where no such unambiguous allocation of powers has 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.

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 power-sharing institutions 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 eight 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 (Table 7).

Table 7: Coordination Mechanisms between Different Layers of Public Authority in Complex Power-sharing Systems

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
Mindanao Gagauzia	Bougainville Macedonia Mindanao Gagauzia Northern Ireland South Ossetia	Bosnia and Herzegovina Bougainville Kosovo Macedonia Mindanao Gagauzia Northern Ireland	Bosnia and Herzegovina Kosovo

As Table 7 indicates, with the exception of South Ossetia, all the case studies exhibit at least two different coordination mechanisms, with one of them always 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 complex power-sharing institutions as settlements for self-determination conflicts. Co-optation, adopted in the Philippines and Moldova, is a mechanism to ensure the representation of regional officials (from the ARMM and Gagauzia respectively) at the centre. In both cases, the regional governors and officials of their executive are *ex officio* members of relevant national government departments. This arrangement is, on the one hand, symbolic and emphasises the special relationship between central government and autonomous region, but, on the other hand, also necessary as in both 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 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.

In the context of coordination between different vertical layers of authority in complex power-sharing structures, 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), Philippines/Mindanao (development), Moldova/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 South Ossetia (transport, crime prevention, Georgian-Russian cooperation). Such bodies can hold one-off (Moldova) or regular meetings (Papua New Guinea/Bougainville, Macedonia, Philippines/Mindanao, Northern Ireland); and they can be in their nature domestic, centre-periphery bodies (Papua New Guinea/Bougainville, Macedonia, Philippines/Mindanao, South Ossetia) or reflect the international dimension of a particular self-determination conflict (Northern Ireland, South Ossetia). They may be prescribed in agreements between the conflict parties (Papua New Guinea/Bougainville, Mindanao, Northern Ireland) or arise from actual needs (Macedonia, Moldova/Gagauzia, South Ossetia).

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.

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 (Table 8). 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 8: Guarantees of power-sharing institutions

International Guarantees		**Domestic Guarantees**	
'Hard'	**'Soft'**	**Constitutional Guarantees**	**Guarantees in Specific Laws**
Bosnia and Herzegovina Kosovo Northern Ireland	Bougainville Macedonia Gagauzia Mindanao South Ossetia	Bosnia and Herzegovina Bougainville Gagauzia Kosovo Macedonia	Bougainville Gagauzia Macedonia Mindanao Northern Ireland

Table 8 illustrates that there is great variance across the eight cases considered here, and with only one exception (South Ossetia), guarantees exist at multiple levels. 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.

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 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 South Ossetia, the commitment of resources and personnel by UNHCR, UNDP, EU and OSCE have contributed to the maintenance of the 1992 ceasefire agreement and the ensuing cooperation between the various parties to the conflict on a number of substantive issues.

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, Moldova, Macedonia, 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.

Guarantees through specific laws exist in the cases of Bougainville, Gagauzia, Macedonia, Mindanao and Northern Ireland. 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.

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 the territorial layering of authority, the extent of these two limitations placed on the exercise of authority is similar. Regional, territorial autonomies are spatially confined. The powers devolved to a regional government 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.[11]

These observations are relevant in two 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.

This suggests that there is an additional degree of differentiation available that goes beyond the traditional territorial delimitation of authority in that it incorporates a public consultation process for the definition of the territorial boundaries of the autonomous area. If combined with levels of personal autonomy in specific policy areas, the range of authority that an

[11] 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.

autonomous 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 vertical and horizontal power-sharing mechanisms, it may also make them more suitable to particular contexts and thus more acceptable. In other words, careful territorial and personal delimitation of autonomy 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 autonomy of a population group seeking a higher degree of self-governance.

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 radical 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,[12] but it is reasonable to assume that their implications would be even more severe in cases where territorial (re)arrangements are recent, precisely because they will imply a degree of fluidity which is threatening to majorities and minorities at the same time. On the other hand, given reasonably and rationally acting political elites there is nothing to say that significant demographic shifts could not be addressed constructively.

G. The functioning and stability of institutions in vertically layered complex power-sharing 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 power-sharing institutions and the coordination of government activities at and between different vertical layers of authority – are structural issues and thus more easily subject to modification. Whereas the third one – the overall political institutional settlement within which vertically and horizontally structured

[12] I am grateful to Tom Trier for pointing this out to me.

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 it will 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 and Gagauzia. 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. 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 less autonomous regions demand equity in the distribution of powers; 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 quite closely related to this last point, namely 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 ensuring 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 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 recommendation to transfer the relevant structures and coordination mechanisms to 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 Moldova and the Philippines), 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 (Table 9). Especially where interim structures are set up (as in Kosovo) or develop out of a conflict stalemate (as in South Ossetia) 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 disintegration 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 or not? 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.

Table 9: Provisions for final status settlement

Final Status Agreed	**Final Status to be Determined by**			**No Provisions**
	One-off referendum	**Referenda at regular intervals**	**Negotiations**	
Bosnia and Herzegovina	Bougainville	Northern Ireland	Kosovo	South Ossetia

Macedonia Mindanao	Gagauzia			

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 and South Ossetia 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 eight case studies. In addition to unitary states, Elazar (n.d.: 9-10) distinguishes nine different forms of states with federalist components: confederation, 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. However, not all cases can be clearly categorised (Table 10). For only one is it straightforward: Macedonia is a unitary state. Bosnia and Herzegovina is the case that most closely resembles 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). Bosnia and Herzegovina possesses all 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, if fails the confederal test as it, strictly speaking, is not made up of "pre-existing polities" (Elazar n.d.: 10).

Table 10: Forms of State

	Unitary	**Federation**	**Federacy**	**Undetermined**
Bosnia and Herzegovina		**X**		
Bougainville			**X**	
Gagauzia			**X**	
Kosovo				**X**
Macedonia	**X**			
Mindanao			**X**	

Northern Ireland			**X**	
South Ossetia				**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 Gagauzia and Bougainville, 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, 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 Gagauzia (co-optation) and Bougainville (joint [executive] committees). 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 and South Ossetia 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. For South Ossetia, a federacy arrangement with the Georgian central government is one possibility, as is its participation in a future Georgian federation with Abkhazia as another possible constituent entity in such an arrangement.[13]

IV. The vertical layering of authority as part of the power-sharing toolkit

Clearly, there is no single blueprint for the design of a system of vertically layered authority 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, the vertical layering of authority is a key component of complex power-sharing settlements, i.e., horizontal power-sharing alone is not sufficient for the establishment of stable political and institutional processes conducive to resolving self-determination conflicts. In fact, vertical layering of authority is a necessary condition in a number of cases for horizontal power-sharing: 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 the Autonomous Region of Muslim Mindanao and in Northern Ireland 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 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.[14] With some qualifications pertaining to the lack of formalised structures, this is also the case in South Ossetia. 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 and of Northern Ireland, as well as the religious and tribal mix in the provinces that opted for membership in the Autonomous Region of Muslim Mindanao, required constitutional designers to devise mechanisms of conflict regulation below the national level and beyond traditional notions of subsidiarity and devolution.

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

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 or the individual provinces that make up the Autonomous Region of Muslim Mindanao.

Where regional or national (formal) horizontal structures of power-sharing are missing in the case studies, 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 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 the vertical layering of authority has 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 case of 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 and Bougainville) or at the regional level (Bosnian-Croat Federation, Bougainville, Mindanao, Northern Ireland), 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 autonomy of regions created as a particular layer of authority with the specific purpose of conflict resolution (such as the Autonomous Region of Muslim Mindanao and Gagauzia), 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; and in Northern Ireland the popular will regarding unification with the Republic of Ireland is to be gauged at regular intervals.

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 complex power-sharing will always modify and constrain majoritarian forms of democracy, but this does not mean that power-sharing institutions can or should be run without popular support. Power-sharing *does* depend upon on the willingness and ability of

elites to cooperate and make compromises, but it *also* depends 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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