

Accommodating Diversity: Federalism, Autonomy and other Options

By Katia Papagianni¹

States have adopted a variety of institutions in order to accommodate ethnic, linguistic and religious diversity within their borders. In the particularly challenging circumstances of negotiated settlements to end civil wars, conflict parties tend to rely even more on institutions which provide for the sharing and decentralization of state power. New institutions offering various forms of territorial autonomy, on the one hand, and ‘shared rule’ at the central government level, on the other (Ghai, CIC, 3) attempt to accommodate the demands of armed groups and their constituencies, while also preserving the territorial integrity of the state.

Conflict parties are cautious about the ability of new institutions to contribute to accommodation. Optimists argue that institutions can transform politics by offering political leaders incentives for accommodation and by habituating them to collaborate with each other. However, it is widely agreed that, in the immediate post-agreement period, newly-established institutions are unlikely to enjoy wide support and to be able to transform the political environment. Thus, even if institutions are able to foster accommodation in the long-term, they are likely to require a lot of support in the short-term in order to survive.

This paper presents some of the options available to conflict mediators when confronted with the challenges of accommodating diverse interests and identities. It recognizes that there is no one model for any given situation and that no two institutional designs are identical. No two federal systems or autonomy models share exactly the same ingredients. Most countries adopt hybrid institutions, which combine aspects of various models. For the purposes of understanding options, however, the paper presents four categories of institutional arrangements:

- I Federalism
- II Autonomy
- III Decentralization
- IV Power-sharing

The goal is to identify the key components of the above options, the differences between them, and the circumstances in which they are likely to be adopted. The paper also presents some evidence regarding the effectiveness of the above institutions in accommodating diversity, while also preserving the territorial integrity of the state.

¹ The author is Project Manager at the Centre for Humanitarian Dialogue with expertise in governance and human rights, post-conflict transitional politics and institutions, and constitution-making processes. Prior to joining the HD Centre, she worked for the Office of the UN High Commissioner for Human Rights and the UNDP, her field experience includes work for the National Democratic Institute in Russia, the OSCE in Bosnia and Herzegovina and the UN in Iraq.

I FEDERALISM

What is a federal system?

A federal system exists where there is a layer of state institutions between a state's centre and its localities, when this layer of institutions features its own leaders and elected bodies, and when those leaders and bodies share decision-making power with the center (Bermeo, 1999, 98). Other definitions add that, for a state to be federal, it needs to guarantee in its constitution that both levels of government have at least one area of action in which they have exclusive jurisdiction. Also, there is considerable agreement that a federal state needs to have a minimum level of democracy in order for the concept of sub-state autonomy to have meaning (Hale, 2004, 168).

Federalism, then, is a constitutional means to prevent the centralization of power (Elazar, 1993, 192). It combines self-rule by territorial sub-units and shared rule at the centre: sub-units govern themselves and share power in the central government. As will be discussed later on, this is a key difference between federalism and pure autonomy arrangements.

Federal systems have been adopted after civil wars as in Bosnia (1995) and in Sudan (2005). However, not all civil wars ending with negotiated agreements lead to federal systems as the examples of Croatia and Macedonia point out. The brief Macedonian conflict of 2001, as will be discussed later, led to a decentralization of state powers.

What constitutional protection do federal systems offer to sub-units?

There is significant variation in the protection that federal constitutions offer to sub-state entities. Strong constitutional protection is offered when the powers of the centre and these entities are specified in the constitution. This means that any change in the legal status or the powers of the sub-state entities requires their consent (Ghai, CIC, 3). For example, in the US, Swiss and Australian models, all levels of government are considered equal and are protected by the constitution. In the US, the federal government cannot abolish a state or dissolve a state government. Similarly, the 1988 Brazilian constitution is extremely detailed and offers strong protection to the 26 states. In order to change the Brazilian constitution, 60 per cent of the members of both houses must vote in favor of an amendment twice (Stepan, 1999, 29).

A weaker form of constitutional protection is offered when federal institutions or the institutions of the sub-state entities can be changed by a strong majority in the legislature of the central government. This is the case in India and Malaysia. In India, the Lower House of the central legislature, by a simple majority vote, can eliminate any state, carve new states out of existing ones, or change their names.

In a confederation, the constituent entities enjoy the strongest protection: they form a union, but maintain most sovereign powers. This means that they maintain control over the central government, which must work through them to reach the citizens. Also, the secession of individual units may be possible, as defined by the constitutional agreement, without the consent of all units.

What is asymmetric federalism?

Asymmetric arrangements grant different competencies and rights to different sub-state entities (Stepan, 1999, 20). The US federal model is a symmetric one: each state has the same constitutional competences. The Canadian federation, on the other hand, is asymmetric as Quebec enjoys distinct powers not granted to other provinces.

An asymmetric federal model may emerge when a unitary state develops a federal relationship with a territorially, ethnically, or culturally distinct community, while the rest of the country remains under unitary rule. Denmark has an asymmetric federal relationship with Greenland (Stepan, 1999, 20).

One way of introducing asymmetric federalism is through bilateral agreements between the centre and particular regions. For example, Spain's 1978 constitution provided for a federal state by dividing the country into autonomous regional communities, while also offering the Basques and the Catalans, plus any other interested regional communities, to negotiate their own arrangements with Madrid. Eventually, the Galicians and Andalusians also negotiated such arrangements. Independent of these bilateral agreements, every constituent unit has its own regional government with a minimum of powers constitutionally allocated to it (Elazar, 1993, 193).

What are the consequences of asymmetry?

On the one hand, tensions may arise when powers or resources are asymmetric within a federal state. On the other hand, asymmetry may be well-suited to respond to unique conditions in different parts of a country. Some scholars point out that asymmetric federalism is not dangerous to the survival of the state as long as no single unit is predominant and able to compromise the integrity or powers of the others. Also, asymmetric arrangements inject flexibility to the state and enable it to accommodate a wide range of identities and interests. It is worth noting that, with the exception of Switzerland, all democratic federations that are ethnically and linguistically diverse are constitutionally asymmetric. Federations that are constitutionally symmetric are mono-national (Stepan, 1999).

What is ethno-federalism?

A state is ethno-federal when at least one of its sub-units is intentionally associated with a specific ethnic and/or linguistic category (Hale, 2004, 167). The former Soviet Union, Czechoslovakia and Yugoslavia were examples of ethno-federal states. Also, Canada, Spain and Belgium fall under this category. Critics argue that ethnic federations are least likely to survive. They warn that defining sub-state entities on ethnic grounds is risky as these entities are often unwilling to share power with the central government.

Therefore, critics argue that in successful multi-ethnic federalism there is usually a divergence between the sub-state entities and ethnic divisions (Elazar, 1993, 194). Also, heterogeneous sub-state entities provide the opportunity for politicians to work with each other at this level before dealing with each other at the centre (Horowitz, 2002, 25). On the other hand, if the sub-state entities are homogeneous, they may foster competition within ethnic groups and move the focus away from competition among groups.

1

2

3

4

5

6

7

8

9

10

11

12

What arrangements for distribution of power are common in federations?

Sub-state entities commonly have the power to tax, legislate and run what is defined as local affairs. There is a great diversity on what is included in this list. Additionally, arrangements are put in place to ensure sub-state entity participation in the central governments through an Upper House in the legislature. Where there is diversity in the size, population and relative importance of each sub-state entity, care must be taken to ensure very small entities are not able to wield disproportionate power at the Upper House.

II AUTONOMY

Territorial Autonomy

Territorial autonomy arrangements devolve to minority groups the power to exercise direct control over agreed upon issues of special concern to them. At the same time, these arrangements allow the central state to exercise power over other policies of concern to the whole state. Territorial autonomy is possible when the minority is concentrated in one region of the country and when it constitutes a majority in that region. Thus, territorial autonomy attempts to address local concerns (Ghai, 2001, 22).

Territorial autonomy may include the right to tax as well as to establish regional institutions charged with legislative and executive functions. It usually provides for the minority language to be the official language of the region. Also, it defines primary and sometimes secondary education as the responsibility of regional governments.

For example, the predominantly Swedish-speaking region of Åland in Finland enjoys significant cultural and political autonomy. It has its own legislative and executive bodies. Ålanders are represented in the national parliament, while the Åland legislature may introduce bills in the national parliament even on issues that are under the authority of the national government. Furthermore, there is strong protection for the autonomy of the region: the autonomy provisions may not be altered without the consent of both the national and Åland legislatures. Other examples of regional autonomy include the Atlantic Coast of Nicaragua which was established for the protection of indigenous people and the Chittagong Hill Tracts in Bangladesh (Ghai, 2001, 22).

What is the difference between territorial autonomy and federalism?

Some scholars and policy-makers often include in the definition of autonomy federal arrangements, as for example in Bosnia, Nigeria, India and Canada. However, there is an important difference between the two: autonomy is a special arrangement between the center and one or two regions, as for example Scotland in the United Kingdom and South Tyrol in Italy, which does not include institutions through which autonomous territories share legislative power at the central government. Autonomy models do not include Upper Houses.

When is territorial autonomy usually adopted?

Territorial autonomy, rather than federalism, is adopted when the primary goal is to address the local concerns of territorially concentrated minorities. When the regions and minority groups are small, their

priority is often to manage their internal affairs with minimal state intervention, but not necessarily influence policy at the centre. This is the case of the Sami in Scandinavian countries, for example.

Also, because territorial autonomy does not institutionalize regional power at the centre, it may be easier to negotiate and adopt than federalism as it meets less resistance from other regions of the country. However, as will be discussed in the section on decentralization, many states are reluctant to offer territorial autonomy, especially when their minority groups have ethnically kin states across the border. For example, Slovakia and Estonia have resisted the demands for territorial autonomy by the Hungarian and Russian-speaking minorities, respectively, fearing the interference of their neighbors.

Non-territorial or Cultural Autonomy

Non-territorial autonomy means that linguistic, religious or ethnic groups, which are not territorially concentrated, have the authority to run their own internal affairs, in areas such as education and culture (Lijphart, 2004, 105). Examples of cultural autonomy include Muslims in India and linguistic groups in Belgium. The rights given to minority groups may be entrenched in the constitution or subject to the authority of the government (Ghai, 2001, 23).

Many Eastern European countries offer cultural autonomy, including Estonia, Hungary and Russia. In these arrangements, the members of a minority group usually identify themselves through registration and follow the regulations adopted by a council they elect. Within areas such as education, language and culture, the council's decisions may override those of the state. The council may also have the power to tax its members and may receive subsidies from the state (Ghai, 2001, 23).

DO FEDERALISM AND AUTONOMY LEAD TO SECESSION?

Governments facing negotiations to end or avoid civil wars often ask whether federalism, territorial autonomy and state decentralization offer opportunities to ethnic nationalists and separatists to mobilize their resources, gain strength and secede. There is considerable research and debate on this question. The section below attempts to briefly present a part of this debate.

Isn't the collapse of the communist federations proof of the dangers of devolution?

Some point out that the collapse of the three former communist federations, Yugoslavia, Czechoslovakia and the former Soviet Union, confirms that federalism and autonomy lead to the disintegration of the state. They argue, for example, that the communist federal states offered to sub-state entities 'virtually all the building blocks that are necessary for the rise of nationalist movements and the formation of [separate] states' (Bunce, 1999, 49).

However, others argue that the collapse of the communist federations was actually due to the denial of meaningful regional and local autonomy. Their break-up was caused by the impact of authoritarian rule rather than by the federal institutions themselves. Also, there seems to be a relationship between democratization of formerly authoritarian federal states and their disintegration. This risk is particularly real when elections are introduced in the subunits of a formerly nondemocratic federal state prior to democratic nationwide elections and in the absence of democratic country-wide parties.

1

2

3

4

5

6

7

8

9

10

11

12

Is there a relationship between stability, democracy and devolution in multi-national states?

Some scholars argue that federalism helps multiethnic and multilingual societies sustain democracy in the long-term. They point out that long-standing, multi-ethnic democracies are all federal (Switzerland, Canada, Belgium, Spain and India). There are of course many multi-ethnic states in the world, which are not federal. However, these states also tend to not be democratic (Stepan, 1999, 19).

Furthermore, scholars point out that no violent separatist movement has ever succeeded in winning independence in a federal democracy. Rather, every federal system that broke apart or transformed itself to a unitary state was imposed by an outside power. (Bermeo, 1999, 108).

What does the statistical evidence say?

Scholars have found that federal institutions promote accommodation successfully. Diverse countries have benefited from federal arrangements: India with a long electoral and democratic history, Mexico with a relatively short democratic history and Nigeria with mixed democratic experience. Bermeo, for example, examines 112 territorially concentrated minorities living in 46 federal states and 66 unitary states. She finds that minorities in federal states engage in fewer acts of armed rebellion, experience lower levels of economic and political discrimination, and harbor lower levels of grievance concerning political, economic, and cultural policy. Furthermore, on average, this finding holds independent of the wealth, stability and regime of a country (Bermeo, 1999, 98-99; Stepan, 1999).

What does statistical evidence say about devolution in post-conflict countries?

Researchers and policy-makers have offered a variety of proposals to the challenge of accommodating warring factions in one state after wars have ended. Some argue that, in many cases and especially in conflicts based on ethnic or communal identities, groups simply cannot live in one state. They therefore advocate the break up of original states and the establishment of new, smaller states (Kaufmann, 1996). Others argue for international trusteeships in the immediate post-war period in order to ensure that peace agreements are implemented (Helman and Ratner, 1993).

However, many scholars find that federalism and territorial autonomy contribute positively to the sustainability of peace, especially when combined with international military and financial assistance. Devolution (including federalism and territorial autonomy) contributes positively to the durability of peace agreements according to a study of civil wars of 1945-1998 (Hartzell et al, 2001). Also, a study of 233 politically active minority groups covering the period 1945-1989 finds that 'negotiated regional autonomy has proven to be an effective antidote for ethno-national wars of secessions in Western and Third World states' (Gurr, 1994, 366).

Under what conditions does devolution – i.e. either federalism or territorial autonomy - lead to the collapse of the state?

Although statistically federal and autonomy arrangements seem durable, some individual states have collapsed or some territories have seceded. In an effort to understand the conditions under which devolution may lead to the collapse of the state, researchers offer a variety of explanations:

Devolution may lead to ethnic conflict and secessionism only when it increases the strength of identity-based, regional parties. These parties tend to mobilize groups along identity lines and, when in power, they tend to produce legislation that favors certain groups over others. However, a number of techniques may diminish the strength of regional parties: the presence of strong national parties in regional elections; smaller regions; and, direct elections for Upper Houses as opposed to appointment of Upper Houses by regions (Brancati, 2005, 2, 39).

Ethno federal states are more likely to collapse when they contain a core ethnic region that is significantly more powerful and populous compared to the other federal units and exerts great influence over the central government. Examples of dominant regions include the Russian Republic within the Soviet Union and the Northern region within the Nigerian First Republic which included a majority of the country's population. Such regions reduce the ability of the centre to commit credibly to the security of the minority regions and increase the suspicion of the smaller regions vis-à-vis the center (Hale, 2004).

Some argue that where there are only two units representing two communities (e.g. East and West Pakistan, Czech Republic and Slovakia), federations tend to be prone to extreme tension and are not durable. In India, Spain and Switzerland, on the other hand, multiple ethnicities and units have been better able to achieve a balance within the state.

III DECENTRALIZATION

What is decentralization?

Administrative decentralization means that legislative and policy powers remain with the centre, while implementation is delegated to either national civil servants located in the regions or to locally established councils. Additionally, these councils may have some decision-making powers over purely administrative or local issues. Decentralization arrangements are not usually contained in the constitution and may be made either administratively or through legislation. The essential and defining characteristic of decentralized power is that it can be revoked by the centre (Ghai, CIC, 3).

When is decentralization usually adopted?

Decentralization is usually a compromise solution between the demands of minorities for territorial autonomy and the reluctance of the central state to grant it. Central states hesitate to agree to territorial autonomy, when their minority populations are ethnically kin to neighboring states. In such cases, suspicion about the influence of neighbors in autonomous regions deters states from adopting territorial autonomy arrangements. Following the end of the Cold War, for example, Eastern European states have avoided territorial autonomy arrangements and opted for either decentralization or the adoption of laws offering strong protection for the linguistic and educational rights of minority groups.

What are the challenges in implementing decentralization?

Although less authority is being transferred in the case of decentralization, nevertheless, it is controversial where ethnic minorities exist. The 2001 Slovak Law on Regional Self-Government, for example, envisioned the creation of twelve higher territorial units with elected bodies. The Hungarian political party, however, demanded that a higher territorial unit be created of six districts with large

1

2

3

4

5

6

7

8

9

10

11

12

Hungarian population. The dispute over the law almost brought down the Slovak government as the Hungarian party threatened to leave the governing coalition.

Macedonia offers a similar example. The Ohrid Framework Agreement signed after the 2001 conflict provided for the decentralization of state power directly to municipalities. The implementation of the decentralization provision was marred by disputes similar to the ones in Slovakia regarding the size of municipalities and the principles based on which municipal borders should be drawn. The Albanian minority argued for municipal borders which increased the percentage of ethnic Albanians – a principle resisted by the Slav Macedonian majority.

IV POWER-SHARING

What is power-sharing?

Power-sharing refers to political arrangements which guarantee the participation of representatives of all significant communal groups in political decision-making and especially in the executive (Lijphart, 2004, 97). Its central goal is the inclusion and protection of minorities from the effects of majority rule. It usually provides for proportional representation of all minorities in cabinets, and proportional allocations of funds and positions. It also often includes mutual vetoes on contentious issues for the participants of the arrangement.

How does power-sharing differ from federalism?

Federalism divides power territorially. Although the federal sub-state entities may be drawn based on ethnic criteria, the organizing principle remains territorial. Power-sharing, on the other hand, is based on the organizing principle of ethnic, religious or communal groups.

Power-sharing may be part of a larger deal which includes a federal arrangement or provisions for territorial autonomy, or it can exist in a unitary state. In Bosnia, for example, power-sharing in the executive of the central government is combined with federal institutions. Also, in Sudan, the 2005 Comprehensive Peace Agreement, defined in great detail how the centre and the South will share power at the central executive, while also establishing a full-fledged federal system.

In what areas do groups usually share power?

Groups may be proportionally represented in the executive, the cabinet, the bureaucracy and the military. For example, the Ohrid Framework Agreement in Macedonia introduced the principle of equitable representation of all communities in the public sector with specific provisions for such representation in the police. The agreement did not provide for power-sharing in the political institutions, such as the cabinet or the parliament.

When is power-sharing usually adopted?

At the end of civil wars, conflict parties often demand both territorial autonomy and guaranteed inclusion in the central government regardless of the outcome of elections. The motivation behind such demands is the fear of being exploited in the future by the majority group or the winner of the

elections. As a result, peace agreements often include the guaranteed distribution of key ministries and shared control over executive positions regardless of election outcomes. This dynamic can also be observed when it comes to the sharing of military power within the state. As they demobilize, groups may ask, for example, that the national army and internal security forces are comprised of equal number of government and rebel soldiers. (Walter, 1999, 141).

What are the advantages and drawbacks of power-sharing?

There are many criticisms against power-sharing as described above. Critics have pointed out that it is undemocratic and gives great powers to the leaders of the groups represented in the power-sharing agreement. Critics have also pointed out that power-sharing works well when political elites are moderate and willing to compromise. However, this is unlikely in post-conflict countries, where leaders are uncooperative and where majority group leaders are under pressure to not concede to minorities. Critics of power-sharing have also argued that the extensive guarantees offered to the parties of the conflict take away any incentives to compromise (Horowitz, 2000, 14).

However, others point out that, despite the above shortcomings, power-sharing agreements along with some form of devolution (federalism or territorial autonomy) are useful tools for the immediate post-agreement period. They also argue that the more political, military and territorial power is disaggregated; the more credible are the promises of all parties to share power and to implement peace agreements. Guarantees to share power allow parties during the negotiations to distinguish whether the other side is serious about sharing power or not (Walter, 1999, 142). Also, some research has found that the more dimensions of power-sharing among former combatants specified in a peace agreements, the higher the likelihood that peace will endure (Hartzell and Hoddie, 2003).

REFERENCES

- Varlerie Bunce, *Subversive Institutions: The Design and the Destruction of Socialism and the State* (New York: Cambridge University Press, 1999).
- Nancy Bermeo, 'A New Look at Federalism: the Import of Institutions', *Journal of Democracy*, Vol. 13, No. 2 (April 1999).
- Dawn Brancati, 'Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism', *Institute for Quantitative Studies, Harvard University*, September 2005.
- Svante E. Cornell, 'Autonomy as a Source of Conflict; Caucasian Conflicts in Theoretical Perspective', *World Politics*, Vol. 54 (January 2002).
- Daniel J. Elazar, 'International and Comparative Federalism', *PS: Political Science and Politics*, Vol. 26, No. 2 (June 1993).
- Yash Ghai, 'Public Participation and Minorities', an *MRG International Report*, 2001.
- Yash Ghai, 'Unitary or Federal: A False Choice? Decentralisation of powers in Afghanistan', Options Paper for the Afghan Constitutional Commission, p. 2. Available at the site of the Center for International Cooperation: www.cic.nyu.edu
- Ted Robert Gurr, 'Peoples against States: Ethnopolitical Conflict and the Changing World System', *International Studies Quarterly*, Vol. 38 (Fall 1994).
- Henry E. Hale, 'Divided We Stand: Institutional Sources of Ethnofederal State Survival and Collapse', *World Politics*, Vol. 56 (January 2004).
- Caroline Hartzell, Matthew Hoddie, Donald Rothchild, 'Stabilizing the Peace After Civil War: An Investigation of Some Key Variables', *International Organization*, Vol. 55, (Winter 2001).

Background paper

Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power Sharing and Post-Civil War Conflict Management', *American Journal of Political Science*, Vol. 47, No. 2 (April 2003).

Gerald Helman, Steven Ratner, 'Saving Failed States', *Foreign Policy*, No. 89 (Winter 1992-3).

Donald L. Horowitz, 'Some Realism about Peacemaking', Center for Development Research: Facing Ethnic Conflicts (14-16 December 2000).

Donald Horowitz, 'Constitutional Design: Proposals versus Processes', in Andrew Reynolds, ed, *The Architecture of Democracy* (Oxford: Oxford University Press, 2002).

Chaim Kaufmann, 'Possible and Impossible Solutions to Ethnic Civil Wars', *International Security*, Vol. 20, No. 4 (Spring 1996).

Arend Lipjhart, 'Constitutional Design for Divided Societies', *Journal of Democracy*, Vol. 15, No. 2, April 2004.

Alfred Stepan, 'Federalism and Democracy: Beyond the U.S. Model', *Journal of Democracy*, Vol. 10, No. 4 (1999).