

Power-Sharing in Conflict-Ridden Societies

Challenges for Building Peace and
Democratic Stability



NILS A. BUTENSCHØN, ØYVIND STIANSEN
AND KÅRE VOLLAN

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Preface

Power-Sharing in Conflict-Ridden Societies: Challenges for Building Peace and Democratic Stability is a project that builds on and complements a previous project, *Electoral Quotas and the Challenges of Democratic Transition in Conflict-Ridden Societies* (first published in 2011). Both projects are organised under NORDEM, the Norwegian Resource Bank for Democracy and Human Rights at the Norwegian Centre for Human Rights, University of Oslo. The overall purpose is to contribute with systematic analysis of alternative institutional designs of political institutions in conflict-ridden societies in critical stages of political transition from open conflict to democratic stability.

The first report looked particularly into electoral quotas as one mechanism available to overcome the dilemma: What are the effects of introducing quotas? Will they contribute to democratic stability or rather preserve and strengthen the cleavages that led to open conflict in the first place? The report included the three cases of Lebanon, Bosnia and Herzegovina and Nepal, and in addition a broad overview of all relevant systems in the world where such quotas are applied. The present report broadens the perspective to include a larger range of power-sharing elements: Devolution of powers, representation, form of governments and grand coalitions, and decision-making rules. The number of cases has also been extended to include Burundi, Rwanda, Ethiopia, Myanmar, the Philippines and Fiji, in addition to re-worked cases from the first report. To the best of our abilities the presentations of the cases are updated as of November 2014.

This project could not have been realised without the institutional support by the Norwegian Centre for Human Rights. Siri Skåre, Director of International Programmes at the Centre, has had the administrative responsibility.

We would like to thank the Norwegian Ministry of Foreign Affairs for their generous support making this study possible. We are also grateful for the invaluable support we received from Norwegian embassy personnel in conducting our fieldwork for the case studies.

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Chapter 1

Introduction

Most conflicts since the Second World War have been intra-state, and the predominance of internal conflict has increased since the end of the Cold War.¹ The scale of intra-state conflicts varies greatly from all-out civil wars and genocide to low-intensity conflicts with few casualties. The effects on human security and development are disastrous.

It is a well-established principle among states that intra-state conflicts are a legitimate concern for the international community to the extent that such conflicts involve massive violations of human rights or a threat to international peace and stability. In this way, intra-state conflicts become foreign policy concerns of some or all states, even if these states are not themselves party to the conflict.²

Increasingly also, civil wars are terminated by negotiated solutions rather than by victory for one side, which was the dominant settlement pattern during the Cold War.³ Negotiated outcomes may take the form of peace agreements with or without external intervention, mediation and mechanisms for including the parties to the conflict in post-conflict arrangements.⁴

The purpose of the present study is firstly, to analyse the nature of the formal and informal post-conflict arrangements that define the political order and the rules of the game in a select number of conflict-ridden countries, and secondly, to evaluate the effects of these arrangements as implemented with the view to whether they seem to strengthen or weaken the stated goals of sustainable peace and lasting democracy. In this study we focus particularly on the significance of the effects of alternative institutional designs for the future sustainability of democratic politics, not on the processes related to the peace negotiations themselves and transitional justice, however important that might be for the immediate political climate.

We look particularly into cases of conflicts between socio-cultural groups mobilised along ethnic, religious and other socio-cultural cleavages. The two reports address a classical theme in political analysis: How can designing a

1 Themnér and Wallenstein 2013.

2 The strongest expression of this principle is the United Nations' General Assembly resolution, adopted by consensus, on the Responsibility to Protect (A/RES/63/308, 14 September 2009), also known as "R2P". The possibilities of intervention are restricted by the ban on the use of force, UN Charter: Preamble, Article 2.4 and Chapters 6 and 7.

3 Kreutz 2010: 246.

4 According to Christine Bell (2008), it has become possible to talk about the development of a *Lex Pacificatoria* in international law which regulates the conclusion, content and implementation of peace agreements.

political system contribute to overcoming deep-seated conflicts in society? Peace agreements after civil wars should seek to overcome the mistrust and enmity between the groups, possibly overcoming the conflict-producing cleavage structure itself. The assumption is that democracy and stability are strengthened if citizens see their interests in terms of socio-economic factors across cultural divides rather than in terms of socio-cultural identities. The recommendation would therefore be to encourage types of political representation that criss-cross cultural divides in society. On the other hand, a democratic system should also reflect real opinions and interests in society as the voters themselves define them. We observe that in most post-conflict societies, the political system tends to be organised along the ethnic divides that defined the previous conflict. The dilemma then is how a democratic principle of representation that tends to reflect group-based identities can contribute to overcoming group-based conflict dynamics.

We have selected cases that we believe are helpful in shedding light on the performance of power-sharing institutions in conflict-ridden societies. The case countries have either experienced conflict in their recent history or are trying to resolve current conflicts. We have not aimed at attaining a representative sample that will allow statistical generalisations to the universe of cases. Rather, the goal has been to achieve a diverse set of cases in order to explore how power-sharing institutions work when confronted with different political contexts, types of conflicts and historical legacies. Based on interviews with central actors, in each case we are able to say something about how the actors adapt to the formal arrangements and how the negotiated settlement is experienced from within the political system. Field visits to all nine case countries except for Rwanda have been conducted. In addition to interviews, we also rely on relevant documentation, including constitutions and laws, election results and other data, in combination with existing academic work.

By combining the lessons from these cases with insights from other documented cases, and drawing on the existing theoretical and empirical literature, we hope to be able to give some advice to policy-makers on what works and what does not work when designing post-conflict political institutions. A summary of findings and recommendations is included in each chapter. The concluding chapter seeks to draw more general lessons from the analysis of the individual cases without pretending that these lessons and recommendations are valid for *all* conflict-ridden societies.

The selected cases are:

Burundi is included because of the negotiated settlement between the pre-conflict Tutsi elites and Hutu rebel groups. The 2005 Constitution introduced a number of power-sharing institutions, which with the exception of devolution of powers include all the elements investigated in this report. Burundi also represents a case where the former rebel movement has become the dominant political party after conflict and where governance has clear authoritarian traits.

Rwanda also has a long history of conflict between Hutus and Tutsis. Unlike Burundi, post-conflict Rwanda has attempted to suppress ethnic identities. While

Rwanda has a List PR (proportional representation) system, ethnic parties have been banned and there are no provisions for inter-ethnic power-sharing. Although governance in Rwanda has been authoritarian, this makes the comparison with Burundi very useful. It should be noted that this case is a desk study as opposed to the other cases that include a study tour.

In **Ethiopia**, federalism was introduced after the rebel victory in 1991 as a solution to the country's long history of ethnic conflict. By granting all of the more than 70 different ethnic groups the formal right to self-determination, the Ethiopian experience represents a break with the strategy of suppressing ethnic diversity in African states. As in Burundi, post-conflict politics has been dominated by a former rebel movement that has exhibited authoritarian traits.

Lebanon is a classic case of power-sharing system that has survived since independence in spite of local and regional conditions tensions, conflicts and wars that have threatened to tear the country apart many times. Intricate patterns of alliances both along and across ethnic lines, and informal negotiations often including external parties and powers have contributed to keeping the country together. Political processes in Lebanon therefore are illustrative of many of the questions discussed in this study. It is also attractive because the political system is relatively open to observers and major players are accessible to analysts.

Bosnia-Herzegovina is a prominent example of a peace agreement with all but the grand coalition power-sharing elements included, partly in an extreme form. When designing the power-balance between the combatting ethnic groups, the costs in terms of a weak central state and extensive veto powers that have hampered the functioning of the country since the war, were underestimated. The exclusive rights given to the "constituent peoples" also introduced unreasonable limitations to the rights of individuals not belonging to any of the three constituent peoples to elect and be elected. The country offers a good case for studying the long-term effects of the power-sharing in terms of lasting peace, a working national state and a functioning democracy with protection of human rights.

Nepal's ten years of civil war ended with a peace agreement in 2006, containing all elements of power-sharing. A new constitution is about to be drafted and in particular federalism and broad representation of groups are likely to be brought forward into the constitution. With its complexity in terms of ethnic groups and castes Nepal offers fundamental challenges to the power-sharing concepts. Kåre Volla, one of the authors of this report, has served several years in Nepal as advisor to Nepalese authorities on questions of elections and constitutional reform. The case study of Nepal therefore contains a more thorough discussion of the internal political processes in this country than in the other case countries.

Myanmar is chosen as a case of early transition from authoritarian rule towards democracy combined with attempts to negotiate solutions to the country's long-lasting ethnic insurgencies. Reform of the country's political institution is central to both these processes.

The Philippines is included because of the long-lasting Maoist insurgency. Attempts at negotiations to resolve the situation have been ongoing since the early

1990s. The Philippines has a majoritarian political system dominated by political dynasties. This makes it interesting to study the impact of the existing political system and whether the parties see institutional reforms as something that can contribute to a settlement.

Fiji has had a fragile state structure since independence. The two main groups, the indigenous Fijians and the Indians who immigrated to Fiji during the British rule, have very different interests and compete on the utilisation of land. The introduction of the alternative vote (AV) system in the late 1990s was meant to work in a conciliatory way but proved not to work as intended and the provisions for grand coalitions turned into tokenism. In particular the system of representation, the veto powers on land rights and the composition of government are of interest to this study.

For each of the cases we describe the background and nature of the conflict, and where relevant the negotiation process and constitutional history. We then present the different power-sharing elements and discuss how they relate to building peace and democracy. Where relevant, we also discuss the expected benefits of alternative arrangements. In the conclusion of each case, we present a summary table which for each power-sharing element, outlines the relevant preconditions, the existing system, the costs or risks of the present system and possible solutions.

Finally, a few words on the terminology used in this report. Groups of people in conflict need a common label. “Ethnicity” designates groups that have an identity across age, gender and socio-economic classes, as well as political opinions. Ethnic groups share beliefs of common ancestry, customs and other cultural features, which sometimes include language and religion.

The usage of “ethnic group” is analogous to the term “nation” used by Anderson – defined as “an imagined political community – and imagined as both inherently limited and sovereign”.⁵ As we use the term, ethnicity can be contrasted with social stratification, “which divides and unifies people along a series of horizontal axes on the basis of socioeconomic factors, ethnic identities divide and unify people along a series of vertical axes”.⁶ While some authors prefer the term “nationality”, we deem ethnicity to be a less controversial term.

We reserve the term “nation” or “nationality” for the relationship between an individual and her state. This is in line with the European Convention on Nationality, which states in Article 2 that “[f]or the purpose of this Convention: a ‘nationality’ means the legal bond between a person and a State and does not indicate the person’s ethnic origin”. The term “nationalism” is used to refer to the ideology of an ethnic group’s ambition of statehood or connection to a state already in existence.

Other traditions, for example in political philosophy, would have a definition of a group defining themselves with a common identity, not much different from

5 Anderson 1991: 49.

6 Peoples and Baily 2008: 383.

the definitions of ethnicity quoted above. Wayne Norman⁷ is one of those. He uses the term to represent a group with a common identity and he would see some expression of nationalism as being positive or neutral, similar to patriotism.

In some of our empirical cases the terms are used slightly differently. In Bosnia and Herzegovina, the terms “nations” and “nationalities” are common for designating the three constituent ethnic groups. We therefore use these terms when discussing the particular case. This is done to avoid confusion, and we do not see the concept of “nations” in this and other cases as different from our more general term “ethnicity”.

7 Norman 2006.

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Chapter 2

Democratic Peace and Institutional Design. Some Theoretical Perspectives

Democracy is all about how “the will of the people” is aggregated from the individual citizen upwards in the political system to the levels of decision-making in the legislative and executive branches of government. Securing legitimate interests and basic rights of minorities in well-established stable democracies is challenging enough as long as we also want efficiency in decision-making and governance. In deeply divided societies emerging from violent conflict between groups (for example, the kind of cases discussed in this study), the challenges are all the more severe because basic conditions for democratic stability cannot be taken for granted. This relates especially to mutual trust between contending groups and their willingness to respect the rules of the game also when they lose.

Within the tradition of democratic theory, models of power-sharing can be considered as modifications of the classical liberal principle of “one person one vote”. For a variety of reasons, this principle of organising a political order – when strictly applied in national elections – does not always produce institutional outcomes that give every group of citizens adequate protection of their core rights and interests or a fair say in the running of their country. This is because political institutions composed on the basis of aggregate *individual* votes do not always meet the requirements for reconciling or managing conflicts in societies that are *collective* in nature. The democratic dilemma that this situation creates is particularly typical of deeply divided societies. Minorities who are constantly and systematically outvoted or otherwise marginalised in the political process might easily feel trapped in a position of democratic deficiency, lose confidence in the political system and seek non-democratic ways in the struggle for their interests. This is why models of group-based power-sharing are frequently being discussed as means of introducing new or complementing existing democratic institutions in conflict-ridden societies.

Consequently, the more precise questions we should try to answer is the following: *What kind of institutional design is best suited for conflict-ridden societies and how can political institutions be adopted to the local contexts in specific cases to facilitate peace and democratic stability?*

We will approach these questions both from the perspective of securing an equal say and the right to effective participation for all citizens irrespective of their position in the system, as well as from the perspective of strengthening the efficiency and stability of the political system.

2.1 Preconditions for Power-Sharing

The way in which open conflict is terminated,¹ the possible role of external powers and the balance of power between the parties at the outset of the establishment of a post-conflict political system will to a large degree define the scope and limitations of power-sharing mechanisms and institutions.²

In this study, our main concern is the post-conflict situation. We discuss the conflicts and the peace processes, but the focus is on the solutions or what could be possible solutions, rather than on what made the conflict “ripe” for a settlement and the process of negotiating a peace accord.

We will, however, take into consideration the preconditions for power-sharing. This includes the institutional legacy, the balance of power between the groups and other conditions created during the conflict and the transition to a post-conflict situation that we find to be of relevance for an evaluation of which form of power-sharing that could be most effective under the given circumstances.

2.1.1 Political History and Institutional Legacy

Political history is important. Power-sharing will never succeed if it does not reflect the political history of the country, including collective experiences that have shaped identities and aspirations in the population. This relates both to the experience of democracy (if relevant) and the specific institutions that have existed in the past. Lack of democratic experience may make any post-war democratic arrangements less stable. As shown by Przeworski, what makes democracy self-enforcing is the *ex-ante* uncertainty prior to each election that allows electoral losers to respect the election outcome in the hope that they might be more successful in the future.³ In countries without a democratic experience, electoral losers may have justifications for doubting that they will get a second chance.⁴ In the absence of a democratic political culture and strong institutions, it may be possible for election winners to “to forever exclude political rivals, ethnic minorities, and leaders of insurgent groups from power”.⁵ This can be done by consolidating power and appointing members of the winning group in key positions and by denying the opposition a level playing field in future elections.

1 Pospieszna and Schneider 2013; Wucherpfennig 2011.

2 See for example Hartzell and Hoodie 2007: Chapter 2; Wucherpfennig 2011; Gammet and Malesky 2012; Pospieszna and Schneider 2013.

3 Przeworski 1991; Wantchekon and Neeman (2002) shows that democratisation may result from civil war in the absence of any normative belief in liberal democracy if preferences among the citizenry are diverse enough as to provide *ex ante* uncertainty about which faction will win the post-conflict election.

4 Stiansen 2013: 22–23.

5 Mukherjee 2006: 409.

As shown by Pospieszna and Schneider, the specific choice of power-sharing institutions is also impacted by which institutions have existed in the past.⁶ Introducing new political arrangement is always difficult; tradition and political culture play an important role. This means that countries most likely to practice the electoral system of proportional representation (PR) after the conflict are those with experience of proportionality as an organising principle for political representation in the past. For countries such as Myanmar where democratic experience is very limited and the only experience with elections is with plurality elections in single-member constituencies, it may be difficult to win support for a more proportional system.

The same pattern can be seen for many other political institutions. Although, countries sometime undertake extensive reforms in the wake of armed conflict, there will often also be important continuities in the state structure, political representation, form of government and the legislative process. Such continuities will often date back to the political institutions introduced during or at the end of colonial rule.⁷ The constitutional history is therefore important for understanding the post-conflict political institutions.

2.1.2 The Conflict Outcome

Another important question is how the armed conflict was terminated as reference for the post-conflict order. How did it affect the post-conflict balance of power? And how does it affect the chances for successful power-sharing institutions? We can identify at least the following post-conflict situations:⁸

One outcome is a decisive military victory by either the rebel or the government side. Some research has found that rebel victories are generally more stable than government victories. Not only is one side left incapable of resuming the conflict, which is generally considered to produce stability,⁹ but rebels that end up victorious are likely to enjoy popular legitimacy and have attained the institutional capacity needed for post-war institutional reform. A third advantage is that people loyal to the previous regime may be easy to identify and neutralise.¹⁰ Ethiopia and Rwanda represent examples of decisive rebel victories. In both cases, political institutions have been extensively reformed and pre-conflict elites are replaced with people close to the new regime. Government victories often also produce stability due to the inability of the rebel movement to resume the insurgency, as illustrated by the government victory on Sri Lanka in 2009. That war ended very violently with massive atrocities committed by government forces and with no conciliatory moves

6 Pospieszna and Schneider 2013.

7 Acemoglu, Johnson and Robinson 2000.

8 See Kreutz 2010.

9 Luttwak 1999; Mason, Gurses, Brandt and Quinn 2011.

10 Toft 2009, Toft 2010: 28. See also Quinn, Mason and Gurses 2007.

towards the Tamil rebels. It is uncertain therefore how stable the outcome of this conflict will be. The Nigeria–Biafra war 1967–1970 also ended with a decisive government victory over the secessionist state of Biafra. In contrast to the Sri Lanka case, the war ended without revenge massacres against the rebels and with a famous conciliatory message by President Gowon on 13 January 1970. He invited all Nigerians to a process of “reconciliation, reconstruction and rehabilitation”, and stated that there are “no victor and no vanquished”.¹¹ Among other measures, political parties organised along ethnic lines were outlawed. Later, the federal structure of the country was changed with increasing the number of federal states. The civil war, with one to three million direct and indirect victims, certainly inflicted long-term scares and tensions between the Igbo people and the other major Nigerian communities, but there are no signs that this particular historic ethno-political cleavage will re-emerge as an active conflict dimension in the foreseeable future.

Victories may be contrasted with peace agreements where the parties agree on a framework for resolving the main incompatibilities of the conflict. Such peace agreements may be facilitated by external powers at the request of the parties, as in the Philippines and Burundi, *de facto* imposed by external powers, as in the Bosnian war, or be negotiated by the parties themselves with limited or no external involvement, as in Nepal.

Some conflicts are ended with ceasefires where the parties agree to stop fighting, but where the main incompatibilities are not resolved. Examples include the Taif Agreement 1990 which ended the civil war in Lebanon and the limited cessations of hostilities that the government of the Philippines and the Maoist guerrilla agreed on in 2014 as part of the ongoing peace process. Other examples are the ceasefires that the military regime in Myanmar has concluded with some of the ethnic insurgencies.

In addition, some conflicts cease to be active without there being neither a victory nor a negotiated settlement. According to the Uppsala Conflict Data Program (UCDP) Conflict Termination Dataset, this has in fact been the most common form of “termination” since the 1980s.¹² As can be seen from Figure 2.1, most of these other outcomes are cases of low activity. One example is the Ogaden National Liberation Front (ONLF) insurgency in Ethiopia after the Ethiopian People’s Revolutionary Democratic Front (EPRDF) victory in the civil war in 1991 (see Chapter 5). While ONLF has attempted to continue the armed struggle, the conflict has in some periods faded away as the organisation has been unable to challenge the government militarily.

In cases where the conflict did not end in a decisive victory, a durable settlement will depend on the ability or willingness of the parties to make credible commitments. While in principle, a settlement that is mutually beneficial to both parties relative to war always exists, parties may find it difficult to commit to

11 Falola and Heaton, 2008, p. xxv.

12 Kreutz 2010: 245–246.

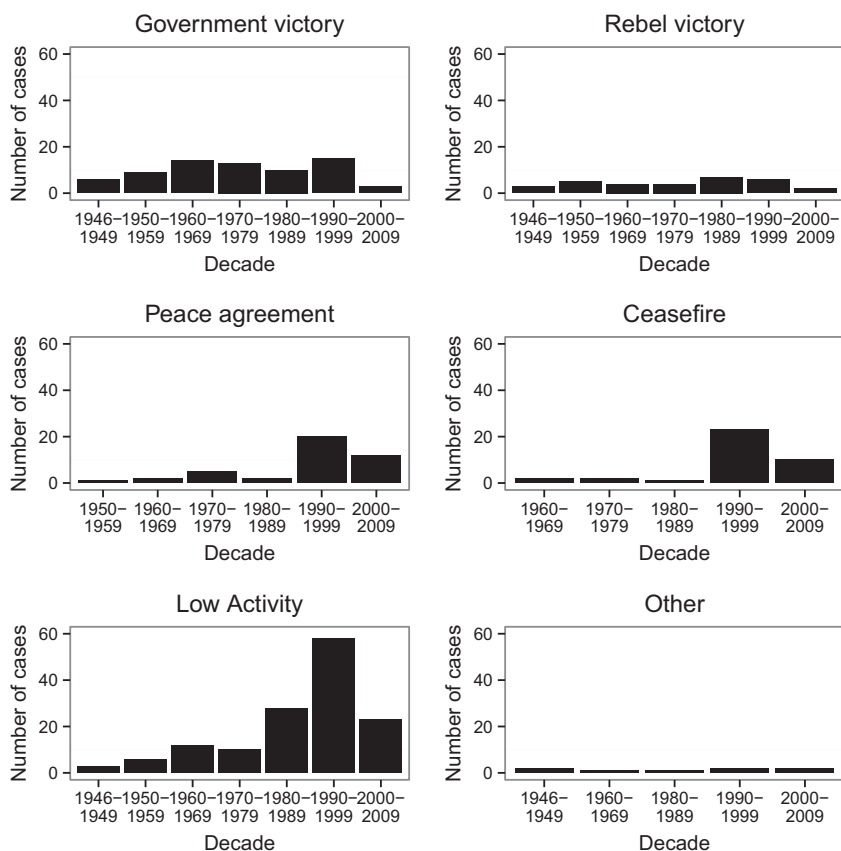


Figure 2.1 Conflict outcomes, 1946–2009

Source: Data from Kreutz 2010.

a cooperative strategy because they fear that the opponent will not reciprocate but exploit the situation to gain decisive advantages in the short or long run, including if and when the distribution of power changes in the future.¹³ As discussed by Walter, majoritarian democracy may exacerbate this problem if elections empower one side at the expense of the other.¹⁴ Such commitment problems are one reason for the introduction of power-sharing institutions, which are discussed in this report.

¹³ Fearon 1995; Powell 2004; 2006; 2012. This dilemma is commonly known as “The Prisoner’s Dilemma”.

¹⁴ Walter 2002; Metternich (2011) has provided some evidence that leaders of ethnic insurgencies do consider their chances.

2.1.3 Third Parties

Third parties may be able to offer enforcement of a settlement that would otherwise suffer from commitment problems.¹⁵ As discussed in more detail in the chapter on Bosnia and Herzegovina the international community took on a governor role in that country after the war and have in a range of other cases contributed to institution building. An important precondition for such efforts, as well as for power-sharing between the parties, is security guarantees from the international community, including assistance to demobilisation of former combatants and monitoring arrangements.

The international community often plays a crucial role in broking a peace agreement, and sometimes even in imposing a deal. Third-party enforcement may be necessary due to the deep mistrust between the parties to the conflict.¹⁶ In such cases one would have more possibilities to influence the steps to be taken to implement a working and democratic state where the parties to the conflict feels secure.

In the immediate aftermath of the ending of hostilities, the international community may contribute to Disarmament, Demobilisation and Reintegration (DDR)¹⁷, and then encourage and support the building political institutions, repatriation of displaced persons and refugees, establishing a judicial systems, and so on. The sequence is important. In many cases establishing legitimate political institutions and elections of those institutions have been given the most prominent priority. Such efforts can, however, be expected to be less successful where other goals are not achieved first or at the same time.

2.2 Qualities and Dilemmas of Power-Sharing

Power-sharing as a mechanism for democratic peace-building is frequently used as a policy option in many post-conflict situations. As experiences have been gained and collected by practitioners and analysts alike, discussions on underlying theories and applied methods have followed in the footsteps. The debate has partly a normative dimension between, on the one hand, those who see a unitary nation-state with a majoritarian system as the ideal model for democratic stability (including in ethnically diverse societies) and consequently favour strategies and institutional designs that integrate differences and unifies the political system. On the other hand are those who consider established group identities as essential

¹⁵ Walter 2002.

¹⁶ Walter 2002.

¹⁷ The UN first became involved in DDR through the UN Observer Group in Central America (ONUCA), which was deployed in 1989. Since then, the UN has carried out and supported DDR programmes in more than 20 countries around the world, both within and outside peacekeeping operations. See for example, Ball and van der Goor 2006.

building blocks in a plural political system and that power-sharing based on mutual recognition of group integrity (consociationalism) is the best recipe for accommodating differences, particularly in societies with a history of serious inter-group conflict.¹⁸ The present study takes its point of departure in the latter position, but the aim is not to argue for or against any of these normative positions *per se*; in our experience elements of both strategies may have a positive effect in different situations and under different conditions, and elements of consociationalism may bear with it unwanted side effects. The extreme complexities of ethno-political challenges under review in this study tells us that pragmatism and openness to alternative solutions should guide our thinking.

We expect power-sharing institutions to be associated with a range of positive or negative qualities relating to (1) the provision of stable peace; (2) provision of stable democracy; (3) incentives towards reconciliation and more equality, or permanent group balance. We also expect that sunset clauses (that is, that terminates guarantees for special group representation) are beneficial for some but not all types of power-sharing institutions.

2.2.1 Provision of Stable Peace

2.2.1.1 The Armed Conflict

An important quality of power-sharing is the potential for not only bringing the armed conflict to an end (negative peace), but also bringing the parties together under the umbrella of common political institutions where they need to share political responsibility (positive peace). As noted by Durant and Weintraub, this is achieved by making the “distribution of benefits to potential spoilers proportionate to their relative bargaining power, where bargaining power is a function of capabilities to use violence”.¹⁹

Power-sharing agreements should also be designed to accommodate the security dilemmas that arise from one side demobilising its forces as part of a negotiated outcome. Institutions such as shared executives, mutual veto rights and inclusion of both sides in the armed forces make it more difficult for one side to renege on past promises after a change in the distribution of power.

18 For a presentation of alternative positions in this debate, see Choudhry (2008). A closer examination of questions involved with particular reference to the case of Northern Ireland is found in Taylor (2009). Weller and Wolff (2008) and O’Flynn and Russell (2005) also give useful overviews. McGarry and O’Leary (2009) relate the debate to the question of federalism as a solution to ethno-national diversity; Weller, Metzger, and Johnson (2008) and Weller and Nobbs (2012) discuss cases that involve disputes over self-determination and autonomy, respectively.

19 Durant and Weintraub 2010. Note, however, that a key argument for Durant and Weintraub is that power-sharing can only be expected to solve what they call the static spoiler problem. As the distribution of power changes, they expect a dynamic spoiler problem as the initial power-sharing agreement become suboptimal to conflict for some actors.

2.2.1.2 Incentives for Reconciliation

A vital element of positive peace-building is to facilitate reconciliation. Arrangements will need to include the right incentives. The purpose is to reduce or remove the sources of conflict and create a viable state. A well-designed federal state may in some cases be sufficient and provide a permanent solution to a multi-ethnic state. In some cases, such as in India, there are mechanisms for redrafting internal borders. New states have been created quite frequently to reflect changing perceptions of groups that have rights to certain autonomy. In terms of representation, the relevant question is whether arrangements are likely to strengthen divides or make them less prominent. The representation should make parties to a conflict feel safe in its representation but at the same time one should keep in mind that the system should work also when the tension is lowered and the people's political priorities largely criss-crosses ethnic identities.

2.2.1.3 Secession

If the power-sharing institutions harden ethnic identities rather than provide incentives for reconciliation, an important concern is that they may be the first step towards secession. This danger is probably greatest when power-sharing takes the form of devolution of power to territorial subunits of the state.²⁰ In most cases it will be preferable to avoid such an outcome, not least because secession in many cases will generate new minority problems within the successor states and may set troubling precedents that can activate irredentist and separatist pursuit in other regions or other countries.²¹

It has been argued that ethnically based (pluri-national) federations are basically unstable with reference to the break-up of such federations in the post-colonial era. Prominent examples are the Soviet Union, Yugoslavia, Czechoslovakia, Nigeria, Ethiopia, Pakistan (Bangladesh). McGarry and O'Leary²² argue that these were pseudo-federations, where the devolution of powers was undermined by a strong centralised communist state or where the units had been forced together by colonial powers at the time of independence. Even if the number of successful ethnic federations is small, they include cases like Switzerland, India, Belgium and Canada where federalism is combined with well-established democratic institutions.

*2.2.2 Provision of Stable Democracy**2.2.2.1 Transaction Costs*

Power-sharing may involve substantial transaction costs, which refers to the increased "institutionalized difficulty of reaching decisions".²³ By increasing

20 Horowitz 1985: 628.

21 Horowitz 2003b.

22 McGarry and O'Leary 2009.

23 Gates and Strøm 2008: 8

the number of veto players, power-sharing institutions may make negotiations more demanding and more costly and increase the chances of deadlocks. Such mechanisms tend to have a particularly negative effect in situations of intergroup tensions, and often when effective decision-making is most needed in order to defuse tensions. This is, for example, illustrated during many political crises in Lebanon where the working of the political system, constantly under the burden of the constitutional veto power system, depends on the willingness of the major players to reach agreed upon operative decisions. More often than not, it has taken some form of external intervention or assistance to get the parties out of the deadlock.

Such transaction costs may lead to important decisions being taken outside the formal institutions. That important decisions are negotiated by elites without the oversight of their constituencies is something that is also known from consociationalism in stable democracies, such as the Netherlands until 1967.²⁴

2.2.2.2 Agency Costs

Power-sharing may also involve agency costs as it may remove some of the opportunities the electorate has at checking those in power. Agency costs stem both from how it may be necessary to include all potential spoilers and that this may empower warlords and representatives of sectional interests, and from how it may be difficult to check the behaviour of these actors once empowered.²⁵

Sectional politicians and former warlords that have to be included in the peace agreements will often be “politico-military entrepreneurs without a genuine interest in representing anything beyond themselves. They are usually involved in the negotiation because of their spoiling capabilities”.²⁶

Once empowered, sectional politicians may also act against the interest of those they represent because the power-sharing arrangements may protect them from removal.²⁷ In this way, power-sharing institutions may undermine one important virtue of democracy, namely that the citizenry has the option of replacing politicians that misuse their power. This problem may be exacerbated by the loss of democratic oversight that occurs if elites make decisions behind closed doors to escape transaction costs.

2.2.2.3 Non-Discrimination and Equal Basic Rights

Power-sharing arrangements will be designed to protect the interest of different (ethnic) groups. Therefore the definition of group identity becomes important. In some countries, citizens are legally divided into predefined groups, the relative demographic size of which provides a reference for distribution of political power between the groups. This is the case in Lebanon, where one is born into a

24 Lijphart 1977.

25 Gates and Strøm 2008: 8.

26 Mehler 2009: 455.

27 Gates and Strøm 2008: 9.

confessional group and where that identity is kept regardless of religious beliefs later in life. In other places members of certain groups (that is, indigenous peoples) may demand special protection to secure the survival and size of their group and to make up for discrimination in the past.

In other cases, group belonging is defined as a subjective feature, not as ascribed by the state or by the primordial group within which the person is born. Ethno-political conflict tends to be less frequent in such societies. If this is because ethno-political cleavages are considered to be of little political relevance or if it is because identity-formation is more fluid, less rigid and more difficult to mobilise politically, is an empirical question. But it follows logically that intergroup reconciliation and politics that criss-crosses ethnic identity is more likely to succeed in contexts where group belonging is largely a question of subjective choice. Furthermore, individuals who do not identify with the main groups of a particular conflict will more easily be accommodated in a post-conflict arrangement.²⁸

The question of defining group membership is also important where special provisions are made to accommodate marginalised groups. While special provision for the group may be important to raise its status and give its member a chance of getting access to important positions, there may also be individuals that prefer to disassociate themselves from the discriminated groups. This is seen among Dalits in India and Nepal, where some people will choose to move to a new place and change their family name. That national minorities have the right to choose whether to claim special group rights is explicitly stated in Article 3.1 in the European Framework Convention for The Protection of National Minorities:

Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

Over the last 30 years minority rights in general and rights of national minorities and indigenous peoples in particular have been included in a number of new human rights conventions and other treaties. In addition to the Framework Convention mentioned above, the International Labour Organization (ILO) Convention 169 and the UN Declaration on the Rights of Indigenous Peoples are landmark documents. The principle that every person has the right to belong to or not belong to a particular group is clearly stated in these documents of international soft law and gives legitimacy to political system formation on the basis of individual

28 The 1991 census in Yugoslavia showed that many people identified as Yugoslavs rather than as Serbs, Muslims, Croats or Slovenians. The Bosnian war ended with the Dayton Agreement in 1995 and a settlement that did not give room for political participation for others than those belonging to the three constituent “nations”. Thus, the war itself might have impacted identity-formation, making group belonging less flexible. See Chapter 7 on Bosnia-Herzegovina.

choice.²⁹ Slowly, these new standards adopted on the UN level are being introduced in the legal systems of member states and become yardsticks for judging state compliance with their international human rights obligations, including in the field relevant to power-sharing arrangements.

2.2.3 Reduced Importance of Group Identities or Permanent Group Balance

In addition to a broad goal of building peace and democratic stability, the more specific visions for the political order after conflict may vary. One question is whether the political order should be based primarily on a balance of power between identity groups or on a system for distribution of political rights among citizens where ethnicity becomes (increasingly) irrelevant. In such cases, one would create incentives for arrangements which may include time-bound affirmative action and an electoral and political system promoting multi-ethnic parties. The contrast is a system permanently based upon group rights and with checks and balances institutionalised for the groups.

Switzerland is an example of a long-lasting system containing all the four main elements of power-sharing. Interestingly, the parties are multi-ethnic and the federal units do not follow the language borders. The rotation of political top positions follows language rules in addition to cantonal ones, but one may claim that the federal structure including veto rules are motivated rather by a strong commitment to placing the decisions close to the people affected and to give equal rights of culture and language to all groups, not because the alternative is conflict. Therefore the national parties are not divided along linguistic lines, and the cantonal boundaries are not adjusted to follow language borders.

The other alternative is a structure based upon ethnical balance without any vision of changing that in foreseeable future. Ethnic federal states are examples. But even in such states, the ethnic divide may be toned down at national level with nationwide parties and political agendas crossing ethnic borders, and a reasonable long-term goal would still be to tone down the significance of ethnicity in order to reduce conflict. Reducing ethnic conflict is obviously a goal regardless of the permanence of some of the power-sharing elements.

In his criticism of Lijphart's consociational model, Donald Horowitz has claimed that for example rules for coalition governments would drive the groups into ethnically based negotiations and therefore strengthen the divides rather than removing them.³⁰ On the other hand proportional electoral systems would serve ethnic diversity as long as needed but would shift to accommodate other cleavages once the electorate's political priorities have shifted.³¹ The alternative vote (AV) system favoured by Horowitz can moreover be criticised for being one-size-fits-

²⁹ Eide 2009.

³⁰ Horowitz 1993: 32–33. For a similar argument is made regarding List PR, see Horowitz 2003b: 122.

³¹ Lijphart 2004.

all solution that will need particular electoral engineering based on ethnic rules in delimiting constituencies.

2.3 Elements of Power-Sharing

The qualities and dilemmas may be more or less prominent depending on the specific power-sharing element. In this study, we will focus on four main elements of power-sharing: devolution of powers, representation, form of government and grand coalitions, and decision-making rules. In addition to these four power-sharing elements we also discuss the role of the political elites and the international community.

These elements have been prominent in the broad literature that since the 1960s has addressed the challenges of building democratic stability in “plural” or “fragmented” societies. The most relevant contributions for our purposes will be discussed below, all addressing the different measures of power-sharing. The basic premise is that plain applications of the principle of the right of the majority to decide must be modified so that minorities are not only securing the right to participate in the political process, but also that their basic rights and interests are secured in the political system’s constitutional and institutional design.³² This is best achieved in the form of power-sharing in the electoral, legislative and executive levels of the political system.

We discuss the qualities and dilemmas of power-sharing identified above in the context of each of the power-sharing elements. An important point to remember is that different trade-offs must be considered for the different power-sharing institutions and in different contexts.

2.3.1 Devolution of Powers

Devolution of powers may be constitutional like in federal structures or by looser arrangements. In most cases, it will be territorial, but there are some cases of devolution of powers to units that are not geographically defined. Lijphart was originally concerned with the segmental autonomy of each constituent group, and such autonomy may be achieved also by the devolution of power to units that are not territorially defined.³³

While the devolution of power may also be more limited, the autonomy of the regional units can be constitutionally guaranteed by introducing a federal state structure. For a state to be considered as a federal state, three conditions must be fulfilled according to William Riker: (1) two levels of government rule the same land and people; (2) each level has at least one area of action which is

³² Lijphart 1999: 2; Lijphart 2004.

³³ See Coakley 1994. One example of non-territorial devolution of powers is the Saami Assembly established in Norway in 1989.

autonomous; and (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere.³⁴ Hence, a defining characteristic of federalism is that one side cannot unilaterally renege on the distribution of power between the levels of government.

Our first question is how devolution of power may help bring an end to the armed conflict. Federalism is often considered as a possible solution to civil wars where the groups of conflict are geographically concentrated. Its ability to secure the peace has, however, been disputed and the empirical record of federalism is mixed. Whereas some scholars view devolution of powers as an important way of reducing the risk of conflict by appeasing minority groups, others claim that (ethnic) federations are in fact more prone to conflict than other state structures.³⁵

The relationship between federalism and peace may depend on the more specific nature of the federal arrangements. One important question is whether the delimitation of the constituent units is ethnic or functional. Drawing state lines along ethnic divisions may be inevitable after conflict. This may create a structure that will satisfy groups that would otherwise feel threatened:

[P]roviding self-government in a number of substantial areas ought to appease peripheral nationalists, by diluting many of the perceived threats to their existence as a group, by removing sources of perceived grievance and by fulfilling a substantial part of their aspirations. Typically, self-government enables territorially-concentrated ethnic groups to protect and promote their own culture and values.³⁶

Similarly, Brancati finds that decentralisation reduces the risk of ethnic conflict by giving groups control over their own “political, social and economic affairs”.³⁷

Other authors claim that while functional federalism may be beneficial both for the quality and efficiency of ending armed conflict, ethnic federalism, giving autonomy to regions dominated by minority groups, may be prone to renewed conflict. Under certain conditions it may serve to harden ethnic cleavages³⁸ and increase minorities’ potential for mobilisation. In turn, this may contribute to new outbreaks of armed conflict and be a first step towards demands for secession. The hardened ethnic identities that may result from an ethnic demarcation of internal borders may moreover make reconciliation more difficult.

34 Riker 1964: 11.

35 Cederman, Hug, Schädel and Wucherpfennig (2013) find that while decentralisation decreases the chance of conflict prior to the first conflict onsets, it is not enough to prevent recurrence of conflicts. Christin and Hug (2012) point out that the selection problems are critical as institutional choice is highly unlikely to be exogenous to the risk of conflict.

36 Martínez-Herrera 2010: 5.

37 Brancati 2006: 655.

38 Brancati 2006: 658; Erk and Anderson 2009: 196–197.

The number of constituent units and the share of units controlled by each group may also be important. Asymmetric federations may work in particular situations, such as in the case of the Kurdish Regional Government in Iraq. By asymmetric federalism, we mean otherwise unitary countries which have devolved power to specific regions as a part of power-sharing arrangements. Hale considers such cases as “partially ethnofederal”.³⁹ More generally, the potential for reducing conflict may be better if there is a more balanced division of power between several units. The potential for secession or conflict may be largest if the country is divided in two relatively equal units inhabited by different ethnic groups.⁴⁰

Federations may be weak or strong. A weak federation has strong central powers and the residual powers rest with the centre. A strong federation has powerful federal units and the residual powers may rest with the federal units. Strong federations with an explicit right of secession and with residual powers with the states may have built-in conflict potential. One example would be a strong and rich federal unit with, on the one hand, a sustainable resource base, on the other hand a lack of willingness to continue supporting units in the federation that are a burden to the federal budget, wanting to break away from the federation using all necessary means, including violence. On the other hand, a weak federation may not be enough to satisfy minority regions. If most important decisions are taken at the centre without being influenced by the minorities, the minorities may not be satisfied and conflict may recur.

Federalism may be beneficial for democracy as it reduces the distance between the decision-makers and the people, but there may be some potential pit-falls in conflict-ridden societies. According to Brancati, one of the main dangers of federalism is the potential agency cost as regional parties may become dominant in the regional states.⁴¹ When these political parties lack a national political agenda, the result may be detrimental to long-term peace and reconciliation. In turn, the strengthening of sectional politicians within each state may increase transaction costs at the central level as representatives for different states fail to compromise. Bosnia and Herzegovina is a case in point.

To avoid the potential detrimental effects of decentralisation, it may be necessary to create incentives for cooperation at the central level. Horowitz argues that the “most potent way to assure that federalism or regional autonomy will not become just a step to secession is to reinforce those specific interests that groups have in an undivided state”.⁴² He furthermore argues that inter-ethnic cooperation and alignments based on non-ethnic interests should be encouraged, that is, by designing federal units so that strong ethnic majorities is avoided.⁴³ According to Strashheim and Fjelde, decentralisation may be most successful when combined

39 Hale 2004: 169

40 Christin and Hug 2012.

41 Brancati 2006.

42 Horowitz 1985: 628.

43 McGarry and O’Leary 2009: 8.

with inclusive institutions at the central level.⁴⁴ One such incentive that is suggested by Lijphart is over-representation of small regions in second chambers.⁴⁵ Incentives for cooperation may also be created by having several constituent units to produce space for shifting alliances between regions.⁴⁶

The Badinter Opinion No. 1⁴⁷ on the break-up of the Socialist Federal Republic of Yugoslavia stated that the Federation dissolved because the federal organs representing the components no longer functioned. This has been used to show that the international community is willing to accept secession of entities in an internationally recognised federated state and would be another reason for ethnic federations to fail. However, there is little evidence supporting the assertion that a multi-ethnic unitary state would have better chances to succeed.⁴⁸

Federalism may introduce new problems related to securing non-discrimination and equal basic rights. Where ethno-federalism is adopted as a solution to the conflict, the minorities within minority regions and the challenge of defining geographical boundaries along ethnic lines will present additional problems. The protection of all groups in a state will be crucial and one needs to avoid granting any inheritance rights to the defining group of a province. That could involve human rights violations.⁴⁹

As noted, devolution of power will tend to be a permanent arrangement and sunset clauses will therefore most often not be relevant.

2.3.2 Representation

For a group to feel safe within a political structure and to accept the rules of the game, certain criteria for political representation should be met. One is that a group should not be permanently excluded from powers. If a group due to its identity can never be part of a ruling coalition, it would have difficulties in accepting the system of representation. Such exclusion could be formal and have to do with unequal citizenship rights, but it could also be an implicit consequence of the system of representation favouring the largest groups and marginalising minorities.

To what extent a minority group can be part of a ruling coalition is a consequence of both the system of representation used for the composition of the legislative body and the system of government. The latter is discussed below. The composition of the parliament is decided by the electoral system of representation. There are a number of systems in use that are legitimate according to international standards. They derive partly from conscious deliberation of the qualities of the systems

44 Strasheim and Fjelde 2012: 15.

45 Lijphart 2004: 104–105

46 Erk and Anderson 2009: 197.

47 Badinter 1991: 1495.

48 McGarry and O’Leary 2009.

49 An extensive discussion on cases that involve issues of self-determination is found in Weller 2009.

and partly from tradition. In a post-conflict situation, the conscious deliberation should take prominence, although we know that, empirically, tradition tends to be important.⁵⁰ Among the qualities an electoral system should meet the following are often seen to be most important:

- the ability to create representative parliaments;
- accountability of the elected towards the electorate;
- the ability of creating stable governments;
- inclusive representation of minorities;
- the ability to promote cross-ethnic dialogue and reconciliation;
- the incentives for moderation.⁵¹

One should also differentiate between post-conflict situations where groups strong enough to be parties to an armed conflict are the subjects of the group rights, and the situation where minorities claim special treatment because they have political interests which would otherwise be excluded. In the latter case, the minorities may be given special representation and in some countries where they are geographically concentrated they may be given an autonomous area, without being units of a federal state. In terms of representation one should have the dynamics in mind. Once discrimination is eliminated the representation may not be needed, but in other cases the minority is defined by language or other means that would need protection regardless of social divides. The representation would then often be an element of a larger scheme of protection of cultural or indigenous rights.

Two main classes of systems are considered: The PR and plurality/majority based systems. The first group of systems are conducted in multi-member constituencies and the seats are distributed in proportion to the votes cast for different parties. The latter group is most often conducted in single-member constituencies where individual candidates (with or without party affiliation) are competing for the seat and where the candidate who gets the most votes is elected (known as first-past-the-post, FPTP). We will not discuss plurality or majority systems in multi-member constituencies here; they have been demonstrated to either produce extreme winner-takes-all results or be prone to tactical party and voter behaviour.⁵²

PR systems are better at creating representative and inclusive parliaments and inclusiveness whereas single-member constituency elections are often seen to be better at holding elected representatives accountable to their electorate. The latter systems would generally favour the largest groups and smaller parties would have difficulties in winning seats. Since the largest parties will get extra seats, forming majority governments (in a parliamentary system) will often be easier, but the government would not necessarily represent a majority of the voters. If

50 Pospieszna and Schneider 2013.

51 A number of other qualities are discussed in Butenschön and Vollan 2014 (2011).

52 For a further discussion see Blanc, Hylland and Vollan 2006: 39–41.

groups are geographically concentrated, single-member constituencies will give representation for each group, but the results may still not be proportional in terms of political parties.

The AV is a majoritarian system that has been proposed to facilitate moderation in conflict-ridden societies. AV elections take place in single-member constituencies and candidate needs more than 50 per cent of the votes to be elected. AV allows voters to rank the candidates, and if a voter's first preference does not succeed then the vote is transferred to their second choice. While elections in single-member constituencies clearly cannot produce proportional results, Horowitz claims that in combination with careful delimitation of constituencies AV will lead to the election of moderate candidates as these will receive the votes from minority candidates in that constituency.⁵³ It will also provide for preselection alliances in order to secure the alternative preferences. It should be noted that this requires gerrymandering to achieve the preferred political outcome of group moderation and that even if moderation is achieved, the elected candidates will tend to come from the majority group. While there are some cases, such as Fiji, where AV has been tried in order to mitigate ethnic conflict, the more common choice is proportional elections.⁵⁴

PR can be expected to underpin an end to the armed conflict by giving groups – ethnic and/or based on other characteristics – influence over the national policy relative to their size.⁵⁵ Several global studies have found that PR-elections increase the chances of a durable peace after civil wars.⁵⁶ Although the choice of electoral system may be endogenous to the risk of conflict,⁵⁷ Bogaards finds that PR, when included in a peace agreement, tends to work as intended in securing the peace.⁵⁸ Significantly, it is also the case that while the systematic effect of electoral systems may be disputed, most scholars seem to view PR as the most obvious candidate for contributing to peace in divided societies.

The debate over the merits of the AV relative to PR concerns how one can achieve increased incentives for moderation and reconciliation.⁵⁹ Horowitz claims that AV will lead to electoral agreements among moderates of various camps and that they will in turn, by winning the elections, be able to form government. Scholars favouring proportional elections will claim that since PR will accommodate all significant groups, they will be forced to negotiate coalition

53 Horowitz 2007: 1216–1217.

54 Bogaards 2013.

55 Reynal-Querol 2002.

56 Mukherjee 2006; Gammet and Malesky 2012.

57 Pospieszna and Schneider (2013) find that the electoral system is largely endogenous to institutional legacy and conflict outcome, and that PR is not, robustly, related to a more durable peace. Gammet and Malesky (2012) on the other hand find a systematic effect of closed-list PR, even when accounting for endogeneity. Also, the relationship may not hold if countries that have not experienced previous conflict are included in the sample.

58 Bogaards 2013.

59 See Horowitz 2003a; 2007; Lijphart 1991; 2004.