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GOVERNANCE:
DECENTRALIZATION, DEVOLUTION,
AUTONOMY, AND FEDERATION**

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OPTIONS FOR TERRITORIAL SELF-GOVERNANCE: DECENTRALIZATION, DEVOLUTION, AUTONOMY, AND FEDERATION

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Territorial conflict within states tends to be violent and protracted but not beyond settlement, as many examples of territorial self-governance (TSG) arrangements illustrate. Offering a compromise between the highly centralized, unitary state at one end of the spectrum and the redrawing of international boundaries at the other, TSG arrangements can take different forms and be transitional or permanent.¹

FORMS OF TERRITORIAL SELF-GOVERNANCE (TSG)

TSG arrangements predominantly take four different forms.

Federation: Extensive self-rule with institutionalized shared rule. Federation implies a constitutionally entrenched structure in which the entire territory of a given state is divided into separate political units, all of which enjoy certain exclusive executive, legislative, and judicial powers independent of the federal government.² The most commonly cited contemporary example of a successful federation is Canada. Others include Belgium, Bosnia and Herzegovina, Switzerland, and India. Historically failed federations include Yugoslavia, the Soviet Union, and Czechoslovakia.

Autonomy (federacy): Constitutionally entrenched extensive self-rule for specific entities. The main distinction between an autonomy arrangement and a federation is that the former enjoys powers and constitutional protections similar to those of federal entities but does not necessitate subdivisions across the entire state territory. In other words, autonomy arrangements are a feature of otherwise unitary states, as in the cases of Adjara (Georgia); the Åland Islands (Finland); Azores and Madeira (Portugal); Basque Country, Catalonia, and Galicia (Spain); Gagauzia (Moldova); Greenland and Faroer Islands (Denmark); Sardinia, South Tyrol, and Valle d'Aosta (Italy); and Vojvodina (Serbia).

Devolution: Extensive self-rule for specific entities entrenched in ordinary law. Like an autonomy/federacy arrangement, devolution can be applied to selected territories in a unitary state. The degree of legal protection is weaker, however (in the sense that it is easier to reverse) and extends only to protection by “regular” rather than constitutional laws. The only European example is the United Kingdom, with its four devolution settlements (London, Northern Ireland, Scotland, and Wales).

Decentralization (local/municipal self-government): Executive and administrative powers at the local level. Decentralization involves the exercise of executive and administrative powers by regional and municipal institutions. It does not include legislative competences but provides the authority to pass bylaws. Recent examples of the application of this form of TSG as a mechanism of conflict settlement in divided societies include Macedonia (under the 2001 Ohrid Agreement) and Kosovo (under the terms of its 2008 constitution and related “Ahtisaari legislation”).

SUBSTANTIVE DIMENSIONS OF TERRITORIAL SELF-GOVERNANCE

What all the different forms of TSG have in common is that they represent different types of territorial state construction. Crucial to the sustainability of any of these arrangements as conflict settlements are a number of further, substantive governance arrangements that can vary widely within and among the different forms of TSG. These include the following:

- Arrangements concerning the *distribution of powers* between the center and the TSG entities, including fiscal and security arrangements, that also take into account broader principles

- of good governance, such as subsidiarity, proportionality, economic efficiency, and administrative capacity
- *Arrangements at the level of the central state*, including forms of representation and participation of TSG entities in legislative and/or executive institutions, and the design of the legal/judicial system
 - *Mechanisms for policy coordination and future dispute resolution*, to establish effective and efficient government and create and maintain a functioning, predictable, and stable political process
 - A set of *domestic and international guarantees* to assure all parties to the conflict of the sustainability of any settlement they agree to

ILLUSTRATIONS OF TSG ARRANGEMENTS

To keep this paper brief, the following examples of the application of TSG as a mechanism of conflict settlement focus predominantly on questions concerning the distribution of powers.

Bosnia and Herzegovina

The Dayton Peace Agreement of 1995 provides the legal foundation upon which the postwar Bosnian state has been constructed as an asymmetrical *federation*. It establishes several layers of authority, at the state level, the entity level,³ and the local level.⁴ Within the federation (that is, one of the two entities), cantons⁵ provide a further layer of authority. The competences of all four layers of authority are clearly laid out in the Dayton Peace Agreement, its various annexes, and follow-on documents, as well as in various amendments.

On top of this structure is the Office of the High Representative, which has the authority to dismiss elected and unelected officials in Bosnia and Herzegovina if they are deemed obstructive to the implementation of the agreement and to make legally binding decisions (that is, to pass laws) in any area in which the state or entity parliaments are unable or unwilling to legislate. This authority does not only establish the High Representative as the ultimate arbiter in any difficulty in implementing the Dayton Peace Agreement and in coordinating policy among the institutions

it has established; it also endows the office with significant legislative and executive powers.⁶

Powers at the level of state institutions are very few. They cover foreign relations, foreign trade, customs, monetary policy, immigration, international and inter-entity criminal law enforcement, communications infrastructure, inter-entity transportation, air traffic control, and inter-entity coordination. Any other power, or part thereof, not explicitly mentioned is by default allocated to the entities, which thus become the sources of original and residual authority.⁷

Whereas there is further devolution to cantons and eventually to municipal authorities in the federation, the Republika Srpska remains a highly centralized entity within Bosnia, retaining most powers at the level of the entity government and endowing municipalities primarily with administrative functions in the areas of development, urban planning, budget, and local infrastructure, and with the responsibility of addressing specific local needs of citizens in such areas as culture, education, health, and social welfare.

Because of the way in which powers have been divided across the different layers of authority, there has been a significant need for power-sharing arrangements at the state, entity, and cantonal levels. These arrangements include proportionality, qualified majority voting procedures in legislative assemblies, and so on and are provided for in great detail in the Dayton Peace Agreement and other relevant constitutional documents and their amendments. Given the limited willingness of elites to cooperate, the complexity of the Dayton arrangements have led to almost complete paralysis of the political process in Bosnia and Herzegovina.

Åland Islands and South Tyrol

Of all the cases of territorial *autonomy* in Europe (and beyond), two stand out in terms of their longevity and success: the Åland Islands and South Tyrol. Established in 1920 and 1948, respectively, they are among the oldest of such arrangements and are frequently referred to as models for the use of territorial autonomy as a mechanism for settling self-determination conflicts.

The Act on the Autonomy of Åland of 1920 devolved significant executive and legislative powers to the Åland Islands and provided the structure

of government for the autonomy with a locally elected assembly of thirty members (*Lagting*) and an executive (*Landskapsstyrelse*) supported by a civil service. Revisions in 1951 and 1991 expanded the competences of the autonomy further while leaving the structure of government largely intact. This included the absence of a separate judicial system for the Åland Islands, with justice being administered by and within the unitary judicial system of Finland. (This is, in a sense, the only symmetrical dimension of the islands' governance arrangements.) A third institution of unique character, affirmed by the 1991 act, is the Åland Delegation, a joint body of the autonomy and the central government for coordinating policymaking.

In the 1991 act currently in force, the lawmaking powers of the Åland Assembly and the Finnish Parliament are divided into two separate lists, which detail individual areas of competence.

In all areas where the Åland Assembly has the legislative power, its government also enjoys executive powers and is bound by the acts passed by it. Moreover, the 1991 act also foresees legislative supervision of the activities of the Åland Assembly. Thus, the Finnish Ministry of Justice and the Åland Delegation have to be notified of any act passed by the Åland Assembly. The Åland Delegation is to issue an opinion on the legality of any such act (that is, whether it falls into the legislative competence of Åland) before it is presented to the Finnish president for signature. The president can only annul an act in part or in full in accordance with a Supreme Court ruling, either that the Åland Assembly has exceeded its legislative powers or that a specific act undermines the internal or external security of Finland. Any annulment has to happen within four months of the Ministry of Justice's being notified of the act.

In South Tyrol, after a failed attempt to establish a satisfactory self-governance regime for the territory in 1948, a new autonomy statute came into force on January 29, 1972. This statute provided for both the structure of governance in South Tyrol and the powers exercised by the government there, relative to three distinct dimensions at both regional and provincial levels: voting procedures in the two assemblies, rotation of high offices between the ethnic groups, and coalition government.

The government of South Tyrol has to reflect the ethnic proportions of the provincial assembly, making a coalition of at least one German and one Italian political party compulsory. The arrangement requires the equitable

distribution of the offices of the two vice presidents of the provincial government between the German and Italian ethnic groups and the rotation of offices in the presidency of the provincial assembly. These institutions share a wide range of primary, secondary, and tertiary legislative powers.

The most significant change introduced with constitutional reforms in 2001 (of both South Tyrol's autonomy statute and Italy's Constitutional Law No. 3) was the provision of primary legislative competences to the province in all areas not specifically reserved for the center or otherwise designated as secondary or tertiary competences—that is, in addition to the specific domains named in the autonomy statute, primary legislative competences now include policy areas previously assigned to the center by default.

The distinction among these three levels of legislative competence has its source in the legal boundaries within which they are confined, which the 2001 reforms generally extended. This is particularly obvious in relation to South Tyrol's primary legislative competences. These are now only constrained by the Italian constitution and the country's European Union and other international obligations.

Northern Ireland

Northern Ireland in the United Kingdom is a special case of *devolution*: rather than being entrenched in domestic law, it is guaranteed by an international treaty between the UK and the Republic of Ireland.⁸

The power-sharing institutions in Northern Ireland slot in between its twenty-six local councils and the central government in Westminster, which remains the residual source of all public authority. The power-sharing institutions in Northern Ireland initially had powers on so-called devolved matters—that is, economic development, education, health and social services, agriculture, environment, and finance. At the time of the 1998 agreement, so-called reserved matters (subsequently devolved to Northern Ireland in 2012) included criminal law, criminal justice, and policing. A third category of powers remains indefinitely with the British government: foreign and defense policy, the Crown—that is, anything related to the status of the British monarchy—and monetary policy.

The 1998 agreement foresees the possibility of constitutional change through a referendum. Should a majority of the people of Northern Ireland

express the wish to unite with the Republic of Ireland at some stage in the future, the British and Irish governments have committed themselves to respect the popular will, and the British government is to provide for referenda at regular intervals to gauge public opinion on the issue.

The structure of institutions in Northern Ireland mirrors the classical division of powers among legislature, executive, and judiciary. The directly elected assembly has full legislative competence over all devolved matters. The power-sharing executive, which enjoys full executive competence over all devolved matters, comprises first and deputy first ministers with coordinating executive functions, ministers who formulate and execute policy and enact assembly legislation within the remits of their portfolios, and executive committees that scrutinize ministerial departments. The legislature and executive are complemented by an extensive judicial system consisting of a high court, county courts, and magistrates' courts, an attorney general, an advocate general, a public prosecution service, a chief inspector of criminal justice, and a law commission.

The third layer of public authority in Northern Ireland is local. Twenty-six directly elected local councils, also referred to as boroughs, have competences in a range of areas, including development, tourism, community relations, and the environment. A town clerk and chief executive in each locality are responsible for running its day-to-day affairs.

Macedonia and Kosovo

Macedonia and Kosovo are both unitary states in which municipal governments enjoy significant (enhanced) levels of competence in the exercise of executive and administrative powers. These examples represent models of *decentralization*.

According to the Ohrid Agreement, Macedonia remains a unitary state with a two-layered system of authority. The powers are, however, clearly divided between the central government and the municipalities, and the municipalities enjoy a substantive degree of self-governance within this system. The central government is the residual source of all public authority in the country. It comprises a unicameral assembly, an executive with a (largely symbolic) president and a cabinet government, and a judicial branch with a constitutional court and lower-order courts, as well as a public attorney with decentralized offices at the local level.

At the local level, one hundred and twenty-four municipalities and the capital city of Skopje have so-called enhanced self-administration powers in the areas of public services, culture, education, social welfare, health care, environment, urban and rural planning, economic development, and local finance. Municipal institutions comprise a council and a municipal executive. The council's competences include the budget and other financial matters, the establishment and control of public services, institutions, and enterprises, and the establishment and supervision of governing and administrative organs at the municipal level. The municipal executive is an elected mayor who is responsible for the appointment and dismissal of all officers of the governing and administrative organs and services in the municipality and for their overall management. The governing and administrative organs and services draft and implement individual acts and supervise activities in their areas of competence.

Kosovo represents a further evolution of the model of decentralization. Here, wide-ranging powers devolved to the local level include local economic development; urban and rural planning; provision and maintenance of public services and utilities; public pre-primary, primary, and secondary education; promotion and protection of human rights; public health and health care; social welfare services; public housing; and the naming of roads, streets, and other public places. The law on local government also gives municipalities power in any matter that is not explicitly excluded from their competence nor assigned to any other authority. From this perspective, municipalities in Kosovo hold residual authority.

Despite its character as a unitary state, some municipal governments in Kosovo, principally in those localities with ethnic Serb majorities, can exercise enhanced municipal competences in the areas of health, education, and cultural affairs. Moreover, they are given participatory rights in selecting local station police commanders.⁹ The state, however, retains the right to monitor the exercise of these powers according to clearly specified criteria, including equal access to public services, quality and quantity standards, and minimum standards for accreditation of public service providers.

As noted earlier, these municipalities may also cooperate with any other municipality in providing services. Specifically, Mitrovicë/Mitrovica North, Graçanicë/Graçanica, and Shtërpçë/Štrpce also have powers in secondary health care, and Mitrovicë/Mitrovica North has enhanced competences

in relation to university education, including registration and licensing, recruitment, payment of salaries, and training of education instructors and administrators. Serb majority municipalities anywhere in Kosovo furthermore enjoy a range of enhanced competences in the area of culture, including religious and cultural heritage, and have the right to exercise powers jointly (that is, they can effectively come together to form larger, self-governing entities).

CONCLUSION

Territorial self-governance arrangements are a frequently applied tool of managing self-determination conflicts. They can take many different forms in terms of how a given state is territorially constructed and which powers are exercised at which level of authority within the state.

As the examples here illustrate, there is no blueprint for successful TSG arrangements, which are normally part of a complex institutional setup that also involves power sharing at the local and central levels, policy coordination, guarantees, and so on. The success of any strategy built around specific TSG arrangements to resolve self-determination conflicts will depend on how responsive the overall institutional “package” is to the needs and concerns of the parties to the conflict and how viable the state is as a whole as a result of such an institutional design.

NOTES

1. Suffice to say, these arrangements can be put into place as interim settlements and involve varying degrees of international administration before a particular territory is either fully reintegrated into an existing state (as in Eastern Slavonia in Croatia, 1996–8) or gains independence (as did South Sudan, 2005–11, and Kosovo, 1999–2008).

2. This entire-territory rule has some common exceptions. For example, capital cities, unless they are federal entities of themselves, often have special status (for instance, Washington, DC, versus the German capital Berlin, which is a federal state). Occasionally, other special territories may be directly ruled by the federal government, even though they may enjoy some degree of self-governance (falling short, however, of full federal status), such as India’s Union Territories.

3. There are two entities: the Federation of Bosnia and Herzegovina and Republika Srpska.

4. In addition, the District of Brcko was established by international arbitration as yet another self-governing entity after the signing of the Dayton Accords.

5. The federation has ten cantons (federal units)—five with Bosniak majorities and three with Bosnian Croat majorities. The other two cantons are “ethnically mixed,” and special legislative procedures ensure the protection of constituent ethnic groups.

6. These are comparable only to the powers of the secretary of state for Northern Ireland, who, for a period of time after 1998, was able to suspend Northern Ireland’s self-governing institutions and assume their executive and most of their legislative powers.

7. In other words, all authority in Bosnia and Herzegovina rests with the entities and is not derived from another source, and any new area of legislation is thus, by default, an entity competence. Entities thus have to agree to delegate legislative competence to the state level for the state parliament to be able to legislate in a particular area beyond what was determined in the Dayton Constitution. See, by way of comparison, the provisions of the Tenth Amendment of the US Constitution: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

8. The international legal protection of Northern Ireland’s status is established by the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (the so-called Belfast Agreement of 1998), to which the Northern Ireland Agreement was appended.

9. Whereas in the rest of Kosovo the general director of the Kosovo Police Service presents three candidates for the post to the municipal assembly for ranking and subsequent appointment by the general director, in communities where the largest ethnic community is Serb the municipal assembly initiates the process by proposing two candidates for selection and appointment by the Ministry of Internal Affairs.

ABOUT THE AUTHOR

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