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Presentation for the Conference
Iraq: Powersharing and its Discontents
American University, Washington D.C. 11 June 2004
DRAFT. Not for distribution/citation.

Power-sharing Arrangements: Lessons for Iraq
The Case of Bosnia-Herzegovina and Cyprus

In the discussions on power-sharing arrangements in post conflict settings, Switzerland or Belgium are frequently referred to explicitly or implicitly as models to be emulated.[1] Bosnia-Herzegovina with a wealth of literature criticism both the power-sharing arrangements and the continued international presence and the failed peace-plan for Cyprus suggest the latter to cases not as models, but rather examples of failed power-sharing. Nevertheless, it would be misguided to only examine the flaws or failures of the post-conflict arrangements in Bosnia and the plan for Cyprus. Both can also help to identify workable mechanisms (rather than blueprints) or institutional design which can be applicable elsewhere. As post-conflict societies, albeit very different, suffering from deeply divided population groups, power-sharing arrangements constitute conflict management tools, rather than grown institutional structures. Thus, a comparison appears to be appropriate with Iraq and other states were power-sharing is contemplated in the aftermath of a conflict.
Unlike Iraq, conflict in Bosnia (1992-1995) and in Cyprus (1974) were intimately linked to the inter-ethnic tension and divergent interpretations of the nature of the state were among the principle causes of the conflicts. In Bosnia, conflicting views over the country's independence from Yugoslavia (support by most Bosniaks and Croats, opposed by most Serbs) and in Cyprus support among Greeks for *Eonisos* (joining Greece) and support for *Taksim* (division of the Island into a Turkish and a Greek state) set the scene for low-conflict in the 1960s and 1970s, leading eventually to the Turkish invasion in 1974. The General Framework Agreement for Peace in Bosnia-Herzegovina (aka Dayton) sought to provide not only (or even primarily) for long-term governance of Bosnia, but rather for an end to military hostilities, substantial international presence and the return of refugees. The Agreement on a Comprehensive Settlement of the Cyprus Problem (aka Annan Plan) on the other hand sought to provide for a political settlement of a 'frozen' conflict in the context of the imminent EU accession. While different a degree of rewards and coercion was required for the parties to agree to the different institutional arrangements—both design with substantial external intervention—the power-sharing arrangements rested on the acceptance by the key parties to the conflict.

Federalism and Power-sharing
A key feature of both the Dayton Accords and the Annan plan is the combination of federalism and power-sharing at the level of the central government. The federal system constitutes a form of territorial autonomy for the main communities, whereas

[1] For Cyprus see Michael Emerson and Nathalie Tocci, *Cyprus as Lighthouse of the East Mediterrenean*. Brussels: CEPS, 2002 and the Annan Plan itself which refers to Switzerland: "The status and relationship of the United Cyprus Republic, its federal government, and its constituent states, is modeled on the status and relationship of Switzerland, its federal government, and its cantons." Art. 2/1, Main Articles, Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, 2004.

power-sharing at the level of central institutions aims at securing consent among all affected communities for fields in the remit of the central government. In both cases, the competences of the central government are minimal, focusing on issues of foreign policy and monetary policy. Even defense, conventionally a primary competence of central governments, has not been a function of the central government. In the case of Cyprus, this is due to the demilitarization of the island foreseen in the plan, while in Bosnia, the two entities were allowed to retain their separate armed forces until 2004, when a reform established a central command and ministry of defense at the state-level.

Bosnia-Herzegovina	Cyprus
Foreign policy	Foreign Policy
Foreign trade policy	Relations with EU
Customs policy	Intellectual property, antiquities
Monetary policy	Monetary Policy
Finances of the institutions and for the international obligations	Federal Finances
Immigration, refugee, and asylum policy and regulation.	Citizenship, Immigration
Regulation of inter-Entity transportation.	Natural Resources
International and inter-Entity criminal law enforcement, including relations with Interpol	Serious Crime combat
Establishment and operation of common and international communications facilities.	Communication
Air traffic control	Aviation, internal navigation
Security, Defense (since 2004)	n/a

Competences of the Central Government in Bosnia and Cyprus

A key feature of both cases has been the delegation of all other competences to the level of the territorial autonomies. The weakness of the central governments is largely a consequence of the minimal consensus among the different parties on the nature and strength of central government. In both cases, alternative and competing visions, as indicated earlier, exist which favor either partition or joining neighboring countries. Bosnia has since the signing of the peace accord in 1995 gained additional competences, largely as a result of deliberate efforts of the international organizations active in the country, in order to create a more sustainable and viable state. Here, the weakness of the central state was compounded by the lack of formal competences and the substantial practice of decision-making in the territorial autonomies without much consideration to the central government.

Central decision making in Bosnia and according to Annan plan also in Cyprus is regulated according to detailed power-sharing principles, pertaining to the legislature, judiciary and executive. As with power-sharing arrangements, these mechanisms ensure both the representation of all key groups and introduce a consensus decision-making process, which requires consensus of representatives of all main groups in parliament and government on decisions.

	Parliamentary Representation	Grand Coalition	Veto Rights	Administration	Autonomy/ Decentralization
Bosnia-Herzegovina *(1996)*	PR, Bi-cameral House of People (15): reserved seats (5 B, C, S)	Quota 2/3 from Federation, 1/3 from RS, 2 deputy min. of other ethnicity to each min.	Yes. "Vital National Interest of Constituent People", (1/3 from each entity, ½ in HoP) mediation procedure, constitutional court	"generally reflect the ethnic structure"	2 Entities, 1 District
- Federation (2002)	PR, Bi-cameral House of Representatives (98): reserved seats (min. 4 C, B, S) House of Peoples (58): 17 C, B, S, 7 O	Presidency: 1 pres, 2 vice-pres of other group Government: deputy min of other ethnicity to each min., 8 B, 5 C, 3 S.	Yes. "Vital National Interest of Constituent People" (2/3 HoP comm. MPs), mediation procedure, constitutional court	Proportional representation of constituent people and others (1991 census)	10 cantons
- Republika Srpska (2002)	PR, National Assembly (83): reserved seats (min. 4 C, B, S) Council of Peoples (28): reserved seats (8 C, B, S, 4 O)	Presidency: 2 vice-pres of other group Government: Reserved seats (5 for B, 3 for C)	Yes. "Vital National Interest of Constituent People", mediations procedure, constitutional court	Proportional representation of constituent people and others (1991 census)	No
Cyprus (2004)	PR, Bi-cameral (48 each): Senate (24 GC, TC); Chamber of Deputies (PR, min. ¼ per state), 1 Maronite, Latin, Armenian	Presidential Council: 6 members (PR, 1/3 from each state)	Yes. "Special Majority for key areas". 2/5 from each state & simple majority	Proportional to population in constituent states, min. 1/3	2 constituent states

Key Features of Power-Sharing in Bosnia, its entities, and Cyprus[2]

As outlined in the table above, the legislatures are generally bi-cameral[3], with one charged with addressing community concerns—often elected on parity-basis—and the other elected to represent the citizens proportionally. Different types of veto rights exist in Bosnia, its entities and Cyprus. The most comprehensive right to veto is offered at state-level in Bosnia were all three communities ('constituent nations') are allowed to veto any law in parliament based on a supposed violation of vital

2 PR: Proportional Representation, C: Croats, S: Serbs, B: Bosniaks, O: Others, GC: Greek Cypriots, TC: Turkish Cypriots

3 in the RS, the CoP is elected by the National Assembly, thus not entirely a second chamber, but enjoys comparable prerogatives.

national interest. In the entities, a list constrains to the domains were such a veto can be invoked in regard to the

- Exercise of the rights of constituent peoples to be adequately represented in legislative, executive and judicial authorities;
- Identity of one constituent people;
- Constitutional amendments;
- Organization of public authorities;
- Equal rights of constituent peoples in the process of decision-making;
- Education, religion, language, promotion of culture, tradition and cultural heritage;
- Territorial organization; and
- Public information system."[4]

Similar in Cyprus, the domains were a special majority, constituting de-facto a veto right of a community (with a high threshold), is required in a limited number of fields:

- Ratification of international agreements on matters which fall within the legislative competence of the constituent states
- Ratification of treaties and adoption of laws and regulations concerning the airspace, continental shelf and territorial waters of the United Cyprus Republic, including the exclusive economic zone and the contiguous zone;
- Adoption of laws and regulations concerning citizenship, immigration, water resources and taxation;
- Approval of the federal budget;
- Election of the Presidential Council; and
- Other matters which specifically require special majority approval
- pursuant to other provisions of this Constitution.[5]

In both Bosnia and Cyprus, some representation is based on the territoriality principle (i.e. HoR, CoD) while in other cases this based on ethnicity. The combination of both forms of representation allows for the inclusion of communities who live in one of the autonomies without belonging to the regional majority, such as Greeks in the TC state of the island of Bosniaks in the Serb Republic. However, in the case of Bosnia the presidency is constrained by the combination of both territorial and ethnic criteria, which has been widely criticized for both excluding part of the population from being elected to the presidency[6] and equating territorial and ethnic representation. In the government of both countries, all groups are represented and decisions are usually, although not exclusive to be taken be consensus.

As both Bosnia and Cyprus (according to the Annan plan) constitute Federal states, the power-sharing at the center is supplemented by territorial autonomies. In the case of Bosnia, the entities were originally constituting mono- or bi-national autonomies, where in the Serb Republic, Serbs were privileged over citizens from

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4 Amendment XXXVII, Definition of Vital Interests, Decision on Constitutional Amendments in the Federation of Bosnia and Herzegovina, OHR, 19.4.2002; available at: www.ohr.int.

5 Art.25/2, Constitution of the United Republic of Cyprus, Annex I, 2004.

6 This is only formally true, as for example the current Bosniak member of the presidency hails from the Serb Republic, but ran for the Bosniak member in the Federation in the 2002 elections.

other communities and in the case of the Federation Bosniaks and Croats took a similar role. This ethnically exclusive feature of the autonomy was challenged at the constitutional court and lead to far-reaching amendments in 2002, resulting in a replication of the power-sharing structures of the state at the entity level. In case of Cyprus, the Annan plan does not foresee any protective mechanisms for the rights of the non-dominant community in one of the two constituent states and instead limited the extend of refugee return to allow the constituent state (esp. the Turkish Cypriot north) to retain its nature as the autonomy of one community. While retaining ethnic autonomy is post-conflict environments can equal an endorsement of wartime population expulsion and transfers, replication of power-sharing arrangements at a lower level of governance might be equally problematic. The key question to be considered is the need for autonomy as a form of ethnic self-governance, only attainable if few other communities reside in the territory, or if the autonomy merely constitutes an additional layer of governance to bring decision-making (and the means to influence it) closer to community which might wield less power at the state level.

Mediation, Arbitration and Veto Rights

A key feature of both federal and consociational arrangements are mediation and arbitration processes. Out of consociational arrangements arises the challenge of legislation and decisions blocked through the use vetoes. Mediation mechanisms here need to be operational to prevent the failure of institutions to take key decisions and are thus unable to perform. The federal nature of states gives rise to a different range of possible conflict, arising from conflict legislation and decisions between the constituent states and the Federal government. Even in the case of a clear formal division of competencies such conflicts can arise as a number of policy fields touch on different areas of competencies. Furthermore, conflictual decisions and legislation can arise between constituent states.

Thus there are three sources of conflicts in legislation and decision-making which are likely to arise from Federal-Consociational arrangements such as the Cypriot plan or Bosnia after Dayton:

First, conflicts of passing legislation at the level of the Federal institutions.

Second, conflicting decisions and laws between one or two constituent states and the Federal government.

Third, conflicts between the two constituent states.

These conflicts are best addressed through different institutions, as they are at their core divergent.

a) Blocked decision-making needs first a process of mediation between the sides holding divergent views. If this does not result in a compromise, a *decision* needs to be taken (even this in practice means the absence of a decision). Such a process of arbitration has to the second step.
b) A conflict of laws between the state level and the autonomous regions has first of all the distinctive difference that both acts are already in place. Such a situation could be prevented by a screening mechanism *both* in the legislature at the Federal and at the constituent state level which would seek to identify possible conflicts prior to the passing of laws and trigger a mechanism similar to a). If this is not the case, there is a need for arbitration/judication in order to determine the precedence of the law.
c) In the case of conflicting laws in the constituent units, the first step has to be a legal decision to determine the legality of the laws or decision in relationship to the state constitution, but this fails to resolve the conflict, a political process of

harmonization will be required. Again, identifying such possible conflicts prior to the passing of laws can facilitate a harmonization process ahead of time and decrease the stakes at finding a compromise.

In the case of Bosnia and Cyprus these functions are held by Supreme Court and/or by the High Representative, i.e. the semi-permanent mediator/arbiter in Bosnia. Such institutions are generally important to prevent the institutional failure and as such the role of the Supreme Court appears to be satisfying the need for arbitration in the case of conflict. There are, however, several concerns with this structure, as the Court is the only clearly identified mediation and arbitration body in the arrangement. The concern with the international arbiter is the related both this his/her legitimacy and acceptability, as well as to the sustainability of external actors/institutions.

Before the Veto

First, most potential disputes arising from legislation and decisions taken by the Federal government/parliament or the constituent states should be resolved prior to their passing, i.e. before a community will invoke a veto or the Supreme Court will be active.

Here one instrument from the UN proclaimed Constitutional Framework for Kosovo (2001) might serve as a constructive approach. First, the framework establishes a Committee on the Rights and Interests of Communities which is composed of two or one representatives from all communities in Kosovo and can been asked to screen a proposed law in case a member of the parliament presidency (which includes representatives from the different communities) requests it to do so.[7] Although it can only issue a recommendation, it is a mechanism to prevent the use of veto and allow for the identification and possible resolution of contentious issues prior to voting.

Similarly, Switzerland has a process of hearings on legislation ('Vernehmlassung'), which exist together with formal mediation committees between different chambers of parliament.[8] In Belgium, an explicit reference in the constitution to conflict prevention (Art. 143) the different institutions are charged with preventing disputes. The mechanisms include consultation procedures which include representatives from the governments. In addition, the senate has a mediation role, as it incorporates representatives from all levels of governance in Belgium.[9]

Altogether a wide range of different institutional arrangements can be envisaged, within the parliamentary structures (committees etc.), *between* parliaments and/or executives (mediation committees, informal or formal) or *outside* of the legislative structure such as through an arbitration court or committee. Key with such an institution is the ability to prevent deadlocks and not only to intervene once such a deadlock occurs.

After the Veto

Such preventive mechanisms are unlikely to fully prevent the failure of parliament to pass particular laws, so in a next step, a mechanism needs to be in place once there is a deadlock in parliament. Again returning to the example of Kosovo, we can identify a clearly described procedure for action in the case a proposed law or decision runs counter to the interests of one community. Here, a community invokes

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7 Art. 9.1.14., Constitutional Framework for Provisional Self-Government, Kosovo, UNMIK Reg. /2001/9, 15 May 2001.

8 Schneckener, p. 249

9 Lisebet Hooghe, "Belgium. From Regionalism to Federalism", John Coakley (eds), *The Territorial Management of Conflict* (London: Frank Cass, 2003), p. 89.

a violation of a vital interest of a community. In such a case the sponsors of the law are required to respond to the position of the community. The presidency then seeks to identify a possible solution (including a compromise proposal), if it fails a special panel, consisting of the sponsors of the law, the ones invoking a vital interest violation and an internationally nominated person form a special panel to decide whether to reject the law or the veto.[10] In the Kosovo parliamentary assembly the final word remains with a parliamentary vote which can override these proposals, but the two steps mediation process within parliament appears to be preferable to immediate reference to the Supreme Court. Firstly, there would be more room for political compromising which would not be the case with the court. Furthermore, there is an interest in not overburdening the court with taking decisions in such a domain, except as last resort, i.e. if the above process fails. As parliamentarians and its bodies are democratically elected rather than appointed such as the court, compromises would have greater legitimacy. Any such mechanism, especially if containing several steps has to have a clear time calendar and deadlines attached in order to avoid excessive delays which result in similar problems as the vetoes themselves.

In Belgium, several institutions are charged with mediation and arbitration. The Arbitration court screens legislation for conformity to the constitution and is the final arbiter in conflicts of competence.[11] It is staffed with equal numbers of Flemish and French speakers. The highest administrative court (Conseil d'Etat) similarly can similarly be asked to give advice on particular legislative projects and decide in particular domains.[12]

International Judges

A fundamental challenge arises from the presence of international judges or arbiters, in existence in Bosnia and in Cyprus. While in a mediation process, parity between the two communities appears crucial, any decision making body (including courts) will have to overcome parity in order to be able to take decisions. As this means that in contentious questions voting might follow community lines, there is little interest in advantaging one community in such a process to all for decisions to be made. The solution chosen in a number of cases has been the inclusion of international members who are considered to be 'neutral'. The Annan Plan for Cyprus thus incorporates three international judges into the proposal.[13] This resembles the solution found in the Dayton Peace accords, which establishes a constitutional court with three

International members (not from either neighboring state) selected by the European Court of Human Rights president after consultation with the Bosnian presidency.[14] Unlike the envisaged Supreme Court of Cyprus, the mandate of the Bosnian court is narrower. Although the competencies include resolving disputes between entities and the state (both between constitutions and institutions) and among state institutions, it lacks the clear mandate to resolve deadlocks and the power to declare interim solutions in other cases than where the court declares parts of entity or state legislation or constitutions unconstitutional.[15] As such, the Supreme Court of Cyprus

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10 Art. 9.1.39-42, Constitutional Framework for Provisional Self-Government, Kosovo, UNMIK Reg. /2001/9, 15 May 2001.

11 Art. 141, 142, Belgian Constitution, 1993.

12 Schneckenr, p. 259.

13 Art. 6.2, Main Article, Foundation Agreement

14 Art. VI, 1, a), b), Constitution of Bosnia-Herzegovina.

15 Art. VI, 3, Constitution of Bosnia-Herzegovina, 1995

incorporates functions held by the Bosnian Constitutional Court, as well as currently by the High Representative.
While there are few alternatives to the role of international judges as arbiters in the case a court with a parity appointment cannot take decisions, there is a need to minimize the role of international judges in order to allow for *domestic* processes of decision-making. In practice, this might suggest that international judges only acquire voting powers in the case of tied decisions.
Furthermore, there would be a need to strengthen mediation and arbitration mechanisms at earlier stages, as outlined above, which would have effects:

a) encourage the dispersion of power through additional institutions (formal and informal) and thus reduce the importance of the Supreme Court as the main and only mediation/arbitration institution;
b) increase the importance of domestic paths to compromise rather than external arbitration;

At the same time such intermediate steps would require clear time-lines and procedural delimitation to prevent extended periods of legal uncertainty and possible abuse to prevent decisions from being taken.

Permanent or Temporary Power-Sharing

A key question of post-conflict power-sharing arrangements is their permanence. Enshrining intra-ethnic relations in an institutional framework risks freezing a high degree of politicization of ethnicity, i.e. ensure that ethnic belonging constitutes a key feature of the political system. Once established, constitutional systems in general and power-sharing arrangements in particular—as they require broad consensus for change—are hard to adjust and change. While the Bosnian constitution was not seen by many as a permanent solution, it contains no grains for change, revision or reform. Even in cases where this has been so, this ambition for transformation need not translate in gradual reform. The fact that the Lebanese constitution introduces "[a]s a transitory measure and for the sake of even justice and concord, [that] the communities shall be equitably represented in public posts and in ministerial composition."[16] which has lasted (with some changes) for more than three quarters of a century demonstrates that ill-defined transitions can last.
This is not to suggest that power-sharing might not be a permanent feature of the institutional set-up or that this should be undesirable. At the same time, there is a need for power-sharing systems to be adaptable and be able to reflect new and changing realities of interethnic relations.

Further Reading:

Bieber, Florian: Institutionalizing Ethnicity in the Western Balkans. Managing Change in Deeply Divided Societies. February 2004, 34 pp, appendix (ISSN 1435-9812), ECMI Working Paper 19, http://www.ecmi.de/doc/download/working_paper_19.pdf

as well as related texts at:
www.ecmi.de and www.policy.hu/bieber

16 Constitution of Lebanon, Art. 95 (1926).