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Examining Power-sharing in Persistent Conflicts:  
De Facto Pseudo-statehood versus *de Jure* Quasi-federalism

EIKI BERG

The reasons that explain the failures in power-sharing lie in the notions of sovereignty and territoriality and their applications in the (post-)modern world. While territory is largely perceived as indivisible, sovereignty is seen as something that could be shared. Power-sharing schemes tend to fail because of the incompatibility of these two principles. Although enduring compromises between facts and norms may allow talks about diffused power and fuzzy identities and are therefore an asset, they do not offer a recipe of how to end zero-sum games and provide communal security. The aim of this paper is to examine comparatively recent attempts to resolve persistent conflicts through power-sharing in Cyprus, Moldova and Bosnia & Herzegovina. It concludes that although power-sharing is compatible with the normative categories stipulated in international law, solving modern conflicts necessitates a rethinking of the concepts over which these conflicts are taking place.

Introduction

Power-sharing deserves a more critical examination in contemporary discussions of conflict resolution than has been the case so far. Indeed, sovereignty may become increasingly fictive and states may devolve governance but even today territory continues to play an important role in part because it provides a locus for the exercise of political authority over a range of interests and initiatives. The so-called re-territorialisation approaches postulate that the state is not an anachronism of the past but instead interacts with the international environment in the globalised world.\(^1\) The desire for self-government and independence is equally visible in parallel with the territorial demarcation of national homelands with sovereignty aspirations through some form of de facto control as contrasted with *de jure* international recognition.

However, mainstream conflict-resolution approaches rely on power-sharing according to which federations develop from unitary states as a response to

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threats of secession or rebuilding of nations, granting subunits shared sovereignty.\textsuperscript{2} A federal solution has been justified in some cases (e.g. Belgium or Spain) and questioned in others (e.g. Bosnia & Herzegovina) while in the absence of territorial compromises, de facto states—unconventional entities on the world’s political map—may come into being. Moreover, the externally imposed federal constitution seems to do no more for formal reintegration than granting the status \textit{de jure} that unrecognised entities already enjoy \textit{de facto}. As territorial dominance configures the order of the day in partitioned states, power-sharing helps to maintain the pseudo-statehood or to establish quasi-federation where the initial goal in terms of state territorial integrity remains unattainable. The above reasoning is further elaborated below.

First, territoriality always causes disputes between ethnic groups claiming exclusive sovereignty over a certain territory. As a spatial strategy,\textsuperscript{3} territoriality comes about as a result of states’ sovereign interaction involving territorial practices that change over time. Instead of taking sovereignty and territoriality for granted one should perceive these key notions as concepts in flux.\textsuperscript{4} One may argue that the less important territoriality is nowadays, the more complex and multifaceted the issue of sovereignty becomes. However, the facts on the ground tell us that all polities carry the idea of a single governmental jurisdiction over a particular territory and look jealously on joint administration with others.

Second, once partition has occurred, the host states seek to gain territorial control over the part that has seceded. One potentially successful way of dealing with these types of conflicts is power-sharing, with the attempt to share sovereignty and alternate territoriality. In ideal terms, power-sharing arrangements should eliminate the reasons for which politicians seek securitisations and make conflicting parties believe in win-win games.\textsuperscript{5} But similarly to partition, power-sharing accepts at face value the primacy and permanency of ethnic divisions and promotes segregation instead of social contact and co-operation.\textsuperscript{6} One may easily agree with Charles King\textsuperscript{7} that every conflicting party is actually interested in the status quo because any proposed solution could easily be translated into the language of a zero-sum game and capitalised on by domestic political forces according to their own interests.


\textsuperscript{5} Rory Keane, \textit{Reconstituting Sovereignty: Post-Dayton Bosnia Uncovered} (Aldershot: Ashgate, 2002).


Third, whereas power-sharing arrangements\textsuperscript{8} can be difficult to achieve and even more difficult to put into practice, the idea of partition attracts fresh attention as the inevitable solution to persistent ethnic conflicts.\textsuperscript{9} Indeed, most de facto states are the end products of partition.\textsuperscript{10} On the one hand, one can claim that territorial division may be an efficient and equitable means of resolving disputes between competing groups—good borders make good neighbours. On the other hand, the risks remain that territoriality renews conditions for conflict or simply imposes boundaries that generate mutual hostility.

Fourth, international recognition seems to be the decisive criterion when all the other managerial instruments have been exhausted in relation to conflict resolution. In the past, the recognition of sovereignty depended upon the state having a territorial basis and was usually granted to states that exercised authority over state affairs. Yet the rules of the game have changed considerably, giving less attention to de facto sovereignty than in the period of de-colonisation. It is not only facts that take the lead in formal recognition of statehood but rather the norms that create facts.\textsuperscript{11} In this way, sovereignty becomes a limited property with rights that come from sovereign status rather than possession of this status as such.\textsuperscript{12} If that is the case then there is a danger of erupting sovereignty claims, which only seemingly present the framework for power-sharing while at the same time perpetuating partition.

In this paper, the first three sections discuss the contemporary issues of undivided territory in a new sovereignty game, partition and power-sharing dilemmas and illegal states in the post-modern setting. The final section combines theoretical notions with the hard data on the partitioned ground. The Turkish Republic of Northern Cyprus (TRNC) and Transnistria (TMR) are two examples of political entities that are difficult to fit into the international legal framework. At the same time, Bosnia & Herzegovina is recognised internationally and represents an example of quasi-federation, while consisting of two political entities (the Federation of Bosnia & Herzegovina, and Republika Srpska) which are only loosely connected with each other, embodying separate identities and different\textit{ raison d’être}. As power-sharing continues to be at the core of conflict-resolution schemes, the purpose of this final section is to

\textsuperscript{8} Power-sharing agreements are based on a political restructuring of existing entities and an attempt to change the zero-sum nature of the conflict. This zero-sum nature is especially critical in democracies where ethnic minorities are marginalised by the majority’s electoral power and, consequently, are alienated from the state and endanger its legitimacy. For more about power-sharing arrangements, see Timothy Sisk, \textit{Power Sharing and International Mediation in Ethnic Conflicts} (Washington, DC: USIP, 1996).


demonstrate how difficult it is for contemporary polities to accept post-modern notions of sovereignty and territoriality and to find compromises between the norms and facts. To be more specific, why do externally imposed power-sharing schemes tend to produce legally approved quasi-federations, which then perpetuate de facto partition?

**Indivisible Territory in a New Sovereignty Game**

Control over territory seems to be a key political motivating force whereby territoriality becomes “the spatial expression of power”.13 Ethnic engineering or national construction efforts that attempt to control portions of space always receive a violent reaction from those who have counter-claims to that piece of land. To be sovereign means to have absolute authority within a territorial base and to suffer no interference by parties outside of that space. It is not surprising, then, that ethnic groups consider control over disputed territory to be an indivisible issue and demand sovereignty whenever they have both capability and legitimacy to do that.14 Concomitantly, states also view control over a territory as an indivisible issue whenever precedent-setting effects come into play. What follows is a conflict because both parties feel insecure and threatened in relation to their ethnic or state survival.

Quite often territory leads to conflict and exacerbates power asymmetries. But clearly defined territory may also be a pre-emptive solution to a problem if successfully managed.15 As compared with other means of asserting control, “territory may promote clarity and simplicity, and therefore certainty and predictability, and therefore peace, security and order, and therefore efficiency and progress”.16 Territories are human creations, produced under particular circumstances and designed to serve specific ends. Once these territories have been produced, they become the spatial containers within which people are socialised.17 In this conception, territory remains a valuable commodity in international relations.

Yet this territorial fact alone helps little in providing statehood with legal conditions of sovereignty as long as international recognition is missing. In the past, the recognition of sovereignty depended upon the state having a territorial basis and was usually granted to states that exercised authority over state affairs. These criteria for statehood were laid down in article 1 of the Montevideo Convention on the Rights and Duties of States, 1933. Recognition was dependent on the entity’s possessing empirical criteria for statehood.18 Accordingly, entities behaved as sovereign states because other states allowed them to do so, provided that they fulfilled territoriality criteria. By accepting them as equals they made recognition a pivotal element in the institution of sovereign statehood. Yet the rules of the game have changed over time, giving less attention to factual sovereignty in the period of de-colonisation. Today, the right of self-determination, recognised in international law, applies only to colonies, which are separated from their

metropoles by salt water. Current legal doctrine forbids de jure recognition of those territorial units whose political establishment has been resisted by “undivided” central authorities. According to a normative approach, it is widely believed that by discouraging small peoples from seeking statehood international law guarantees stability.

Nevertheless, the rules of sovereignty are not fixed in stone, but rather are subject to changing interpretations. Scott Pegg argues that the international community has alternated between the conceptions of state sovereignty and national sovereignty, today defending the rights of established states against the nationalist claims of domestic ethnic groups. The shift from empirical statehood to juridical statehood mirrors the fact that recognition is a political decision, and not based on facts on the ground. Ersun Kurtulus is also convinced that

the breakdown of a state, its political control by another state, its involvement in integration-processes, its status as a subject under international law, its constitutional design, and restrictions that may be imposed upon its foreign policy are either inherently political phenomena or phenomena with clear political implications.

If that is the case then international law does not have a logically consistent legal doctrine that would treat sovereignty claims in a universal manner.

As a matter of political fact and owing to its inconsistent interpretation, the world political map is fragmented into juridical sovereigns that do not have the suggested empirical attributes and into territorial entities that acquire qualities of statehood after years of warfare, and sometimes at a cost of intolerable human devastation, while possession of sovereign rights remains an unattainable status for them. This “new sovereignty game” embodies rules that apply to many political entities, which have not met the traditional tests of empirical statehood and probably would not exist as sovereign states otherwise. These normative innovations tend to ignore empirical facts. In this way sovereignty becomes a “limited property” with rights that emanate from sovereign status rather than possession of this status as such.

A new sovereignty game fixes the borders and bans territorial change, which is legally sanctioned and politically correct interstate practice. While recognising that states’ territory is an indivisible issue, this legal doctrine constantly ignores the fact that ethnic homelands within an internationally recognised state can be

19. “The unqualified right of self-determination is a privilege to separate colonial peoples, those societies seeking liberation from metropolitan centres in a blue-water relationship, and not to those hapless people whose colonization had no oceans to cross”, Barry Bartmann, “Political Realities and Legal Anomalies: Revisiting the Politics of International Recognition”, in Bahcheli et al. (eds.), op. cit., p. 20.
22. Ibid., pp. 128–132.
indivisible as well. Ethnic groups may be desperate to control their territory and reluctant to recognise the legitimacy of the central authorities, especially when communal security issues are at stake. No matter how effective or internally legitimate these groups are, the normative regime of fixed borders operates to ensure that the indivisible territory remains just the order of the day. There are strong institutional and practical reasons not to expect its sudden demise; however, sovereignty remains a constructed political arrangement that can be rethought and redefined. One way to challenge it is to examine the power-sharing schemes in the partitioned states.

Partition versus Power-sharing?

Monica Duffy Toft is probably right when she refers to scholars as premature who want too eagerly to abandon the notion of territory in the globalised world: “If this were the case, ethnic groups would not be so desperate to control their homelands, nor would states and the international community hesitate to allow them to do so.”26 Although explicitly supporting territorial imperatives, Nathalie Tocci argues that “the drive for secession is not an end in itself for the underlying basic needs are those of communal security and self-determination”.27 When the issue is federalisation then identity and security concerns become vital for the larger community. Federalism may serve as a useful institution to deflect calls for autonomy if dissatisfaction has to do with the uneven distribution of material resources. Prospects for power-sharing look slim when symbolic and territorial issues are at stake. Hence Tocci sees the major problem as that of reaching comprehensive agreements on the parties’ positions, which “focus on absolute notions of sovereignty and statehood, making the reconciliation of subject positions almost impossible”.28 What follows is a conclusion that both secession and federalisation may contain a conflicting logic feeding zero-sum assumptions in their own way.

Studies on partitions reveal a sensitive frontier between the norms and facts as well as morality and practicality. Its most fervent critics say that partition does not solve the problems, but produces and multiplies them in time and space.29 In case of the nationalist solution, the state purifies its discursive space from “the other”, thus making dialogue no longer possible,30 or validates the process of ethnic cleansing, thus forcing minorities either to assimilate or to move.31 Sumantra Bose even goes so far as to claim that in the case of protracted conflicts, partition is “breathtaking not only for its abject poverty but its sheer, senseless absurdity”, and equates it with dementia.32 Perhaps a conventional policy response to partition can never completely answer the question as to whether partition is a

28. Ibid., p. 170.
31. Keane, op. cit.
solution to conflict, or by itself a conflict. Is it a classical separation-of-forces agreement to be followed by peace, or a lengthy process of face-to-face positioning of forces?\(^{33}\)

Chaim Kaufmann is a well-known proponent of partition as the solution for a persistent conflict. He claims that separation and partition “can be justified only if they save the lives of people who would otherwise be killed in ethnic violence”.\(^{34}\) In Kaufmann’s frame of analysis, this kind of security dilemma is not resolvable, and therefore separation of the hostile groups and the establishment of homogeneous political units for each of them become inevitable; otherwise the process of war will separate the populations anyway, at a much higher human cost.\(^{35}\) In Bose’s view, Kaufmann simply ignores the practical difficulties and dilemmas of drawing partition lines.\(^{36}\) Good borders do not necessarily make good neighbours unless the mutual acknowledgement of partition is present.

Despite the moral deficit that partition may endorse, one cannot deny that “violence is so relevant in the process of state reconfiguration and makes the groups of population believe that a common political experience cannot be shared any more by putting them under a different context”.\(^{37}\) Surprisingly enough, even Bose finds difficulty in determining whether shared sovereignty is a durable political alternative to partition. At the same time, he is convinced that a layered-sovereignty model may provide the basis of bridging the gap between the reality of fragmentation and the imperative of those divided: “The final element of the challenge is to make a virtue out of porous borders and intertwined economies and cultures, to transform the cultural, economic and other ties that spill across the borders of states from a problem into an asset.”\(^{38}\) This sounds good and morally justified but the prospects for federal solutions in a de-territorialised world remain only theoretically wide open. Practically, the chances of success may not be that great.

Despite the vast literature on different constitutional designs and power-sharing schemes, most of the earth’s land remains claimed as a homeland by one or another distinct (and exclusionary) group in such a way that it becomes a zero-sum game. Successful federation of deeply divided societies requires sincere political will and determination, which have been manifestly lacking in partitioned states. Even Arend Lijphart has conceded that in cases where consociationalism has been tried and failed, dividing the state into two or more separate units is the only viable alternative.\(^{39}\)

The problem with consociationalism is that it recognises the collective identities and excludes the others while “institutionally entrenching those cleavages”.\(^{40}\)

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37. Stefano Bianchini, “Conclusion”, in Bianchini et al., op. cit., p. 163.
40. Bose, op. cit., p. 247.
This may lead to the freezing of multiple identities and validating of fragmented politics that do not encourage the development of a wider solidarity. What Scott Pegg offers is the de facto state solution, which “does not preclude other future settlement possibilities”. Although he argues that the existence of a de facto state cannot become an obstacle to any kind of power-sharing in the future, this paper considers this option most unlikely to occur given the partition logic and reification of borders and distinct identities. In many cases, partition, however, does not open up possibilities for new forms of dialogue.

Illegal States in a Post-modern Setting

According to Bianchini, “partition embodies the political will of distinguishing a group from another territorially, by meeting group identities, group loyalties and power needs for the elites”. Whenever the power of a state collapses, there is always a new, factually sovereign entity ready to occupy the power vacuum that emerges in the aftermath of that collapse. But the problem here is that the discipline of international law has not been able to establish a legal procedure, as opposed to the international community’s political will, by means of which newly emerging entities may be granted or denied juridical sovereignty. Self-determination remains an essentially contested concept because consensus has never been reached on such key points as who the self is or whether self-determination is a political principle or a legal right. Moreover, if self-determination is a legal right, does it include secession?

De facto states result from the strong secessionist bid and the unwillingness of the international system to condone secession. They carry out the normal functions of the state on their territory but they are not sanctioned by the international order. Instead, other states and interstate organisations continue to refer to them as illegal entities. “They have a legal status that is uncertain, an international standing that is indefinite, a legal existence that is often relative, and a security situation that is at times precarious” is how Kurtulus defines their condition. It is indeed surprising that where de facto states ask what they have to do in order to be able to establish a subject status under international law, “the lawyers and scholars have nothing to say but to refer them to the brutal contingencies of international relations or the unpredictable caprices of great power politics”. On the other hand, John MacGarry argues that the best option for granting them legitimacy in the eyes of the international community is “a negotiated re-entry resulting in a decentralised federal system combined with consociational power-sharing”. But the problem is that many new constitutional designs which have the legitimising value and have been recognised by the international community are in fact dysfunctional because they are often imposed from outside and have little match with the facts on the ground.

41. Pegg, op. cit., p. 196.
42. Stefano Bianchini, “Partitions: Categories and Destinies”, in Bianchini et al., op. cit., p. 49.
43. See Kurtulus, op. cit.
44. See Buchanan, op. cit.
45. See Pegg, op. cit.; Bahcheli et al., op. cit.
47. Ibid., p. 190.
As a result of the enduring compromises between facts and norms we are faced with “an absurd combination of states and would-be states in a legal fog” while the conservatism of international norms on the genesis and prerequisite conditions of statehood remain powerfully formidable and consequently contradictory. Given the precarious situation, one may question whether the post-Cold War era international society should adopt a broader and more accommodating view of all self-determination. Are there alternatives to a traditional political order, which stick to modern categories of borders and statehood while openly promoting post-modern solutions to modern conflicts?

Vaclav Havel once stated that human freedoms represent a higher value than state sovereignty and that international law protecting human beings must be ranked higher than international law protecting the state. The NATO intervention in Yugoslavia showed disrespect for the alleged rights of recognised states and governments, thus emphasising the alleged rights of people to challenge their governments in certain circumstances and to secede from their jurisdiction. This would allow observers to state cynically that the international community recognises humanitarian principles selectively and supports the existence of states only on paper and under the watchful eyes of international troops. NATO intervention in Yugoslavia violated the same legal principles that do not allow self-determination of peoples, namely fixed borders and territorial integrity. Again, the core of today’s conflict is about sovereignty and its modern interpretation.

Thomas Diez argues that “post-modernisation would allow for a sustainable solution to the territorial conflicts over sovereignty and identity”. He draws the example from the European Union where minorities are protected and regions recognised as political subjects within the acquis, where territory is supposedly losing significance and borders are becoming equally less important while being subverted by increasing cross-border flows. As the final outcome would be the transformation of sovereignty then one can hardly countenance a domestic monopoly of power and international non-interference. But in vain. Although, the resources offered by a non-state framework created the potential for a win-win agreement in Cyprus, it did not materialise because EU actors overlooked the reasons motivating the Greek Cypriot drive for membership, reasons that were inherently linked to their position in the (modern) conflict and in the (modern) conflict-settlement efforts.

Rory Keane presents an equally challenging approach to modern conflict resolution, assuming that the nation-state is the anachronism of the past, which has to be deconstructed for the sake of peace and human dignity. He sees the solution in the “disaggregation of power from the centre and in simultaneous emancipation of peoples”. His theoretical escape route attempts to challenge the modern

49. Bartmann, op. cit., p. 12.
50. See Thomas Diez (ed.), The European Union and the Cyprus Conflict: Modern Conflict, Postmodern Union (Manchester: Manchester University Press, 2002).
54. See Tocci, op. cit.
55. Keane, op. cit., p. 3.
definitions of sovereignty and territoriality, thus eroding the exclusionary dichotomy of identity versus difference. He is also concerned about human security and believes that only “dispersal of sovereignty can replace the power configurations created under the Westphalian model and enable a society to challenge the conflicts of the past and the present”. Unfortunately, this escape route does not provide an exit from the vicious circle because “the emancipation of peoples” may bring about the sharing of state sovereignty but not of the territory that these peoples inhabit.

Although a de facto state may have an unconventional solution to a secessionist problem, it stands squarely with two feet on the ground. While few would argue that a de facto state always represents a just, fair, legal, and optimal settlement to a secessionist conflict, its effectiveness in terms of stabilisation and communal security is a more valuable asset than a post-modern dream. The unacknowledged yet “legal” de facto statehood of Republika Srpska coexists within the framework of preserving existing sovereign states and maintaining fixed territorial boundaries. This compromise relationship between facts and norms may have some considerable attractions for international society in that norms are preserved and legal secession is not allowed, thus serving as a kind of template for a future evolution of a de facto state. Martin Dent sees this status of “sovereign land in a larger independent country” as an acceptable substitute for independence.

Legitimating Modern Solutions

While the international community and the United Nations have not shown any willingness to accept the independence of new states formed by the break-up of the old ones, there have been calls “to create a new system which has elements of federalism but at the same time goes far beyond it with independent home rule and self-defence privileges”. This fits into the current sovereignty regime but there is still valid concern as to whether this kind of power-sharing constitutes a remedy, thus satisfying both conflicting parties equally. This paper examines, from a comparative point of view, recent attempts to resolve persistent conflicts through power-sharing in three partitioned states, namely Cyprus, Moldova and Bosnia & Herzegovina. Both Cyprus and Moldova face the complex realities of de facto states. Bosnia & Herzegovina, on the other hand, has shared power among the constituting political entities without ending partition.

Why choose these states and not others? Cyprus and Moldova are comparable because the continuing conflicts in these states demonstrate similar patterns. First, both conflicts evolved from the same ground: Turkish Cypriots were dissatisfied with the Greek Cypriot irredenta with Greece, and thus seceded. Similarly, the formation of Transnistria was a reaction to the Moldovan language law and to the lack of self-determination guarantees should Chisinau decide to rejoin Romania. Second, both conflicts involve influential external players: the TRNC relies on Turkey, and Transnistria is supported by Russia. Third, both conflicts have been frozen for decades and various federalisation plans have contributed

56. Ibid., pp. 27–28.
58. Ibid., p. 3.
very little to peace making. For comparative purposes, it is important to include Bosnia & Herzegovina where, in the absence of a federal solution, territorial claims would have been made by neighbouring Croatia and Serbia. In order to stop the fighting and ethnic cleansing, international observers advocated a power-sharing scheme, which separated conflicting parties by establishing political entities, one for Bosniaks and Croats, the other for Serbs. Although the Federation of Bosnia & Herzegovina and Republika Srpska do not enjoy international recognition, these peace-making products are de jure federal subjects, even though the problem of partition has not been resolved. The Dayton agreement has frozen a de facto partition, transforming it into a durable administrative separation.

A State in Limbo

Bosnia is a society divided on the most basic issues—the question of legitimacy of the state, its common institutions and its borders.59 The eventual settlement of the Bosnia dispute between the Serbs, Croats and Bosniaks came through international coercion. Today, most of the Bosnian Serbs and Croats oppose a united Bosnian state while most of the Bosniaks refuse to acknowledge the “equal treatment of aggressors and victims” and therefore demand a new constitution to replace the Dayton agreement. The post-war state is “a legal fiction”60 and the internationally validated sovereignty holds to the point where neither Croats nor Serbs can accede officially to their mother countries. “Several civilian aspects of the agreement remain ink on paper, refugee returns are insignificant and the common institutions are frail.”61 The architects of Dayton have largely failed to create a single multi-ethnic country with functioning state structures and the implementation of its sovereign practices in Bosnia.

The Dayton agreement maintained the 51% to 49% division between the Federation of Bosnia & Herzegovina and Republika Srpska. It attempted to create a central government and two semi-independent regional entities. The constitutional model in Bosnia is “clearly based on a conception of diffuse, layered sovereignty and citizenship”.62 It allows multiple forms and levels of citizenship. The entities possess all residual powers and functions, and they are empowered to establish and develop special parallel relationships with neighbouring states. On the one hand, the governmental structures imposed by Dayton dilute the power and responsibilities of the central authorities. On the other hand, the common institutions become ineffective due to the obstructionist policies of ethnonationalist parties.63 Post-Dayton Bosnia enshrines an undivided territory, which is mutually exclusive despite the shared sovereignty. There is a fear that such disaggregation of power away from the centre may encourage Republika Srpska to strive for self-determination and an independent state, thereby alienating the Bosniaks and Croats living in, or wishing to return to, the entity.

Bosnia & Herzegovina became a state in limbo immediately after the declaration of independence in 1991. It was unable to procure the empirical properties

59. For more about Bosnia, see Florian Bieber, Post-war Bosnia: Ethnicity, Inequality and Public Sector Governance (Basingstoke: Palgrave Macmillan, 2006).
60. Bose, op. cit., p. 25.
of statehood since it did not have an effective government and a clearly defined
notion of what Bosnia & Herzegovina is, where the state borders are and who
the people are who form its citizenry. The final settlement of the conflict (1992–
1995) entailed a de facto partition of the territory and left the nature of the relations
between these subunits and the neighbouring foreign states of Croatia and
Yugoslavia, now Serbia, undefined. Finally, Bosnia & Herzegovina did not have a
permanent population, partly due to the fact that it lacked an uncontested territory
and partly due to ethnic cleansing.64 At the same time, Republika Srpska became
the epitome of “aborted statehood”.65 It exhibits extensive autonomy in the
conduct of its internal affairs and a large margin of independence in the conduct
of foreign relations while entering into agreements with foreign states and inter-
national organisations with the consent of the state assembly and consistent with
the state’s territorial integrity. Although there is a unified citizenship, there is also
an entity citizenship. “All governmental functions and powers not expressly
assigned in the Constitution to the common institutions of Bosnia and Herzegovina
fall immediately within the preserve of the entities.”66 Bose argues that the main
goal of the framers of the Republika Srpska Constitution was to convey that it
closely approximates a sovereign state declaring that “it shall be the State of Serb
people and of all its citizens, and that the territory of the Republic shall be
unique, indivisible and unalienable”.67 As the Dayton agreement has virtually
made the Republika Srpska a state within a state, a status the majority of Bosnian
Serbs are determined to preserve, one may question whether formal partition is
necessary at all, as long as de facto statehood coincides with quasi-federation
structures in an overtly normative legal framework.

Given that the Dayton settlement is a consociational formula, which tends to
work only in moderately divided societies, and that the views of the three
Bosnian communities are all more or less equally legitimate, there are disadvan-
tages in imposing power-sharing schemes from outside.68 Susan Woodward has
observed that “entity leaders can choose intransigence and delay when a decision
would be unpopular with constituents or colleagues, also that the parties have
capitalized on the benefits of cooperation without incurring the domestic cost of
compromise”.69 Not surprisingly, Bosnia’s joint institutions have failed to function
because every issue has been viewed in zero-sum terms, while all the break-
throughs have required significant time and effort on the part of the international
community.

The current weakness of federal institutions in Bosnia & Herzegovina and
the existence of problems which are pending cast doubt on the solidity of the

64. Kurtulus, op. cit., pp. 93–95.
65. Zahar, op. cit., p. 32.
66. Ibid., p. 44.
68. Michael Kerr argues in his book that “consociational government is not a model for long-term
ethnic conflict resolution but should be viewed as a tool for conflict regulation, provided that a stable
external environment exists to guarantee the political structures”. Perhaps, this argument holds in
certain cases, such as Northern Ireland and Lebanon, but it has serious limitations in the case of
Bosnia and Herzegovina. See Michael Kerr, Imposing Power-sharing: Conflict and Coexistence in Northern
69. Susan Woodward, “Transitional Elections and the Dilemmas of International Assistance to
Bosnia and Herzegovina”, in S. Riskin (ed.), Three Dimensions of Peacebuilding in Bosnia: Findings from
arrangement. Concrete developments have usually come about because of external pressure rather than domestic will. Is the preservation of a multinational state feasible in a situation where the vast majority of its citizens belonging to two of the three constituent communities of that state only reluctantly acknowledge its legitimacy? While not denying that any revision of Dayton will reopen issues lying dormant since the war, and these issues are of a zero-sum nature, it is not possible to make the conflicting parties equally happy and accept the partition in real terms. At the same time, as long as formal partition has not taken place and power-sharing leads to a dead end, instability and an international presence continue to be the order of the day. Moreover, time is not on the side of the status quo since relatively bad solutions may still be better than the possibility of no solution.

There are three lessons one should consider before applying the Dayton model of power-sharing to other persistent conflicts in the partitioned states of Cyprus and Moldova. First, one may easily agree with Diez’s suggestion that “the constitution needs to be complex in order to justify otherwise exclusionary identities, but it must be simple enough to work”. Second, the settlement cannot be imposed from outside, while at the same time using the normative discourse which promotes unity and separation. Notions such as territorial integrity, communal security, and fixed borders are used in contemporary reasoning irrespective of the presumed goals—power-sharing or partition. And finally, the inconsistent legal framing of secessionist problems tends to produce states in a limbo, quasi-federations which lack factual sovereignty and configure a separation of two or more political subjects despite the preservation of a common roof that is more a formality than a reality.

Why Partition in Cyprus and Moldova?

In many ways, partition may indeed be a last resort, “a combination of the needs for self-determination and territorial expression”, as Stanley Waterman has put it. Rapprochement seems to be the least likely stage in the development of the relations between partitioned states for the separation acts as a factor providing peace and stability, at least for the party which opts for partition. What Greek Cypriots consider as a “problem of the divided island”, Turkish Cypriots see as a “solution for ethnic co-existence”. In the context of a zero-sum game, neither side will be satisfied with the final outcome: taksim (partition) is a counter-claim to enosis (union) in Cyprus and the Soviet-type of multiculturalism resists Romanisation in Moldova.

The problem of recognition is strikingly demonstrated by the example of statehood symbols where each community uses the anthem and displays the flag of its respective “motherland” in Cyprus. Moldova’s attempts to emancipate itself from the Soviet centre in 1989 involved giving Romanian the status of an official language, and adopting the Romanian tricolour with a Moldovan coat of arms together with the Romanian national anthem. Both Cyprus and Moldova

70. Diez, op. cit., p. 10.
71. Waterman, op. cit., p. 151.
denied the political equality of the major ethnic communities and the titular nations in state formation. Although bi-communality was stipulated in the 1960 Constitution of Cyprus, and minority rights were fully respected in Moldovan constitutional acts in the late 1980s, both states became dysfunctional.

After the Greek support of a coup in 1974 to overthrow Archbishop Makarios’ regime in Cyprus and to set the course towards unification with Greece, Turkey intervened with the aim of re-establishing the state of affairs guaranteed by the basic articles of the 1960 Constitution. Whereas Greek Cypriots represented the Republic of Cyprus internationally and denied any international role for the Turkish Cypriots, they continued to think of inter-communal relations in terms of a majority–minority relationship and thereby pushed the Turkish Cypriots to a position of separation. The military conflict of 1990–1992 was the result of Moldova’s attempt to achieve territorial control over the breakaway region, and subsequently provoked the Russian 14th Army to intervene for the sake of Russophone rights to self-determination. Following the war in 1992, Moldovan representatives aimed at restoring national unity by granting special constitutional and legal status to Transnistria. While categorically declining offers of territorial autonomy within Moldova as well as federalisation of the country, the Transnistrian leadership insisted on the model of a confederation consisting of two equal and independent states.

Although the TRNC and the TMR have not obtained international recognition in recent decades, they both have most of the attributes of an independent state. For security reasons, Turkey has kept its troops on the territory of the TRNC (30,000) and Russia has secured its involvement in the peacekeeping forces in the TMR (2,500). A large immigrant community from mainland Turkey clearly contributes to the preservation of the “Turkish dimension of Northern Cyprus”. The same tendency appears in the TMR where its residents emphasise the multi-ethnic character shaped by Russian influences. Transnistria has striven to become a sovereign CIS republic, a third partner in the Belarussian–Russian Federation, or even to gain the status of “second Kalingradskaya oblast”, that is, to become part of the Russian Federation. In the view of the TRNC leadership, it could be incorporated into Turkey, strive for independence or fit into some sort of confederation or federation scheme with Cyprus. But the prolongation of the status quo, as a de facto state, might be an appealing perspective for both the TRNC, and for the TMR.

Both communities in Cyprus recognise the necessity of a federal solution but these perspectives differ significantly from each other. The Greek Cypriots are supportive of a federal state whereas the Turkish Cypriots are in favour of

78. Troebst, op. cit.
79. Groom, op. cit.
80. Bindebir et al., op. cit.
confederation. This is mainly because Turkish Cypriots are concerned that they might become an impoverished minority while the Greek Cypriots fear that the TRNC might become a sovereign state. From 1975, when inter-communal talks began in Cyprus, both parties have continuously declared that they seek an independent, non-aligned, bi-communal federal republic where the independence and territorial integrity should be adequately guaranteed against union in whole or in part with any other country and against any form of partition or secession.\(^{81}\) But when it came to making a peace deal, the difficulty lay in the sensitivity of the Greek Cypriots to anything which might be held to constitute a recognition of the state of North Cyprus and the sensitivity of the Turkish Cypriots to anything which might seem to recognise the right of the Greek Cypriot authorities to call themselves the Government of Cyprus.\(^{82}\)

Although the specifics of the various peace proposals, memoranda and draft agreements have changed, the nature of the debate between the parties in Moldova, such as whether the plan should be conceived as a federal or confederal solution, has remained the same.\(^{83}\) While in the beginning Moldovan leaders insisted on territorial integrity, the breakaway republic spoke out in favour of a contractual federation consisting of two states with equal rights.\(^{84}\) But when a special legal statute of autonomy with considerable rights for self-government was presupposed for the TMR in 1995, the TMR leadership had moved a step further by this time, while consolidating its statehood and searching recognition from outside. Steven Roper suggests three basic reasons why there has been little movement in power-sharing.\(^{85}\) First, there is the issue of the equality of constituent parts, resisted by Chisinau. Second, Transnistria wants its final status ratified in a state-to-state treaty and not stipulated by law. Finally, many Moldovans oppose the federalisation of the country, while Transnistria still maintains that any solution must involve the creation of a confederal state.

**The Search for a New “Dayton Plan” for Cyprus and Moldova**

Since independence, both Cyprus and Moldova have been divided far longer than they have been united. The internationally recognised governments that play host to these unrecognised entities in Cyprus (TRNC) and in Moldova (TMR) have continually called for outside help in settling disputes. Intermittent partial agreements on specific issues have been reached but only some have been partially implemented. The UN General Assembly has adopted countless resolutions, so have the European Parliament and the Organization for Security and Co-operation in Europe (OSCE).\(^{86}\) Principles have been laid down and sometimes agreed upon. Moments of peace have come and gone. All of this has led to

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\(^{81}\) See Groom, *op. cit.*


\(^{83}\) See Roper, “Federalization and Constitution-making as an Instrument of Conflict Resolution”, *op. cit.*


\(^{86}\) More about this is available in *European Stand on the Cyprus Problem*. Resolutions adopted by the Parliamentary Assembly and the Committee of Ministers of the Council of Europe and the European Council and the European Parliament of the EU (Nicosia, 2001).
nothing. Despite the committed efforts of negotiators in the field, none of these disputes are really any closer to being resolved.

When the European Union officially opened membership negotiations with the Republic of Cyprus in March 1998, a widespread assumption in both EU and academic circles was that these negotiations would have a catalytic effect on the Cyprus conflict and a federation would finally materialise because the EU structures would provide the right framework for solving the Cyprus problem. At the same time, following the election of Moldovan President Voronin in 2001, there was a great deal of optimism that a conclusive status could be negotiated for Transnistria. During the parliamentary election campaign, the Moldovan Communist Party had proposed the elevation of Russian to a second state language, and Moldovan membership of the Russia–Belarus Union.

The Annan Plan (named after UN Secretary-General Kofi Annan) for Cyprus went through four versions starting in November 2002 until it ended up with a fifth version and 9,000 pages of federal laws. That version was agreed as a basis for the negotiations, which resumed on 19 February 2004, and eventually was put to a referendum in both parts of partitioned Cyprus on 24 April 2004. Most importantly, the Annan Plan provided territorial integrity allowing Cyprus to speak and act with one voice internationally, and to fulfil its obligations as an EU member state. The Plan provided for a United Cypriot Republic with a single international personality, sovereignty and citizenship, safeguarding its independence and territorial integrity, and comprising two politically equal constituent states in a bi-communal and bi-zonal federation. On governance, it provided for a form of government at the centre which reflects and guarantees the political equality of Greek Cypriots and Turkish Cypriots but also represents the significantly larger numbers of Greek Cypriot citizens in a democratic manner. On territory, the Plan allowed a majority of displaced Greek Cypriots to return to their homes under Greek Cypriot administration while minimising the adverse impact upon the lives of Turkish Cypriots.

At the end of 2003, Dmitry Kozak, the Deputy Head of the Russian Presidential Administration, introduced a new draft memorandum on the basic principles of the state structure of a United State of Moldova. According to this proposal, the territory of the federation was composed of the territory of federal subjects (Transnistria and Gagauzia) and federal territory (the rest of Moldova). The federation was considered subject to international law but federal subjects could also be members of international organisations, in which de jure recognition was not a mandatory condition, maintain international relations, conclude international treaties on their own and establish representation in other states that did not

87. See Diez, op. cit.; Tocci, op. cit.
92. Gagauzia or Gagauz Yeri is an ethnic homeland of the Turkish-speaking Orthodox population in the Republic of Moldova. Since 1995 it has enjoyed considerable autonomy over its internal affairs and therefore has been considered a close ally to the Transnistrian separatist regime.
have the status of diplomatic representations or consular establishments. The status of the TMR was upgraded compared to earlier proposals. It was supposed to become a state entity within the federation (just like in Bosnia & Herzegovina), which formed its own state structures, had its own Constitution, state property, independent budget and tax system, as well as its own state symbols and other attributes of statehood.

The Annan Plan sought to ensure that the identity of Cyprus and its constituent states is maintained. But this did not convince the Greek Cypriots who decided to reject the Annan Plan in the referendum, with 75.83% of voters saying “no” to the federal solution. The very rejection of the UN plan by Greek Cypriots in the referendum weakened Turkish Cypriot backing for negotiating any future power-sharing arrangement in a simple calculus: since they had agreed to the Annan Plan, they do not need new negotiations. While being factually outside the EU and acquis communautaire but at the same time enjoying the gradual lifting of economic isolation, the existence of the TRNC is strengthened as a result of these sticks and carrots.

Moscow’s draft Memorandum allowed some political analysts to make rather pessimistic remarks, pointing out that the federal structures proposed for Moldova would not have any control mechanism over the federal subjects since the law enforcement powers would coincide with the separate units. As a consequence, Chisinau would be in a position to ask the Memorandum authors in Moscow to interfere and compel federal subjects to comply with the Memorandum provisions. Bearing this in mind, large protest meetings began, with considerable support from the OSCE and the European Union, to reject the Kremlin’s unilateral peace deal, after which Moldovan president Voronin declined to sign. Again, a de facto state found itself in a position where conditions to reach the final settlement were satisfactory but the host state refused to accept power-sharing along the lines that had a precedent in the form of Bosnia & Herzegovina. Dayton has provided an example that encourages de facto states in legitimising their existence and discourages the partitioned states in giving up their sovereignty claims.

Conclusions

Against all predictions, the accession of Cyprus to the European Union did not solve the “Cyprus problem”; the Communist regime change in Moldova did not produce mutual understanding in peace talks with the counterpart in Transnistria; the Dayton peace process has not succeeded in bringing the conflicting parties closer to each other but instead has provided for de facto states in a politically correct way. The reasons that explain these failures lie in the notions of sovereignty and territoriality and their applications in the (post-)modern world. This theoretical incursion and empirical evidence has attempted to demonstrate how contested identities and representation of the “self”, undivided territory and shared sovereignties, the normative basis and facts on the ground still contribute to matters relating to mutual relationships between partition and power-sharing.

Perhaps it is more appropriate to keep a low profile and talk about conflict management instead of conflict resolution unless one has a magic stick to wish away deeply protracted conflicts. These conflicts take place in a real world in real terms: who has the sovereign right to impose control over a piece of land? Whereas territory is perceived largely as an indivisible issue and sovereignty as a shared property, power-sharing schemes tend to fail because of the incompatibility of the core demands. Although a new sovereignty game and post-modern settlement of modern conflicts allow us to combine nebulous and factual aspects of ethnic coexistence as well as to talk about diffused power and fuzzy identities as an asset, it does not offer a recipe as to how to end a zero-sum game and provide communal security.

This cannot be a normative legal framework either, which is implemented inconsistently. On the one hand it relies on the very notion of territorial integrity and fixed borders (at the state level), but on the other it promotes the erosion of internal divisions and group boundaries (at the national level). Sometimes humanitarian intervention outweighs Westphalian principles of independent statehood (as in Yugoslavia), but most do little to stop human suffering and provide communal security in partitioned states where there are legitimate secession claims. The conditions for recognised statehood have changed radically in recent decades, with the abandonment of viability criteria.

Little emphasis is placed on states’ survival and functioning. The international community does not seem to be interested in credibility issues (is a state effective and functioning?) and denies a state’s durability and authenticity (is there popular support from a distinct group?). If the declaration of group or state independence is seen as an illegitimate act, given an unsupportive international law, then how can externally imposed peace plans be legitimate given the reluctance of the conflicting parties to accept its provisions? In this sense, the concept of legitimacy conveys more than the acceptance derived from legal recognition, giving a new impetus to related topics such as factual sovereignty in a legal framework and a de facto state in international relations. Due to the incompatibility of facts and law, power-sharing results in the partition of states.

As we can see from the Dayton plan, there are no longer either/or questions on the (modern) conflict-management/resolution agenda, yet the (post-modern) settlement has not made territoriality issues irrelevant or given rise to a shared sovereignty in such a way that group boundaries disappear. Power-sharing is premised on the will of the parties to compromise, but federal representatives of the three Bosnian ethnic groups have not demonstrated such a will. Relying on a strategy of control and influence, ethnic territoriality claims have created new conditions for conflict in Bosnia & Herzegovina and imposed new boundaries, despite the wishful thinking of escape routes from the Westphalian sovereignty regime.

This paper has also demonstrated that territoriality still shapes the political map in the so-called post-modern world through the analysis of the two frozen conflicts in Moldova and Cyprus. Each being de facto partitioned into two separate states with functioning administrative apparatuses and economies, Moldova and Cyprus on the one hand, and the TMR and the TRNC on the other, have not been able to reach a compromise on territorial and administrative arrangements, because each side in both conflicts securitises the status quo and perceives the future outcome as a zero-sum game. In other words, being de facto partitioned
is perceived as a threat to the internal security and state identity of Moldova and (Greek) Cyprus but at the same time any re-unification attempts increase the insecurity of the TMR and the TRNC. As for external plans, the federalisation attempts proposed recently in the Annan Plan and the Kozak Memorandum as possible solutions have failed to convinced the people and government.

One might assume that the reason for the failure of power-sharing lies in the fact that the TMR and the TRNC were not willing to abandon control over their territories in return for legal recognition from the Moldovan and Greek Cypriot-controlled central governments. In fact, the situation was the opposite in that it was the host states that rejected the federalisation plans. With the implementation of the federal structure, the central governments of Cyprus and Moldova would have to grant a legal status to and reduce their future control over the federal entities of the TRNC and the TMR. Although at present Nicosia and Chisinau do not have any control over the separated territories, they are not willing to settle for an agreement granting a legal status to the TMR and the TRNC with the risk of not having full control and perpetuating their separation. They prefer to keep the unrealistic option of full control of the total territory open. This is what they have learned from the dysfunctional state apparatus of Bosnia & Herzegovina as a contrary experience to their own (recognised) sovereignty monopoly, which they enjoy due to the presence of favourable and biased legal conditions. As long as these contradictory elements of defining statehood and judging sovereignty issues remain firmly in place there is no reason to expect much power-sharing in managing persistent conflicts in the near future.