

# Guaranteeing Federalism In Post-Conflict Societies

## Abstract

*Federalism is at the heart of many current and proposed conflict resolution settlements. It provides territorially concentrated groups, usually those that are minorities within the wider state, with autonomy over a range of matters. Yet such arrangements are often unhappy compromises, with identity groups pursuing higher levels of autonomy, up to and including secession or unification with a neighbouring kin-state, and central government seeking to limit the level of autonomy to retain power and protect against state break-up. The compromise nature of such measures and the post-conflict context in which they operate makes them inherently unstable. This paper assesses the potential of guarantee mechanisms to overcome the innate instability of federalism as a conflict resolution mechanism by examining two cases, Bosnia, and Iraq, where federalism was a key element of a political agreement aimed at ameliorating intra-state group based conflict.*

## Introduction

Federalism, or the broader concept of territorial self-government, is central to many current and proposed peace accords. It can provide territorially concentrated groups, usually those that are minorities within the wider state, with autonomy over a range of matters. Such autonomy can help to ameliorate intra-state identity conflicts by meeting the different identity groups' needs for both security and recognition (Keil and Anderson, 2018). Yet the compromise nature of these arrangements, with identity groups pursuing higher levels of autonomy and central government seeking to limit the level of autonomy, and the post-conflict context in which they operate makes them inherently unstable (Walsh, 2018a). This paper explores how such instability creates a demand for the inclusion of guarantees which can provide all groups with reassurance that the agreed federal arrangements will be respected and that there will be no unilateral efforts to alter them. Such mechanisms can be built into domestic laws or be provided through the involvement of international actors.

By providing regionally concentrated minority groups with a degree of autonomy over local issues the state recognises the legitimacy of these identities and affords these groups a sense of security that the central state will not interfere in a group's internal affairs. As Rothchild and Hartzell argued 'by diffusing political power to sub-state interests, territorial autonomy can reassure minority groups about their ability to control social, cultural, and economic matters that are important to the maintenance of communal identities and interests' (Rothchild and Hartzell, 1999, 254-171). Federalism, structured to provide identity groups with self-government, also provides such groups with official recognition of their group identity. By restructuring the state to accommodate this identity the state explicitly recognises it as legitimate and moves from viewing it as something to be repressed, to framing it as officially accepted, a reality which informs the character of the state (Walsh, 2018a).

## Guaranteeing the Stability of Post-Conflict Federation

Federalism can only act as an institutional mechanism to manage conflict if the arrangements are expected to remain in place for the foreseeable future. Such arrangements may represent 'knife edge equilibrium' between national government and self-governing communities (Roeder, 2005, 59). Such delicate compromises can be easily undermined by a lack of trust which inhibits conflict parties from having confidence in the ability of the agreed arrangements to sustain.

Guarantees are valuable for central governments. They commit all parties to an agreed structure and imply that there can be no unilateral changes outside pre-agreed procedures, such as, for example, referenda provided for in the settlements, and decrease perceptions that federal arrangements contribute to state disintegration.

Guarantees are also vital for groups provided with self-government through federalism as they mitigate against what appears to be a tendency towards re-centralization. Rothchild and Roeder warned that where delegation is dependent on possibly shifting government majorities at the centre, recentralisation is a real danger (Rothchild and Roeder, 2005, 129). Without guaranteed mechanisms, federalism is dependent not only on trust between current conflict parties but on an understanding that future leaders are also trustworthy. Confidence in future events is extremely difficult to achieve in environments where trust between current leaders is low. This reinforces the need for guarantees to overcome these challenges.

Guarantees can be international or domestic. International guarantees are offered in the form of the involvement of third countries, international and transnational organisations in the negotiation, implementation, and (potentially) operation of a particular peace agreement. Domestic entrenchment can take place either through constitutional assurance or through legislation (Walsh, 2018a).

## Do these guarantees work?

### Guarantees: Bosnia Herzegovina and Iraqi Kurdistan

Constitutional guarantees were not central in Bosnia Herzegovina (BiH). In BiH, the post-conflict constitution was part of the internationally brokered Dayton Peace Agreement and as such is often conflated with the wider accord. It is more commonly referred to by international than domestic parties. However, the Kurds in Iraq have made references to the constitutional guarantees of their status as a federal unit. Despite the legal strength of constitutional guarantees, they have not been as effective as predicted in guaranteeing the stability of federal arrangements. This can almost wholly be attributed to the gap between the broad framework provided in a Constitution and the detailed provisions needed to implement federalism.

In Iraq the weaknesses of the constitutional guarantee is clearly the result of a failure to actually reach agreement on important elements of the federal arrangements. The division of powers relating to the management of hydrocarbons was subject of diverging interpretations. This prevented agreement on a federal law which would have provided details as to how hydrocarbons were to be managed and was a running sore between the Kurdish Regional Government (KRG) and the Iraqi government. Furthermore, while the Iraqi Constitution provided for a process through which the issue of the disputed territories could be resolved, it left important questions, for example eligibility to vote in the proposed referendum, unresolved (Iraqi Constitution, 2005). Continuing disagreements which are uncovered as part of efforts to develop general principles provided in Constitutions and ambiguity which results from a failure to spend time and resources clarifying federal provisions make it incredibly difficult to guarantee the arrangements.

Difficulties around non-agreement can also be seen in the Dayton Agreement in BiH. It included provisions which arguably promoted contradictory understandings of the territorial organisation of the state. In BiH there was a tension between the Dayton Accord's stated aim of encouraging refugee return and facilitating a multi-ethnic state across both federal entities and its implicit acceptance of the entities as being ethnic homelands (General Framework Agreement for peace in Bosnia and Herzegovina, 1995). No guarantee mechanisms can stabilise arrangements which are contradictory. In BiH it fell to the Constitutional Court to resolve differences between incompatible understandings of the federalism (Walsh, 2018b).

The international community, which essentially authored the Dayton Agreement and provided the only credible guarantees that it would be respected, was also a key advocate for its reform. While it is undeniable that the institutions require reform, by advocating for the centralisation of powers, different international institutions involved in BiH have pitted themselves against the Bosnian Serb leadership. The Serb leadership has accused the international community of perpetuating political crises through the 'imposition of the principle of respect towards the "spirit", and not the "letter" of Dayton (Kulenović, 2016). Bosnian Serbs can simply not trust the international community to ensure that its security will not be undermined through the centralisation of powers without its agreement.

Furthermore, while the High Representative (HR), with the support of an international military presence and other international organisations, has made vital interventions to prevent unilateral changes to the federal arrangements, the willingness and capacity of the international community to continue to play such as interventionist role is questionable. International crises elsewhere, particularly in the Middle-East, internal difficulties for the EU, and a deterioration in relations between Russia and the USA and EU in recent years, have all diverted international attention away from BiH and made unified response to recent secessionist threats from Republika Srpska (RS) more difficult (Walsh, 2018a).

The US presence acted as a guarantee of Kurdish autonomy protecting them from any attempted centralisation from Baghdad (Wilgenburg, 2012). However, the Kurds were wary of proclaimed US support, acutely aware of the fickle nature of such support and recalling in particular the 1991 betrayal, when George H.W. Bush encouraged the Kurds, and Shia, to rebel against Saddam Hussein, but then failed to support them and was tragically tardy in acting to protect them against the regime's reprisals (Contenta, 2003). The temporary nature of the US guarantee came sharply into focus in 2007 when the US government began to plan for a withdrawal from Iraq.

Given that the Kurds had been repeatedly forsaken by the US government when strategic priorities shifted, the Kurdish Regional Government (KRG) sought to develop additional international relationships which could support and protect its

federal status. Central to this strategy were the KRG's efforts to enter directly into oil contracts with international companies, without the involvement of the federal government. While this strategy escalated tensions with Baghdad, the Kurds viewed these contracts as strong mechanisms to guarantee their autonomy. KRG President Masoud Barzani argued that 'if ExxonMobil came, it would be equal to 10 American military divisions. They will defend the area if their interests are there' (Owtram, 2014).

However, it is questionable whether the Kurds wanted to simply use these contracts as 'a commercial bulwark against renewed southern Iraqi aggression' or whether they felt that these contracts could be used to facilitate a unilateral movement towards independence (Webster, 2009). It seems highly unlikely that international oil companies would be perturbed by the unilateral nature of any Kurdish moves towards independence, rather it is more likely they would oppose any response from the federal government or the international community that undermined their commercial interests.

## Conclusion: The Importance of Guarantees

Combining domestic and international guarantees offers the best possibility of ensuring that federal arrangements are stable and operate as an effective conflict management mechanism. Strong domestic guarantees, such as constitutional entrenchment, combined with international intervention which is flexible to address the shifting domestic environment, can convince the domestic actors that federalism will not be unilaterally altered and can avert such actions when they appear imminent. International actors need to be constantly vigilante and consider the impact of any policies on TSG (Walsh, 2018a).

There is an instability which is intrinsic in federalism and this increases where it is used as a conflict management mechanism. However, every form of social organisation has its own inherent contradictions. The challenges which undermine the use of guarantees in consolidating federalism may suggest that it should not be used as a conflict management tool. Yet it is often the only solution which is acceptable to the state and the group seeking greater autonomy and as such it is paramount that scholars and practitioners develop an understanding of how to best counter instability and overcome the challenges which weaken the guarantees (Walsh, 2018a). To produce peace federalism institutions must reconcile the competing needs for group autonomy and a cohesive central state *and* ensure that this delicate balance is not violated.

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