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Solutions and Failures in Identity-based Conflicts

The Autonomy of Trentino-South Tyrol
in Comparative Perspective

Edited by

Filippo Andreatta

Emanuele Castelli

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Preface

Filippo Andreatta

This book is the outcome of a collaborative research project financed by the Fondazione Cassa di Risparmio di Trento e Rovereto, which awarded a generous two-year grant in 2012, and the Foundation for World Wide Cooperation, founded by Romano Prodi. The project was coordinated by the University of Bologna and the Research Project on International Politics and Conflict Resolution of the Fondazione Bruno Kessler in Trento and involved two further research units at Columbia University and the University of California at Irvine. Trento provides an ideal environment to study international politics, given the presence of the university, its location on the Italian border and in the heart of Europe, and its history within the multinational Habsburg Empire.

The book has two objectives. First, to further the understanding of the Trentino-South Tyrol conflict and reconciliation. Second, to explore the possibility that the solution of this particular conflict can offer general lessons applicable to other identity-based conflicts as well. The originality of this project stems from the fact that, in the Trentino-South Tyrol case, conflict was contained below the critical threshold of civil war, whereas in many of the case studies in this volume, violence has led to civil war. The underlying hypothesis is therefore that some of the mechanisms that are at play in averting conflict can also be at work in conflict resolution.

A detailed historical reconstruction of the Trentino-South Tyrol conflict and of its termination (employing a formal theoretical model originally developed by Andreatta and Archibugi 2001, and here adapted for the particular aims of the project, as can be seen in the Appendix) has underlined the importance of trust in definitive agreements. The main ways in which to develop trust in a conflict situation are either bilateral, through compromises involving important matters for the parties (the classical example being the exchange of hostages), or multilateral, when a third party offers guarantees to the parties either as an umpire

or as a credible enforcer of punishment for defection. The case studies find that trust-building mechanisms are indeed crucial in any conflict resolution, finding that where trust is lacking, conflicts tend to continue.

Identity-based conflicts are a particular intractable form of disputes, because they frustrate many of the most common solutions for social and political tension. With groups that perceive each other as distinct, as in divided societies, neither democracy nor efficient government guarantee that grievances will be ameliorated. Elections—which usually fulfill individual aspirations for political rights—can be perceived by smaller groups as a way for the majority to dominate over minorities, and democratization has indeed proved to be the trigger for inter-group violence in many instances. Efficient government—which usually fulfills individual aspirations to welfare—can also fail to solve identity-based disputes since minorities often care about “who” governs them more than “how well” they are governed (Posen 1993; Lake and Rothchild 1996; Fitzsimmons 2008).

Short of partition or successful military repression, identity-based conflicts can then be solved by a mixture of autonomy, power sharing and outside intervention. In the Trentino-South Tyrol case, as can be seen in detail in the first three chapters of the volume by Emanuele Castelli, Francesco Raschi and Elisabetta Pulice, this has been accomplished by devolving many functions of government, by the design of regional institutions and outside intervention. These measures have produced mixed results in the other case. In the case of Catalonia, as Miriam Rossi shows in her article, devolution alone has not solved the regional grievances, even if the tension have not turned violent. On the contrary, Sinisa Vukovic suggests that in the other non-violent dispute considered in the book, that of Montenegro, success was achieved, but in this case a crucial role was played by the European Union.

The cases involving civil wars show that not always outside intervention works. In the case of Cyprus, Patrick Morgan and Elena Baracani argue, the European Union has not been perceived as partial and has contributed to increasing the likelihood of permanent partition. In the Kurdistan case, Turkish intervention may have reduced the chances for an agreement between the region and the central Iraqi government, as shown by Massimo Morelli and Costantino Pischedda in their chapter. Marco Pinfari suggests that the attempts by the coptic minority to appeal to the military government in Egypt may produce short term benefits but inhibit a permanent solution. One sided French intervention has

produced a typical situation in Mali, where the negotiations between the government and the Tuareg community encounter difficulties at the enforcement stage, as argued by Arrigo Pallotti and Lorenzo Zambenardi. Finally, Matteo Dian argues that one of the most successful negotiations considered in the volume has taken place in Myanmar, where outside pressure for democratization has also improved the conditions of the Karen minority.

In conclusion, there seems to be no easy and ready-made solution for identity-based conflicts. The Trentino-South Tyrol case is certainly a successful one, but it is not sufficient to mechanically apply its model to other situations. In part, this is due to different particular circumstances. More in general, this is due to the fact that no institutional compromise can hold without the goodwill of the individual parties as well as mutual trust. In conflict resolution, there is still no substitute for creative diplomacy and hard gained negotiation. These qualities have proved to be able to solve conflicts that appeared endless, such as the one between the protestant and catholic communities in Northern Ireland. Let us hope that they will prove to be able to produce peace in other cases in the future as well.

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Introduction

Emanuele Castelli

On 11 March 2014, after several months of unrest, the Russian-speaking population of Crimea declared independence from Ukraine, joining the Russian Federation. Six months later, on 18 September, Scotland failed to secede from the UK through a democratic referendum, despite more than 1.6 million people (or 45%) voting for Scottish independence. In the broad universe of domestic disputes, these are only the most recent cases of independence movements trying to secede from their home countries: according to the Minority At Risk Project (2009) there are currently more than 280 politically-active communal groups at risk of rebellion, protest, or repression (out of fewer than 200 states in the world). Their grievances range from ethno-nationalist motivations to religion, from self-determination to inclusion in the government. To be sure, the Crimean and the Scottish case are different to some extent: political framework (the Crimean secession was unilaterally declared in the context of a bloody civil war, which according to a recent UNDP Report¹ has produced more than 3,600 victims in less than 1 year, while the Scottish attempt at secession was pursued through peaceful means), international legitimation (the newly created Republic of Crimea has been recognized by only a few states, including Russia, while the Scottish Referendum was discussed with, and legitimated by, the UK government in London), and outcome (Crimea was able to secede, while Scotland was not). Yet, despite these differences they share an important feature, since both can be considered identity-based disputes: the latter goes back to the thirteenth century, when England attempted to take control of the then-Kingdom of Scotland, and from that time on it has resulted in several wars; the former is much more recent—Crimea was transferred to Ukraine by the Soviets in 1954—and, on the contrary, it has been mostly characterized by low-intensity tensions that had never produced an escalation in violence. Unfortunately, neither the Crimean

¹ <http://www.undpi.org/World-News/Death-toll-in-eastern-Ukraine-reaches-3682-UN.html>.

nor the Scottish case will be discussed in this volume. However, they may help in introducing the research question that has prompted the present study: why do some domestic conflicts between two parties result in open violence, while others are solved without using (or with a limited use of) force? What allows both sides, in the latter case, to come to a peaceful and durable agreement?

The role played by identity (as well as that of religion, ethnicity, and culture) in civil conflicts has often been downplayed—or worse, neglected—by the rationalist International Relations (IR) literature (Fearon and Laitin 2003). This is because sometimes identities may be manipulated (King 2004) or even constructed by unscrupulous elites (Fearon and Laitin 2000). Moreover, they cannot alone explain why, in some cases, minority groups decide to revolt, while in others they are able to coexist with each other (as in the case of Belgium, or in Switzerland). Thus, if earlier works on civil conflict onset have focused on motives for rebellion (Gurr 1970), more recent studies have stressed the role of inequality (Buhaug et al 2011; Deiwiks et al 2012), feasibility (Collier and Hoeffler 2009), problems affecting the democratization process (Mansfield and Snyder 2005), or the level of economic development (De Soysa and Fjelde 2010; Mousseau 2012). Additionally, the traditional distinction between “loot-seeking” and “justice-seeking” behaviors (also known as the “greed” vs “grievance” argument, first proposed by Collier and Hoeffler in 2004) has been dismissed as being relevant for explaining rebellion (Collier and Hoeffler 2009). Today, the trend in civil war research² seems to converge toward the integration of two different broad explanations. The first are opportunity cost arguments (De Soysa 2002; Weidmann 2009; Taydas et al 2011), which are grounded on the feasibility of rebellion. According to this line of reasoning, rebels are rational actors that evaluate both the benefits and the costs of rebellion. The second explanation, state capacity arguments (Fearon and Laitin 2003; Buhaug 2006; Fjelde and De Soysa 2009), assumes that civil wars can be prevented through the strengthening of good governance, economic development and the rule of law. Although both sets of factors (those affecting rebels’ opportunity cost and those influencing the level of state capacity) may determine conflict onset, in this volume we adopt a different approach, focusing on the negotiation phase (Walter 2001) and assuming the escalation to war to be a consequence of bargaining failure or enforcement (Fearon 1995; Powell 2006; Walter 2009). In other words, we do not try to understand

² For a review of quantitative works on civil war onset, see also Dixon (2009) and Blattman and Miguel (2010).

why civil wars occur (that is the *motives* for war, see Walter 2006 for a short literature review)—though the roots of the different conflicts will be outlined in each chapter—but we mainly focus on problems concerning bargaining and implementation. For this reason, we start from the IR literature on interstate bargaining (see, for example, Axelrod 1984; Keohane 1984; Walter 2006) and we try to apply its main insights to domestic disputes. Accordingly, we propose a simple micro-founded and game-theoretic model (Fearon 1998), that takes in account the problem of relative advantages (Grieco 1988, 1993) and can be also graphically formalized (Andreatta and Koenig-Archibugi 2001, see appendix).

The main goal is to provide some insights on conflict resolution. In particular, we aim to show that sometimes traditional solutions to identity-based conflicts, such as partition (Kaufmann 1998; Johnson 2008), consolidation of democracy (Hegre et al 2001), power sharing (Hartzell and Hoddie 2003, 2007; Weller and Wolff 2005), and power-dividing agreements (Roeder and Rothchild 2005) may not be sufficient to end hostilities. As the authors in this volume will argue, other kinds of “compensatory” solutions may have an important role in solving these types of conflicts. To be sure, we do not contend that the former solutions are useless in ending civil conflicts. On the contrary, if fairly implemented, they usually lead to a reduction in the levels of violence and sometimes even to stability. Yet, they may not be able to prompt the sides toward a mutually satisfactory solution in terms of “Pareto efficiency” (by which each party is able to enhance its own condition without making the others worse off), thus making the agreement more stable. Indeed, a Pareto optimal situation is different from the outcome of the Nash Equilibrium in the Prisoner’s Dilemma, in which each party—being afraid of ending up in the worst situation (cooperate while the other defects)—chooses its dominant strategy, which is to defect regardless of the other’s choice. Moreover, reaching a jointly-satisfactory solution (mutual cooperation) seems to be a particularly tough task in the absence of trust, credible commitment (Powell 2006), complete information, issue divisibility (Walter 2009), and simultaneity between the agreement and the enforcement phases. And, if stable cooperation is missing, the risk of war recurrence is always real and present: both parties, in this case, could come to the conclusion that inflicting damage upon their counterpart—even if they may also bear costs—could be better than the status quo.

The idea of focusing on compensatory solutions, instead of other types of solutions, comes from the analysis of the South Tyrol case,

which we use as a sort of benchmark here. Indeed, the South Tyrol dispute is an interesting one in terms of the means that have been used to reduce the level of violence between the parties and to push them toward cooperation. In this light, the 1972 institutional agreements not only avoided an inefficient outcome (war), but they also made divisible—through side payments and issue-linkage mechanisms—an issue that, to both parties, had hitherto appeared indivisible. We argue that such mechanisms may also work in other ongoing cases of civil conflicts. For this reason, the starting hypothesis has been that political-compensatory solutions (such as those that have characterized the South Tyrol case) could push parties to cooperation even in the presence of commitment problems, high levels of mistrust, and issue indivisibility. Our main aim was to understand whether these solutions can make divisible what was thought to be indivisible before (through compensation mechanisms), thus producing a more stable agreement between the parties.

The model we outline requires some methodological assumptions. In particular, we start from a broad idea of “conflict” as not just the phase of open violence between two or more parties, but as a dispute that—even when violence has ceased—may be still present politically and might potentially restart. This allows us to emphasize the negotiation phase (instead of the subsequent phase, that of the war proper) and thus to consider both those disputes that were solved without the use of force, and those that were characterized by high levels of violence. In turn, this may help to understand why, in some cases, disputants have failed to cooperate and, at the same time, which factors seem to be more relevant to compromise. Accordingly, we define an effective solution to be not simply an end to violence, but a situation in which both parties are better off, relative to the status quo. Conversely, we think that disputes tend to recur overtime as a result of bargaining or enforcement failure. Therefore, the model is deliberately a-cultural in that it emphasizes certain variables (in particular, political and economic factors) and it downplays others, such as the role of values, beliefs, and ideologies. This has the clear advantage of allowing the application of our theoretical model to a number of ongoing civil disputes, regardless of the specific cultural context: compensation—not only in terms of material returns (such as wealth and transfer of money), but also immaterial gains (such as autonomy and self-rule)—tend to be universal and more attractive for rational actors.

However, as the following case studies will show, compensatory solutions do not seem to be sufficient to end a conflict. This may be

because the issue at stake is indivisible (as in the case of control over a strategically-relevant territory), or because the result is unique and both sides can simply decide to take it or leave it. Furthermore, proposing direct and indirect compensation as possible facilitators of cooperation, even in the face of issue divisibility, does not address the problem of enforcement, as in both cases (side payments and issue linkage), once the agreement is reached in the bargaining phase, each side still has an incentive to renege on the portion of the deal that is disadvantageous to it, thus bringing both parties back to the Prisoner's Dilemma. This is because, as Barbara Walter (2001, p. 3) put it,

“The greatest challenge is to design a treaty that convinces the combatants to shed their partisan armies and surrender conquered territory even though such steps will increase their vulnerability and limit their ability to enforce the treaty's other terms”.

Indeed, on the one hand, the side that was willing to cooperate can refuse to do so after receiving compensation; on the other, the side that was willing to compensate its partner's loss, after obtaining cooperation, can simply refuse to pay. In order for both direct and indirect compensations to guarantee an actual effect on cooperation possibilities, enforcement must be contemporaneous with bargaining. The possibility of cooperation is, therefore, enhanced if the issues in questions are divisible and if compensation can take place simultaneously. Or, as the analysis of the South Tyrol case will show, if some other factor is present as a “functional substitute” for divisibility or simultaneity. This was the role played by Austria, which in 1960 decided to “internationalize” the South Tyrol dispute, requesting UN intervention. According to our model, this served as a kind of functional substitute for simultaneity between bargaining and enforcement, and it assured the agreement's stability. As the analysis of the case studies will show, although in principle all issues can find a solution with compensation, in practice the lack of divisibility and/or simultaneity can hinder agreements if levels of reciprocal trust are low. By offering solutions to these two elements, third party intervention can make up for the lack of trust between the parties in the short term, helping to avoid conflict and to achieve mutually beneficial outcomes.

The conflicts that we take into consideration come from different cultural, historical, and geographical contexts (four from Europe, two from Africa, one from the Middle East and one from East Asia). Besides South Tyrol, which is the case study that inspired the research, the vol-

ume also takes into account seven ongoing identity-based conflicts: the dispute between Greek and Turkish Cypriots, the case of the Kurdish minority in Iraq and of the Karens in Myanmar, the Catalan question in Spain, the independence of Montenegro from Serbia, the problem of the Coptic community in Egypt, and, finally, the Tuareg question in Mali. The main reason for this choice is threefold. First, *originality*, as we tried to focus on cases that are still largely understudied in the literature, such as the Egyptian and the Kurdish cases. Second, *relevancy*, since we are interested in verifying whether our model could be applied to different cultural contexts, regardless of the issue at stake. Third, *saliency*, as we mostly consider disputes that are currently ongoing in the international system.

Broadly speaking, of the eight case studies that we take into consideration, four of them can be considered successful cases of solutions to an identity-based conflict (South Tyrol, Catalonia, Myanmar and Montenegro), one case is approaching a positive solution (Iraqi Kurdistan), and one has been a failure (Cyprus), as, in this case, both the Greek and Turkish communities have failed to reach anything but mutual-defection equilibrium, and they still live under partition. In the final two cases (the Tuareg minority in Mali and the Coptic community in Egypt), the conflict has recently resurfaced and its resolution is still uncertain, being affected in both cases by the evolution of the Arab Spring and by the perspective of regional stabilization.

All disputes have been characterized by early episodes of violence between the parties, which took the form of repression or assimilation attempts by the central government (as in the South Tyrol, Catalonia, Iraqi Kurdistan, Myanmar, and Mali cases), periods of militarized tension between the groups (Montenegro), or as a consequence of a demographic imbalance between them (Cyprus, Egypt and again South Tyrol). Incidentally, five of the eight countries that we consider are former British and French colonies, clearly demonstrating the role of colonial legacies, which can sometimes thwart the process of nation- and institution-building. In some instances, the imbalance between the groups was the product of early colonial discrimination and, in turn, this prompted some sort of “revenge” sentiments after independence (Turkish Cypriots, the Karen minority, the Coptic community in Egypt, and the Tuaregs in Mali all had strong ties with their respective former colonial administrations). To be sure, early episodes of violence had some important implications for the levels of mistrust between the parties and, in each case, these mutual suspicions and commitment problems have made it difficult to

reach a positive solution. According to the model, this is because low levels of trust between the parties may render them less interested in knowing how much they could gain (absolute gain), and more worried about opponents' profits (relative gain). Indeed, the high sensitivity to Grieco's (1988) gap in payoffs (the so-called *K* coefficient) reduces the possible zone of agreement between the parties, especially if high levels of mistrust are present (as in South Tyrol, Montenegro and Egypt), if the government is worried about rebels' future bargaining power (as is the case for the Iraqi government with respect to the Kurds), or if the rebels fear that the government will implement assimilationist policies (as in the cases of the South Tyrolese, the Iraqi Kurds, the Karen minority, the Turkish Cypriots, and the Tuaregs).

In most cases, these commitment problems have produced security dilemmas (attempts made by one party to achieve its own security—or more simply to safeguard it—can have the result of generating security concerns for the other) and in some circumstances these dilemmas have escalated to open, inter-ethnic clashes, making the dispute even more violent. However, it is worth noting that only in three of the eight cases (Cyprus, Myanmar, and Mali) has violence escalated to open warfare. We should also stress that the presence of natural resources (such as oil in the Iraqi Kurdistan, or minerals in Mali) or the territory's strategic value (such as South Tyrol's hydro-energetic facilities) has affected some disputes, but in no case was it the actual trigger of the conflict. The presence of memories of resistance and persecution (as in Egypt, Montenegro, and South Tyrol) contributed to the split between moderates and radicals (the so-called "zealots" vs "sellouts", a typical feature in several domestic conflicts) in some cases, but not in others. Of course, the presence of kin countries in a dispute may change the balance between the groups, since these countries are usually worried about the fate of their kin people, and thus ready to intervene in case of discrimination. But this presence has not had the same results in all cases under investigation here, considering, for example, that in the Cyprus dispute it contributed to escalation, while in the South Tyrol case it led to a positive resolution.

According to our model, solutions to identity-based conflicts depend on the strategies that parties use during the bargain stage, regardless of the causes of conflict onset (which, however, tend to vary little across the cases we consider). And under this view, it is worth noting that, in all cases, parties have actually been able to reach an agreement in an earlier stage, but in each case this was eventually

renege upon, or not implemented by at least one actor, most often the government. However, the presence of an original agreements (the Panglong Agreement in Myanmar, or the more informal Entente between the Copts and the military regime in Egypt) has not been sufficient to solve the conflict, which is consistent with the generally-poor record of negotiated solutions (Walter 2001, p. 5). This is mainly because these early accords have been too general and vague (e.g., the Iraqi Constitution for the Kurdistan Regional Government and the Spanish and Cypriots Constitutions for Catalans and Turkish Cypriots respectively) or simply because they have not been implemented (as was true for the Degasperi-Gruber Agreements in the case of South Tyrol, the Belgrade Agreement for Montenegro, and the *Pacte Nationale* in Mali). In some cases, the agreement's vagueness has even given birth to additional commitment problems in the enforcement phase, since neither group could be certain that the opponent would comply in implementing the agreements without changing its mind (as in Kurdistan), or in disposing of arms (as in Cyprus and Myanmar).

Apart from these dynamics, which traditionally affect every civil war, three cases included a factor that, if put into the context of our theoretical framework, might be considered crucial for conflict resolution: the concerns about the cost associated with the conflict. In other words, if at least one of the two sides does realize that, while the status quo (the Nash Equilibrium in the Prisoner's Dilemma) is inefficient, the continuation of the hostilities could be even more damaging for the economy (as it was for the *Aufbau* Group in South Tyrol and for the business and bank associations in Catalonia), and could even lead to international isolation (as the case of the Junta in Myanmar). Rational actors, though still concerned with relative gains, tend to be very sensitive to conflict-related costs, particularly when they frame the dispute in a "race to the bottom" fashion. Economic costs of war tend to be self-evident, and in some cases (as for Iraqi Kurdistan), the realization of the losses associated with violence has to do with the dispute itself (the creation of new pipelines in this case). In other circumstances, as in the Montenegro case in the face of the European Union, loss realization may involve more "immaterial", or reputational costs. However, it is important to stress that, under a certain threshold, relative gains concerns may lose their original relevance and give way to absolute loss considerations.

In sum, the analysis shows that civil conflicts tend to follow a similar path, apart from the issue at stake (language, ethnicity, and religion).

In every case, both sides try to solve the dispute through negotiation and bargaining in an earlier stage, but this has not been sufficient for them to reach a compromise. This also applies to traditional solutions that have been tried to end the dispute. First, partition, which is the physical separation of belligerents: the Italians and South Tyroleans, the Catalans and Spanish, the Kurds and Arabs, the Serbs and Montenegrins, the Greek and Turkish Cypriots (although in this case the separation was a consequence of an actual partition of the country), and the Malian and Tuaregs have all lived—and currently live—in separate territories. But this did not prevent one of the two groups (or both) from resorting to violence. Second, third party intervention, which is often thought to be essential to provide parties with credible guarantees on the terms of agreement (Goddard 2012): as the analysis suggests, it did not lead to clear results, considering that in some cases it contributed to conflict resolution (the role of the United States in Myanmar’s decision to liberalize, the internationalization of the dispute in the South Tyrol case, the EU legitimate power in Montenegro), while in others it had a mostly destabilizing (such as in Cyprus and in Catalonia) or unclear effect (as the role of Turkey in the Iraqi Kurdistan, though Ankara in this case can be considered as an active player rather than a third party actor). In this regard, it is worth noting that, although the issue at stake is the same (the creation of new pipelines), China’s role in Myanmar has been the opposite in comparison to the one played by Turkey in Kurdistan (destabilizing rather than stabilizing). Third, sometimes even the democratic nature of a country may not matter in solving a dispute. Of course, if one looks at the Scottish dispute, both parties—the British government and the Pro-Independence movement—were able to solve the dispute through democratic means (the referendum), but sometimes even democracies may refuse to bargain over regional autonomy, as the Catalan case suggests. Furthermore, in some cases the government was already democratic when the dispute erupted (Italy after the Second World War, Cyprus after independence in 1960), while in others (Myanmar and Kurdistan) political liberalization followed conflict onset and produced some positive externalities for minority treatment (as in the conflict between the military Junta and the Karen minority in Myanmar, and between Erbil and Baghdad in Iraq). In Mali, on the contrary, democratization did not prevent the recurrence of violence (1992, 1996, 2005 and 2012), but this may be the consequence of the well-known problems of democratization (Mansfield and Snyder 2005). Lastly, sometimes both sides were able to reach a power-sharing agreement, that is, a normative framework aimed at sharing power between them. This is a

solution that has been traditionally proposed by several authors and, under this view, power-sharing agreements have been tried in South Tyrol, Iraqi Kurdistan, and Cyprus. However, it is worth reiterating that their effects have been far from being unambiguous (agreement in the former case, contestation in the latter). To be sure, in some cases the role played by traditional solutions has been crucial, and in every case these solutions have led to a reduction in violence levels. Most likely, without the partition, the conflict in Cyprus would have been more violent; without the recent shift toward liberalization, the Karen minority would still be suffering from discrimination; with a mediator lacking legitimate power, both the Serbs and Montenegrins would have found it difficult to reach a compromise over the referendum.

Yet, emphasizing these traditional solutions is not sufficient to explain the successful resolution of identity-based conflicts, at least in the cases that we consider in this volume. Beyond their uncertain and sometimes ambiguous role, it is still unclear why parties actually accepted these specific solutions: what pushed the military Junta in Myanmar, for example, to take steps toward the liberalization of the political system? Why did the government in Madrid agree to bargain over the Catalan “right to choose”? And finally, what persuaded both Serbs and Montenegrins to ask for EU mediation? In other words, if traditional solutions such as partition, democratization, and power sharing seem essential for resolving identity-based disputes, it is not clear what allows both parties to overcome their mutual diffidence and reach a compromise over the rules.

From this point of view, our research results are consistent with the initial hypotheses: compensatory solutions do matter in identity-based conflicts. In successful cases, they have helped parties not only to overcome relative gains concerns and to go back to the bargaining table, but also (in some cases) to reach a mutually satisfying solution. It is in this regard that the South Tyrol case may shed light on solutions and failures in civil conflicts. According to our theoretical framework, the positive solution of the South Tyrol dispute was due to two mechanisms: on one hand, there was a “political” compensation (side payment) made by Italy to South Tyrol, wherein the latter gained more political representation thanks to the new institutional architecture (autonomy granted directly to the provinces); on the other, there was an issue linkage between the political and financial realms, by which South Tyrol agreed to give up violence (and thus the fight for secession) and to renounce any desire for independence, in exchange for almost complete financial autonomy

(an absolute advantage for them), granted by the Italian government. Autonomy, which was previously a matter of “indivisible” sovereignty, turned into a question of devolving specific subjects to the provinces.

As the following chapters will show, something very similar also occurred in four of the seven case studies that we consider (Kurdistan, Myanmar, Catalonia, and Montenegro). Indeed, in those four cases, compensatory solutions certainly made it easier for parties to achieve a positive resolution: in Myanmar, for example, side payments (in the form of personal gains) were made to the military junta key members, and those compensations have been conditional to their willingness to liberalize the system, thus contributing to the enhancement of the Karen’s condition. Furthermore, the inclusion of the Karen militias in the Board Guard Force reveals the presence of a compensatory issue linkage: the promise of more representation (in the political and in the military realm) made by the Junta to the Karens, in exchange for their commitment to disarm. The same mechanisms were also present in the Catalan case, where the Catalans achieved more financial autonomy and the transfer of more resources from the central state in exchange for their support of the government in the parliament (especially during the Zapatero government). In the case of Montenegro, the side payments and linkage strategies employed by the EU were unequivocally intertwined. Thanks to its normative leverage in the peace process, the EU was able to link different issues (voting threshold, voting rights, composition of referendum commission) into a single formula, which, in turn, was presented as a ‘European model’ and offered to the parties as the only solution that would be legitimized and approved by the EU. Under this view, European support changed actors’ payoffs, thus making the acceptance of this formula more preferable for them than the status quo. The presence of an international guarantor, in this regard, seems to be crucial not only for inducing both sides to work toward the agreement, but also to reassure them during the implementation phase.

The dispute in Kurdistan is, of course, more complex, but it seems that oil revenues can represent compensatory incentives for both sides (especially for Baghdad), while the linkage between the economic (the creation of new pipelines and related revenues) and political (administrative autonomy) realms may foster more peaceful relations between Erbil and the central government. Lastly, the model explains how power-sharing agreements between the Italians and the South Tyrolese were considered possible only when put in the framework of compensatory solutions after 1972. Therefore, and this is our primary result, only those

disputes characterized by political-compensatory mechanisms can be considered successful cases of resolution of an identity-based conflict.

Of course, as with every theoretical model that tries to explain reality through a few simple variables, also our framework requires some caveats. First, the level of economic development, for example, may be an important game changer: richer and wealthier states tend to have more revenues to put on the bargaining table, and by increasing the size of the economic pie they may give rebels a larger slice, rendering them better off. Second, the level of political and social inequality between domestic groups seems to be relevant in explaining civil war onset, regardless of the level of GDP per capita (Buhaug et al 2011; Deiwiks et al 2012). Finally, the role of values and beliefs, which has been downplayed here, may render the agreement easier to reach and to enforce when the parties have the same cultural background (as it was for Italians and the South Tyrolese, who shared a common Catholic-based ideology). To be sure, the real world is too complex to fit any stylized theoretical argument. Nevertheless, we do think that giving prominence to a set of self-consistent variables, while downplaying the role of others, may help to understand their relative weight in the broader universe of solutions to identity-based conflicts.

The next ten chapters examine eight cases of identity-based disputes. The first three chapters are devoted to our main case (the conflict between Italy and South Tyrol), which warrants a particularly relevant status in this volume. In chapter 1, Emanuele Castelli analyzes the South Tyrol dispute through the theoretical model that inspired the research, assuming instrumental rationality to be the main underlying feature of actors' attitudes and behaviors. However, since instrumental rationality may be rare in the real world, and agents may sometimes be driven by value-rationality, or even traditional considerations, we thought it important to provide readers with a more complete picture of the South Tyrol dispute by offering two additional chapters. Accordingly, in chapter 2 Francesco Raschi focuses on the relatively short history of the German-speaking minority in Italy (1919-1992), highlighting the role played by prominent individual personalities (such as Alcide DeGasperi, Silvius Magnago, and Karl Gruber) and by their common Catholic-based ideology. In chapter 3, Elisabetta Pulice goes further, providing some considerations on the juridical and political evolution of the South Tyrol dispute (from 1992, when the dispute was officially closed, to 2012, when both parties celebrated the 40th anniversary of the Second Statute of Autonomy). The remaining seven chapters focus

on seven different cases of ongoing identity-based conflicts. In chapter 4, Miriam Rossi deals with the dispute between Madrid and Catalonia, which has recently resurfaced as a result of the current economic crisis and will probably continue to influence Spanish politics in the near future. In chapter 5, Patrick Morgan and Elena Baracani focus on one of the most well-known cases of identity-based conflict, the dispute between the Greek and Turkish Cypriots, arguing that the failure to achieve a negotiated solution is mainly due to the negative role played by the European Union. Chapter 6, by Matteo Dian, is dedicated to the Karen insurgency in Burma-Myanmar; the author points out that the current wave of liberalization in Myanmar's political system may have some important consequences for the negotiations between the Karens and the Military Junta. In chapter 7, Massimo Morelli and Costantino Pischedda provide an interesting analysis of the current dispute between the Kurdish Regional Government and the government in Baghdad, which involves also Turkey and its energy interests in Iraq. Chapter 8 by Sinisa Vukovic is devoted to another recent dispute that—contrary to the Cyprus case—was successfully solved thanks to the “European leverage”: the secession of Montenegro from Serbia. In Chapter 9, Marco Pinfari examines the case of the Christian Copt community in Egypt, focusing on its troubled relations with the central government in Cairo. According to the author, a negotiated solution to this dispute is deeply linked to the evolution of Egypt's current transitional phase. Finally, in chapter 10, Arrigo Pallotti and Lorenzo Zambenardi analyze the Tuareg question in Mali, a long-running conflict that has recently become more complex as a result of the involvement of jihadist groups in Sahel.

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Chapter 1

Solution of an Identity-based Conflict: The Case of South Tyrol

Emanuele Castelli

Introduction

The Autonomy of South Tyrol has been heavily studied over the last few decades. While juridical and historical accounts¹ have focused on the nature of the agreements that allowed a peaceful and durable solution to the dispute, within the political science literature the conflict between Italy and South Tyrol has had a more marginal position². This is mainly due to its status of “potential” civil war, which de-escalated before it could escalate to real violence. In fact, this de-escalation is its most interesting feature: explaining how South Tyrolese and Italians were able to solve their disputes may shed light on the causes which, in other cases, have produced higher levels of violence on both sides.

In the following pages I will analyze the South Tyrol conflict through an original approach: paying attention to the process that led to the agreements between Italy and South Tyrol, instead of simply analyzing their juridical nature. As I will try to show, this focus on the bargaining phases between Italians and the German-speaking community will clarify how they were able to reach a stable compromise, highlighting the factors that most contributed to the final agreements.

The theoretical framework is derived from the institutionalist literature on inter-state cooperation (Axelrod 1984; Axelrod and Keohane 1985; Fearon 1995), grounded in Rational Theory assumptions, and considering both the related neorealist critiques about relative gains (Waltz 1979; Grieco 1988) and the synthesis between the two traditions

¹ See for example Alcock 1970; Di Michele et al 2003; Steininger 2003; Woelk et al 2008.

² See Katzeinstein 1977; Wolff 2003.

originally proposed by Andreatta and Koenig-Archibugi (2001). The model, which can be graphically formalized, underlines both costs and benefits arising from the bargaining, as well as the balance of forces between the parties to the dispute. It starts from the assumption that both sides, even if they seek the best outcome, may be willing to renounce their preferred goal if they can receive more in other issue areas. Under this view, the de-escalation of the South Tyrol conflict is mainly attributable to side-payment and issue-linkage mechanisms, which persuaded the South Tyrolese to renounce their right to self-determination (and thus the fight for independence from Italy) in exchange for broad territorial autonomy. The 'guarantor' role played by Austria, on this occasion, compensated for the lack of simultaneity between the bargaining and implementation phases. Therefore, the main aim is to explain what happened in Trentino-South Tyrol from the end of World War II (the "De Gasperi-Gruber" agreement) to 1992 (when Austria declared that the dispute was closed).

In order to understand which factors most contributed to resolving the conflict, the theoretical approach adopted in this paper is intentionally parsimonious, meaning that it emphasizes some variables and downplays others. For this reason, some simplifications will be necessary. First, to make its application easier to other case studies, the model is deliberately acultural, i.e., it does not consider the role played by actors' values and ideologies (for example, the role of the Catholic faith, shared by both parties, and its related party ideology). Second, the number of actors involved in the dispute is reduced to three³: 1) the South Tyrolese and their main political party, the Südtiroler Volkspartei (SVP), which after World War II emerged as a legitimate actor for bargaining with Italy because of its ability to gain a broad consensus among the German-speaking community; 2) the Austrian state, which, after 1945, always fought to be acknowledged as the primary power protecting South Tyrol, though it gained parity status with respect to Italy only after having regained full sovereignty in 1955; and 3) Italy, which was able to gain both Trentino and South Tyrol after World War I in 1919 and, from that time on, had not only the priority of preserving the Brenner frontier and safeguarding the Italian minority in the area, but also of keeping stability and order in the region and fostering its international credibility with European and American allies. Last, the model does not consider the role played by individual political person-

³ The Ladin minority, which represents a small percentage of the total population, is not considered politically relevant in this paper.

alities (such as De Gasperi and Magnago, whose actions—according to some authors⁴—were crucial for the success of the agreements), or only examines them to the degree that they influenced the change in the balance of forces, political consensus and trust between the two sides.

In the following pages, I will start from the onset of the dispute, which took place during the Fascist period, to highlight the fact that most South Tyrolese diffidence and mistrust was the product of Fascist policies toward the local population. Then, I will shift to post-war developments, when Italy became democratic and tried to find an official solution to the conflict. The lack of implementation of the 1946 agreements will be discussed in the third section, which will underline why (at least a limited part of) the South Tyrolese decided to resort to violence: since they had not gained sufficient benefits from the agreements, by resorting to terrorism they attempted not only to attract international attention but also to worsen the situation for both sides, thus inflicting losses on Italy even if that meant bearing costs themselves. The fourth section will be devoted to implementation of the so-called “package” (a set of juridical measures to enforce South Tyrol Autonomy), which was drafted in the sixties as an attempt to overcome the 1946 agreements. In the conclusions, I will try to single out the factors that may be applicable to other cases.

Phase 0: Repression and assimilation (1918-1943)

South Tyrol has been rightly defined as a “land of transit” (Lantschner 2008, p. 3). The two linguistic communities (German and Italian) that live in the region have alternated as members of the minority group, experiencing similar identity violation and assimilation policies⁵. It is thus understandable that both groups have developed distinct autonomist claims and a strong inclination to self-rule over time. It took more than fifty years to satisfy those claims (of course, justifiable for both sides), following a mutual compromise that was reached in 1972.

The dispute emerged in 1919 when, in the aftermath of the First World War, the Allied powers met in St. Germain (near Paris), to re-define Europe’s boundaries after the collapse of the Habsburg Empire. At

⁴ See the essay by F. Raschi in this volume.

⁵ These assimilation policies affected both the Italians in Welsch Tyrol under the reign of Franz Joseph I of Austria and later the Germans in Italy under the Fascist regime.

that time, the German-speaking population of South Tyrol represented about 86% of the province (compared to 4% Ladins and just 3% Italians, see Alcock 2001, p. 1). It was mainly poor and rural, not yet organized and, above all, fragmented and scattered all over the province's several valleys. The only hope for achieving a certain degree of self-government was bound to the principle of self-determination proposed just two years earlier by US President Woodrow Wilson, and the Allied powers wished to adopt this principle as the main criterion for the territorial re-definition of the former Habsburg Empire. The Italian government, which secretly agreed with the UK and France to enter the war in exchange for annexing both Trentino and South Tyrol (Alcock 1996, p. 66)⁶ was in a stronger position vis-à-vis the South Tyrolese, because it fought against the Habsburg Empire and thus was on the winning side after the war. As a result, the Italian frontier moved to the Brenner. This solution was the best choice for the Allies too, not only for geographical reasons but also from a political and strategic standpoint (Alcock 2001, p. 2). South Tyrol and Welsch Tyrol (as it was known at that time) were annexed to Italy and South Tyrolean claims to autonomy—supported from the very beginning through a first project (1918) drafted by the local elites and later through a non-official referendum (1921)⁷ sent to the Italian authority—were simply ignored by the Italian government. However, this rejection did not push the South Tyrolese to radicalize their stance, even though they had a strong national memory of resistance against oppression⁸. On the contrary, the awareness of their weakness against Italy persuaded them to believe that they might enhance their status and reach a better deal in the future with the Italian government.

From 1920 to 1922, Italy was led by a series of liberal governments, which increased the German-speaking community's hope of

⁶ After the failure of the negotiations with Austria, which was allied with Italy but refused to cede South Tyrol in exchange for Italian neutrality, Italian Prime minister Sonnino reached an agreement with the United Kingdom and France, which would have supported the transfer of the entire region to Italy in the event of victory.

⁷ From that time on, several other referenda have been organized by the South Tyrolese (the latest being in January 2014) without any juridical effect. The first project of autonomy (see Vedovato 1971, p. 13) included the two main goals that the South Tyrolese aimed to achieve after the annexation to Italy: 1) to reach a degree of autonomy from the central state that would be sufficient to preserve the German character of the province and 2) not to renounce to the right to self-determination (Wolff 2003, p. 118).

⁸ Those memories were linked to the achievements of Andreas Hofer, who, at the beginning of the Nineteenth Century, led a popular revolt against the Napoleonic Occupation of the region. For the same dynamics applied to other conflicts, see the essay by M. Pinfari on Egypt in this volume.

achieving a certain degree of territorial and cultural autonomy for South Tyrol. In fact, some representatives of the Italian political class, not only the liberal-minded leaders, declared their support for South Tyrolean claims to autonomy⁹ (Vedovato 1971, p. 15). However, these hopes were dashed when the Fascists gained power in 1922, as their primary goal soon became the total Italianization of the region, which was to be achieved in three stages (Gehler 2003; Lantschner 2008; Steininger 2003, pp. 21-39)¹⁰. First, in 1923, the government began a phase that could be defined as “Italianization through assimilation”, meaning the complete de-nationalization of Germans (the exclusive use of the Italian language in public offices, the progressive closure of German schools¹¹, suppression of the German press, and even prohibition to use the name “Tyrol”)¹². This stage was also characterized by a substantial militarization of the province, which in 1924 became a fortified border region by decree (Steininger 2003, pp. 21-24).

Second, in 1928, the Fascist regime attempted to expedite the Italianization program with work incentives offered to new Italian settlers in South Tyrol, mainly achieved through the industrialization of the region. This stage of “Italianization through industrialization” reached its peak in 1934, when the regime created a new industrial zone in the suburbs of Bolzano (Alcock 2001, p. 3), where immigrants from all parts of Italy decided to settle. As a consequence, the ethnic-demographic balance in the province changed radically. This is especially apparent considering that the total number of Italian industrial workers, almost nonexistent at the beginning of the program, increased to 7,000 in 1942 and to 12,000 in 1947 (Pristinger 1978, p. 25).

Finally, after the Nazi regime rose to power in Germany, Hitler and Mussolini agreed in 1939 to give the South Tyrolean people a choice (the so-called “Option”): either to stay in Italy and accept Italianization

⁹ See also the essay by F. Raschi in this volume.

¹⁰ The need to “Italianize” the South Tyrol area emerged even before Mussolini’s takeover, if one considers that Fascist squads carried out a “March on Bolzano” some months before the well-known “March on Rome” in October 1922. It is worth remembering also the “Bloody Sunday” of 24 April 1921, when Fascists troops assaulted a German ceremonial procession in Bolzano, leaving one dead and fifty injured see (see Steininger 2003, p. 8; Blanco 2006, p. 131; Niglia 2012, p. 235).

¹¹ During this first stage, only Catholic schools—the so-called “Catacomb Schools”—could secretly hold class in German (Alcock 2001, p. 3; Steininger 2003, p. 3). This is significant if we consider the role later played by the Catholic Church as a “third party” in the dispute between Germans and Italians.

¹² In that period, a similar treatment was applied to the Kurdish Minority in Turkey.

or to immigrate to neighboring Austria (which was annexed by Germany in 1938) and maintain their German identity. This last stage may be called “Italianization through emigration” and involved, above all, the flight of the most active and productive part of the German-speaking population: employees, entrepreneurs, professionals, and large-scale farmers (Steininger 2003, p. 66). By contrast, those who decided not to leave (the “Non-Optants”) were those with strong ties to the land, such as the inhabitants of the valleys and the rural population. Some 204,000—or 83% of the German-speaking population—opted for emigration from the region (Pristinger 1978, p. 28), even if just a portion of them (75,000) actually left the country. Of course, the net result of these policies was to substantially increase the proportion of Italians settled in the province, which climbed from only 3% in 1919 to 25% twenty years later (Alcock 2001, p. 3).

Therefore, the period from 1922 to 1945 saw no real conflict between the two sides. This was primarily a result of the Fascist regime’s high resolve to maintain the annexed territories of Trentino and South Tyrol, even with the threat or actual use of force. During this period, the government was able to suppress almost all sources of dissent (thus there were no rebel groups) to impose the Italianization of South Tyrol and to exploit the issue to gain domestic political consensus. No shifts in boundaries occurred after World War II, even though Italy changed side during the conflict. This was mainly a consequence of the Allies’ geopolitical considerations: the former Italian territories of Istria and Dalmatia were to be annexed to Yugoslavia with the peace treaty, and the cession of South Tyrol back to Austria would mean weakening Italy to an unacceptable degree.

Moreover, Austria lacked bargaining power with respect to Italy. Indeed, its weak position had worsened during the thirties, when the fears of a possible German annexation (which finally happened in 1938 with the *Anschluss*) pushed Austrian Chancellor Dolfuss to secure an alliance with Mussolini after an Italian military display of force had frustrated a first attempted Nazi coup d’état in 1934 (Niglia 2012, p. 237). Thus, in this period, Vienna was unable to support the South Tyrolean cause against the Fascist regime, and the result of this initial phase can be considered an absolute loss for South Tyrol and an absolute gain for Italy, an outcome that was destined to change after the defeat of the Axis powers in 1945.

Phase 1: Compromise without enforcement (1946-1961)

After the end of World War II, the Allied powers returned to negotiation on the South Tyrol question during the Paris Peace Conference. At the conference, each party involved in the dispute attempted to achieve its preferred goals. According to Italy, any change of the Brenner frontier was out of the question. Its motivations were especially clear, considering that at that time South Tyrol's hydroelectric plants produced about 13% of Italy's national energy output (Steininger 2003, p. 80) and that, as a result, the province became a strategic necessity in view of post-war reconstruction. Furthermore, the Italian government was worried about the fate of Italians in South Tyrol who, despite Fascist attempts, remained a minority, especially considering that they were mainly settled, wealthy (relative to the German majority) and urbanized (Alcock 2001, p. 1)¹³. Therefore, losing South Tyrol would mean paying an unacceptable cost for Italy. Austria, which had never accepted the loss of South Tyrol, still believing that the latter had been given to Italy as a reward for the "betrayal" of World War I (Wolff 2003, p. 119), had to solve the problem of the Optants, who wished to go back to their homeland and were gathering in Innsbruck, on the border with Italy. Therefore, since Austria wished to maintain friendly relations with Rome, it only asked to be acknowledged as a "protecting power" of the German-speaking community. Lastly, the South Tyrolese had founded their own party, the SVP, which, after the war ended in May 1945, had already published its three-point program in the "Dolomiten", their party newspaper (*ibid.*, p. 125): achievement of cultural, linguistic, and economic rights for the German-speaking population, securing peace and order in the province, and the advancement of the South Tyrolese claim to self-determination.

According to this point of view, secession would have been an absolute gain for the South Tyrolese, though they were aware that they could achieve some relative gains by bargaining with Italy (for which South Tyrol's independence would have been an absolute loss). Therefore, each side's goals were similar and in some ways symmetric, but they were again pursued by parties with different levels of strength. Austria was under occupation, without full sovereignty, and thus its future prospects were uncertain (Alcock 1970, pp. 81-82). The South

¹³ As Wolff (2003, p. 128) put it, at that time Italy had to find a balance between different groups: protecting the Italians in South Tyrol (in the case of the Optants' return), satisfying the Italians in Trentino (their autonomist claims, which could be reached only with a "regional" autonomy) and compensating the South Tyrolese for the Fascist assimilation policies.

Tyrolese, as mentioned above, had founded their own party, which was able to recruit some 70,000 members (about 1/3 of 220,000 South Tyrolese)¹⁴, but its leadership—even if it was perceived as a legitimate player by the Allies—was mainly constituted by the *Dableiber* (people living in the valleys who had decided not to leave the country) and thus still fragmented and unorganized. Italy, for its part, had been able once again to end up on the winning side (following Mussolini's resignation on September 8, 1943) and was supported to a certain degree by the two new superpowers (the US, because of its influential Italian community, and the USSR, because of the strength of the Italian Communist Party). It was, therefore, in a better position than the other parties involved in the dispute.

There was also mutual suspicion between the SVP and the DC (Democrazia Cristiana, Italy's ruling party), whose relations were also characterized by misperception of one another's agenda (Wolff 2003, p. 125), and between South Tyrolese and Italians living in the province, with each party considering the other a "guest" (Alcock 1970, p. 83). Furthermore, the Italian government was afraid that by granting some degree of self-government to the South Tyrolese, it would have to allow similar claims to autonomy by the French living in the Aosta Valley and by the Slovenes in Trieste. Moreover, Rome was suspicious about the South Tyrolese's real willingness to cooperate, and this concern was linked to the fate of the Italians living in South Tyrol, who ran the risk of being abandoned (Wolff 2003, p. 123). There was also the question of the Optants: because of their alleged pro-Nazi sympathies, they were considered enemies by the new Italian political elite, while their *Dableiber* kin—though not considered traitors (because of the decision not to leave the country) but still seen as Germans by the public at large—could easily be perceived as the Trojan Horse of Pan-German and Tyrolese irredentism (Alcock 1970, p. 85).

In addition to each side's suspicion and hesitation, one must also take into account the Western Powers' attitudes toward the dispute: the USA, the UK, and France did not want to impose highly punitive conditions on Italy. As Wolff (2003, p. 122) has argued, their approach to the question was mainly influenced by strategic considerations and not by the need to protect minorities' rights. The loss of South Tyrol would have meant weakening Italy to an unacceptable degree and this

¹⁴ Under this point of view, the SVP can be considered a real "Dominant Party" in the sense given by Sartori (2005), see also Pristinger (1978, p. 35).

would probably have favored the Soviet Union in the zero-sum game of the Cold War. In other words, South Tyrol's self-determination was unthinkable not only for Italy, and the South Tyrolese became the first de facto victims of the Cold War (Steininger 2003, p. 92).

It is in this uncertain atmosphere characterized by mutual fears, diffidence and unbalanced forces that Italy and Austria began negotiations during the Paris Peace Conference. Suspicions notwithstanding, talks between the two sides were held without tensions. Both were aware that, in order to reach a compromise, each of them must agree to relinquish some of its goals. Moreover, both Alcide De Gasperi and Karl Gruber, Italy's and Austria's foreign ministers respectively, had strong personal incentives to reach a positive agreement (the former was born in Trentino and had been a deputy at the Diet in Vienna, the latter had been North Tyrol's governor), and the fact that De Gasperi was willing to grant some autonomy to the province even if he was neither obliged to do so, nor pushed by the Allies¹⁵, contributed to reassure Austrians of Italy's good faith on the question (Steininger 2003, pp. 105-106). Given the balance of forces, the final result¹⁶ was thus almost satisfactory for each side: Italy would give away part of its sovereignty over the region, in exchange for the retention of the Brenner frontier; Austria would renounce the annexation of the province in exchange for being acknowledged as South Tyrol's protecting power; South Tyrol, which was granted some specific rights (related to linguistic parity, representation in public administration and education) would give up its right to self-determination in exchange for a greater degree of autonomy from Italy (Medda-Windischer 2008, p. 18). Of course this was, for the South Tyrolese, a better situation than that of the Fascist era.

However, behind this seemingly optimal solution lay some ambiguities, which would lead to significant tensions between the two groups over the next few years. First, one basic question was left unaddressed (Alcock 1970, p. 147; also reported in Wolff 2003, p. 123): "what would happen if the equality of rights granted to the individual was not sufficient to preserve the separate economic and cultural development of the minority against the stronger assimilating forces of the majority" as stated in the SVP's political program? Second, it seems that Karl Gru-

¹⁵ According to Steininger (2003, pp. 105-106), the motivations behind Degasperi willingness to negotiate with the Austrians, despite the Italian government's strength, have to do with his desire to bring order and stability to the region, to stop the South Tyrolese's secessionist claims and to grant autonomy to "his Trentino".

¹⁶ The full text of the agreement can be found in Alcock 2001.

ber himself harbored a sort of diffidence in regard to his fellow South Tyrolese (Alcock 1970, p. 100)¹⁷ and that the Austrian government pushed the SVP to accept those conditions that, according to Gruber, were realistically the best (*ibid.*, p. 139). Indeed, according to the Austrian government, a strong insistence on self-determination would have put the agreement at risk. The South Tyrolese, for their part, realized that the upcoming Italian elections (scheduled for April 1948) could result in a new parliament potentially imposing the worst conditions on them (Wolff 2003, p. 128). Finally, it seems that the real Italian goals had to do not only with the South Tyrolese's desire for self-government, but also with the need to contain the claims of autonomy coming from Trentino, and avoid the risks of Pan-Germanism by building an Italian majority in the region (*ibid.*, p. 125)¹⁸. However, the most relevant ambiguities, as is often the case, lay in the wording of the agreement (Alcock 2001, p. 6) and, among the open questions, the term "regional autonomy" would be the most controversial: what did it mean? Should it be interpreted in a geographical sense, thus restricting autonomy to South Tyrol, or in an administrative one, thus including Trentino in the autonomy zone?

There was no time to discuss the issue during the conference, and both sides needed to reach a compromise as soon as possible to show good faith, and thus gain credibility in the eyes of the Allies. But it can be argued that the different interpretations given to the term (extensive by the South Tyrolese, reductive by the Italians) would be the agreement's "original sin" in light of its subsequent implementation. Indeed, with its new 1948 Constitution, Italy officially instituted the Autonomous Region of Trentino-South Tyrol¹⁹, where Italians had the demographic (71.5%) and thus also the political majority. In the eyes of the South Tyrolese, whose condition had, of course, improved relative to the Fascist period, this result appeared to be a relative gain for the Italians. As for the first Statute of Autonomy, approved in 1948, Italy considered the agreement to be fulfilled (Lantschner 2008, p. 10), while South Tyrolean resentment toward the compromise's ambiguity started to increase. In other words, although an agreement had been reached,

¹⁷ According to the Italian representative sent to Vienna, Gruber reportedly said, referring to the South Tyrolese, that "However much liberty conceded them, they would use it and abuse it to insist on returning to Austria" (Alcock 1970, p. 100).

¹⁸ However, the final agreement did not include what Italy actually wanted: the formal renunciation of South Tyrolean re-annexation by Austria (Alcock 2001).

¹⁹ The Italian regional system was instituted as a sort of "third way" between an unitary and a federal system (Palermo 2008) and soon after the South Tyrolese regarded this *fait accompli* as a dressed-up version of the repressive measures of the fascists (Katzenstein 1977, p. 291).

at least on paper, there were no guarantees that the sides would have respected it during the implementation phase.

However, in the years following the 1946 De Gasperi-Gruber agreement, the situation remained stable and, despite the reductive interpretation of the agreements, the relationship between Rome and Vienna was nonetheless friendly. The SVP maintained a moderate and confident attitude toward the agreement's implementation (especially toward the "Trentino" De Gasperi), even if the party had already expressed its disappointment to Rome. Additionally, in its political program (as it appeared in their newspaper "Dolomiten" in 1945) the South Tyrolean party had already excluded recourse to "any illegal mean" to achieve its main goals (Alcock 1970, p. 81). Beginning in August 1953, when several questions were still unaddressed (such as that of the Optants, or that of Italian immigration into the province), unexpected events arose that changed the situation: first, De Gasperi (who was considered by the South Tyrolean as a kind of guarantor of the agreements, their only link to Rome) was ousted from power; second, the new Italian government officially asked that a plebiscite be held for the people living in Trieste (at that time, still a free territory) to decide on its possible annexation to Italy²⁰, and this obviously pushed the South Tyrolean to request the same right for themselves.

As had been the case thirty years earlier, the Italian government ignored the South Tyrolean claims (Wolff 2003, p. 132), giving rise to the party's more radical wing. The SVP, whose relationship with the DC was still friendly but fundamentally one-way (*ibid.*, p. 131), was therefore shocked by an internal radical dispute aimed at changing the situation. Local commentators began referring to the destiny of the German-speaking community as a "death march" ("Todesmarsch") and to its status as one of a "people in need" ("Volk in Not") (Steininger 2003, p. 113). The party was going to split: on one side, the old moderate leadership, who until then had managed the question without achieving any real result; on the other, the new guard, led by Silvius Magnago, which asked for a turning point in the dispute. This shift from the old to the new leadership sparked the well-known rally at Castelfirmiano (Sigmundskron), where more than 35,000 people gathered to demand separation from Trento ("Los von Trient"). Besides its general importance

²⁰ "The sufferings of these people" Pella stated with reference to the people living in Trieste "have gone on too long. They must be allowed to speak; theirs must be the last word concerning their own fate" (reported in Alcock 1970, p. 228).

in recent South Tyrolean history, this implicitly meant that the South Tyrolean minority (in the region) had shifted from the goal of secession to that of autonomy from the Italian state. From this point of view, the foundations of the future compromise had already been laid.

Phase 2: Rebuilding trust (1961-1972)

In the mid-fifties the South Tyrol question had reached a deadlock. However, the situation would soon change, mainly due to a transformation in the balance of power among players. Austria finally regained full sovereignty with the State Treaty in 1955, thus achieving the status of formal parity with Italy. Moreover, the South Tyrol question had become a problem of domestic politics within Austria itself (Katzenstein 1977) and would reach high-priority status in the Austrian government's agenda. As soon as it regained sovereignty, Vienna tried to exploit its strength vis-à-vis Rome by sending a memorandum to the Italian government, asking for the full implementation of the 1946 agreement, but again Rome refused to take it into consideration. During this time, Italy had also strengthened its international position. In 1957 it hosted the founding Conference of the European Economic Community (which did not involve Austria) and thus it enjoyed the support of major Western European powers. Furthermore, in a cunning move, the Italian government agreed to deploy NATO nuclear missiles in South Tyrol, thus rendering the province an area of strategic importance for the Atlantic Alliance (which, again, did not involve Austria) and frustrating Vienna's aspirations to bring in the US as mediators (Steininger 2003, p. 119). Perceiving that it would soon be cornered, Vienna decided to internationalize the South Tyrol dispute: in June 1960 the Austrian government asked the UN to put the question onto its agenda. A few months later, the UN General Assembly issued a Resolution (1497/XV) asking the parties to return to negotiations and to solve the question of the German-speaking minority in Italy in a friendly manner. This was a serious blow for Italy, whose reputation was at risk before the international community, even if it still enjoyed general support from its allies. And that was not the only problem for Rome.

During the Castelfirmiano rally, the SVP (now led by Silvius Magnago) also increased its strength. Some months before, the South Tyrolese had asked for full implementation of Art. 14 (which would have devolved the autonomous power of the region to the two provinces), but in February 1957, the Italian government and the Constitutional Court

remained firm in the application of regional (as opposed to provincial) autonomy. A petition of 155,000 signatures asking for annexation to Austria failed to achieve any concrete result. This time, however, the Italian refusal to reconsider its position over the question produced some unintended effects: the compromise that had been reached with the Paris agreements in 1946, which was already unstable and unsatisfying to one side, would increasingly be eroded. The members of the South Tyrolese's more radical wing realized that inflicting damage upon their Italian counterparts, even if it might worsen their own conditions (by triggering Italy's retaliation), could be preferable to the status quo.

Over the next ten years, Trentino-South Tyrol was shocked by several terrorist attacks carried out by South Tyrolean activists. The most significant attack was the so-called "Fire Night" (June 11-12, 1961)²¹, when members of the BAS (Befreiungsausschuss Südtirol, i.e., South Tyrol Liberation Committee) blew up several electric power pylons in the Province of Bolzano, causing massive damage to the region's energy system. Through those attacks, the terrorists hoped to draw international attention to the dispute, while simultaneously signaling to Italy that, if it did not work to solve the South Tyrol question, they were willing to make the situation worse, even if that meant triggering Italian retaliation.

The "Fire Night" attacks were not the first terrorist attacks in South Tyrol's history, and they would not be the last. But they represented the peak of a (notably low-intensity) violence curve that passed through South Tyrol for at least thirty years. Overall, there were about eighty casualties and 19 fatalities (Flamini 2003). In this regard, several authors argue that the terrorist waves in South Tyrol can be divided into two phases (Alcock 1970; Katzenstein 1977, p. 291; Wolff 2003, p. 137): a first, indigenous and uncoordinated phase, through 1958, aimed at damaging property (i.e., mainly Italian monuments and symbols); after 1958, a second and more coordinated phase, directed against Italian interests and people (above all the military and the police), financially supported and even led by foreign movements (mainly Austrian and Bavarian groups). While the former had been a spontaneous reaction to the stalled implementation of the 1946 agreements and aimed to push Italy back to the bargaining table (Steininger 2003, p. 123), the latter was characterized by a clear outbidding strategy (Kydd and Walter

²¹ In the terrorists' view, there was also a symbolic reason to choose those days for carrying out the attacks: during that night, since 1796, the South Tyrolese would celebrate the Annual lighting of "Sacred Heart of Jesus" (Wolff 2003, p. 119; Blanco 2006, p. 126). After the attack, some 150 people were arrested by the Italian police (Lantschner 2008, p. 12).

2006), aimed not only at stopping any future agreement between the sides, but also at discrediting the SVP leadership, accused of being too weak on the South Tyrol question.

The terrorist attacks produced different consequences for the several parties involved in the dispute. Italy reacted by deploying a large number of soldiers and police to South Tyrol. This is a typical reaction for a state that is challenged by extremist groups, and indeed, terrorism sometimes tries to generate such a response. The terrorist offensive also had the result of threatening SVP's internal cohesion (Alcock 1970, p. 358), and the party split into two main parts: on the one side, those who thought that the time had come to insist (through the "protecting power") on secession from Italy; on the other, those who pledged their loyalty to the Italian state and wanted to go back to the bargaining table. Among the latter, the group known as *Aufbau* ("rebuilding") was the only one to stress the economic costs associated with terrorism: according to *Aufbau's* leaders, resorting to violence could worsen, and not improve, South Tyrolean conditions (Katzenstein 1977, p. 319; Alcock 1970, p. 360). The *Aufbau* group represented the interests of South Tyrolean entrepreneurs and the middle class, and it was worried about the situation of the South Tyrolean economy, which worsened significantly after the start of terrorism (Pristinger 1978, pp. 116-117). Undeniably, the Italian government had done nothing to strengthen South Tyrol businesses and, on the contrary, had shown its preferences for Italian companies²². But according to *Aufbau*, this did not mean that a strategy of mutual detriment could in fact improve the South Tyrolean condition.

Thus, the situation would change again. With the eruption of terrorism, Italy's prior absolute gain (the sovereignty over South Tyrol) now carried with it a much higher cost (the deployment of police forces, the instability of the province, the risk of having its international reputation damaged), because the South Tyrolean, unable to reach a satisfactory payoff (self-determination) had decided to change the balance in a mutually disadvantageous way. As Katzenstein (1977, p. 287) argues, at that time a lasting solution to the conflict seemed "neither imminent nor probable". However, events during the sixties (internationalization and terrorism) had produced deep changes in the players' attitude to

²² According to Katzenstein (1977, pp. 308-310), for example, of the 2,500 railway employees in the province in 1966, less than 10% were German-speakers, while during the construction of the Brenner interstate highway no subcontract was given to German-speaking firms.

the question. On the one hand, the SVP's leadership adopted a more moderate standpoint, and was thus more willing to compromise with Italy. This change of mind was of course due to *Aufbau's* political pressure, but was also the result of political considerations related to the costs of radicalization: if the SVP had not openly condemned the terrorist attacks and shown itself to be a responsible partner, the Italian government could easily have banned the party (Wolff 2003, p. 137).

On the other hand, there was also an Italian change of attitude toward the dispute, and Rome realized that the choice was between an open fight against the South Tyrolese and a different application of the 1946 agreement. In other words, Italy changed its mind on the question, and this was mainly due to fears of losing its international prestige after the UN's call for a friendly resolution of the dispute. Recognizing the change in the SVP's approach to the question, Italy thus decided to take the initiative. In September 1961, the government established an ad hoc committee (the so-called Committee of the Nineteen) which was composed of 11 Italians, 7 representatives of the German-speaking community and 1 Ladin. Their task was to reconsider the wording of the 1946 agreement and find a more appropriate way (in the South Tyrolean interpretation) to implement it. This was a strategic move for Italy, which was simultaneously able to demonstrate its goodwill to the International community and to exclude Austria (until then Italy's main interlocutor) from negotiations by acknowledging the SVP as a legitimate partner (Lantschner 2008, p. 12). Within three years (by 1964), the Committee proposed a set of 137 provisions (the so-called "Package"), which, for the first time, (according to the South Tyrolean mindset) produced a more fitting interpretation of the 1946 agreement and set up an operational calendar for its implementation. The question would be resolved, even if the process was long and potentially difficult. As Kurt Waldheim, then Austria's foreign minister, put it some years later, "The package is the train, the operation calendar is the timetable" (Steininger 2003, p. 131).

Phase 3: Pareto efficiency (1972-1992)

According to some authors (Alcock 1970; Steininger 2003; Matscher 2003) it was no coincidence that the Committee of the Nineteen was established by the Italian government soon after the Fire Night of 1961. But the fear of open conflict with the South Tyrolese—thus giving both sides their worst payoffs—was not the only reason behind Italy's

decision to return to negotiations. The SVP played an important role by condemning the violence and signaling to the Italian government its willingness to cooperate and to solve the dispute in a friendly and peaceful manner. Of course, the party split after the Fire Night, but during the 1969 Party Congress Silvius Magnago was able to convince the majority of its members (52.8%) that approval of the Package was necessary for solving the dispute (Lantschner 2008, p. 12). This helped to improve the movement's image with Italy, demonstrating that it was a party that could legitimately decide the fate of the South Tyrolean people. A second element contributing to the negotiations was Italy's ability to selectively persecute the terrorists without retaliating against the people of South Tyrol at large. A third element was the lack of inter-ethnic clashes between the two groups (Italian and German), a factor that in other disputes has tended to produce an escalation of the conflict.

As noted above, in the aftermath of World War II the situation had become unbearable for the German-speaking minority and Italy's relative gain pushed the South Tyrolean to change the situation, inflicting damage upon Italy, even if it meant taking an absolute loss themselves. At that point, the clash with Italy was, of course, very costly for South Tyrol (not only the risk of being repressed, but also the militarization of their territory and the losses caused by the poor economic situation). However, it was even more costly for Italy (not only in terms of resources needed for repression, but also in terms of victims generated by terrorism and above all in terms of international reputation). It was during this era (the mid-sixties) that—thanks to the ideas of some local political leaders (including Bruno Kessler)—the parties were able to come to an acceptable solution for both sides: with a substantial revision of the statute of autonomy in 1972 (the "Package")—which granted the two Autonomous Provinces (instead of the Region as a whole) very broad governmental and budgetary powers—Italy devolved the bargaining to Trentino, which, relative to South Tyrol, had a much more symmetric bargaining position. Thus, there was a "political" side payment made by Italy to South Tyrol, which gained more political representation thanks to the new institutional structure (autonomy granted directly to the provinces), keeping the Region as a roof-structure (Parolari et al 2008, p. 77). In the Province of Bolzano, the law that provides "proportional access" (relative to each side's demographic size) to resources and services can still be considered the keystone of South Tyrolean autonomy (Blanco 2006, p. 135). Devolving the bargaining to the local government

changed the shape of negotiations, from a whole nation vs. one small linguistic minority to a bargain between two formally equal communities²³.

Additionally, because of the link between the political and financial realms, South Tyrol gave up violence (and thus its fight for secession) and renounced any desire to secede (which was an absolute loss for them), in exchange for (almost complete) financial autonomy (an absolute advantage), granted by Italy. Autonomy shifted the question from one of (indivisible) sovereignty to one of devolving specific subjects to the provinces. In this regard, Italy compensated the renunciation of violence and claims to secession with the loss of control over schools, teaching, public offices, etc. and allowed South Tyrol to keep 90% of its tax revenues. This situation of mutual cooperation was clearly a compromise, superior to conflict even though each side had to renounce its preferred outcome, but it was Pareto optimal since neither side could improve its situation further without damaging the other.

But reaching an agreement is not a sufficient condition for peace. To ensure that an agreement remains stable if the levels of trust are low, the bargaining phase must be simultaneous with the enforcement stage. This was obviously not possible in the Trentino-South Tyrol case. To be sure, the sides agreed to set up an operational calendar (Medda-Windischer 2008, p. 20; Wolff 2003, p. 143) and two additional committees (the Committee of the Twelve to work out the Package measures, and the Committee of the Six to draft specific measures for the province of Bolzano) (Lantschner 2008). But both groups still had the possibility to defect and to renege on the agreements. Italy, for example, could not be sure that, once it had made the payment in terms of political representation and linked the political issue to the financial one, South Tyrol would be willing to cooperate. There was always the possibility of South Tyrolean defection (i.e., the continuation of the struggle for independence). Similarly, South Tyroleans could not be sure of Italian compensation after the end of fighting. Therefore, given this lack of simultaneity, the 1972 agreements could not be stable, and for this reason, some radical groups continued fighting for secession from the Italian state (such as the “Ein Tirol” terrorist movement, which aimed at outbidding against the selling out on the question by moderates)²⁴.

²³ Moreover, also the slogan launched by Silvius Magnago during the Castelfirmiano rally (Los von Trient) meant that the South Tyrolese were already looking at the dispute in those terms: in 1957 their counterpart was Trentino, and not Rome anymore.

²⁴ During the eighties, some attacks were carried out by South Tyrolean hardline movements which complained about the slow implementation of the agreements (see Lantschner 2008,

At this point, it is essential to analyze the role of Austria, which assumed the role of international guarantor, thereby functionally overcoming the lack of simultaneity by linking Italian constitutional agreements with international law. Having raised the issue in 1960 at the United Nations, Austria did not accept the closure of the question immediately in 1972 at the end of the bargaining phase. On the contrary, the issue was closed only twenty years later, when it became clear that the autonomy of South Tyrol was an established fact and could no longer be questioned. Between 1972 and 1992, Austria acted as the main guarantor of enforcement by the Italian government, which also had an incentive to enforce the agreement, as it did not want to lose the good reputation that it had acquired within the international community²⁵. This is especially true if we consider that, beginning in the eighties, Italy became involved in UN-sponsored peace operations around the world, which became a cornerstone of its foreign policy. Twenty years after the agreement, having realized that Italian promises had been (and would continue to be) honored—and hoping to obtain a good reputation with the European Union (which it would eventually join in 1995) by demonstrating that no international dispute was ongoing with a founding member of the EU—Austria formally declared to the UN that the issue was resolved²⁶.

Therefore, with the 1972 agreements both sides not only avoided an inefficient outcome, but they also made divisible—through issue linkage mechanisms—an issue that, to both parties, had previously appeared indivisible. Furthermore, the guarantor role played by Austria—for both South Tyrol and Italy—served as a kind of functional substitute for simultaneity of bargaining and enforcement, thus assuring the agreement's stability. This demonstrates that, although in theory all issues can find a solution with compensation, in practice a lack of divisibility or simultaneity can hinder agreements if levels of reciprocal trust are low.

p. 14). On the Italian side, the MSI (a rightist, post-fascist Italian party) also complained about the condition of the Italian minority in South Tyrol. However, neither of those groups was able to challenge the implementation of the agreements.

²⁵ At the same time, Italy was still suspicious about Austrian alleged complicity in the terrorist movements, and for this reason Rome vetoed the Austrian entry in the European Economic Community in 1967 (Medda-Windischer 2008).

²⁶ In theory, Austria can still bring Italy before the International Court of Justice.

According to McGarry and O’Leary (1993, reported in Wolff 2005, p. 121) there are several ways (at least eight) to manage or eliminate the differences underlying ethnic conflicts. Among them, only power sharing agreements offer a solution that can be mutually satisfying for both sides. The problem, however, is that scholars have seldom, if ever, shown interest in how different groups can achieve a compromise, and in how benefits coming from the agreement can induce both sides to decide not to defect once the agreement has been reached. From this point of view, the tools used by Italians and South Tyrolese to reach a stable equilibrium are interesting if considered via the model presented in this essay. This analysis is even more useful if we consider that the South Tyrol dispute emerged (and was resolved) before the onset of many other ethnic, linguistic and identity-based conflicts in the second half of the Twentieth Century, and that often those conflicts have involved high levels of violence (Esman 1977, p. 11).

Of course, the theoretical model outlined here to explain the resolution of the South Tyrol conflict is grounded on some simplifications which, as mentioned, have to do with the number of players and the emphasis on some variables at the expense of others. Furthermore, the model underestimates some factors (related to the social and cultural context) that might have influenced the success of the negotiations and the agreement’s durability. Among these factors are: 1) the collaborative atmosphere between SVP and DC, whose attitude toward compromise derived from their common Catholic background²⁷. In this regard some authors argue that the role played by the Second Vatican Council and its attempt to raise awareness of the protection of minority rights was crucial (Pallaver 2003, p. 276); 2) The lack of inter-ethnic conflict between the Italian- and German-speaking communities living in South Tyrol, which has, in other cases, produced high levels of violence and impeded agreement between the parties; 3) Austria’s and Italy’s responsible behavior, even in an atmosphere of mutual diffidence. From the very beginning, Austria renounced South Tyrolean re-annexation and encouraged the SVP to negotiate with the Italian government, while Italy later reacted to terrorism with caution, downplaying its significance and selectively hitting the perpetrators; 4) The Italian government’s gradual redefinition of the notion of National Interest, which at first

²⁷ For example, SVP leader Silvius Magnago excluded resorting to violence from the very beginning.

was related to the safeguard of national integrity and was later enlarged to include the protection of local linguistic minorities (Alcock 2001, p. 11); and finally, 5) the good economic conditions experienced by the two communities from the seventies onward, precisely when violence ceased and compromise was reached. Without a doubt, the economic situation persuaded both parties to give significantly greater attention to the costs of possible defection.

Despite these simplifications, the model has the advantage of highlighting the elements that can be easily compared to other cases and, in particular, to conflicts that cannot be solved with partition because of the presence of mixed populations and those that are characterized by low levels of trust. In the first case, the South Tyrol conflict can be emblematic, as many of the region's inhabitants have strong ties with the land (not only for cultural reasons, but also for the seasonal character of employment, which alternates between agriculture in summer and tourism in winter) (Katzenstein 1977, p. 299). In the second case, the model underlines the central role played by Austria, whose presence functionally substituted for the lack of simultaneity and of high levels of trust. Thanks to the presence of a third party²⁸, each of the three Statutes of Autonomy had international recognition (Wolff 2003, p. 148; Lantschner 2008, p. 14), which pushed both Austria and Italy to bargain (Gehler 2001) and induced Italy to consider the reputational costs associated with the conflict.

According to several authors, the South Tyrolean conflict was an example of successful conflict resolution²⁹, and its exportability is a matter of discussion even today. Both Trentino and South Tyrol currently have a status that is very similar to that of a state in a federal country (Wolff 2005, p. 124) and, despite the fact that every year the two provinces have to negotiate the level of resources granted them by the central government, their autonomy remains unquestioned. In other words, it can be argued that the 1972 institutional agreements have stabilized, despite the lack of divisibility (resolved through side payments) and simultaneity of bargaining and implementation (circumvented thanks to the presence of a third party). This should induce scholars to ask whether these factors may help achieve similar results in other situations.

²⁸ According to Gehler (2001) the South Tyrolean model can be applied only to those conflict in which a "kin state" is present, while Wolff (2005, p. 11) argues that, in absence of kin-state, other international actors could play this important mediating role.

²⁹ This is true even if some commentators talk about a creeping apartheid that is produced by the strict implementation of the ethnic proportion rule (Blanco 2006, p. 136).

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Chapter 2

Historic and Political Review of the South Tyrol Dispute

Francesco Raschi

Introduction

The South Tyrolese claim to autonomy began in 1919, when—with the Treaty of St. Germain—Italy was granted rule over the territories south of the Brenner Pass, and lasted until 1992, when Austria issued the formal declaration of conflict settlement. However, the question is actually much older. The Episcopal lordships of Trento and Bolzano, both legally founded in 1027, remained under the Empire's vassalage until 1803. After the secularization of both princedoms in 1805 with the Peace of Pressburg between Austria and France, Habsburg dominance over South Tyrol was briefly suspended. The northern part of South Tyrol was transferred to Bavaria, while the southern part (up to Merano) was assigned to Italy, which after the 1810 Treaty between France and Bavaria extended its sovereignty to the whole region. With the defeat of Napoleon, then, the situation returned to its origins, as the region was given back to the Habsburg Empire (Blanco 2006, pp. 123-126; Furlani and Wandruszka 1974, pp. 95-130). This short historical review demonstrates how, for at least two centuries, the safeguarding of minority rights in Trentino-South Tyrol has been the main political question, as is often the case in every bilingual frontier zone.

The first claims to autonomy came from Italians under Habsburg rule, while after 1919 the same claims were made by the German-speaking community. It would be interesting to determine whether those claims from both the Italian and the German minority were made for idealistic reasons (to safeguard their ethnic identity) or for more classical and political reasons (with both groups struggling for dominance over the other). In this chapter I will try to sketch out what happened in the area from the 1919 Treaty of St. Germain to the end of the dispute in 1992, through the Paris Agreements of 1946.

For several reasons that will be discussed later on in this chapter, the dispute over South Tyrol Autonomy ended with the only possible—and fair—solution: the Autonomy of Trentino-South Tyrol. However, some of those reasons can be anticipated now: first, the parties were constrained from the very beginning, i.e., the fate of the German minority, in general, and the degree of autonomy granted to them in particular, did not exclusively depend on the relationships between the parties (Italy, Austria, and the South Tyrolese, represented by the Südtiroler Volkspartei, or SVP). Indeed, the crystallization of the South Tyrol dispute was also due to the geopolitical context that emerged between the end of World War II and the beginning of the Cold War. Against Austrian wishes, the border between Italy and Austria—and thus Bolzano's belonging to Italy—was not up for discussion. Therefore, both the Austrians and the South Tyrolese lacked sufficient space to maneuver when supporting their respective claims. The latter could only bargain with Italy on the different degree of autonomy to be granted to the German minority, which is what would happen forty years later.

The difficulty of striking a bargain between the two sides was clear. On the one hand, the German request for self-determination—even if it was voiced at times during this period by Austrian and South Tyrolese groups (and mainly for political propaganda)—was not realistic. On the other, Italy, while considering the South Tyrol dispute as a domestic problem, was forced to keep a certain degree of openness in the face of South Tyrol demands. This aspect introduces the second structural constraint of the dispute: for each side, the solution could only be a compromise between the two parties. And this depended on Italy's and Austria's (but also the SVP's) democratic status. Italy could not avoid granting some (or several) rights to the German minority. If it had refused, its international reputation would have suffered in the eyes of its democratic allies. In the same vein, Austria could question the legitimacy of the Paris Treaty, but it could not call the Brenner frontier into question during international meetings, as often happened in some Austrian and South Tyrolese milieux. Finally, for propaganda reasons, the SVP asked for South Tyrolese self-determination, but with the consciousness that it would have gained only some concessions for the Province of Bolzano. I will return to these aspects in the conclusions; now, I will briefly summarize the issue at stake between 1919 and 1992.

Before entering World War I, Italy attempted to bargain with other European powers to gain sovereignty over South Tyrol. On the one hand, Italian diplomats asked the Central Powers to set its northern border at Merano (the old 1810 frontier) in exchange for its neutrality. On the other, they secretly negotiated with the UK and France to obtain all of South Tyrol, along with Istria and Dalmatia, in exchange for Italian intervention in the war (Toscano 1967, p. 1; Alcock 1996, p. 66; Alatri 1961; Furlani and Wanduska 1974; Corsini and Lill 1998). As is well known, the latter option prevailed: with the Treaty of London (1915), France and the UK promised Italy both the Brenner frontier and the annexation of Istria. The Habsburg defeat and the dissolution of the Austrian Empire did the rest. With the Treaty of St. Germain, for the first time ever, Italy would exercise control over the territories north of Salerno. It was then that the problem of the German minority in Italy emerged. Of course, the South Tyrolese expected a different outcome, that is “a readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality” as President Woodrow Wilson declared in the ninth of his Fourteen Points in 1918. As a result, they perceived themselves—correctly—as the sacrificial victims of an international system that, despite the hopes generated from American liberal interventionism, remained the same: a system characterized by power politics and by the balance of power between major powers. Even the “liberal” Wilson was forced to accept the Italian claims, which were grounded in several arguments for Italian control of South Tyrol: historical and political reasons (the Italians in Trentino-South Tyrol were a minority only because past invasions had changed the face of a region that was “undoubtedly Italian”), geographical reasons (the continuity of the region up to the Brenner frontier) and strategic ones (a straight line through the Alps would guarantee Italy a higher degree of security against possible invasions from the German world¹, Toscano 1967). Eventually, all these considerations—especially the last—persuaded President Wilson and the US allies that the strategic element—Italian border security—should prevail over the ethnic element. Therefore Austrian proposals, aimed at maintaining an ethnic border and at assuaging Italian security concerns through the demilitarization of the whole region, were rejected. The same was true for South Tyrolean demonstrations

¹ See, for example, Ambassador Barzilai’s memorandum presented at the Versailles Peace Conference, as reported in Giannini (1934, pp. 13-35).

of allegiance, which had no effect at all. The decision was made, and it was final. What would begin, however, was the dispute between the German minority and Italian institutions. In this regard, it should be noted that some key Italian players in the socialist movement—such as Bissolati and Salvemini—criticized the annexation of South Tyrol (Alatri 1974, pp. 66-82). But those voices—even if qualified and linked to the irredentism of Cesare Battisti—remained marginal and mostly unheard (Toscano 1967; Gatterer 1994; Alatri 1959)².

The Allied powers recommended that Italy adopt a “generous and liberal policy over the German-speaking people, in regards to their language, their culture and their economic interests” (Almond and Lutz 1935, pp. 358-359). Italians, through Foreign Minister Tommaso Tittoni, confirmed the intention to respect both the German minority’s language and its cultural institutions without any aim of “denationalization”. In addition, they agreed to adopt a considerate policy toward autonomy and local traditions. Eventually, despite the South Tyrolese’s protests, Austria signed and ratified the Treaty that assigned South Tyrol to Italy (Alatri 1959, p. 83).

In the following years, the Italian political attitude toward South Tyrol was not especially oppressive, as it was led by Luigi Credaro (head of the special civil committee appointed by the Italian government), whose behavior was considered particularly liberal and open during the period following annexation. This is also confirmed by the fact that Ettore Tolomei—the standard bearer of South Tyrolean “Italianness”, who at the time was commissioner for South Tyrol language and culture—soon resigned, claiming the incompatibility of his views with those of Credaro (Toscano 1967, pp. 69-70)³.

The Italian government formed a provisional committee because it didn’t want to give a specific administrative structure to the region immediately. Instead of making rash decisions, Italy preferred to study the question carefully and to pay attention to the South Tyrolese claims. For this reason, in late 1919 Italian Prime Minister Nitti met a South Tyrolese delegation, which presented him a broad program of autonomy,

² As reported by Toscano (1967, pp. 37-43) some spokespersons of the Innsbruck’s Diet made an offer to the King of Italy, aimed at giving the whole Tyrol region to Italy to avoid its division. According to Toscano the episode is authentic, while Gatterer (1994, pp. 343-346) is skeptical about its reliability (see also Alatri 1959).

³ The Fascist policies toward South Tyrol would reveal this disparity soon after. Indeed, Tolomei was the main proponent of South Tyrolean denationalization. On the programme of South Tyrol Italianization, see Di Michele 2003. On the figure of Tolomei see Ferrandi 1986.

which the government initially took into consideration. But soon after, it suspended the talks (*ibid.*, pp. 58-89). The relationship between the Italian government (which was well intentioned, but with a centralistic mentality) and the South Tyrolese representatives (who asked for autonomy measures that looked like secessionist requests) was quite rocky in this first period. And communication between the two groups would soon be suspended when the Fascists came to power⁴.

It should be added that the city of Bolzano witnessed the first Fascist march ever on April 14, 1921, when some three hundred black shirts led by Achille Starace assaulted a South Tyrol procession, killing one and wounding fifty. But what would happen to the German minority over the next few years would be even worse. Indeed, Fascist policy toward the region was shaped by the complete de-nationalization of the region or, as Tolomei—who undoubtedly was the most important counselor on the South Tyrol question—put it, “the assimilation of the German–Speaking community”. The Italianization of national minorities was based on in the appointment of Italian municipal officers, the introduction of Italian as the only official language in public offices and tribunals⁵, the dismissal or transfer of German employees and teachers to other Italian regions, the strengthening of Italian *carabinieri* and military troops (with the exclusion of the Germans), the institution of Italian schools and kindergartens and, lastly, the closure of German banks (Peterlini 2000, 67). In the following years, other measures would be added, such as the migration of southern Italians to Bolzano, the Italianization of German family names and locations (from German to Italian) and the fight against the teaching of German in private schools⁶. In addition, South Tyrol was included in the administrative province of Trento⁷. In the late 1920s, improved relations between Italy and Austria—mainly due to their common anti-Bolshevik attitude—resulted in better conditions for the South Tyrolese. Beginning in 1928, the South Tyrol question was assuaged thanks to the easing of Austrian-Italian relation-

⁴ It is worth noting that, in the 1921 elections in South Tyrol, the Deutsche Verband (which gathered the Tiroler Volkspartei and the Liberals) was able to gain all four seats at its disposal, getting about 36.500 votes.

⁵ Even more, the South Tyrolese could not defend themselves in Tribunals using their own language.

⁶ On this question the essay by Salvemini on “The National minorities under Fascism”, illuminating collected in his 1952 essays (Salvemini 1952).

⁷ In December 1926, the detente between Austria and Italy led to the constitution of the Province of Bolzano. However, the process of Italianization kept going, leading to the immigration of Italian workers and farmers to South Tyrol.

ships, demonstrating that “South Tyrolese charge easily up when they know they have a Power in the north that supports and encourages them to act” (Toscano 1967, p. 112).

In the 1930s, and even more so after Hitler’s rise to power, the political frame of the South Tyrol dispute changed profoundly. Indeed, Italy had to consider not only Austria as its main interlocutor, but also Nazi Germany. On the one hand, as a result of Italy’s initial tensions with Nazi Germany, Mussolini was willing to make some concessions to the German minority, as requested by Austria⁸. On the other, especially after the German annexation of Austria in 1938, Italy thought it would be easier to bargain directly with Nazi Germany. While the Austrians had always been interested in the fate of the South Tyrol minority, the same was not true for the Nazis. The Pan-German ideology also took root in South Tyrol, since it called for the reunification of all German groups in Europe. The Nazis, however, believed that the Pan-German ideology could be better defended through its strategic alliance with Italy. Thus, they did not hesitate to sacrifice the South Tyrol question for the sake of the Fascist alliance. In a sense, Mussolini forwent the defense of Austrian independence in 1938 (which had been one of his main foreign policy lines over the previous ten years) in exchange for the Nazi regime’s declaration to consider the Brenner frontier as definitive. For the first time ever, using the German language, Germans renounced the Brenner question. Of course, the South Tyrolese felt betrayed by Hitler. It is in this framework that both parts agreed to the so-called “options” (May 22, 1939). In the eyes of the Fascist and Nazi regimes, the problem of the German minority in Italy had to be solved in a radical way: the South Tyrolese who wanted to keep their German identity had to move to the Reich, while those who were not willing to leave their homeland had to accept assimilation. As is often the case, totalitarian regimes tend to rely on more radical policies to solve problems, because they don’t have to consider public opinion or safeguard basic civil rights. In fact, according to both the Fascists and the Nazis, the idea of solving the dispute in this way—what we might call “Italianization through emigration”—would have solved the dispute once and for all. About 80% of the German minority (some 200,000 people) decided to leave the country, though only 75,000 were actually

⁸ First, in 1935, Mussolini announced that German courses would exist in every municipality of the province of Bolzano. Second, the Fascist government adopted some acts of grace toward South Tyrolese who were hit by police measures. In early 1936, the Italianization of German family names was put into place (Toscano 1967), but it should be stressed that the concessions that were made in words were barely or badly applied.

able to do so (Pristinger 1978; Steininger 2003; Toscano 1967), as the onset of World War II froze expatriation. It should also be noted that the decision to opt for the re-union with Germany was not free and voluntary, but a totalitarian solution prompted first of all by the Nazis to solve the South Tyrol question. For the Nazis, this solution also had the advantage of bringing home the German South Tyrolese. As a result, the latter were to be sacrificed for the sake of good Italian-German relations.

As is widely known, the events of 1943 greatly weakened Fascist Italy. With the announcement of the truce between Italy and the Allies on September 8, 1943, a new chapter of the dispute between Italy and South Tyrol opened. First, the Italian defeat gave rise to the re-emergence of South Tyrolese irredentist claims to independence. It should be added that, even after the constitution of the Republic of Salò⁹, Nazi policy toward South Tyrol was deeply transformed. In other words, the Germans continued to consider the Brenner border definitive, but in fact the Nazis enacted a policy to annex the region and Italian territories. This led to the institution of the Operational Zone of the Alpine Foothills (*Alpenvorland*), which included Trentino, South Tyrol, and the Province of Belluno under the command of the Tyrolese Gauleiter Franz Hofer. Besides its military function, the *Alpenvorland* policy aimed to re-unite the Germans with the Reich. The balance of power was once again overturned, as it was now the Italian minority's turn to experience reprisal and to suffer an overt attempt of Germanization. The South Tyrolese interpreted the institution of the *Alpenvorland* as the re-birth of the old Tyrol region. According to Toscano (1967, pp. 230-235), Pan-German attitudes in 1943-1945 would lead to Italian hostility (also strong in the sixties) to the Autonomy of the Province of Bolzano. Too much autonomy for the South Tyrolese would have meant paving the way to the persecution of Italians in the region.

1945 to 1956

The South Tyrol question re-emerged at the end of the war, when, in May 1945¹⁰, rumors spread about a possible re-consideration of Italy's Northern frontier. Of course, neither Austria nor Italy had the right to

⁹ The Italian Social Republic was founded after the ousting of Mussolini (near the Northern city of Salò) and formally controlled by the Nazis.

¹⁰ On May 2nd Bolzano was freed by the American troops. For all of 1945, the administration of South Tyrol was under the control of the allied military Government.

join the peace Conference as winners with bargaining rights. Austria, even if it was seen as the first victim of the Nazi aggression, had still not complied with Allied requests, since it had not contributed to the liberation of its territory. Italy, despite its co-belligerent status after 1943, was still considered responsible by the British and the French for its alliance with Hitler.

However, both countries presented a memorandum to the Allies. Initially, Austria insisted on the right of self-determination for the South Tyrolese, eventually asking for the complete restitution of South Tyrol. The Italians, through their Foreign Affairs minister De Gasperi, asserted the necessity of the Brenner as a frontier that would guarantee their security against possible threats coming from the German world, in addition to stressing the strategic value represented by South Tyrol for the Italian industrial economy and the magnanimity and humanity that had characterized the Italian behavior toward the German minority, including those people who—while opting for the re-union with Germany—did not actually leave the country.

At the end of the first session of the Council of Foreign Ministers in London (September 14, 1945), the Allies adopted the American position on the frontier between Italy and Austria, which would remain unchanged, with the explicit reservation that minor adjustments would be examined later (Toscano 1967, p. 260). In November 1945, Vienna specifically asked the Allies to return South Tyrol to Austria. This would be done through a referendum involving the local population. In early 1946, however, the administration of the Northern provinces passed to the Italians, and the Allies made clear that this would not jeopardize further adjustments of the frontier. On May 30, 1946, speaking before the Council of Deputy Foreign Ministers, Austrian Foreign Minister Karl Gruber asked for the transfer of about 43% of the Province of Bolzano to Austria (thus including the Puster Valley, the Isarco Valley and Brixen). Great Britain seemed willing to support Austrian requests. The Soviets, however, had changed their mind on the dispute, as a sort of reprisal for the results of the first Austrian parliamentary elections, in which the Austrian Communist party gained only four seats. From that moment on, Austria became only a “defeated Fascist country” (*ibid.*, p. 286). The French, perhaps because they hoped to obtain some sort of symbolic victory over Italy with the gaining of Briga and Tenda, supported the status quo (the Brenner frontier), though they were also willing to maintain friendly relations with Italy. The Americans, on the contrary, supported the Italian position from the start.

In late April 1946, Austrian President Figl received some 150,000 South Tyrolean signatures asking for union with Austria, which in turn had already demanded about the half of the Province of Bolzano, instead of just some minor adjustments. In early May, the Council of Foreign Ministers rejected the Austrian proposals. On June 24, 1946, the Council again rejected the proposals after an intervention by Soviet Foreign Minister Molotov, who argued that they were not consistent with the need for “minor adjustments”. Pushed by public opinion supporting Tyrol annexation, Austria displayed its inflexible diplomacy, thereby jeopardizing its position. Its main aim was to keep the question open (as it tried to do several times through 1992), and its attitude implied that the only way to solve the South Tyrol dispute was through a plebiscite. On the contrary, Italian diplomacy—thanks to the work of Ambassador Carandini—achieved unquestionable success (even if this success was soon offset by the loss of territory on the Eastern frontier). The Council of Ministers, however, asked the Italian authorities to fulfill the promises made in 1919 (which were not satisfied as a consequence of Fascist policies), related to the granting of autonomy to the German minority.

The June 24 decision closed all Austrian windows of opportunity. The only way remaining was bilateral negotiations with Italy on South Tyrolean autonomy. De Gasperi’s policies, moreover, were grounded in granting broad regional autonomy (to be approved by the Constituent Assembly soon after), and to obtain the same from Yugoslavia, which would have an Italian minority of about 200,000 in its territory. Hence, South Tyrol was the victim of power politics twice in thirty years: first, during World War I, Italian demands were accepted because it was on the winning side and because the allies found it easier to downsize the territory of a loser than that of a brand new country (Yugoslavia). Then, after World War II, Italy and Austria were both defeated, but while the former was able to save its honor by changing sides during the war, the latter remained loyal to the German Reich. Therefore, Italy could not be denied its claims, both regarding the Northern frontier and the East (Trieste and Istria). Italy’s right to South Tyrol thus also depended upon these two events.

In this situation, Austria and Italy—for different reasons—were both forced to start bilateral negotiations in June 1946. Indeed, the bargaining would allow both countries to satisfy their needs, at least in part. On the one hand, Austria was weak due to the Allied rejection of territorial adjustments and a plebiscite. But, through bilateral negotiations, Vienna could still have some say in the matter, thus achieving

some degree of autonomy for South Tyrol. In substance, Austria's main aim had shifted to internationalization of the statute for the German minority. On the other hand, through bilateral negotiations, Italy could resolve one of the most controversial features of the Peace Treaty (the question of its Eastern border). Of course, it was not convenient for Italy to internationalize the dispute, as it had already received South Tyrol. At the same time, it was still interested in maintaining friendly relations with Austria.

However, the question did not come to an end in June 1946. In July, the British Parliament (both the majority led by Attlee and Bevin and the conservative minority led by Churchill) reopened the discussion and agreed to reconsider the dispute, envisioning the possibility that the South Tyrolese could be heard at the Peace Conference. The Italian diplomatic corps, headed as usual by Carandini, struggled against the new British position. This is even more apparent considering that the British emphasized the possible contradiction between the Italian position toward South Tyrol and its position toward Istria. In fact, that same position—demanding a frontier respectful of ethnicity on the East, while rejecting the same principle on the North—was untenable.

On August 10, 1946, De Gasperi made his well-known speech at the Paris Conference, recalling that Italy had already implemented some measures toward both the regional autonomy of the Trentino-South Tyrol and the generous revision of the options. Despite this, the Conference also invited the Austrian Foreign Minister, Karl Gruber, to speak. Gruber gave an effective speech on August 21, 1946, avoiding any reference to the plebiscite and simply asking that the dispute be solved with South Tyrolese consent (Toscano 1967, pp. 330-348; Pastorelli 1987, pp. 45-72). Most likely, the Austrian Foreign Minister meant that Austria would have agreed to any solution that granted autonomy solely to the Province of Bolzano. In general, Austria's goal was to link such autonomy to some form of international guarantee.

Therefore, Austria and Italy were ready to begin bilateral negotiations. As a consequence, a series of memoranda was sent to the Conference secretariat (Italy on August 21, Austria on August 30 and an additional Italian document on August 31). Those memoranda constituted the basis of the well-known Paris Agreements (September 5, 1946) signed by both De Gasperi and Gruber. It is worth describing the role of these two political figures: De Gasperi was born in Trentino and during his political life (as a Member of the Habsburg Parliament) had always fought for the rights of the Italian minority, through 1919. Therefore,

the safeguarding of minority rights was essential for the leader of the DC. In the same vein, Gruber had been Governor of the North Tyrol and thus was personally interested in the fate of the German minority in Italy. Moreover, both were top representatives of the political and social Catholicism of their respective countries, and this implies that both had a similar view on people and politics (other than sharing, of course, the same anti-communist views).

As mentioned above, the memoranda represented a first stage of the Paris Agreement. Although every event that led to compromise cannot be analyzed here (Serra 1989), some aspects of those events are worth noting: the first, and preliminary, is that any bilateral talks should begin with acceptance of the territorial status quo, i.e., the Brenner border. Starting from this point, then, both sides could bargain over the kind of autonomy to be granted. But the parties' positions were still far apart: Austria asked for a clear international guarantee on both autonomy and customs measures, the possibility of appealing to the United Nations in case of future divergences, the return of all optants and, last but not least, the exclusion of Trento from the Autonomous Region. Italy could not accept all of these conditions, which ultimately meant that Austria still opposed any closure of the dispute. Nevertheless, De Gasperi decided to open negotiations because they could bring some advantages to Italy. The first and most important was that an agreement with Austria would have excluded the Diktat argument forever: Austria would sign the agreement freely. This would contribute to showing the Allies the Italian government's good faith. The second was that such an agreement would allow Italy to have a card to play in the Yugoslav game, i.e., having some rights granted for the Italian minority in Istria. Eventually, Italy agreed that the principle of minority protection had to be included in the Peace Treaty (provided that it was expressed in a vague and general manner, Toscano 1967, p. 364).

However, the talks went on, and despite some troubles and a mood that was not always friendly, the parties came to the draft of the Peace Treaty's 10th amendment. As mentioned earlier, Italy could not accept all of Austria's demands, which would have limited its sovereignty over South Tyrol. For example, it could not accept the argument aimed at limiting free migration of Italians in the region. Nor could it accept the idea of the United Nations as international guarantor. Moreover, Italy rejected the hypothesis that autonomy had to be granted only to the Province of Bolzano. After discussions on the different projects in early September 1946, De Gasperi's strong determination persuaded

Gruber—and the three South Tyrolese representatives in Paris—to accept the agreement, which was signed on September 5, 1946¹¹ and then attached to the Peace Treaty.

The very first point of the agreement included equal rights between the German minority and Italians. In addition, it guaranteed both the ethnic character and the cultural development of the German-speaking community, the teaching of German in primary and secondary schools, the equal use of both languages in official documents and in the public administration, the return of German family names that were Italianized under the Fascist regime, and fair distribution between the two groups in public employment. The second point guaranteed autonomous legislative and executive power in the region, with the involvement of local German representatives. The third point stressed the joint commitment by Austria and Italy to review, within a year and with a spirit of equity, the option regime, besides the mutual acknowledgment of educational qualifications, the approval of a convention to allow the free transit of passengers and goods between North and East Tyrol and, last, the planning of a kind of customs union between the two countries.

It is, perhaps, needless to mention that the agreement left broad margins for interpretation, and this ambiguity would be the point of contention over the following thirty years. It was unclear, for example, what would happen if Italy did not effectively safeguard the German minority's rights with respect to Italians. Moreover, it was not clear what the term "autonomy" would mean in practice. According to the South Tyrolese and the Austrians, autonomy should be granted only to the Province of Bolzano, while according to the Italians—to respond to Trentino's claims—the area of autonomy also included the Province of Trento. It was evident (even to Gruber himself) that De Gasperi was trying to include both provinces in the area of autonomy from the very beginning. But the Austrian Foreign Minister could not mention this explicitly during the negotiations, as he was afraid of being charged by the Austrian public of "selling out" South Tyrol to Italy (Toscano 1967, pp. 401-407).

However, both Italy and Austria achieved some of their goals. Austria managed to safeguard the autonomy of the German minority,

¹¹ While Italy did not want to include the agreement with Austria in the Peace Treaty, Austria supported its inclusion. In this case, a compromise was reached: an additional article was put in the Peace Treaty, affirming that the winning powers took note of the provisions agreed by both parties.

even if it wasn't clear how it was going to be articulated and implemented. For Italy, the agreement represented a diplomatic success. Eventually, it was able to remove the South Tyrol question from the punitive mechanism of the Peace Treaty. But, as is obvious, the ambiguities surrounding the agreements would reveal their potential for conflict over the following thirty years. On the one hand, the mindset of a centralistic—even if democratic—state like Italy would prevent the actual implementation of autonomy (or, better, the autonomy that would be implemented in 1948 favored the Trentino-South Tyrol Region, instead of the sole Province of Bolzano)¹². On the other, Austrian mindset—which was linked to a not-so-hidden desire to have a unified Tyrol—prevented it from accepting the Brenner Pass as its definitive frontier with Italy¹³. It is clear that, though the compromise had been reached, it was far from definitive, and over the following decades it would be discussed several more times.

1956 to 1972

After the agreements, the situation in the region was stable. Even the SVP¹⁴, which was able to get almost all of the German minority's votes, maintained a collaborative attitude toward the Christian Democratic Party (this was also due to both their shared Catholic-based ideology and their common opposition to communist ideology)¹⁵. The first change in the party's perspective—and therefore in the Austrians' as well—happened in 1953. First, with the ousting of De Gasperi from power, the South Tyrolese lost the main guarantor of their autonomy. Second, new prime minister Pella's request regarding a possible plebiscite

¹² As a result, the Germans became a minority in the region, where Italians represented about 71,5% of the population (while in the sole Province of Bolzano, the German speaking group weighed for about 70%). On the agreement's provisions see Toscano (1967) and Vallini (1961).

¹³ As Chancellor Leopold Figl put it, in 1946, the South Tyrol question was still a "thorn in the heart" for Austrians (Steininger 1999, p. 32).

¹⁴ On the party's origins and on the developments of its political activity see Pristinger (1978, pp. 35-70) and Gatterer (1994, pp. 983-1017). In the original program published in the party's newspaper "Dolomiten", The SVP had already insisted on the restoration of cultural, linguistic, and economic rights (limited by the Fascists and the Nazis), on its commitment to restore calm and order in the region and on the request of self-determination, to be achieved only through legal means.

¹⁵ The SVP's collaboration with the Christian Democrats took place in Rome, where the minority's representatives supported every DC-led government, in the Region, through the direct management of the departments for agriculture and for regional affairs, and even in the Province of Bolzano, where the parties were allied.

to be held in Trieste and Istria had the effect of prompting the South Tyrolese's autonomist claims (Alcock 1970, p. 228). In this framework, the Austrians and South Tyrolese began denouncing the non-application of the agreement. In particular, the South Tyrolese criticized the Italian government's systematic rejection of laws approved by the Province of Bolzano and the government's policies regarding housing in the region (which, according to the regional statute, should be in the Province's jurisdiction), because those policies would have favored Italian migration to South Tyrol. Moreover, the marginal role played by the German language was also contested. Therefore, in 1953 they began to mobilize against the centralization attempts of Rome and Trento. On October 28, presbyter Michael Gamper published in "Dolomiten" the well-known article on the "Todesmarsch" (death march): "Since 1945, we South Tyrolese have been marching towards death, unless the rescue does not come at the very last minute ... Rome would have granted us autonomy only when Italians will be the majority, but then it will be too late" (Steininger 1999, p. 30). Even within the usually collaborative SVP there emerged some dissent from the more radical wing—the so-called "Young Turks"—which was strongly committed to shedding the old guard's moderate attitude. As a result, Silvius Magnago, who led this fringe, became the SVP's President in 1957 (Vallini 1961, pp. 171-176; Pallaver 2009, pp. 599-605; Pristinger 1978, pp. 35-70).

In 1955, the South Tyrol crisis emerged with clarity. In that year, Austria regained its sovereignty by signing the State Treaty, thus ending the Allied occupation of the country. The irredentist circles in Tyrol and Innsbruck, in addition to the "Young Turks", had long waited for this moment. In fact, with Austria's support, their protest became much more credible. Austria regained full freedom of action in foreign policy. Moreover, it could no longer ignore the requests coming from its domestic public, which was all the more convinced that the cession of South Tyrol to Italy was a resounding injustice. In the summer of 1955, Foreign Minister Bruno Kreisky made clear that Austria "as a free and sovereign state, would have more powers than those granted by the Peace Treaty" (Steininger 1999, p. 34; Nolet 1999, pp. 125-127)¹⁶.

¹⁶ Toscano (1967, pp. 468-469) points out that already in February 1954 the Italian Embassy in Vienna had sent a cable to the Italian government, stressing that, after confidential talks with South Tyrolese representatives, Chancellor Raab would re-start the negotiations with Rome on South Tyrol and that, if no agreement was reached, he was ready to submit the question to the United Nations.

Consistent with those aims, in early 1958 SVP representatives presented a proposal for the institution of autonomy for the Region South Tyrol. Yet, this proposal was not even discussed in the Italian Parliamentary Committee for Constitutional Affairs. In the meantime, after the issue of operational decrees on popular housing by the Italian government, the SVP left the regional government (where the party had always ruled along with the DC). This appeared to be incoherent behavior, since the SVP left the regional, but not the provincial government. Indeed, in Bolzano the SVP was still ruling with the DC, despite the opportunity to form a different government with the leftist parties (Gatterer 1994, p. 1172). This ambiguous behavior was denounced more than once by the Italian Communist Party (Scoccimarro 1960), but can likely be explained by the common Catholic-based ideology of the SVP and the DC.

In July of the following year, Chancellor Julius Raab openly criticized Italy for not having implemented the agreements. After receiving the Italian reply, which pointed out that those generic claims would only have the effect of fueling misunderstandings between the Italian and Austrian (other than South Tyrolean) publics, Austria reacted with a detailed memo (October 8, 1956), in which it underlined all the points that had not been implemented: the application of territorial autonomy to the region (which would have been granted only to the Province of Bolzano), the lack of parity between German and Italian languages, the lack of application of equality in rights regarding recruitment in public employment and, lastly, the end of Italian migration to South Tyrol. In February 1957, Italy—while holding fast to its positions—agreed to additional provisions for the German minority, provided that Austria would contribute to maintaining mutual trust and loyalty (Toscano 1967, pp. 475-477; Vallini 1961, pp. 177-184; Gehler 2001). But by then, relations between the two states had already become a “dialogue of the deaf”¹⁷. The South Tyrolean protest did not cease, and, on the contrary, starting in autumn 1956, the region witnessed the first attacks against electric power pylons, which led to the capture of some twenty terrorists (ultimately convicted and given only mild sentences). For some time afterward, the situation remained calm. But when the Italian government allocated resources for popular housing, ordering the building of thousands of new houses in Bolzano, the situation deteriorated. The apex of the protest was reached in the well-known

¹⁷ The comments on Austrian newspapers were of this sort: “Italy doesn’t show any good will toward the South Tyrolean” (Vallini 1961, p. 182).

SVP gathering at Castelfirmiano (Sigmundskron) on November 17, 1957, when some 35,000 South Tyrolese openly claimed their willingness to separate from Trento, waving banners saying “Let’s defend ourselves from 48 million” (Italians), or “Los von Trient” (Away from Trent). These banners summarized the main aim of the manifestation: to claim real regional autonomy for South Tyrol (Gatterer 1994).

In the meantime, the fruitless talks between Italy and Austria led to the internationalization of the dispute. While Italy had always wanted to manage the problem as a domestic issue, Austria had been trying, since 1946, to anchor the South Tyrolean autonomy to some form of international guarantee. With the worsening of both the situation in South Tyrol and bilateral relations with Austria, however, Italy affirmed that the question was only juridical, and thus that it had to be submitted to the International Court of Justice in the Hague. The Austrians rejected this, and pointed out that the question was political rather than juridical. For this reason, in September 1960, they decided to bring the question before the United Nations, where Italian diplomats put into motion a clever plan: instead of denouncing Austrian behavior for its refusal to submit the dispute to the International Court of Justice, Italy decided to discuss the question openly¹⁸, aware of the fact that the United Nations was unwilling to consider, in general, any territorial adjustment. This overbalanced Austria’s perceived advantage in playing the role of the protecting power of a minority whose rights had been stepped on.

Neither Austrian Foreign Affairs Minister Kreisky nor Deputy Secretary Gschnitzer, got the chance to make their case. The radical views of the Austrian delegation, which softened only over time, put Austria in a bad light. The continual reference to the unfairness of the St. Germain Peace Treaty, and to the fact that Austria was forced to sign the 1946 agreements, gave the impression that the request for substantial and effective regional autonomy for the Province of Bolzano was not, ultimately, the true Austrian goal. On the contrary, they seemed to be oriented toward debating the Brenner issue again. Italy, with Foreign Affairs Minister Segni and former Minister Martino, replied to each and every point in Austria’s arguments. The speeches made by other states’ delegates in subsequent days demonstrated a broad majority in favor of the Italian position (Toscano 1967, pp. 498-540). In the end, the

¹⁸ The Italians only wanted the question put on the UN agenda not to reference the “Austrian minority” in Italy. They wanted to deal with the question as a misunderstanding over the Paris agreements and nothing more (Toscano 1967).

Austrians had to sign the resolution (no. 1497/XVI), which reaffirmed the need to apply the 1946 agreement, and urged Italy and Austria to return to negotiations and to solve the dispute on the agreement's implementation. An additional recommendation stressed that, in case of unsatisfactory results, the parties had to find a solution by appealing to the International Court of the Hague or through any other peaceful means. Finally, the resolution underlined that the United Nations was confident that the parties would abstain from resorting to behavior that could jeopardize their friendly relations.

In the end, Italy achieved a diplomatic success. But it was, perhaps, a Pyrrhic victory, when one considers that, in the long term, the Austrian attempt to internationalize the question ultimately benefited Austria more than Italy. The first stage of bilateral talks was completely unproductive, due to the rigidity of both the Italian and Austrian positions. The meetings between the Foreign Affairs Ministers went on until the summer of 1961. Italy continued to consider the 1946 agreement to be fulfilled, even if it admitted that some additional provisions for the German minority would be necessary. Austria—most probably as a result of South Tyrolese pressures—held firm on its request for the institution of regional autonomy for South Tyrol. In the autumn of 1961, Austria resubmitted the question to the UN, which reaffirmed (with resolution 1661/XVI of November 30, 1961) the same positions taken the year before. The Italian position was made much easier, all the more so if one considers that on September 12, 1961, at the initiative of Italian Interior Minister Mario Scelba, Rome instituted a “Committee for the Study of South Tyrol Problems”, better known as the “Committee of the Nineteen”. Despite the fact that it was just an advisory body and not a joint committee (since the German speaking members numbered 7 of 19), it was viewed favorably in South Tyrol: for the first time ever, Italy was willing to talk directly with South Tyrolese representatives (almost all from SVP), instead of negotiating on a bilateral basis with Austria. We will return to this point, because the institution of the Committee was the result of a renewed consciousness in Italy (the need to overcome the stalemate). This renewed awareness was also due to the intensification of South Tyrolese terrorism in the region.

As the diplomatic stalemate continued, the situation in the region worsened: the terrorist attacks, which had been sporadic in previous years, became more frequent. Some demonstrative attacks followed just after the meetings between the Austrian and Italian Foreign Ministers (from January to June 1961). The apex was reached during the so-called

“Feuernacht” (Night of Fire) between June 11 and 12, 1961, when—on the occasion of the “Herz Jesu” (Sacred Heart) celebrations—about 47 explosions took place in South Tyrol. From that moment, South Tyrolean terrorism returned in an even stronger form. The terrorists were linked to the BAS (Befreiungsausschuss Südtirol: South Tyrol Liberation Committee), and the attacks continued throughout the sixties and beyond¹⁹. However, there were at least three phases of terrorism: the first (1956-1958) was spontaneous, not armed and not well organized; the second was better organized but still indigenous (1959-1961); and the third, starting in 1962, was led by Pan-German movements (including neo-Nazi groups), which also brought a change in the BAS movement. While the first two phases were characterized by attacks on property (i.e., avoiding human casualties), the last aimed at killing Italian military personnel and police forces (Steininger 1999, pp. 39-44; Gatterer 1994, pp. 1426-1437). The first two phases pushed Italy back to talks with the South Tyrolean (the institution of the Committee of the Nineteen was proof of this): as the SVP President said in 1976, it was undeniable that the 1961 attacks “had made an important contribution to the realization of autonomy” (Steininger 1999, p. 42). By contrast, the third phase impaired negotiations between the parties, as they led Italy and the Italian public to view the dispute as a mere problem of public order and security. This last phase also slowed the process that led to compromise in 1972.

But this compromise was not immediate. Although the parties began negotiating as terrorism abated, progress was slowed by Italy’s retaliation against the South Tyrolean, which obviously led to an intensification of the conflict between the Italians and the South Tyrolean. The Italian Police was accused of sometimes being too harsh on those who were only suspected of terrorism, and in some cases even of torturing these suspects (Gatterer 1994, pp. 1429-1432; Steininger 1999, pp. 43-44).

In the meantime, relations between Austria and Italy—which had nearly frozen, since both were waiting for results from the Committee of the Nineteen—were not as friendly as the UN had hoped. Italy was partly right in pointing out that several attacks were perpetrated by Austrian citizens, and it criticized the Austrian government for its inactivity in fighting the terrorist movements. Austria, on the other hand, denounced Italian repression, and assured that it was doing its best to fight terrorism.

¹⁹ The casualty figures from the terrorism in South Tyrol were 21 dead, about 80 wounded and significant material damage (Flamini 2003; Marcantoni and Postal 2014).

The deadlock of the South Tyrol question was resolved only thanks to the willingness of the parties to take responsibility. After the debate at the UN and the institution of the Committee of the Nineteen, Italy decided to shift away from considering the issue as just an internal problem, and showed its willingness to bargain on autonomy with both the Austrians and the South Tyrolese. Meanwhile, throughout the sixties, the SVP denounced the attacks and asserted that the fight for autonomy should be peaceful, as the South Tyrolese had always been opposed to the use of violence. Lastly, there were economic considerations: following the terrorist attacks, revenue from tourism had declined, and the South Tyrolese in this sector paid the price of instability in the region. Additionally, while the South Tyrolese had not yet gained full autonomy, Italian rule did not justify the resort to violence (similar to the Algerian case, for example), because some individual rights were still guaranteed by the Italian state²⁰. In the same vein, Austria, although its public was almost radical on the issue, agreed to return to negotiations, and in several circumstances even tried to push the South Tyrolese to accept the Italian proposals (Bartoli 1967, pp. 613-663).

As mentioned above, Austrian-Italian relations were frozen until the end of the Committee of the Nineteen's work. The Committee's results, presented on April 10, 1964, allowed the two to "overcome the crisis and start resolving the dispute" (Bartoli 1967, p. 652).

Although the Committee's conclusions were unanimous, linguistic minorities continued to hold some reservations, and the final provisions envisaged a broadening of provincial autonomy²¹. Negotiations between Austria and Italy resumed. Discussions continued, with ups and downs, during the following five years. The path that was taken led to resolution of the situation. In a secret meeting held in London in July 1966, the Italians launched a comprehensive agreement that envisaged a future deal between the two states: as soon as the provisions provided by the Committee of the Nineteen were put into effect by Italy, Austria would officially declare the end of the dispute (Pastorelli 1987, pp. 96-101). In the spring of the following year, Austria welcomed the proposal as a positive step.

²⁰ This is because, in the South Tyrolese propaganda, the Algerian fight against France had often been associated with the German struggle against Italy.

²¹ For a detailed analysis of the results, see Bartoli (1967, pp. 652-655), Toscano (1967, pp. 638-646) and Gatterer (1994, pp. 1432-1437).

In the summer of 1967, terrorist attacks intensified, leading Italy to take a firm stance against Austrian behavior, reviewing the results that had been achieved thus far and vetoing the negotiations for Austrian access to the European Economic Community (EEC). Italy would change its mind only if Austria effectively managed terrorism through both preventive and repressive measures. Austria was shocked by Italy's decision, and soon gave credible reassurances on the fight against terrorism. Moreover, the timing of the attacks with the talks between the Foreign Affairs Ministers had revealed the terrorists' game, which was always the same: boycotting peaceful negotiations in order to outbid the compromise. This time, however, Austria denounced the blackmail as unacceptable. In 1968, as noted by Pastorelli (1987, p. 102), various circumstances favored agreement between Italy and Austria: 1) the attenuation and gradual cessation of terrorist attacks; 2) the willingness of the DC (which was leading a one-party government after the May elections) to resolve the dispute; 3) the attempt by Austria's one-party popular government, in the face of socialist and nationalist opposition²², to run in the next elections after having gained a diplomatic success on the dispute; 4) the fact that, after the meetings between the Foreign Affairs Ministers and the Expert Committees, the dispute would be brought before the international community (Pastorelli 1987, p. 102). When this last precondition was addressed, the Foreign Affairs Ministers agreed on an operational calendar for implementation. In May of that year, Italy removed its veto on negotiations between the EEC and Austria. Then, in July 1969, the final agreement (similar to the one drafted in London in 1966) was reached.

Before taking further steps, however, the Italian government wanted the South Tyrolese's consent. The final proposals—which would become the core of the so-called "Package"—were approved first by the SVP's executive committee in October 1969 (41 votes in favor, 23 against) and then by the Fourth SVP Special Congress (November 22) with a bare majority (52.8%, 583 votes in favor and 492 against). After a heated debate, the moderate and realistic line proposed by Silvius Magnago eventually prevailed²³. On November 30, Foreign Affairs Ministers Moro and Waldheim acknowledged the "existence of strong

²² In the 1966 elections, the Austrian Popular Party gained the absolute majority of seats, thus ending the twenty-year lasting coalition with socialists.

²³ As Steininger (1999, p. 50) argues, Magnago stated that "the Package allows us to achieve 'Los von Trient' by 80%. If we reject it, we will probably be able to go to the International Court of Justice, but without the Package".

basis to start the implementation of the measures for the Province of Bolzano, and thus to come to a closure of the dispute between Italy and Austria"²⁴. Soon after, in December 1969, first the Italian and then the Austrian Parliament approved the Package. The dispute was finally resolved, thanks to all three of the parties involved.

The Second Statute of Autonomy entered into force on January 20, 1972, and was consistent with the provisions envisioned in the 1969 Package. The region of Trentino-South Tyrol, which was first established in 1948, was maintained, but the powers of the Provinces of Trento and Bolzano were strengthened. Few powers were left to the region itself. According to the decree issued on October 31, 1972 by the Italian government, the Package's 137 articles should be put in practice before the end of the decade.

In fact, by the end of the seventies, most of the 137 articles had been implemented, but the few provisions that remained to be applied had to do with a number of important aspects (in particular, the equality between the German and Italian languages in public offices).

After a long stalemate in the negotiations with Austria and SVP, the talks resumed in 1987 in conjunction with the resumption of terrorist attacks. According to Italy, the last hurdle for officially closing the dispute was the problem of international anchoring: both Vienna and the SVP demanded that the measures envisaged in the Package should not be considered domestic, in order to allow a possible appeal to the UN or to the Hague International Court in case of violations. An SVP ultimatum in September 1991 (if the final provisions were not put into effect, Austria would bring the question before the UN) gave the final boost to the dispute. On April 22, 1992, Rome sent a cable to the Austrian government, informing it that the final provisions had been approved. At the end of May, during the SVP's special Congress in Merano, the party approved the closure of the dispute with a significant majority (82%). After the authorization by the Austrian Parliament, the Austrian government finally declared the dispute closed. With two notes on June 17, both Rome and Vienna informed the UN that the South Tyrolean question was finally resolved. As the UN Secretary General Butros Ghali put it, this was an extraordinary model for finding a bilateral solution to a conflict over a minority group (Steininger 1999, p. 57).

²⁴ See the Journal "Relazioni Internazionali", 1969, 49, p. 1086.

Conclusions

The resolution of the South Tyrol question provides some important lessons. From a general point of view, the equitable resolution of the South Tyrol dispute shows that if the countries involved—and, no less important, their political parties—act within a democratic framework, compromise is often the best outcome for all concerned. Of course, democracy brings not only benefits, but disadvantages as well. In our case, for example, the Austrian leaders often had more moderate views in private than in public, as they had to appeal to and partly indulge their radical constituencies. This can explain the different tones that, for example, Gruber and others used with the Italians and the South Tyrolese. It was important for the Austrian government to limit the “radical” claims and lead public opinion toward the path of compromise. Of course, a similar role was played by the SVP’s leader who, while claiming self-determination to guard against possible charges of compliance with the Italians, actually bargained much more readily with them on possible forms of political and administrative autonomy.

The options were clear to the parties. Italy could—and preferred to—deal with the dispute as an internal problem, but eventually compromised and accepted its internationalization. On the other hand, the Austrians and the SVP always demanded self-determination, while actually seeking autonomy for the Province of Bolzano. Austria assumed the role of guarantor of the German-speaking minority in 1946. Thus, Italy was forced to reach an agreement with the Austrian government. Austrian claims, which often coincided with those of the South Tyrolese, were gradually accepted despite missteps and misunderstandings. To reach a satisfying peace, as Raymond Aron pointed out, it is necessary for “political units to aim neither at the external territory of their area of sovereignty nor at foreign populations” (Aron 1970, p. 199). Once the Brenner frontier was acknowledged as definitive by Austria, and thus once South Tyrolese claims to self-determination came to an end, the field was ready for compromise. It was not easy, but the parties’ goodwill and their democratic character did the rest.

According to Aron, pluralist democracy is based on two main aspects: respect for the law and a sense of compromise (Aron 1969, pp. 47-49). The resolution of the dispute between the Italians and the South Tyrolese was shaped by those two aspects. Besides some initial sympathy for the indigenous terrorists, the South Tyrolese always respected the Italian constitution and law. In the same vein, Rome always

guaranteed the South Tyrolese the same rights granted to Italian citizens. Charges that Italian police tortured suspected terrorists were more political propaganda than real accusations of human rights violations.

But something more was required to resolve the South Tyrol question: an agreement granting the South Tyrolese the right to cultural and social development. Thus, Aron's second aspect, the sense of compromise, was also necessary. To reach the compromise of autonomy meant "while the constitutional pluralist 'principle' harbors respect for legality and a sense of compromise, the totalitarian 'principle' combines 'faith and fear'" (*ibid.*). The new 1972 Statute of Autonomy was a mutual acknowledgment by the Italians and Austrians that these rights were sacred both for the Italian minority in South Tyrol and for the South Tyrolean minority in the Trentino-South Tyrol Region. To achieve this, each party had to forfeit its preferred goal: the Italians had to give up dealing with the dispute as an internal matter, and the South Tyrolese had to renounce self-determination for the Province of Bolzano. Once these goals—which involved a zero-sum game—were given up, it was possible to reach some form of agreement.

Of course, other elements contributed to the agreement as well. First, the role of the great powers—especially the victors—after World War II, and their refusal to discuss the Brenner frontier and the border between Italy and Austria, was crucial. Other factors included the political similarity between the SVP, DC, and the Austrian Popular Party, which had a common (Catholic and deeply anti-communist) political ground. This was a strong incentive to reach an agreement. In addition, the similarity between the center-left coalition in Italy and the socialist-popular coalition in Austria played a decisive role in the '60s, when bilateral talks resumed. Moreover, at the end of the decade, the presence of one-party governments both in Italy and in Austria was also decisive for reaching an agreement on a new statute of autonomy.

In general, the presence of a third party (in addition to a linguistic minority and a government) also played a role. It is undeniable that in addition to democracy, the agreement also required the presence of a kin country like Austria. Most probably, without Austrian involvement, the Province of Bolzano would not be what it is today.

Of course, some problems still remain. In particular, it seems that the "ethnic proportion" had created a sort of "hidden apartheid" between two separate linguistic groups that are afraid of ethnic contamination and of intercultural dialogue (Blanco 2006, pp. 136-138). If rights are

granted to groups (to safeguard against assimilation attempts) instead of to individuals the risk could be the crystallization of two separate identities, with no chance of dialogue between them. The hope is that, in the future, mutual understanding between Italians and the German speaking minority may lead to a form of cultural hybridization, which could help to overcome their current separation and the “civil *modus vivendi*” that characterizes this ethnic separation (Nolet 1999, p. 130).

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Chapter 3

South Tyrol's Autonomy after the Conflict Settlement

Compromise, Power Sharing, and the Rights of Language Groups

Elisabetta Pulice

Introduction

The peaceful solution to the South Tyrol case is the result of a political compromise and of a negotiated balance on a wide range of intricate aspects and needs.

This chapter, concerning South Tyrol's autonomy after the conflict settlement, which can be dated back to the formal declaration of conflict settlement made by Austria before the UN in 1992¹, focuses mainly on the South Tyrolean experience after normalization. Normalization refers to the return to a normal, balanced, and basically peaceful relationship between the actors involved in the conflict.

It will first underline, from a legal perspective, the main elements whose implementation led to today's peaceful coexistence in South Tyrol, and will then show how autonomy is a permanent and gradual process, subject to continuous evolution due to social, cultural, and political changes.

The focus will therefore be on the main confidence-building measures that, starting from the "Rebuilding Trust" and "Pareto Efficiency"² phases, and with the participation of Austria, reached and maintained the compromise between South Tyrol and Italy, on the one hand, and

¹ Austria referred the South Tyrolean question (Südtirolfrage) to the United Nations in 1960/1961. For an analysis on the internationalization of the conflict and on the role played by the Austrian Government in supporting the South Tyrolean question, see the essays by E. Castelli and F. Raschi in this volume.

² See the essay by E. Castelli in this volume.

between the two main (German and Italian) language groups within South Tyrol, on the other.

From this perspective, it is important to note that political mediation and compromise need a proper set of legal instruments, and that South Tyrol went through a long period in which the result achieved through compromise was gradually implemented and consolidated.

To properly deal with the South Tyrol experience after normalization, it is important to focus on the achievement of a normal, balanced, and peaceful relationship between its two main language groups, while at the same time considering the multiplicity of possible conflicts and alliances between the various actors involved in the South Tyrol case.

Assuming that conflict, even though institutionalized and transformed, is likely to continue to exist and should be properly managed rather than denied, this chapter will also show that the implementation of South Tyrolean autonomy and a balanced relationship between language groups needs to be constantly adapted to new developments.

In particular, it will focus on the rights of language groups in the context of the proportional principle and the education system, highlighting both the complexity and the dynamic nature of the implementation of linguistic rights and of autonomy itself. This essay also reflects on some unresolved problems and current changes in South Tyrolean society, underlining some elements which seem to be crucial in the evolution toward further and more shared beneficial outcomes. Within such an approach, autonomy, the rights of language groups, and their application to the proportional principle and to the education system are also considered from the perspective of what, after normalization, can be perceived as a better way to exploit South Tyrol's human, linguistic, and cultural resources.

The framework for South Tyrol's autonomy: bilateral negotiation and power sharing

The framework for South Tyrol's autonomy and for protecting the rights of language groups is based on a series of detailed and complicated legal texts and mechanisms for their implementation, and on procedures for dialogue and bilateral negotiation between the Italian state and South Tyrol, on the one hand, and among language groups, on the other. This complex set of rules aims to avoid dominance by one party, thus achiev-

ing equal representation, dialectic confrontation, and, therefore, trust.

Before focusing on the complex themes of autonomy, power sharing, and linguistic rights, we should make some preliminary remarks on the broader context and on its evolution.

In particular, Trentino-Alto Adige/Südtirol is a so-called “special region” within the Italian constitutional system and is composed of two autonomous provinces: Trentino (i.e. the Province of Trento) and South Tyrol (i.e. the Province of Bolzano)³.

South Tyrol has three official language groups: Italian and German speakers form the two main linguistic communities, whereas a third and smaller group speaks Ladin, a Rhaeto-Romance language which is also spoken in other areas of northeast Italy and in Switzerland. The coexistence of different languages and identities that characterizes Trentino-Alto Adige/Südtirol⁴ has its root in the multi-national character of the Austro-Hungarian empire to which both Trentino and South Tyrol belonged until the Peace Treaty of Saint Germain in 1919. While Trentino was almost completely Italian-speaking, even under Austrian rule, South Tyrol has always been, and still is, almost entirely German-speaking.

After the incorporation of South Tyrol into Italy, German- and Ladin-speakers became linguistic minorities. The three language groups are differently distributed throughout the Province of Bolzano, from both a numerical and geographical point of view. These diversities in the distribution of the South Tyrolean population are due to centuries of settlement in the area and, afterward, to the Fascist policy of Italianization⁵.

According to the 2011 census, the South Tyrolean population includes 314,604 people in the German-language group (69.41%), 118,120 in the Italian-language group (26.06%) and 20,548 members of the Ladin group (4.53%). The Italian-speaking population is almost exclusively

³ For purposes of this essay, the terms South Tyrol (which stands for Alto Adige/Südtirol) and Province of Bolzano will therefore be used without distinction, meaning the autonomous province that, together with Trentino (or Province of Trento), composes the Italian special region referred to by its official and bilingual name, Trentino-Alto Adige/Südtirol, or simply as Trentino-South Tyrol. The term (city of) Bolzano/Bozen refers instead to the provincial capital of South Tyrol, while the city of Trento is the provincial capital of Trentino.

⁴ Five language communities (Italian, German, Ladin, Mocheno, and Cimbrian) have coexisted for a significant period in this area, though with different dimensions, different territorial distribution, and different legal status.

⁵ See the essay by F. Raschi in this volume.

concentrated in the city of Bolzano/Bozen and distributed throughout the province's cities and larger towns, in particular in Merano/Meran and Bressanone/Brixen. The German-speaking group is the majority in 103 out of 116 South Tyrolean municipalities, the majority is held by the Ladin-language group in eight municipalities in the so-called Ladin valleys, whereas the Italian-speaking group is the majority in only five municipalities (in Bolzano/Bozen and in four other towns in the southern part of the Province, bordering on the Province of Trento, which is almost entirely Italian: Leives/Leifers, Salorno/Salurn, Bronzolo/Branzoll and Vadena/Pfatten). In particular, in the city of Bolzano/Bozen Italian-speaking people represent 73.80% of the population.

Although this chapter will focus mainly on the complex relationships between the Italian and the German linguistic communities, it is worth noting that the coexistence of three language groups in South Tyrol is not a mere formal element: Ladin groups have always played an important role in South Tyrol's political systems, strengthening, for instance, the representation of the main German-speaking ethnic party, the Südtiroler Volkspartei (South Tyrolese People's Party) or SVP. Indeed, the decision of SVP to represent the rights not only of the German, but also of the Ladin minorities in South Tyrol has been, and still is, an important element in the relations between Italy and South Tyrol and between the different language groups within the province of Bolzano⁶.

A multiplicity of conflicts must constantly be managed in this context: for instance, the conflict between the German and Italian language groups within South Tyrol, the conflict between Italy and the German-speaking minority of South Tyrol, and the conflict between the German language group (i.e., the majority in the Bolzano province) and Trentino within the Region.

As we will see, this complexity may lead to variable alliances between these actors according to the shared interests they aim to pursue at any given time.

The main features of the current South Tyrolean experience are equality of all citizens irrespective of their language group and the broad autonomy granted to the two Provinces (South Tyrol and Trentino): territorial self-government and protection of national minorities are therefore combined.

⁶ On the role of the "Sammelpartei" SVP, see the essay by F. Raschi in this volume. For an analysis of the legal status of Ladins in South Tyrol, see, for instance, Rautz (2008).

In Italy the five special autonomy Regions (Trentino-Alto Adige/*Südtirol*, Valle d'Aosta/*Vallée d'Aoste*, Friuli-Venezia Giulia, Sicily, and Sardinia) have their own Fundamental Law, which enjoys the same status as constitutional laws since it must be approved by the Italian Parliament through the same special legislative procedure required for constitutional laws and constitutional amendments.

Accordingly, the main source of South Tyrolean autonomy, the “basic law” of the Trentino-Alto Adige/Südtirol Region and the Provinces of Trento and Bolzano is the so-called Autonomy Statute (“Statuto di autonomia” in Italian, “Autonomiestatut” in German, hereinafter AST).

From an historical and political perspective, the foundations of South Tyrol’s autonomy were first laid by the Paris Agreement, namely by the De Gasperi-Gruber Agreement (1946). As mentioned above⁷, Annex IV of the Paris Peace Treaty is the result of bilateral negotiations between Italy and Austria, and represents the international foundation for South Tyrolean autonomy. In particular, the Agreement assured German-speaking inhabitants of the Bolzano Province complete equality of rights with Italian-speaking inhabitants and made explicit reference to a framework of special provisions to safeguard the ethnic character and the cultural and economic development of the German-speaking element. According to the De Gasperi-Gruber Agreement, German-speaking citizens were granted some important rights which were then embedded in the Autonomy Statute: elementary and secondary teaching in the mother-tongue; parification of the German and Italian languages in public offices and official documents, as well as in bilingual topographic naming; the right to re-establish German family names which were Italianized during the Fascist period; and equal rights with regard to holding public office. This last right was expressly aimed at reaching a more appropriate proportion of employment between the two language

⁷ See the essays by E. Castelli and F. Raschi in this volume.

⁸ De Gasperi-Gruber Agreement: “1. German-speaking inhabitants of the Bolzano Province and of the neighbouring bilingual townships of the Trento Province will be assured complete equality of rights with the Italian-speaking inhabitants, within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element. In accordance with legislation already enacted or awaiting enactment the said German-speaking citizens will be granted in particular: (a) elementary and secondary teaching in the mother-tongue; (b) parification of the German and Italian languages in public offices and official documents, as well as in bilingual topographic naming; (c) the right to re-establish German family names which were Italianized in recent years; (d) equality of rights as regards the entering upon public offices, with a view to reaching a more appropriate proportion of employment between the two ethnical groups.

groups⁸. Moreover, the German language group was granted the exercise of autonomous legislative and executive regional power⁹. The Italian Government, aiming at establishing good relations with Austria also pledges itself, in consultation with the Austrian Government, to “revise in a spirit of equality and broad-mindedness the question of the options for citizenship resulting from the 1939 Hitler-Mussolini agreement”¹⁰.

Afterward, the so-called “Package of measures in favor of the population of South Tyrol”, approved in 1969 by the parliaments of Italy and Austria to overcome the conflicts connected to the implementation of the Paris Agreement and to the first Autonomy Statute¹¹, imposed 137 detailed legislative and administrative measures, and included an operational calendar with eighteen stages for implementation, and expiration dates aimed at a formal declaration of conflict-settlement, that Austria, as already underlined, formally made in 1992 before the UN after full implementation of the Second Autonomy Statute¹².

In particular, the “Second Autonomy Statute” of Trentino-South Tyrol was adopted under constitutional law no. 1 of November 10, 1971 and entered into force on January 20, 1972¹³.

From a legal viewpoint, the framework for the South Tyrolean experience is thus characterized by a combination of international and constitutional law.

The above-mentioned sources of international law indeed played a fundamental role in settling the South Tyrol conflict. At the same time, the change in the systemic cultural and legal environment, mainly due

⁹ *Ibid*: “2. The populations of the above-mentioned zones will be granted the exercise of autonomous legislative and executive regional power. The frame within which the said provisions of autonomy will apply, will be drafted in consultation also with local representative German-speaking elements”.

¹⁰ As well as to facilitate the mutual recognition of University diplomas and the movement of people and goods between Austria and Italy. The text of the De Gasperi Gruber Agreement is available on the website of the Trentino-Alto Adige/Südtirol Region (<http://www.regione.taa.it/codice/accordo.aspx>). As to the so called “options” (i.e., the choice either to stay in Italy and accept Italianization or to move to Austria - annexed by Germany in 1938—thus maintaining German identity and citizenship) and their revision, see the essays by F. Raschi and E. Castelli in this volume.

¹¹ The first Autonomy Statute was adopted in 1948. For an analysis on the issues raised by the compromise reached with the first Autonomy Statute, the terrorist attacks and the “los von Trient” (“away from Trento”) slogan, see the essays by E. Castelli and F. Raschi in this volume.

¹² See the essays by E. Castelli and F. Raschi in this volume.

¹³ English version available at http://www.provinz.bz.it/lpa/autonomy/autonomy_statute_eng.pdf.

to European Constitutionalism, to the features of pluralist democracy, and to confidence in the rule of law, proved to be an essential factor in the South Tyrol case.

In the Italian context, reference needs to be made to the Italian Constitution, which came into force in 1948 and contains, for example, rules concerning the protection of linguistic minorities and regional self-government, to constitutional adjudication and to constitutional laws introducing and modifying the Autonomy Statute and the relationships between state and special regions.

Along with the international guarantees of autonomy, the constitutional dimension and South Tyrol's peculiar position within the Italian legal system need therefore to be properly considered¹⁴.

In particular, this peculiar status is characterized by the principle of special treatment and by specific safeguards against one-sided decisions and interferences by the Italian state¹⁵.

As a special region, Trentino-South Tyrol enjoys, besides the constitutional rank of its "basic law", a higher level of legislative and administrative autonomy than the other ordinary regions and a specific, more favorable, financial system.

From this perspective, it is important to underline that the second ASt strengthened the legislative, administrative, and budgetary powers of the two Autonomous Provinces, while reducing the competencies of the Region. Although, formally, the latter remains an important institution, by means of the considerable transfer of powers to the provincial level, the two provinces of Trentino and South Tyrol enjoy a status substantially similar to that of two special regions (Toniatti 2001; Palermo 2008).

The relationships between the special regions and the Italian state have been characterized, since the original constitutional setting of 1948, by specific bilateral cooperation and negotiation procedures. In these regions, joint commissions, i.e., bodies composed of state and regional representatives in equal number, perform an important role in drafting decrees implementing the autonomy statute. Implementation rules are therefore a special source of law with a force that protects them from any amendment or unilateral repeal by the state¹⁶.

¹⁴ On this topic, see, for instance, Toniatti (2001), p. 42.

¹⁵ On this topic see, for instance, F. Palermo (2008b).

¹⁶ See, for instance, the decisions of the Italian Constitutional Court no. 20/1956, 22/1961, 151/1972, 180/1980, 237/1983, 212/1984 and 160/1985, and Palermo (2001, p. 832 and fn. 9).

Each special region developed the concrete features of its autonomy, its political system, and the bilateral negotiations with the state in different ways. In South Tyrol, the specific political, linguistic and social context, the awareness of the importance of locally developed politics in protecting minority rights, cultural identity and economic development strengthened its interest and political attitude in focusing and taking advantage of bilateral negotiations in all issues concerning autonomy and its special safeguards.

Besides the political negotiation at the international level and the Ast of 1972, South Tyrol's relations with the Italian state and the concrete features of its autonomy have thus largely been defined, both on the political and legal level, by means of bilateral decision-making processes, granting to South Tyrol a high degree of differentiation and protection within the Italian legal system.

Indeed, with reference to special bilateral relationships with the state, it has also been argued that "(i)n the Italian constitutional experience, South Tyrol is the only case where the full potential offered by this special relationship has been used" (Woelk 2007, p. 171).

It is precisely the long-lasting process of mutual and bilateral negotiations, characterizing both the constitutional implementation of international obligations and the implementation of the autonomy statute that led to the special and unique position of South Tyrol¹⁷ as to autonomy arrangements and protection of minority rights, making it considerably interesting also in a comparative perspective.

Furthermore, as already highlighted, compromise and autonomy are dynamic processes, due to the necessity of ensuring an adequate degree of flexibility while safeguarding continuity in the protection of South Tyrolean identity.

The procedure for implementing and amending the Ast is a clear example of both the special and dynamic nature of South Tyrol's autonomy and of the role performed by bilateral negotiations.

With reference to the scope of autonomy, the implementation rules¹⁸ indeed played an essential role in extending the powers of the two provinces. Through the statute implementation, South Tyrolean

¹⁷ On this topic, see also Woelk (2008a).

¹⁸ These rules are called "norme di attuazione dello Statuto di Autonomia" in Italian and "Durchführungsbestimmungen zum Autonomiestatut" in German.

autonomy has, therefore, been further developed and even changed in some features¹⁹.

In particular, two permanent bilateral commissions (“*commissioni paritetiche*” in Italian and “*paritätischen Kommissionen*” in German) are involved in the process of drafting legislative decrees for implementation of the statute, performing a crucial function in the dialogue and negotiation between the state and South Tyrol.

The so-called “*Commission of Twelve*”²⁰ is related to issues concerning the region and is composed of an equal number of representatives of the region, of the two provinces, and of the state. The “*Commission of Six*”²¹ is part of it, but deals only with the province of Bolzano and is composed of three German-speaking and three Italian-speaking members.

Thus, unlike the province of Trento, South Tyrol has its own special joint commission and given the above-mentioned transfer of powers from the region to the provinces, this latter commission, although formally part of the former, plays a broader role and has considerably more political power²².

The appointment method is mixed as regards both the two main language groups and the relationship between state and province: besides the equal representation of the state and South Tyrol, a member of the German group is appointed by the state and a member of the Italian group is appointed by the province²³, thus testifying the multicultural character of both the state and the province, according to which the former must represent its German-speaking national minority and the latter must represent also the Italian-speaking group (Woelk 2007, p. 167; Palermo 2008, p. 145 fn. 5).

¹⁹ Palermo (2008a, pp. 143-159).

²⁰ “*Commissione dei Dodici*” in Italian and “*Zwölferkommission*” in German.

²¹ “*Commissione dei Sei*” in Italian and “*Sechserkommission*” in German.

²² *Ibid*, p. 144.

²³ Art. 107: “1. The executive measures implementing the present statute shall be issued by legislative decree, following consultation of a joint Commission of twelve members of which six shall represent the State, two the Regional Parliament, two the Provincial Parliament of Trento and two that of Bolzano. Three of its members must belong to the German linguistic group. 2. Within the Commission referred to in the previous paragraph a special Commission for the executive measures relating to the matters assigned to the competence of the Province of Bolzano shall be appointed, made up of six members, of whom three shall represent the State and three the Province. One of the representatives of the State must belong to the German-speaking group; one of the representatives of the Province must belong to the Italian-speaking group”.

Moreover, the peculiar composition of this body forces the two main language groups cooperate to reach a compromise in their common interest.

Through the principle of parity and equal representation, the joint commission performs, therefore, an essential function as a confidence-building instrument (Palermo 2008, p. 145).

The growing power of this institution has been confirmed by the Italian Constitutional Court. In 1989, for instance, the Court declared illegitimate a legislative change made by the Italian government without asking the opinion of the Commission of Six, whose advice seems therefore to gain a quasi-binding character²⁴. In 1995, the Constitutional Court expressly considered this Commission to be a fundamental body for cooperation between the state and the Province of Bolzano, rather than a mere advisory body (Woelk 2007)²⁵. Accordingly, the president of this joint commission cannot be unilaterally appointed by the Italian government, but only by the commission itself²⁶.

This body thus became a crucial player in shaping South Tyrolean autonomy (Palermo 2001, p. 842) and since the formal settlement of the conflict, the negotiated implementation decrees started to intervene even beyond the strict meaning of “implementation”. Therefore, new fields of powers began to be covered by South Tyrol’s autonomy, although sometimes through a lack of transparency and democracy. In this sense, the principle of negotiation and the political factor seem to have prevailed over the normative element and the principle of democracy (Palermo 2001, p. 841; Woelk 2007, p. 173).

In any case, the role of joint commissions is essential in maintaining a dialectic relationship between the state and South Tyrol and is thus an important and necessary instrument to protect the special character of autonomy.

Two other examples of the dynamic nature of autonomy and of the need for an ongoing negotiation of its concrete features are the recent evolution of the financial relations between the state and South Tyrol and the impact of the constitutional reforms of the Italian regional system on the special autonomies.

²⁴ Judgement 37/1989.

²⁵ Judgement 109/1995.

²⁶ *Ibid.*

As to the first point, South Tyrol enjoys, as already underlined, special financial arrangements characterized by mechanisms of bilateral negotiations with the central government and by a considerable level of financial autonomy²⁷.

In this context we must also consider art. 119 of the Italian Constitution as amended in 2001 and the law no. 42/ 2009 on fiscal federalism²⁸, whose art. 27 states that “regions having a special statute and the self-governing provinces of Trento and Bolzano, in compliance with the special statutes, shall participate in achieving equalization and solidarity objectives and in the exercise of rights and duties thereof, as well as in the internal stability pact and in the fulfillment of obligations in connection with community legislation”.

In the case of Trentino-South Tyrol, an important step in the definition of the financial autonomy arrangements of the provinces of Trento and Bolzano was the so-called “Milano Agreement” signed on November 30, 2009, after a bilateral negotiation with the state, into which South Tyrol and Trentino entered together, gaining favorable conditions for both provinces (Magnago 2013, p. 204; Trettel and Valdesalici 2013).

Nonetheless, this agreement has been disregarded by the Italian governments; therefore, the financial relations between the state and the two provinces needed to be renegotiated taking into due account the changes and needs in the economic, financial, and political framework on both the national and local level. Accordingly, the new agreement, discussed in October 2014, aims at new, mutually-beneficial results, safeguarding the main features of the special autonomy, while granting the participation of the two provinces in the fulfillment of public finance commitments and EU law obligations. The political agreement is, however, not sufficient: to achieve these results the contents of the agreement must be included in the Italian budgetary stability law and this is likely to increase potential conflict. In regard to this compromise between Trentino-South Tyrol and Italy, it is also interesting to note the reference to the international guarantee through

²⁷ For a more detailed analysis see, among others, Benedikter (2008); Trettel and Valdesalici (2013); Magnago (2013).

²⁸ Law May 5, 2009, no. 42 Delegation to the government in the matter of fiscal federalism further to art. 119 of the Constitution”, published in the Official Journal, May 6, 2009, no. 103. English version available on the website of the Italian Government: http://www.funzionepubblica.gov.it/media/966261/l42_2009enpersito.pdf.

the possible role of Austria mentioned in the preamble of the agreement²⁹.

As to the second point, Constitutional Law no. 2/2001 reformed the autonomy statutes of the five special Italian regions, while Constitutional Law no. 3/2001 introduced important changes in the relationships between state and regional powers.

Trentino-South Tyrol, as a special region, remains protected by the provision contained in art. 10 of the Constitutional law, according to which only more favorable provisions are applicable to this kind of region (Palermo 2003).

For purposes of this essay, it is important to stress that the Amendment to art. 116 of the Italian Constitution expressly acknowledged that the Trentino-South Tyrol Region consists of two autonomous provinces³⁰ and introduced the Region's bilingual name in the official text of the Italian Constitution: Trentino-Alto Adige/*Südtirol*, in addition to Valle d'Aosta (*Vallée d'Aoste*)³¹.

Thus, the Italian Constitution balanced the German speaking group's claim on the autonomous role of the Province with the strategic role of the Region, namely for Trentino and the Italian authorities. It has also been argued, with reference to the ASt, that its compromise "was possible also because of this balance between form and substance. The Italian state saved the form and the German-speaking group in South Tyrol substantially got what it stood for: a provincial and no longer a regional autonomy" (Palermo 2008, p. 144 fn. 1).

Nevertheless, the role of the Trentino-Alto Adige/*Südtirol* Region and its relations with the two provinces are still at stake, especially with reference to recent proposals for ASt reform or for elaboration of a third Autonomy Statute.

In this respect, it is worth pointing out that this special degree of autonomy is actually granted to the territory and communities, rather

²⁹ See, for instance, the informative report by the President of the Autonomous Province of Trento, Ugo Rossi, available on the website of the Province at http://www.giunta.provincia.tn.it/binary/pat_giunta_09/interventi_presidente_rossi/ROSSI_ACCORDO_al_Consiglio.1413540104.pdf.

³⁰ Art. 116.2 "The Region Trentino-Alto Adige/*Südtirol* consists of the autonomous provinces Trento and Bolzano".

³¹ Art. 116 "According to their special statutes adopted by constitutional law, particular forms and conditions of autonomy are enjoyed by Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/*Südtirol*, and the Aosta Valley/*Vallée d'Aoste*".

than to its institutions. Accordingly, art. 116 of the Constitution, dealing with “particular forms and conditions of autonomy”, refers simply to “Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/*Südtirol*, and the Aosta Valley/*Vallée d’Aoste*”. Regions and provinces are therefore institutional instruments through which the communities settled in a specific territory may enjoy particular forms and conditions of autonomy. Moreover, the legal nature of the autonomous provinces does not correspond to that of other Italian provinces, nor to a proper region. Based on these assumptions, for instance, a proposal for Statute revision made in the province of Trento aims at new institutional arrangements and at a simultaneous change in the terminology used³².

With reference to the relations between the state and South Tyrol it is also important to note that an impact on the concrete features of autonomy might derive from the recent proposal for constitutional reform of the Senate and of Title V of the Italian Constitution³³.

To note a few examples, the provision according to which the state can exercise a power of “supremacy” intervening on matters subject to regional competence when the legal and economic unity of the Republic or the national interest are at stake³⁴ is likely to affect the autonomy of special regions, bypassing, for instance, the content of some implementation rules. In this respect, to maintain compromise and mutually beneficial results, in the amendment process of the autonomy statute it would be important to define the procedure permitting the exercise of such state competence precisely, thus ensuring its exceptional character. As already underlined, autonomy and compromise need a proper set of detailed legal guarantees and arrangements³⁵.

³² Accordingly, provinces should be referred to as “autonomous communities,” and the region as “regional union”. See the proposal made by Prof. Massimo Carli, dr. Gianfranco Postal and Prof. Roberto Toniatti, available at <http://www.lanostraaautonomia.eu/2014/02/verso-il-terzo-statuto-ecco-la-proposta/>.

³³ For a more detailed analysis of the impact that constitutional reform might have on the autonomy of the special regions, see, for instance, the comment sent to the institutions of the regions Alto Adige/*Südtirol*, Friuli Venezia Giulia, Trentino, Valle d’Aosta/*Vallée d’Aoste* by the research group on the Alpine Special Autonomies of the University of Trento (September 10, 2014): “L’impatto della revisione costituzionale in tema di riforma del Senato e del titolo V (A.S. n. 1429) sul sistema delle autonomie speciali alpine. Memoria a cura del gruppo di ricerca A.S.A. (Autonomie Speciali Alpine) nel quadro del progetto L.I.A. (Laboratorio di Innovazione istituzionale per l’Autonomia integrale) dell’Università di Trento”, available on the website of the L.I.A. project at http://www.liatn.eu/images/MEMORIA_ASA_REVISIONE_COSTITUZIONALE.pdf.

³⁴ Art. 30 of the Constitutional reform bill (Italian Chamber of Deputies no. 2613) available at <http://www.camera.it/leg17/126?idDocumento=2613>.

³⁵ *Ibid.*

Another interesting aspect of this proposal for constitutional reform concerning the special regions is the provision stating that the enactment of the reform is subject to the amendment of the autonomy statutes on the basis of a prior agreement with the special regions. On the one hand, the explicit reference to the prior agreement with the region is an important acknowledgment of the bilateral and mutually balanced relation between the state and the special regions as to the basic law of the latter; on the other hand, the vagueness of the provision and the lack of a proper definition of the procedure for the agreement raise doubts about whether this provision could effectively guarantee a properly joint decision-making process on an equal basis³⁶.

Should the reform be approved, the special regions will need to reform their autonomy statutes and to revise their representation within the state. With specific reference to the Trentino-South Tyrol case, the cooperation between the two self-governing provinces will thus be essential to properly protect and strengthen their special autonomy.

Also with reference to the balanced relationship between the two main language groups in South Tyrol, the institutional framework is characterized by specific and detailed confidence-building instruments and legal guaranties.

Power-sharing mechanisms, along with individual and collective rights (Woelk 2008b), are indeed crucial elements of the South Tyrolean model.

In particular, South Tyrol's model corresponds to a consociational democracy (Toniatti 2001) and is strongly based on cooperation between the language groups and is characterized by participation of each group at the governmental level, by their cultural and educational autonomy and proportional representation in political bodies, the public sector, and allocation of public funds (Pallaver 2007).

A crucial role in maintaining proportion, mutual trust and confidence among language groups is played by the principle of power-sharing on which the institutions of the Region and of the Province are based.

With regard to the regional and provincial Legislative Council, according to the constitutional reform of 2001, elections are formally provincial: the regional Council is then made up of members of the

³⁶ *Ibid.*

provincial Councils of Trento and Bolzano³⁷. The structural organization of these Councils is clearly based on the principle of power-sharing. According to art. 30, for instance,

“in the first thirty months of the term of the Regional Parliament the President shall be elected from among the members of the Regional Parliament belonging to the Italian linguistic group. For the subsequent period the President shall be elected from the members belonging to German linguistic group. A member belonging to the Ladin linguistic group may be elected, subject to agreement, for the respective period by the majority of members from the Italian or German linguistic groups. The Vice-Presidents shall be elected from among the members belonging to linguistic groups different from that of the President”.

Similarly, art. 49 states that

“in the first thirty months of the term of the Provincial Parliament of Bolzano the President shall be elected from among the Members belonging to the German linguistic group and the Vice-President from those belonging to the Italian linguistic group; for the following period the President shall be elected from among the Members belonging to the Italian linguistic group and the Vice-President from those belonging to the German linguistic group”.

The composition of the regional government and of the government of the Province of Bolzano is also based on the proportional representation of language groups. Art. 36 of the ASt states that

“the composition of the Regional Government must reflect the extent of the linguistic groups which are represented in the Regional Parliament. One Vice-President shall belong to the Italian linguistic group and the other to the German linguistic group. The Ladin linguistic group is guaranteed representation in the Regional Government, even derogating from proportional representation”.

According to art. 50, the composition of the Provincial government of Bolzano

“must reflect the numerical strength of the linguistic groups as represented in the Provincial Government. Members of the Provincial Government of Bolzano who do not belong to the Parliament shall be elected by the Provincial Government itself, with a majority of two thirds of its members, on the proposal of one or more groups within the parliament, so long as there is the agreement of the

³⁷ Art. 25 of the ASt also states that “the division of seats among the constituencies shall be obtained by dividing the number of inhabitants of the Region, based on the last general census of the population, by 70 and distributing the seats in proportion to the population in each constituency, on the basis of complete quotients and the highest remainders. The territory of the Region shall be divided into the provincial constituencies of Trento and Bolzano”.

members of the linguistic group of those designated, as regards the members who make up the majority supporting the Provincial Government. One of the Vice-Presidents shall belong to the German linguistic group and the other to the Italian linguistic group”.

Moreover

“(t)he Ladin linguistic group may be given representation ... even derogating from proportional representation. In the event that there is only one Ladin representative in the Provincial Council and that he is elected to the Government, he must renounce the office of President or Vice-President of the Provincial Council”.

All these features of the Trentino-South Tyrol system are guaranteed by legal safeguards, at both the national and regional level.

With specific regard to the principle of equality of rights of all citizens irrespective of the language group, the most peculiar judicial guarantee is the special ground of constitutional adjudication by the Italian Constitutional Court introduced by art. 56 of the Autonomy Statute (Toniatti 2001, p. 64).

First of all, according to this article if a bill is considered

“prejudicial to the equality of rights between citizens of the different linguistic groups or to the ethnic and cultural characteristics of the groups themselves, the majority of the Members of a linguistic group in the Regional Parliament or Provincial Parliament of Bolzano may request a vote by linguistic groups”.

Furthermore, if this specific request for separate voting

“is not accepted, or if the bill is approved notwithstanding the contrary vote of two-thirds of the members of the linguistic group which had put forward the request, the majority of that group may contest the law before the Constitutional Court within thirty days of its publication, for the reasons set out in the preceding paragraph”³⁸.

³⁸ See also art. 97 ASt “1. Without prejudice to the measures contained in art. 56 and art. 84, paragraphs 6 and 7, of the present Statute, Regional or Provincial laws may be contested before the Constitutional Court for violations of the Constitution or of the present Statute or of the principle of equality between the linguistic groups. 2. Impugnment may be undertaken by the Government. 3. Regional law may also be contested by one of the Provincial Parliaments of the Region, Provincial law by the Regional Parliament or by the other Provincial Parliament in the Region”; and art. 98 “1. Laws and acts having the force of law of the Republic may be contested by the President of the Region or of the Province following a resolution of the respective Parliament, for violation of the present Statute or of the principle of protection of the German and Ladin linguistic minorities”. 2. Should an Act by the State encroach upon the sphere of competence assigned by the present Statute to the Region or the Provinces, the Region or the respective Province may appeal to the Constitutional Court for a ruling in regard to the matter of competence. 3. The appeal shall be lodged by the President of the Region or that of the Province, following a resolution by the respective Government. 4. A copy of the notice of impugnment and the appeal

For the purpose of this essay, two important elements should be emphasized.

This instrument has been used by Ladins to protect their political representation as a linguistic group precisely when their own autonomous representation was an alternative to that within SVP³⁹.

At the same time, however, the rare use of this judicial guarantee reveals that the South Tyrol system has reached a sufficient degree of equilibrium through political compromise, i.e., on a consociational basis.

Nevertheless, from a political perspective, it is also important to underline that, on the one hand, unity in political representation of the German-speaking group by the SVP (which played an important role in achieving compromise) has recently been broken by the preference given to smaller parties more radically in favor of independence from Italy. On the other hand, Italian-speaking voters have started to give their preference to the SVP. Moreover, it is worth noting that due to the proportional principle applied to the composition of these institutions, the Italian language group in South Tyrol may be represented by political parties that receive the minority of votes within the group. From a future, general perspective, the SVP might perform a different political role in South Tyrol. But so far this party has already voted twice against the possibility of opening membership to members of the Italian language group.

These trends therefore show the ongoing development of complex relationships among the players involved in South Tyrol Autonomy and how the conflict still requires constant management.

In a different perspective, another recent development which reveals the evolution of autonomy concerns cross-border inter-regional cooperation within the framework of a “Euroregion” that includes Tyrol, South Tyrol, and Trentino⁴⁰.

on grounds of conflict of competence must be sent to the Government Commissioner in Trento if it concerns the Region or the Province of Trento and to the Government Commissioner in Bolzano if it concerns the Province of Bolzano”.

³⁹ For a detailed analysis on the Italian constitutional case law concerning the protection of political representation of linguistic minorities and, in particular, on decisions no. 261 of 1995 and no. 356 of 1998 made by the Italian Constitutional Court on the bases of the judicial guarantee of art. 56 ASt, used by the Ladin linguistic group, see Toniatti (1995a and 1999).

⁴⁰ For a more detailed analysis see, for instance, Palermo and Woelk (2005), Pasi (2007); Engl and Zwilling (2013), Palermo (2013).

First attempts of a cross border cooperation between these three provinces began in the 1990s with the first joint session of the legislative councils of Tyrol, South Tyrol, Trentino and Vorarlberg (*Viererlandtag*) in Merano in 1991. At the European level, after the accession of Austria to the European Union, the Land Tyrol and the Autonomous Provinces of Trento and Bolzano established the first trans-boundary EU liaison office in 1995 (Pasi 2007, p. 302)⁴¹.

In 2006, the European Union created a new cooperation instrument, the European grouping of territorial cooperation (EGTCs) to facilitate and promote cross-border, transnational and interregional cooperation at the European level⁴². Accordingly, the autonomous provinces of Bolzano and Trento decided to participate together with the Austrian state of Tyrol in the EGTC “European Region Tyrol-South Tyrol-Trentino”, whose charter was signed at Castel Thun in 2011⁴³.

After the compromise consolidation and the implementation of South Tyrolean autonomy, the importance of cooperation between Italian and Austrian territories and between German and Italian speaking communities began to rise.

In 2012, the Euregio began its first year of operation with 19 projects⁴⁴, aiming to promote and strengthen the cultural, economic, and social relationships between the territories involved and their citizens. Thus, the Euregio also deals with both the territorial and individual dimensions.

The awareness of sharing common territorial interests leads indeed to joint actions to protect them at the European level. At the same time, as stressed by the Presidents of the three provinces⁴⁵, the cooperation aims to promote a series of concrete activities involving the everyday life of the communities of Tyrol, South Tyrol, and Trentino, thus trying to better exploit the common historical background of these three ter-

⁴¹ See also the website of the Common Representation in Brussels at <http://www.alpeuregio.org/index.php>.

⁴² Regulation (EC) no 1082/2006 of the European Parliament and of the Council of July 5, 2006 on a European grouping of territorial cooperation (EGTC) [Official Journal L 210 of July 31, 2006].

⁴³ For more information and for the text of the Euregio’s charter and statute see the official website: <http://www.europaregion.info/it/satzung-und-organe.asp>.

⁴⁴ See also the first number of the official Euregio Journal published jointly by Tyrol, South Tyrol and Trentino in September 2014, available at <http://www.europaregion.info/>.

⁴⁵ *Ibid.*, p. 5.

ritories and their human, linguistic, economic, and cultural resources toward mutually shared interests.

The rights of language groups: the proportional principle and the education system

This section will focus on further elements that characterize the South Tyrolean experience and whose implementation maintained and consolidated cooperation achieved through compromise, thus managing or preventing further developments of linguistic, identitarian, or ethnic conflicts.

The importance of linguistic rights in South Tyrol

Since a language is the expression of the people who speak it, of their history, culture, literature, art, and traditions, linguistic rights have been, and still are, a particularly significant issue in the difficult, but nevertheless necessary, balance between safeguarding and developing minority culture and identity, on the one hand, and their social integration and interaction with the other groups, on the other.

From a general legal point of view, the mother tongue performs a strong identitarian function and is also the key element for distinguishing different groups in a multilingual society.

Language is, therefore, the main distinguishing criterion for both social identification and legal acknowledgment of minorities. The Italian constitutional system is a case in point as it expressly recognizes minorities on the basis of language. In particular, according to art. 6 of the Italian Constitution “(t)he Republic takes appropriate measures to safeguard linguistic minorities”: by choosing the adjective “linguistic”, the constitutional framers excluded indeed other criteria, such as religion or ethnic origin⁴⁶. By requiring “appropriate measures”, i.e. a specific

⁴⁶ This criterion has also been confirmed by Framework Law no. 482 of December 15, 1999, on the protection of historical linguistic minorities. The term “ethnic” disappears in the final text of art. 6 of the Italian Constitution “probably because of a desire to restrict protection only to linguistic and cultural matters” (De Vergottini 1995, fn. 3). However, it is worth underscoring that the typology of minority situations drawn up by legal scholarship is a finely articulated one, and particular attention has also been paid to the employment of the term “national minorities”. See, for instance, Pizzorusso (1967) and, for an interesting analysis of the relativity of the concept of “minority” and of the choice of “national” as “the most comprehensive term [...] to denote those minorities whose description in solely ethnic and linguistic terms is vague and excessively

legislation for linguistic minorities, the Italian Constitution adds to the negative protection guaranteed by the non-discrimination principle in art. 3. Moreover, the reference to “the Republic” means that all public authorities, at every level of government, and not only the state, have the duty to safeguard minorities⁴⁷, although the numerical presence of minority groups, the criteria for distinguishing them from the majority, and their needs differ significantly throughout Italy⁴⁸.

In certain contexts, as in the case of South Tyrol, the rights of language groups have historically represented, and still represent, the main prerequisite for peaceful coexistence. In the Province of Bolzano, many, if not all, social, cultural, and work aspects are therefore centered around and influenced by the language issue. A full understanding of the deeply-rooted importance of language in the Bolzano Province requires reference to the historical origin of the need for such strong protection for language groups and, namely, to the “deep-rooted historical trauma” (Woelk 2007) suffered by the German-speaking group during the Fascist period⁴⁹. As a consequence, many provisions of the current framework

reductive”, Toniatti (1995b, p. 202). In this respect, reference needs to be made also to Pizzorusso (1975), quoted by Toniatti (1995b, p. 203).

⁴⁷ The respect of linguistic minorities embedded in art. 6 of the Italian Constitution represents part of that international obligation to respect and guarantee fundamental rights to which, according to the Paris Agreement, the Italian Republic has been a party, following World War II, and which influenced the normative choices of the Italian constitutional framers also in many other constitutional provisions. See Toniatti (2010, p. 39). Furthermore, according to the main legal documents of the multilevel protection, which, similar to other fundamental rights, characterises minority linguistic rights, language groups shall be granted rights in certain fields, such as the education system, the relations with judicial and administrative authorities, public services, media, cultural activities and facilities, economic and social life (Palermo and Woelk 2011).

⁴⁸ As regards the Italian Constitutional framework, linguistic minorities are also protected under art. 2 of the Constitution, according to which the Republic recognizes and guarantees the inviolable rights of man, for the individual and for the social groups where his personality is expressed. Moreover, linguistic rights are strengthened by other fundamental rights, such as the right to freedom of expression (art. 21 Const.), the development of culture (art. 9 Const.), and the principles of local autonomy and administrative decentralisation (art. 5 Const.). The protection of minorities in Italy, based on the principle of recognition and non-discrimination, presents nevertheless differentiations and asymmetries: certain minorities are indeed “super-protected” through territorial self-government (Alto Adige/Südtirol, Valle d’Aosta/Vallée d’Aoste). Other minority groups, the so-called “historical linguistic minorities,” benefit only from a potential protection according to the Framework Law 482/1999 which requires a “bottom-up” activation; other groups, such as, for instance, Sinti and Roma, have basically no protection. For a more detailed analysis see Woelk (2010) as well as Palermo and Woelk (2011).

⁴⁹ After the annexation of South Tyrol by Italy (1918), the Fascist policy was indeed characterized by a total disregard for minority rights, a strict prohibition of schools, trade unions, political parties, and even personal names in the German language, as well as by a forced Italianization of the whole population of the Province. Thus, the German language was eliminated from public administration and, more generally, from any official, political, or even educational context. See the essay by F. Raschi in this volume.

for South Tyrolean autonomy, above all those regarding linguistic rights, may be considered a strong reaction to previous cultural and linguistic discriminations and were therefore meant to counterbalance the deep disproportion between the two language groups generated by Fascist policies. From a legal perspective, art. 2 of the ASt states that

“in the Region equality of rights for all citizens is recognized, regardless of the language group to which they belong, and respective ethnic and cultural characteristics shall be safeguarded”.

As stressed above, this provision acknowledges the principles contained in the De Gasperi-Gruber Agreement: in particular, equality of rights, cultural autonomy for the three language groups, and the safeguarding of ethnic and cultural characteristics. Moreover, it is interesting to note that the ASt goes one step further, using the term “all citizens” instead of the term “German speaking inhabitants” used in the Agreement. The wording of this article therefore reveals that what was originally meant to protect a specific part of population (the German-speaking community), as distinct from the Italian majority (countrywide), is now considered a right of all citizens in the Region.

Nevertheless, the complex implementation briefly described above leads to a policy of relationships in which the two main language groups in South Tyrol are essentially separate but have equal rights and opportunities.

Accordingly, schools, documents, and a variety of services and institutions are separated on a linguistic basis, with each group having great cultural autonomy, but at the same time each language group is ensured equal rights, equal quality of public services, and equal opportunities. Therefore, parity of languages is granted but separation is considered and used as an instrument for stabilization (Fraenkel-Haeberle 2008, p. 261).

Equality of rights and the separate use of one of the two official languages as a general rule are particularly evident in art. 99 and art. 100 of the Autonomy Statute. The first states that “in the Region the German language is made equal to the Italian language, which is the official language of the State”. Yet in case of discrepancy Italian prevails.

According to art. 100

“except in cases expressly provided for—and except for the regulation through executive measures of cases of joint use of the two languages in documents

intended for public use and in documents intended for more than one office—the right to use one or other of the two languages shall be recognized”;

moreover

“the offices, the organs, and the agencies ... shall use in correspondence and in oral dealings the language of the applicant”.

There are, nevertheless, some important fields in which the two languages are used jointly and have the same layout. In particular, the joint use of languages requires a specific provision or, according to § 4 of art. 100 of the Statute, occurs in some typical cases: documents meant for the general public (e.g. town-planning projects), individual documents or documents addressed to a single individual but meant for public use (e.g. identity cards and diplomas), as well as documents addressed to several offices. In the Bolzano Province all traffic signs are also bi- or trilingual. Other important exceptions to the principle of separation are legislative texts, which are published in the region’s Official Journal in both Italian and in German.

One of the most important safeguards for language groups is the use of language in public administration: in South Tyrol people have in particular the right to use their own language in oral and written relationships with the public administration and with judicial authorities⁵⁰.

In South Tyrol there are also Italian and German newspapers, and radio and television programs are broadcast by public TV and radio or by some private radio and television stations in either of the two languages. At the cinema, movies are shown (separately) in each of the two languages and theater seasons are scheduled considering the needs of the two (or even three) language groups.

The Certificate of Bilingualism

To guarantee linguistic rights and, in particular, the right to use one’s own language in oral and written relationships with the public administration and with judicial authorities, language certification is manda-

⁵⁰ See, for instance, Presidential Decree (D.P.R) no. 574/88 on the implementation of the special arrangements for the Trentino-Alto Adige/Südtirol with regard to the use of German or Ladin in relations between citizens and the public administration and in judicial proceedings. The same is also applied to companies with concession to provide public utility services in the Province (e.g., Italian Railways or Postal Offices) and in notarized documents.

tory for all applicants to the public service⁵¹. Access to public posts is subordinate to certification of knowledge of both official languages (Italian and German) and, according to art. 1 of the so-called “Quota Decree”⁵², this knowledge should be adapted to the need for efficiency of the service. In particular, there are different linguistic levels (D-C-B-A), the level required being determined according to the applicant’s education degree: D - elementary school; C - secondary school (1st level); B - secondary school (2nd level); A - university. There are also some rules regarding the candidate’s age: level D and level C can be obtained up to the age of 14, whereas level B and level A can be obtained only after the age of 18.

The proportional principle

As mentioned above, one of the main features of South Tyrolean autonomy is the proportional principle, according to which, in specific fields (including public employment), access to social services by citizens belonging to the three linguistic groups—German, Italian, and Ladin—is considered and guaranteed in direct proportion to their numerical strengths within the population.

The need for such a principle arose from the strict limitation, if not complete exclusion, of German (and Ladin) speakers from certain public positions and social resources due to fascist policies and forced Italianization of the Bolzano Province in that period. As a result, after World War II there was a great disparity between the Italian and the German groups in the distribution of public positions and in the allocation of resources, to the advantage of the former⁵³.

The proportional quota system introduced by the Autonomy Statute was therefore meant as a positive action in favor of the German group, based on the De Gasperi-Gruber Agreement and implementing the protection of linguistic minorities and the principle of substantive equality stated in the Italian Constitution.

⁵¹ This language certification is called “Patentino di bilinguismo” in Italian and “Zweisprachigkeitsnachweis” in German.

⁵² Presidential Decree D.P.R. 752/1976: implementation decree of the ASt on the quota system and linguistic knowledge in the public administration.

⁵³ For instance, at the time that the Second Autonomy Statute came into force in 1972, fewer than 10% of public posts were filled by German (or Ladin) speakers (Lantschner and Poggeschi 2008, p. 219).

The current normative framework for the proportional quota system requires the proportional distribution of public funds and resources, proportional representation for the allocation of public posts, and proportional representation in the political sphere, i.e., a proportional electoral system and linguistic proportion in the composition of organs, municipalities included.

Seeking to redress the disproportion among language groups, art. 15 of the Autonomy Statute requires in particular that the Province of Bolzano use “its own funding allocated for welfare, social and cultural purposes in direct proportion to the extent of each linguistic group and with reference to the needs of this group”.

One of the most important areas concerned by this provision is social housing. In particular, pursuant to art. 15, the allocation of resources is subject to a combined calculation: the quota of proportional representation of a group and the amount of social housing needed by that group as established according to the number of requests presented by its members.

As housing policy has been extensively used by Fascism in order to Italianize the Province, the instrument of the ethnic proportionality in social housing was considered as an important protection of German and Ladin groups. However, as a further example of the dynamic nature of all these measures, it must be underlined that in the city of Bolzano/Bozen and in the largest provincial towns, where most of the Italian speakers live, the quota turned out to be a protection for the Italian group as well.

The quota system is also applied in the cultural field, where resources for cultural facilities and, more generally, for cultural events and activities aiming at the development and the accessibility of culture, are allocated in conformity with the ethnic proportionality. According to the principle of cultural autonomy, the share reserved to each group is separately administered by offices of German, Italian and Ladin culture. Originally these offices focused their activity only on the promotion of cultural events, activities and opportunities for their respective language group. For the purpose of this essay, it is worth noting that, today, they are starting (although very slowly) to collaborate, creating more opportunities for interaction between different cultures and the offices themselves.

As regards the public administration and specifically the lists of personnel employed in decentralized offices of the state administration

in the Province of Bolzano, § 3 of art. 89 ASt establishes that these posts “shall be reserved for citizens belonging to each of the three linguistic groups in proportion to the numerical strength of those groups ascertained from the declarations of membership given at the time of the official census of the population”. This article aims to re-establish and maintain linguistic pluralism in the administration and represents the direct application of one of the main guarantees in the De Gasperi-Gruber Agreement⁵⁴. Consequently, access to a public post is subject to two requisites: passing the selection process and being affiliated with the language group to which that particular post is reserved. The quota system does not apply to private enterprises or private bodies. In this respect, one of the issues arising from the quota system relates to its application to privatized administrations, such as the railways and the postal service. This issue led to some decisions of the Italian Constitutional Court, which first held that application of the quota system to partially privatized administrations was consistent with the constitutional text⁵⁵ but later excluded fully-privatized administrations from application of this system⁵⁶.

At the legislative level, in 1997 the Decree on the quota system and linguistic knowledge in the public administration⁵⁷ dealt also with this issue providing for a more flexible application of the quota system but, at the same time, for its application to privatized enterprises performing the functions of the former state-owned railways and post service. Instead, the quota does not apply to new private enterprises with public shares carrying out activities previously under provincial control⁵⁸.

⁵⁴ Letter (d) of art. 1 of the Agreement (see fn. 8). It is precisely this provision that is considered to have allowed for the introduction of the quota system, although the Italian and German translations of the original English version led to differences in the interpretation, especially as regards the concrete content and scope of it and the corresponding obligations (Lantschner and Poggeschi 2008, p. 224).

⁵⁵ Constitutional Court Decision no. 768/1988, based on the principle mentioned also in decision no. 289/1987, according to which the protection of linguistic minorities is considered as a national interest (art. 4 ASt) and a fundamental principle within the Italian legal system. See for instance Poggeschi (2001b, p. 698).

⁵⁶ Constitutional Court Decision no. 260/1993.

⁵⁷ Legislative Decree no. 354, amending the implementation decree of 1976 on the quota system and linguistic knowledge in the public administration.

⁵⁸ It has been argued that there might be a political reason behind this difference, considering that the quota system has been maintained for previously state-owned companies where German speakers originally represented the minority, but not for bodies previously under provincial control where the Italian speakers were in a minority position. Indeed, in the latter situation, private enterprises made it possible to reserve more posts for the German group. Accordingly, the quota system proves to be in some way a protective measure for the Italian group,

Declaration of linguistic affiliation

The declaration of linguistic affiliation is the instrument used to determine how many people belong to each group. Besides being directly instrumental to application of the quota system, the declaration performs an important identitarian function since it is essential for linguistic minorities to declare themselves as such in order to gain protection as a group. The declaration of linguistic affiliation is linked to the general census, in which each resident must declare his or her language group.

In addition to, and irrespective of, the anonymous declaration connected to the general census, a person can make a nominative individual declaration of affiliation to one of the three official language groups at any time, in order to benefit from the legal effects of the linguistic affiliation⁵⁹.

The formal declaration becomes the basis for all rights subject to the proportional principle, such as, for instance, the right to be employed in the public administration or to be given social housing.

The declaration of affiliation can be modified or withdrawn, and its issue and use are based on the principles of freedom, secrecy and privacy. In this respect, it is worth noting that the “Quota Decree” has been integrated and modified several times⁶⁰ after some important decisions by the Italian Council of State and, as regards confidentiality of ethno-linguistic data, at the request of the Italian Data Protection Authority. In particular, section 18 of the decree has been amended to better control the way these sensitive data are processed, and to ensure compliance with Italian and European legislation on data protection and privacy.

Moreover, with reference to the free choice of linguistic affiliation, citizens may now choose one of the three language groups—Italian, German and Ladin—or, if they do not belong to any of these three groups, they can choose the option “other”. In this case, they need to indicate their simple aggregation to one of the three recognised language groups.

although originally meant as a tool to redress the disproportional representation of German (and Ladin) speakers in the public context (Lantschner and Poggeschi 2008, p. 223).

⁵⁹ See art. 20-ter of d.P.R. no. 752/1976.

⁶⁰ In particular by D.Lgs. no. 99 of May 23, 2005 (Lantschner and Poggeschi 2007, p. 226).

The possibility to choosing the category “other” is due to decisions by the Italian Council of State⁶¹. Likewise, the Advisory Committee on the Framework Convention for the Protection of National Minorities⁶² stressed, in the “Opinion on Italy” adopted on September 14, 2001⁶³, that the system of individual declaration of linguistic affiliation in the Province of Bolzano did not adequately safeguard the principle of free affiliation⁶⁴ and protection of ethno-linguistic data. Therefore, amendment to Section 18 was meant also to

“make it possible to overcome any possible contradiction between Article 3 of the Framework Convention, which provides that the Declaration should not be mandatory and, not explicitly, that personal data is to be treated as confidential, and the need for this information to be known in order to protect the minority”⁶⁵.

The education system

The South Tyrolean education system for the two main language groups is characterized by two separate and parallel school systems: one Italian and one German.

The school system clearly shows how separation is considered and used as an instrument for stabilization. It aims to grant, in a separate and parallel way, both the right to education in the mother-tongue and knowledge of the other co-official language of the Province (Italian being the only official language in the State).

According to art. 19 of the Autonomy Statute “in the Province of Bolzano nursery, primary and secondary school teaching shall be

⁶¹ In particular, case no. 439/1984 and case no. 497/1987. See, for instance, Carrozza (1988, p. 73); Poggeschi (2001a, p. 659).

⁶² Framework Convention for the Protection of National Minorities, adopted within the Council of Europe in 1995. The Convention was ratified by Italy on November 3, 1997, and entered into force in 1998.

⁶³ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Italy*, adopted on September 14, 2001, p.7. Available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_Italy_en.pdf.

⁶⁴ According to art. 3 of the Framework Convention: “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice”.

⁶⁵ Comments of the Government of Italy on the opinion of the Advisory Committee on the implementation of the Framework Convention for the protection of national minorities in Italy (January 31, 2002), p. 3. Available at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_1st_Com_Italy_en.pdf.

provided in the Italian *or* German mother-tongue of the pupils” and the teaching in that language must be given by teachers of the same mother-tongue. At the same time “the teaching of the second language by teachers for whom it is their mother-tongue shall be compulsory”.

All administrative functions concerning the education system are attributed to institutions separated according to linguistic diversity: recruitment and training of teachers, hiring of administrative staff, elaboration of curricula, choice of textbooks, and supervision.

As regards the relationships between the Italian state and South Tyrol, the Province of Bolzano takes adequate measures—such as the modification of curricula—to safeguard the cultural and ethnic identity of each language group. The advice of the National Council for Public Education is, nevertheless, needed and, in this particular case, its composition is integrated by provincial delegates of the corresponding language group. Moreover, the Province chooses the appropriate education curricula by considering the cultural and linguistic needs of each group. Other key elements of the education system are the principle of free choice of school regardless of the pupil’s mother tongue and the strict selection of teachers on the basis of their language skills⁶⁶.

This education policy permits both languages to be taught in an equal and autonomous way. Considering the role of education, and especially of education in the mother tongue, as a tool for cultural protection and identity development, the existence of two parallel education systems assures the preservation of the culture and the language of each community, thus strengthening its cultural autonomy. It is nevertheless important to stress that education should be considered and must be fully used as a tool to protect cultural diversities, as well as to promote integration and understanding among the different linguistic communities.

The compulsory teaching of a group’s language to students who are not members of that group is clearly an essential tool for greater dialogue between the two main language groups, but it has been unable to achieve more integration.

⁶⁶ School authorities have the option to refuse the enrollment of pupils only if their linguistic ability is considered insufficient to attend classes in the language of the school. In this case, parents can challenge the school’s decision before the Administrative Court. See art. 19 § 3 of the Autonomy Statute: “Enrolment of a pupil in schools in the Province of Bolzano/Bozen shall follow a simple application by the father or guardian. The father or guardian may appeal against rejection of the application to the autonomous section of the Bolzano/Bozen Regional Court of Administrative Justice”.

As we will see, the educational environment should therefore offer, especially after normalization, more spaces for cross-communal life to promote intercultural dialogue between the Italian and the German groups, especially by their younger members.

The rights of language groups after normalization

As mentioned above, compromise is an ongoing process that must be constantly renegotiated and adapted to new needs and social developments.

In South Tyrol, once normalization has been reached a new orientation may be possible and likely necessary. In this perspective, several factors may influence the originally-achieved balance between the two language groups. For example, the need to cope with new developments in society, the influence of the European Union, the need to properly balance linguistic rights and other fundamental rights, and the need to understand how to better exploit human, linguistic, and cultural resources.

The principle of ethnic proportionality gives an idea of the gradual and dynamic nature of the implementation of language groups' rights and of the originally temporary nature of some measures. Proportional representation was meant to be achieved within thirty years of the implementation of the Second Autonomy Statute and, in fact, was achieved in most fields by 2001. From today's perspective, the current situation seems to be characterized by a trend toward normalization, in the sense that many of the difficulties and disproportions that originally characterized relations between the two language groups have been overcome and, after full implementation of autonomy, proportional representation of both groups has been achieved everywhere.

From a general legal point of view, a controversy deriving from the quota principle regards whether it should be a temporary or permanent measure.

On the one hand, the quota system was originally meant as a positive action. Therefore, according to the temporary nature of such actions, it should be discontinued once an appropriate proportion of employment between the two language groups has been achieved. On the other hand, it is important to stress the role performed by the quota system in maintaining peaceful coexistence in South Tyrol. Over the years the quota principle has also changed its originally temporary

function and become a system of power-sharing between the two groups (Lantschner and Poggeschi 2008).

Moreover, the legal foundation of this principle has its roots directly in the international Agreement⁶⁷.

In any case, considering the consequences that strict application of the quota system may have on South Tyrolean society in terms of language group separation, and to the detriment of social cohesion, the safeguarding of proportional representation and of fair equilibrium between language groups should likely be attempted through other, more flexible means. Indeed, the proportional principle is still likely to cause problems and inconsistencies and conflicts. Probably, at least in fields where professional skills directly affect fundamental rights (as is the case, for instance, of judges or physicians), the proportional principle should probably be revised to make application of the quota system more flexible. Moreover, in some professions, such as those of physicians and surgeons in particular, where high levels of scientific, medical and surgical skills can make a difference and raise the quality and efficiency of the Public Health Service, even the rigid prerequisite of the highest level of knowledge of both official languages may fail to ensure other important constitutional rights and principles.

Therefore, after normalization, a new balance between the rights of language groups and other fundamental rights should be sought.

In recent years, the quota principle has been applied more flexibly in certain fields and, on the one hand, the change in this mechanism “shows that also this apparently untouchable pillar of the ASt has to adapt to social reality” (Pallaver 2008, p. 313). On the other hand, because of its role in maintaining peaceful coexistence through a fair system of power-sharing, it will remain one of the main features of the South Tyrolean system.

Concerning the evolutions in the South Tyrol’s legal framework, it is also important to consider, from at least two points of view, the international and European context to which the Province of Bolzano is inevitably related.

First, certain provisions meant to protect exclusively-South Tyrolean language minorities, i.e., the German and Ladin groups, may prove to be inconsistent with the European Union’s principles of non-discrimination

⁶⁷ See fn. 54.

and with the free movement of people, goods, capital, and services. Besides, a more constructive openness toward Europe, and therefore a more proactive attention to the learning of languages other than those spoken in South Tyrol, is certainly an essential starting point in order to better exploit the human, linguistic and cultural resources of the Bolzano Province.

The Certificate of Bilingualism is another case in point. Bilingual language certification as a prerequisite for public posts became an element that deeply characterizes the South Tyrol model. It is an important and essential instrument that guarantees the right to use one's mother-tongue in the public field, thus preserving, among other things, the sense of belonging and of being part of the social community, for both Italian and German speakers.

But this prerequisite, as already highlighted, is likely to affect job opportunities and hiring, sometimes even beyond the candidate's professional skills. As a result, sometimes the hiring of a professional may unreasonably penalize other important public interests.

Moreover, at least the original version of the above-mentioned decree on the quota system and linguistic knowledge in public administration, under which only the specific certificate issued in the Province of Bolzano was accepted as proof of language knowledge to access public posts, had to comply with EU law, namely with the principles of non-discrimination and free movement of people, especially after the so called "Angonese case"⁶⁸.

In this case, where freedom of movement for persons was at stake, the European Court of Justice found that requiring a particular certificate issued only in the Province of Bolzano (referred to as "the Certificate" in the ruling) as the only means of proof of language knowledge constitutes discrimination on grounds of nationality, contrary to EU law⁶⁹.

⁶⁸ Roman Angonese v. Cassa di Risparmio di Bolzano SpA. (ruling of June 6, 2000, in case C-281/98).

⁶⁹ Specifically, Roman Angonese, a German-speaking Italian citizen resident in the Province of Bolzano, after a study period in Austria, applied to participate in a competition for a position with Cassa di Risparmio, a private bank in Bolzano. The issue at stake was the requirement imposed by the bank for admission to the competition, namely possession of the specific certificate of bilingualism issued only in the Province of Bolzano. Angonese was perfectly bilingual but he did not have the certificate in question. He submitted certificates attesting to his studies of languages at the University of Vienna; nevertheless the Cassa di Risparmio informed him that he could not be admitted to the competition because he had not produced the *Patentino/Zweigsprachigkeitsnachweis*.

According to the European Court of Justice

“even though requiring an applicant for a post to have a certain level of linguistic knowledge may be legitimate and possession of a diploma such as the Certificate may constitute a criterion for assessing that knowledge, the fact that it is impossible to submit proof of the required linguistic knowledge by any other means, in particular by equivalent qualifications obtained in other Member States, must be considered disproportionate in relation to the aim”

legitimately pursued. Consequently

“where an employer makes a person’s admission to a recruitment competition subject to a requirement to provide evidence of his linguistic knowledge exclusively by means of one particular diploma, such as the Certificate, issued only in one particular province of a Member State, that requirement constitutes discrimination on grounds of nationality”

contrary to EU law⁷⁰. Indeed, this requirement inevitably puts citizens of other Member States at a disadvantage in comparison with residents of the Province of Bolzano.

Moreover, in 2010, the European Commission sent Italy a formal request to end discriminatory conditions against applicants to public posts in South Tyrol. This request specifically regarded the requirement of the certificate of bilingualism issued in the Province of Bolzano as the only proof of language knowledge (as well as the priority for applicants residing in South Tyrol).

Legislation⁷¹ was therefore amended in 2010⁷². Consequently, German and Italian language certifications, which correspond to levels A2, B1, B2 and C1 pursuant to the Common European Framework of Reference for Languages are now considered equivalent to the language certification issued by the public authorities of the Bolzano Province⁷³. Furthermore, the combination of a diploma obtained from a German-speaking high school and a degree obtained from an Italian-speaking University, or vice-versa, may now certify the bilingual language pro-

⁷⁰ The European Court of Justice held indeed that EU law “precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State”.

⁷¹ Presidential Decree (D.P.R.) no. 752/1976.

⁷² D.Lgs. no. 86 of May 14, 2010.

⁷³ If a person has a language certification only in one of the two co-official languages (German or Italian), in order to obtain the Certificate of Bilingualism he/she needs, therefore, to take the language test only in the other language.

iciency required by level A (i.e. the highest one) of the *Patentino/Zweisprachigkeitsnachweis*.

At the present time there are still a number of unsolved problems regarding the education system. First, South Tyrol has been characterized by opposition to a truly bilingual or multilingual instruction, to so called “immersion” instruction and even to the co-presence of Italian and German teachers.

The Provincial Government rejected, for instance, early attempts to introduce immersion instruction and co-presence in Italian schools. Specifically, a Provincial Government resolution⁷⁴ forbade in 1996 the co-presence, expressly considering it as inconsistent with the wording and the spirit of art. 19 of the South Tyrol Autonomy Statute⁷⁵. Although the Regional Administrative Court, Autonomous Section of the Province of Bolzano, stated in 1998⁷⁶ that this teaching method was compatible with art. 19 of the Statute, the philosophy of separation as the best protection against the threat to one’s culture remains one of the core element of the provincial education policy.

Moreover, since the two school systems are completely separate there are no appropriate schools for pupils from multilingual families, and, above all, the strict separation of school systems and even of school buildings does not permit real bilingualism⁷⁷.

Nevertheless, it is interesting to notice some initiatives promoting multilingualism, such as “Parents for bilingual education”, a non-profit, non-governmental organization of parents wanting their children to acquire a good knowledge of both official languages spoken in South Tyrol. Since the second half of the nineties, this organization has promoted immersion projects in state schools and kindergartens and has

⁷⁴ Provincial Government resolution no. 487 of December 12, 1996.

⁷⁵ See Resolution no. 380 of February 5, 1996. It makes specific reference to § 1 of art. 19, according to which: “(i)n the Province of Bolzano/Bozen nursery, primary and secondary school teaching shall be provided in the Italian or German mother-tongue of the pupils by teachers of the same mother-tongue. In primary schools, beginning with the second or third year classes, to be established by provincial law according to the binding proposal of the linguistic group concerned, and in secondary schools, the teaching of the second language by teachers for whom it is their mother-tongue shall be compulsory”.

⁷⁶ Ruling no. 362 of December 4, 1998, of the Autonomous Section of the Bolzano/Bozen Regional Court of Administrative Justice, available at <http://www.giustizia-amministrativa.it/WEBY2K/frmRicercaSentenzaBz.asp>.

⁷⁷ An interesting example of multilingualism in education is instead represented by Ladin schools where the same number of teaching hours are given in German and Italian.

been active in organizing conferences and debates on bilingual education and immersion.

Although the provincial government has not changed its educational policy and still maintains the formal requirement of separation, it has, at least implicitly, enabled Italian schools to undertake projects and initiatives that address the need for more effective bilingualism (Baur and Medda-Windischer 2008, p. 248). For example, a pilot project aiming at stimulating contact with the German language through kindergarten activities and games has been launched in some Italian kindergartens⁷⁸. Furthermore, the granting of didactic and financial autonomy to schools in 2000⁷⁹ allowed them to use additional resources for second-language instruction. Consequently, several Italian schools in South Tyrol introduced a “trilingual section” based on a new education policy called “Content Language Integrated Learning” (CLIL), in which certain well-defined subjects are taught in both German and Italian.

At present, “immersion learning”, based on the vehicular use of the language, is implemented in some Italian schools where the second (or a foreign) language is used when studying other subjects.

Moreover, interesting initiatives for greater interaction between the two school systems and for more effective bilingualism (or trilingualism) have been garnering support from parents and teachers, including in German schools.

A fairly recent initiative, jointly managed by the Italian and German Education Superintendence, is the possibility for Italian speaking students to spend the fourth year of high school in the German school and vice-versa.

Another significant exception to the strict separation of languages is the Free University of Bolzano, which is trilingual (including English) and might therefore be considered a sign of the provincial government’s new openness to a more European and multilingual future.

In this respect, an interesting project is the so-called “2020 Bilingualism Objective” promoted by the European Region Tyrol-South

⁷⁸ Pilot Project L2 started in 1998. A detailed description is available on the website of the Province of Bolzano at <http://www.provincia.bz.it/intendenza-scolastica/progetti/progetto-pilota-l2.asp>.

⁷⁹ Legislative Decree no. 12 of 2000.

Tyrol-Trentino and aimed at fostering the knowledge of the German and Italian languages in the whole territory of the Europaregion⁸⁰.

After normalization, culture and languages may therefore perform an important function in promoting mutual knowledge and understanding in a multicultural and multilingual society.

The rigid separation within the educational system (which even applies to school buildings), although originally meant to preserve the cultural and linguistic heritage of the minority group and as a tool for equal education and linguistic rights, has proven to be a choice that leads to social separation, if not polarization, rather than to a proper integration. A different kind of education policy, aimed at promoting intercultural dialogue and understanding of both languages and cultures through shared school areas and educational experiences, is therefore needed to achieve better integration between the two main language groups in South Tyrol, while simultaneously avoiding assimilation.

Conclusions

The South Tyrolean experience after the conflict settlement has shown that autonomy and compromise are ongoing and dynamic processes and that the conflict, although institutionalized, still requires constant management.

Some elements, such as continuous dialogue and bilateral negotiation, power sharing, and the balance between equality of rights and the proportional principle, are crucial for maintaining the mutually-beneficial result. From the perspective of constitutional law, the combination of territorial self-government and the protection of minorities also proves to be an essential systemic feature.

But to perform their function in a dynamic context properly, all of these elements must adapt to new social, political, and cultural developments. In particular, what was originally perceived as a mutually-beneficial result after normalization may change, and require a new

⁸⁰ According to the Resolution of the Dreier-Landtag (the three legislative assemblies of Tyrol, South Tyrol, and Trentino) the program aims to involve families, school institutions, universities and cultural communities in the development of the project. The text of Resolution no. 20 of March 5, 2014, is available on the website *Bilinguismo a Bolzano - Mehrsprachigkeit in Südtirol* at <http://www.gebi.bz.it/bilinguismo/?p=139>.

negotiated balance. Moreover, external factors such as the European Union may significantly influence relations among all parties involved.

Therefore, while confidence-building measures should be constantly maintained in order to guarantee peaceful coexistence and reduce conflict (which nevertheless is likely to continue), these measures must be interpreted in a properly flexible way, because rigid application is likely to block the path toward further mutually-beneficial results.

After the various players involved in the South Tyrol case have achieved a balanced and peaceful relationship, they must become more aware of the fundamental importance of sharing interests and reducing separation.

The Euregio seems to be an example of this awareness, at least in a trans-border reality.

At the provincial level, considering the role of education in promoting cultural development, mutual knowledge, and understanding, the education system is likely to be the appropriate starting point for a new trend toward a more shared autonomy.

In this respect, the creation of a bilingual (or trilingual) school as an optional system and the abolition of the rigid separation of school buildings might promote social, cultural, and linguistic interaction inside and outside of the school. Bilingual schools, or at least common buildings with shared recreation areas, would enable students to meet regularly and share experiences and leisure time, both in classrooms (or during breaks) and in free time out of school. Thus the education environment could concretely offer spaces for cross-communal life and therefore improve socialization and spontaneous interaction between the two language groups⁸¹.

⁸¹ This way of socializing, beginning in school, may lead children and young people to share free time outside of school as well. Sharing experiences and leisure time is also a natural way to reduce another obstacle to true social cohesion between the two language groups, i.e., the problems that Italian speakers have with understanding the South Tyrol dialect. The German group speaks an Austro-Bavarian dialect and considers it a fundamental element of its cultural identity. The dialect is so culturally-rooted as to be almost the only real vehicular language within the German group. Standard German, the language studied by Italian speakers, is spoken only in official contexts, and hardly ever in daily life. This linguistic difference, along with strict separation in the educational and, more generally, in the cultural environment, make it difficult to cross linguistic and cultural boundaries. The possibility for Italian children and students to speak with their German schoolmates and to share experiences and leisure time with them may facilitate their understanding, and even spontaneous use, of the German dialect in certain shared contexts.

Furthermore, a truly bilingual school system is not only a valid option for mixed families but may also be a way to increase the value of pluralism as the real cultural richness of South Tyrol⁸².

Beginning from this awareness and from an idea of autonomy and bilingualism (and multilingualism) as a common good, South Tyrol should go beyond the static conservation of ethnic and linguistic diversities by building a more dynamic education and cultural system that is open to European and multicultural challenges.

For all these of reasons, through—and starting from—a more shared education system open to cross-communal life and multilingualism, it might be possible to preserve the richness of cultural and linguistic diversity, while simultaneously coping with the need for harmonious interaction between people from different cultural and linguistic backgrounds. This might even lead to a shared acceptance of more flexible application of the quota system and other minority protections, which could more effectively promote other interests shared by both language groups, including greater competitiveness at the European level.

Therefore, the dynamic process that characterizes the South Tyrolean experience, considering bilingualism and autonomy as shared goods, together with greater openness to Europe, might become South Tyrol's next step in its pursuit of further mutual benefits.

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⁸² The option of a bilingual education system together with a more central role for multilingualism in the curriculum of each education system in the Province of Bolzano is the best way to enrich the South Tyrolean experience and to take advantage of the fact that, in this province, students are already used to being confronted with a different language and a different culture.

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Chapter 4

Catalonia and the “dret de decidir”

Miriam Rossi

Introduction: Interpretative models

For historical reasons incidental to the current crises in the political and economic system, the Catalan case offers a stimulating perspective on defining interpretative parameters for identity conflicts, particularly in a European context. Before the insurgence or rekindling of similar inter-state conflicts, of an ethnic-linguist and/or religious nature in the Mediterranean area, the possibility, as well as the necessity, arises to explore the applicability of an institutionalist approach to international relations. This will help in recasting the Catalan issue in recent decades, and in identifying the conditions which might facilitate a peaceful solution of the conflict between communities in Spain. Despite being a small territory in Europe, Catalonia is one of the most important Spanish autonomous communities from the point of view of historical experience, geographical extension, population density and regional GDP (Roller 2004a, pp. 151-158).

The Catalonian situation, moreover, allows reflection on the growing concession of regional autonomies in the years, and on how this might encourage further requests for home rule, to the point of having the community claim independence. The consolidated transfer of forms of home rule from the central government in Madrid, initially done together with other communities as defined by the Spain's Constitution in 1978 as “autonomous”, has nowadays stopped with regard to further claims which would compromise the principle of unity of the State.

This chapter will identify and explore an interpretative grid to explain the political and institutional means to resolve the ethnic-linguistic conflict in the region of Catalonia. It will then clarify, albeit in broad terms, the system of theoretical reference applied here.

While the anarchy of the international system, the “state of nature” of permanent war (current or potential), is an assumption of every realist theory of international relations, the institutionalist school of thought can provide valid arguments to support the possibility of cooperation between States as well as between different communities within a State. As is known, game theory offers valid explanations about the reasons for conflicts and about perspectives on cooperation. However, the point of balance identified by the analysis, i.e., mutual defection from cooperation, is collectively irrational, as mutual cooperation of the parties would offer a better result in terms of a Pareto-optimal solution. This possibility would lead to the call to institutions to maximize the usefulness of the States and of their functions more efficiently. In this view, institutions can decrease the risk of defection by using institutional structures to provide information to facilitate cooperation, guaranteeing decreased costs of transactions and a wider multilateral, agenda-based context; however this prerogative cannot rule out the risks connected with “free riding”.

The analysis will evaluate a State in terms of the advantages it would obtain from a possible agreement of cooperation, either in absolute or in relative terms. Do States’ concerns about their survival and/or autonomy prompt them to adopt a behavior that considers the possibility that cooperation might bring more relative advantages? Or is the State’s action determined by considerations of the absolute advantages of an agreement of cooperation? Realist literature (Waltz 1979; Grieco 1993, pp. 301-338; Mearsheimer 1990, pp. 5-56; Mastanduno 1991, pp. 73-113) presents a rich array of analyses, trying to find a solution to the controversial priority that a State would give to the relative advantages of cooperation as opposed to absolute advantages, or vice versa. If a realist view has always affirmed that the action of the State is determined a priori by the need to preserve and improve its relative power, therefore giving priority to itself, the institutionalist perspective challenges this assumption. It is, in fact, possible to predict when concerns over relative gains can become an insurmountable obstacle for cooperation, and intervene via mechanisms of compensation, assuming that conditions are favorable for the conclusion and subsequent application of the agreement. The correct identification of these conditions, whether facilitating or obstructing the negotiation of a compensation, is then paramount, albeit not easily achieved. The number of players in an international system, the endowment of the States, the perspective gains or, conversely, the idea of cumulative advantages, the concrete perspective of an armed conflict, the typology of advantages which can

influence the States, are just some of the factors involved in the wide debate on this topic (Snidal 1991, pp. 387-402; Lieberman 1996, pp. 1-23; Olson 1965; Axelrod 1984; Matthews 1996, pp. 112-146; Powell 1991, pp. 1303-1320; Lipson 1984, pp. 1-23; Mearsheimer 1995, pp. 5-49).

The certainty that relative and absolute advantages co-exist in the choices of States or of single communities leads the way beyond simple theorization of the institutionalist model, according to which it is possible to ignore relative advantages in favor of absolute ones, but without providing a solution to the fundamental dilemma of the priority given by the State. The model of synthesis of the two schools of thoughts, offered by Andreatta and Koenig-Archibugi (2001), seems to be more applicable: in particular, the critique of the issue of relative advantages in international relations, which cannot be rendered as absolute. Furthermore, while the need to preserve or improve one's own relative power can be attributed to the difficulty in respecting agreements in the "anarchical" framework of international relations, the reverse connection is not true. A comprehensive balance seems to be the solution to the problem of relative advantages, in a view which levels any asymmetrical distribution of benefits. This is an option which provides the share of benefits of direct collateral payments or of "issue linkages". Thus it is easy to see how, in the stages of negotiation and of implementation, lack of cooperation is caused by issues in the two stages, rather than by issues of relative advantages. It is undeniable that such issues concern all States, considering the anarchical condition they are in, and the absence of a world government capable of preventing or punishing non-cooperative behaviors. However, based on the above, trust in institutions seems the only option for promoting cooperation and avoiding a certain level of conflict. This option is possible both in inter-State and in intra-State conflicts.

The Catalan issue: A nation without a State?

The Catalan community's claims of autonomy or independence are based on its linguistic homogeneity (Miley 2006; Strubell and Boix-Fuster 2011). The Catalan language seems to have shaped the Catalan nation, keeping the community separated from the others around it. Catalan is a neo-Latin language, as is Castilian, and is not a dialect variation as claimed by detractors of the Catalan cause; this also supports an evaluation of language as a constitutive element of nation states, like the creation of an army and of a tax system¹. The existence (or lack of)

a Catalan nationality is not pertinent to this analysis; only one aspect in this context is worth noting: the will of Catalan nationalists (similar to the Scots) to define themselves as such only when the Nation-state system seems to be overtaken by supranational institutions, such as the European Union, and in general by the process of political, economic, and in some aspects linguistic, globalization. Is this a reaction to historical processes of growing linguistic and cultural homologation of the States, or are calls to the national community and its strengthening means to resolve existing conflicts in a territory, which would not exist at higher levels? This question is answered by the president of the *Generalitat de Catalunya*, Jordi Pujol, who in May 2011 expressed his fears about the process of globalization, claiming that: “globalization might threaten our continuity as the Catalan people. We might end up diluted in a great global magma. But we might equally succumb if we try to defend ourselves by shutting ourselves inside ourselves” (Pujol 2001, pp. 5-6). While a shared approach to the issue is not necessarily a feature of the Catalan community, it is undeniable that, at a political level, an essential strategy for the creation of national identity involves uniting the population against a common enemy, identified as a corroborative source to generate feelings of solidarity in the nation and of loyalty towards the Nation-state.

Over the centuries, Catalonia has expressed its national identity quietly but constantly, and has often had to pay a high price². While the unity of the modern Spanish state was cemented by the expulsion of the Jews and the Moors in the late fifteenth century (Estanyol Fuentes 2009), it was during the Enlightenment that the cancellation of Catalan political institutions and the first attacks against the Catalan language and culture were witnessed (Llobera 2004, pp. 1-25). In the Middle ages, the Catalan community had set up a legal system and a form of parliament, which became the principality of Catalonia in the sixteenth and seventeenth century. The spread of Catalan in literature in the Balearic Islands, in the principality of Andorra, and in parts of the west coast of Sardinia confirmed the strong political and economic ascent of the Catalan community in the Mediterranean (Armangué Herero 2001). The fall of Barcelona in 1714, during the war of succession, led to the abolition of the Catalan legal system and of institutions of

¹ A different opinion is expressed in Moreno Cabrera (2008).

² For an overview of the history of Catalonia see Casassas and Santacana (2004); Agustí (2007).

home rule. Despite the decline in its autonomous political and institutional structures, and in its influence over the Mediterranean area, during the nineteenth century Catalonia turned into one of Spain's main industrialized centers, beginning an extraordinary phase of economic development and modernization.

During the nineteenth century, the Catalans strove steadily for an autonomous government. The creation of the *Mancomunitat de Catalunya* (Commonwealth of Catalonia) in 1914 was the first step in recovery of home rule: after two centuries, Spain acknowledged Catalonia's status and unity. However, this administrative institution worked only until 1925, when it was abolished by the dictatorship of Primo de Rivera. A new Catalan government was established under the name of *Generalitat de Catalunya* in April 1931, with the proclamation of the Second Spanish Republic³, and it provided with a Statute of autonomy despite not having received approval by the politicians of Madrid, who noted strong support for the anarchic movement of the Confederación Nacional del Trabajo. Following the civil war, in 1939 the Generalitat was again abolished by general Francisco Franco, who promoted a policy of strong, ultra-centrist, nationalism that met the active resistance of the Catalan community. It was one of the darkest moments in the region's history: together with the elimination of the autonomous administrative system, thousands of Catalans were imprisoned or sentenced to forced labor in an attempt to break every manifestation of dissent, and to demonstrate the strength of the regime (Guibernau 2004; Alcalá 2005; Balcells 1996; Johnston 1991). The prohibition of the use of the Catalan language, in an effort to eradicate every element related to Catalan culture, was one of the most hateful measures adopted by Franco's dictatorship in Catalonia (Solé i Sabaté and Villaroya 1993).

When the regime collapsed in 1975, one of the first requests from the Catalan community was to use its language. In this first stage towards regaining democracy and autonomy, with the proclamation of the Ley de Normalización Lingüística (LNL) (Law of Linguistic Normalization) in 1983, the linguistic element was used to integrate components of foreign origin and members of a linguistic minority in the Catalan society, with the aim of "making a Country". The assimilation or integration of migrant people in Catalan society helped avoid social or political polarization between Catalan "natives" and "immigrants". The Ley de

³ For a clear foundation of the theories that allowed the move from the expression of the cultural politics of the nation to the politics, see Ferré i Trill (2005).

Política Lingüística (LPL) (Law of Linguistic Politics) in 1998 aimed at progressively strengthening the Catalan language in public administration and in education and training. The use of Catalan became the central element of integration for immigrants from other areas of the country, and the element “granting” a sort of “Catalan citizenship” (Lagarde 2008). It is worth noting that the industrialized Catalonia attracted immigrants from the whole country in the fifties and sixties, especially from the poorest communities of the south (for example from Andalusia to Extremadura); at the end of the seventies, the total incidence of the “Catalan non-native” amounted to 40% of the population (Roller 2004a, p. 152; Puig i Moreno 2008).

In 1978, after 40 years of ultra-centralist dictatorship, the Spanish constitution created a “State of autonomies”, which acknowledged different identities in the country. The extreme weakness of the Spanish state during the transition to post-Franco democracy could have been translated into the dissolution of national unity, or at least into the self-proclaimed independence of some historical nationalities. Aware of this risk, the government of Madrid opted for a concession of autonomy, considered to be a valid way to neutralize the centrifugal push of nationalist groups and to confirm the dismantling of Franco’s regime. The explicit acknowledgement of the existence of “nationalities” within Spain⁴ gave birth to a multinational and decentralized State, where every region was converted into a *comunidad autónoma* (autonomous community), with forms of home rule which each region decided to adopt within specific limits. All of the 17 autonomous communities benefited from vast jurisdictions, with the future possibility to increase their prerogatives, and rules established by specific statutes which served as local “Constitutions”. The generic “rights of autonomy” referred to in the Constitution, which associated “historical” regions (Catalonia, Basque Countries, Galicia, and later Andalucía) to other Spanish regions, contributed to an unclear, even ambiguous, view of the powers of autonomy. Furthermore, the Constitution confirmed Castilian as the only official language of the State, making it clear that the attempt to unite the two ideas of a Spanish nation during the civil war (centrality and multi-nationality) had been thwarted in favor of the country’s unity, which had to be preserved at all costs. In 1979, at the request of the Catalan community, Catalonia received a Statute of autonomy (agreed

⁴ Specifically, the introduction of the Spanish Constitution expresses the will of the country to “protect all the Spanish people in their practice of human rights, culture and tradition, language and institutions”.

with Madrid), and therefore its return to its Generalitat (an autonomous government), which had been abolished 250 years earlier. However, while the preliminary sections of the Statute were clearly in favor of Catalan nationalism and its historical importance, the autonomous powers of the Generalitat were barely defined.

Despite this, the *Generalitat de Catalunya*, supported from the very first democratic elections in 1980 by *Convergència i Unió* (CiU) and its historical leader Jordi Puyol, were able to seize the opportunities offered by the Constitution, expanding its autonomous powers and gaining management of areas such as public security and education. Over the years, CiU weighed in at Parliament, providing pragmatic support to the government of one or the other side in exchange for resources, investments, transfers of powers: it was an indirect compensatory solution to the Catalan case. The claim of independence was the prerogative of another, radical leftist group, founded in 1931: the *Esquerra Republicana de Catalunya* (Erc)⁵. Spain was not, however, turning into a federal state, despite its continued granting of concessions in terms of home rule.

The hegemony of CiU in the Catalan government was interrupted in 2003: just before the regional vote of that year, the secretary of the Spanish Socialist Party (PSOE), José Luis Rodríguez Zapatero, pledged that if elected he would accept any modification to the Catalan Statute that the Parliament in Barcelona approved. The Catalans, grateful, brought the socialists to the head of their region's government and rewarded them with an avalanche of votes in the following national elections. In 2006 the *Estatut de Catalunya*, granted in 1979 and symbol of autonomy, was modified to expand home rule of the region with the attribution of wider powers to the Generalitat on fiscal, legal and administrative issues, together with the power to have a representative in European sessions debating matters of interest to the region (López Medel 2006, pp. 51-145; Llorens 2008; Burban and Lagarde 2008; Lagarde 2000). The government in Madrid, with a socialist majority, validated this new Statute and supported Catalan goals to extend management of its *comunidad* both to encourage aspirations to modernize national society, and to limit any form of discrimination (linguistic, economic, political, or cultural) that the central government might be concerned about. This was not an impulsive choice driven by short-term politics: the expansion of regional

⁵ The approach of the Catalans to this issue cannot forget the ideological importance brought about by the political parties in relation to Catalan identity, immigration to the region, relations between Catalonia and the central state, and between Catalonia and European Union; for a detailed analysis on the issue, see Guibernau (2002), pp. 142-244.

home rule was part of a gradual process marked by approval of several norms promoting a spirit of decentralization. This was part of a policy which was clearly shared by the main nationalist parties in Catalonia, the Basque Countries, and Galicia, which, for example, signed the so called “Declaration of Barcelona” in 1998 supporting a multi-national development of the State (Requejo Coll 2003).

Nevertheless, the new Statute of autonomy of Catalonia of 2006 was *de facto* mutilated by Spanish law: first in the State-Generalitat bilateral commission with an agreement to the lowest common denominator between CiU (then the opposition first party in the Catalan parliament) and PM José Luis Rodríguez Zapatero. Second, by an appeal to the Spanish Constitutional Court, presented against the text by the Partido Popular (PP), the main opposition force, together with four autonomous communities (Rjoja, Aragona, Valencia, and Murcia), who challenged Catalonia’s self-definition as a “nation” and its self-attribution of judicial and legislative powers on fiscal issues. After years of debate, on June 28, 2010, the Constitutional Court annulled 14 articles of the Statute and reinterpreted 27, frequently referring to the “indissoluble unity of Spain” in order to limit introduction of the document mentioning the concept of “Catalan nation”⁶.

As the central government reneged on the agreement on the new Statute of autonomy and the functions of Parliament of Barcelona, the Catalan independence movement was reinvigorated and modified its identity. On July 10, 2010, over a million Catalans took to the streets to protest, with the slogan “We are a nation. We decide”. Looking back at recent years of “Catalanism”, the movement which claims the existence of a Catalan nation within the Spanish state and aims to preserve its identity, it is easy to see the search for a new national architecture, of an independent Catalan State within the European Union. The promotion of referendums on home rule between 2009 and 2011 throughout Catalonia embraced this objective, as did the various electoral indicators of the Esquerra Republicana de Catalunya, which grew until 2010; further proof of this is their ability to place the issue on the public agenda, both via the media and in society. However, was is not such a clear-cut political choice.

A Catalan identity could not be defined only via shared cultural, historical and linguistic elements, but also through the renewed aver-

⁶ Sentencia 31/2010, de 28 de junio del 2010 *Tribunal Constitucional de Espana*. See Ariño Ortiz (2011).

sion against the central State in Madrid, perceived as an entity which “discriminates and impoverishes” one of its communities by not strongly opposing the impositions coming from Brussels. Zapatero’s coat-turning in 2010, i.e., not speaking up for the *Estatut* after its rejection by the High Spanish Court, while dealing with the economic crisis, had already been punished with the worst result the socialists had ever received at regional elections.

The autumn of 2012 was a moment of strong identity awareness for the Catalans. In a global context of economic crisis and welfare cuts, the unequal redistribution of internal revenue among the regions of Spain became the main reason for controversies. This was the political setting given by the president of the Generalitat de Catalunya, Artur Mas of CiU, elected in December 2010, who had attributed responsibility for Catalonia’s economic situation to the excessive contribution given to the central State and to the scarcity of public investments in the region. Indirectly, the faults attributed to Madrid also concerned the heavy cuts the government had to inflict on education and national health, at a higher rate than the Spanish government, thus increasing the national debt (Lladó 2008). What they demanded was autonomous management of internal revenue, similar to what had been granted to the Basques and the Navarres according to an ancient privilege that was still operative, identified as the way to restore the dramatic budget of Catalonia. According to surveys, if the tax system were modified, Catalans would renounce independence. However, in Madrid, where Mariano Rajoy’s PP was again leading the government, any form of negotiation was refused: the democrats, centralists by tradition, disapproved of the *Estatut*, which had established fiscal autonomy.

The austerity measures promoted by the EU, peremptorily pursued by Rajoy’s conservative government, together with the heavy cuts of the Catalan government, were seen as the last straw in an already strained relationship between Madrid and Catalonia. The demonstration at the national Catalan event on September 11, 2012 in Barcelona, where about a million people attended, ignited the spark of the separatist movement. It was one of the most significant events in Spain’s history. It was clear that Catalan uneasiness, while not yet strongly in favor of a divorce from Madrid, had its roots in unresolved issues regarding politics and Spain’s territorial structure. It should be noted, incidentally, that the pro-independence movement was able to attract attention (at the international level), especially since late 2012. Following the demonstration, the president of the Catalan *comunidad*, Artur Mas, announced

regional elections two years in advance, to “renew the parliament in favor of the majorities that are more in line with the general feelings”. However, the results on November 25, 2012 were not in line with what he had expected: while the turnout was enormous (about 70% of the population), the results rewarded an array of political parties, some of which had never been in Parliament before. In spite of this, the “Assemblea Nacional Catalana”, a sort of platform of civil society, politically transverse and united by beliefs of independence, organized an imposing demonstration called “the Catalan way to independence” on September 23, 2013⁷: a 400-kilometer human chain crossing all of Catalonia and asking for a referendum on independence from Spain. The real split between radicals and moderates became evident (Solano 2008).

Based on this brief reconstruction, there is clear emphasis on the factors influencing the national Catalan movement that led them to abandon the reformist solution, by now considered unrealistic due to the lack of commitment by Madrid, as well as the preference for the autonomist, or even pro-independence, alternative. The political line that Barcelona will follow is still being defined, and will be influenced by the outcome of the referendum of November 9, 2014, self-proclaimed by CiU, the Catalan nationalist moderate party that is currently leading the autonomous region, Esquerra Republicana de Catalunya (ERC), the pro-independence left-wing party supporting the local government, and Iniciativa per Catalunya Verds (ICV), the Catalan green communist party. The referendum was structured in two parts. The first one asked: “Do you want Catalonia to be a State?”, and the second: “Do you want Catalonia to be an independent State?”. In fact, some parties were in favor of a State within a Spanish confederation, while others wanted Catalonia to become an independent and sovereign State. On December 12, 2013, the Spanish government reacted by stating that the referendum on the independence of Catalonia “will not take place”. “The vote won’t take place, and it won’t take place because our constitution does not authorize any autonomous community to submit a vote or a referendum about the issues of national sovereignty”, as stated by the Minister of Justice Alberto Ruiz-Gallardón⁸. A choice which does not rely on an

⁷ September 11 is the date in 1714 when Barcelona surrendered after a long siege by the troops of the Bourbons, and when it lost its independent institutions: it has since been declared Catalan National celebration by the Generalitat.

⁸ Alberto Ruiz-Gallardón has directly referred to article 149, clause 1, section 33 of the Spanish Constitution, which declares that “the State has the exclusive right to summon popular meetings by way of referendum”.

agreement, therefore, whose consequences are still unclear especially after the referendum took place as a demonstrative act. One third of the people entitled to vote went to the polls, casting an overwhelming majority to the double “yes” option.

Models of conflict resolution in Catalonia

The Catalan case is an identity claim that has never been as violent as in other European areas, such as in the Basque Countries, in Northern Ireland, in Cyprus⁹ and, in the past, in South Tyrol. Despite the intransigent attitude of the Partido Popular in Parliament, necessary to hold back nationalist parties in other regions, the Spanish government is determined to be seen as a stable and reliable player on the international scene. However, as in the difficult years of the post-Franco democratic transition, the weakness of the central State is evident in terms of economic and social instability. This is an element which has brought Madrid to concede several rights to autonomous areas in the past; an approach that is less sure today. It could be said that its refusal to negotiate Catalan autonomy will change only after long and complex negotiations, which would not infer excessive compliance by the government. The risk of appearing compliant, which would then lead to similar requests by other autonomous communities, is seen as particularly high: a hypothesis which would also presume greater demands by the Catalan Generalitat, and where the numbers of the financial bankruptcy undoubtedly contribute. Could a more conflicting scenario be in preparation?

The attainment of fiscal self-government—as a direct compensatory solution even at the end of long negotiations—is all but taken for granted. The national government is in fact aiming at recentralizing the powers granted by the “State of the autonomies”, with “ideal” support from Brussels, whose directives on the topic are inspired by the principle of fiscal harmonization. On the other hand, Prime Minister Mariano Rajoy does not need external support, since he already has an absolute majority: he could then assert that Catalan politicians were responsible for sabotaging the negotiations and “breaking Spain”.

The *independència* which is spoken of in Catalonia (and whose political direction has not yet been entirely embraced) entails a set of

⁹ See the essay by P. Morgan and E. Baracani on Cyprus conflict in this volume.

problems that cannot be ignored. The new State would begin outside the European Union and would be admitted only with the unanimous agreement of member states: how would Madrid behave in this case? At any rate, for a trial period whose length cannot be predicted, but which cannot be ignored, Catalan goods and assets would be excluded from free circulation, thus losing access to the Spanish market. These costs associated with the unilateral declaration of independence of Catalonia are why the businesses and banks of Barcelona and the surrounding area would prefer a compromise. Mas himself has clarified that the sovereignty of Catalonia should not mean a “farewell to Spain”. The alternative is significant strengthening of the region’s self-determination within the framework of the Spanish State. Some nationalist parties, as well as most of the socialists, support a federalist solution. The advantage of withdrawing “the State of Autonomies”, however, goes together with the difficulty of building a new system: some (how many?) federal “States” within Spain, divided into regions with fewer powers. An asymmetrical federalism, therefore, since not all the autonomous Communities have the desire or the ability to change into a type of German *Land*.

The problem of shaping the heritage and cultural particularities of the Iberian peninsula is a constant and complex issue from the political point of view. The historical cause of the current Catalan separatist drive can be identified, besides the economic crisis and financial default, in the end of Basque terrorism: since ETA assassinations have stopped, a moderate party (and the majority of public opinion) can talk about secession without being linked to armed movements. After all, a similar dynamic has been seen between the United Kingdom and Ireland, which has been possible since the end of IRA activities. Throughout the centuries, there have been many unsuccessful Catalan efforts to enhance autonomy from Madrid. However, there remains the question of how reasonable the birth of a new nation State would be in Europe, where the geopolitical situation is compared with China, the United States, Russia or Brazil. In the European Union, capital cities tend to lose their decision-making power to other cities such as Frankfurt. Would Catalonia really be independent (Paquin 2003)?

The role played by Third Party Intervention (i.e., by the European Union), is relevant (Palmowski 2011; Mira 2007; Joan i Marí 2007; López Bofill 2004, pp. 147-171; Roller 2004b; Ithurralde 2002): from the controversial perception of the process of European integration as a mechanism involving the States rather than the people, to the status that representatives have in Brussels, as regional entities as well as

states, up to the fundamental issue of the EU's position on the institutional internal transformation of a State in case of secession. It is useful to remember that the European Union acted as protector of the rights of minorities when post-Franco Spain began the process of European integration, and then adopted the role of creator of the dynamics of "impoverishment" imposed on Catalonia and of European guarantor of a national minority's right to self-determination.

A brief mention can be made of similarity to the guarantee given by the great powers to the De Gasperi-Gruber Agreement in September 1946, for a preliminary solution of the issue for South Tyrol, followed by application of the so-called "Packet" for autonomy in 1972 granted by Italy to the German-speaking minority of South Tyrol. However, if in the South Tyrol case the concession of autonomies and home rule contributed to providing a solution to a sometimes violent conflict between communities, in the Catalan case the reasons for the non-violent character of the conflict, as well as the contents of home rule which would contribute to defusing the conflict, must be examined in depth. In other words, the strong connection between economic growth and decreased social and separatist conflicts, valid for the model of Trentino, would lead to a similar path in Catalonia, at most by suggesting a hypothesis of transformation of the EU from communities of States to communities of "nations", a project which is also supported in other territories (for example, Euregio Trentino-South Tyrol-Tyrol). The parallelism between the South Tyrol and the Catalan case goes beyond this¹⁰. Like South Tyrol, Catalonia suffered the violence of a fascist, ultra-nationalist dictatorship which tried to erase its identity, language, culture and traditions, and the symbols of the territory; at the end of such dictatorships, national laws then tried to amend this by acknowledging the language and culture of the territory. In Catalonia and in South Tyrol there was a contested agreement: the new *Estatut de Catalunya* granted in 2006 and the De Gasperi-Gruber Agreement of 1946; both cases highlight the vagueness and defection of compromise. Both areas suffered heavy immigration from other territories of the State, incentivized by the central government, and perceived as a device to dilute the linguistic and cultural homogeneity of the territory¹¹.

The analysis must of course include an evaluation of the strong Catalan identity, which can be observed in the richness and modernity

¹⁰ See the essay by E. Castelli on South Tyrol conflict in this volume.

¹¹ See the essay by F. Raschi on South Tyrol conflict during 1919-1992 in this volume.

of the *comunidad* in relation to the real or supposed underdevelopment and poverty of the central State (Casals Meseguer 2010; Andrés Orizo and Sanchez Fernández 1991). It is evident that the rapid industrialization and modernization of Catalonia in comparison to the rest of Spain (with the exception of the Basque Countries) has cemented a “Catalan identity”, as the people belonging to the community define it (Vives 1986). Can this be interpreted as a political operation where symbols and features of identity (particularly language) are identified and offered to obtain stronger national cohesion (McRoberts 2001)? The economic question opens the field to comparative analysis with European cases (beyond the scope of this essay) where similar crises have taken place, between ethnic, religious, linguistic groups within the states, emphasized by worsening of economic conditions of its citizens.

In applying game theory and, specifically, the scheme of the “prisoner’s dilemma”, to the Catalan case, the principal players in a political and institutional field are taken into consideration in an attempt to simplify the complex dynamics between center and periphery, the reasons for the conflict, and perspectives for cooperation. In the game, every subject weighs its strategy to optimize the predicted result, considering the plans of the adversary, which are unknown; the system also presupposes the exclusion of complicated systems of “checks and balances”, in the mutual satisfaction of interests, which instead must be taken into consideration in the specific case.

In the Catalan case, considering the motivations of the players involved (the central government and the *Generalitat de Catalunya*), the focus has been on the possible strategies that each appears to be willing to use. However, the starting point must consider two basic assumptions. Independence for Catalonia cannot be seen as an option that Madrid can choose, as it will never be willing to yield a portion of the territory which is part of its sovereignty, important in terms of citizens, area and GDP; furthermore, there are no recorded developments of independence in modern States where the central authority spontaneously collaborated in such a solution without a clash of highest intensity and involvement (as in the case of armed conflicts). On the other hand, it is not clear how strongly the Catalan leadership is bound to the option of independence, since the terms of formulation of the referendum of November 9, 2014 are very vague, and there are no negotiations on the agenda (however hypothetical, on a political-diplomatic level), not only at a national, but also at an international level.

Considering the *status quo* as unsatisfactory for both parties, it can be predicted that their strategies aim toward broader forms of dialogue to allow the configuration of an agreement, which would give better and broader forms of autonomy to Catalonia at the political, economic, diplomatic, legal, and fiscal level (option a). Although this is a perfectly realistic option, which would show the reasonable attitude of the parties and their willingness to provide an effective solution to the conflict, both at a national and international level, the times and modes of this simultaneous availability for dialogue are still difficult to gauge. In this case, however, it seems clear that there would be a gain for both players: for Catalonia, compared to the *status quo*, and for the government in Madrid an opportunity to prevent a possible declaration of independence of *Generalitat de Catalunya*, which would threaten to ignite the heart of Europe. However, the dialogue for an agreement on broader autonomy for Catalonia is not exempt from dangers and problems. For the government in Madrid there is a high risk that other autonomous communities would present similar claims, particularly from the historic regional nationalities of Galicia and the Basque Countries. In a more pessimist view, it could cause a “domino” effect, which would lead to a definitive transformation of the Spanish State in a federalist sense, which in turn would be detrimental for the central power currently in the hands of the government in Madrid. This view cannot exclude the possibility that it is just the latest fulfillment of requests for autonomy from Barcelona, and that a system of perennial tension and claims would develop, which would never allow settlement of the issue. For Catalonia, on the other hand, the dialogue with Madrid to outline an agreement on regional autonomy contains the pitfall of Madrid’s failure to comply with the agreement, or the constant threat of a withdrawal of the agreement, or of a reinterpretation which would lead a restriction, according to the political needs of the majority in power. The experience of expansion of the dispositions of the Statute in 2006, which was then largely deleted in 2010, is a terrible precedent. This same objection would lead the more maximalist part of Catalan nationalists to criticize the option of collaborating with Madrid, suggesting instead an independent path as the only possible option. In this first case, it is evident that both parties must be willing to “lose” something (inflexibility for Madrid and the independent solution for Catalonia), even though each party is convinced that the other is the bigger “loser”.

This last objection opens to a second hypothesis: the case where Madrid decided to start a dialogue that Barcelona would refuse, for

example because it has already opted for the higher objective of independence instead of reinforcing its autonomy, based on the results of the referendum of November 2014 (option b). From an international point of view, Catalonia would give the impression of adopting a maximalist attitude, which would look unclear, given the absence of violations of specific rights of the Catalan minority in the Spanish State, rights which are amply acknowledged by Madrid. The concrete risk for Barcelona is that in the end it would not obtain anything, entrusting political leadership and “catalanism” to the more extremist groups of the movement, or worse, that it would see its political position worsen on at the domestic and international level if it did not use its main weapon: deterrence, i.e., the threat to declare the independence of Catalonia. Therefore its reliability would be compromised substantially. On the other hand, this option does not look feasible from Madrid’s point of view either. The risk of finding itself alone in negotiations cannot please the central government, which would abandon the inflexible image it has maintained regarding Catalan requests. The possible escalation of claims from other autonomous communities would go along with the extension of the conflicts with the Generalitat, an issue which Madrid, already in an unstable condition, would rather not have to deal with. Besides, in the case where the Catalan leadership opted for a self-declaration of independence, the government of Madrid would need to answer with political-diplomatic or military means, a response that could not be overlooked by the European Union. It is in fact clear that the EU, which respects the principle of national integrity of a State member of the Union, cannot tolerate any non-democratic act, such as armed repression of a decision by the majority on popular consultation, even though there are no specific norms on European agreements about the attitude toward a newly-divided state and its entry as new member of the Union.

A third option for the lack of availability for dialogue by Madrid, thus confirming its “iron fist” toward the requests of broader autonomy for the government of Catalonia (even if the latter would be willing to cooperate to reach an agreement), would then mean the preservation of the status quo, accepted de facto on a European and international level. However, this maximalist attitude by Madrid might be criticized by the international community, as it would feed tensions and instabilities for the whole international community (option c). The risk of extending and intensifying the conflict to obtain some concession, through an incentive to the more extreme groups of the Catalan nationalist movement, would be more than real.

A fourth and final hypothesis for solution of the Catalan case involves the lack of willingness to dialogue by both parts (option d). This situation presupposes a return to a pre-conflict stage, which seems completely unrealistic: neither that Catalonia renounces its claims of autonomy, expressed and in part allowed over the years, nor that Madrid regains complete control of the region. Or, conversely, that each party continues with its strategy (requests from Catalonia and refusal from the central State), aggravating the conflict, more or less latent, between the parties, making it permanent and spreading it to other areas of Spain. The risk of an armed or terrorist escalation cannot be excluded in such a scenario. Although it is a hypothesis that must be avoided, paradoxically there are repercussions which could be defined politically: in this case Madrid would maintain its initial position of “non-yielding” toward autonomist requests by Catalonia; meanwhile, the *Generalitat de Catalunya* would continue to govern the territory, attributing responsibility to the central government for some serious internal issues, first of all for the negative budget and the reduction of services for Catalan citizens.

To simplify these options in a graphic, the matrix of pay-offs created by the strategic decisions of the player would be as shown in figure 1, where number 4 is the best result and number 1 is the worst.

Figure 1.

		CATALONIA	
		Dialogue for autonomy	Absence of dialogue
MADRID	Dialogue for autonomy	a 3,3	b 1,4
	Absence of dialogue	c 4,1	d 2,2

Based on the above, it is obvious that for Madrid it is important to maintain an inflexible position regarding the requests of Catalan autonomy, due to the high number of risks that dialogue would create. However, it is understandable how the absence of collaboration between the parties could lead to exacerbation of the Catalan nationalist movement, possibly persuading it to embrace terrorism or to declare independence autonomously based on the popular consensus expressed in the referendum in late 2014. On the other hand, even considering the case in which the *Generalitat de Catalunya* adopted an inflexible position for its claims of autonomy, or of independence, the conflict with Madrid would only be continuous, if not exacerbated, especially if Madrid were willing to reconsider the *Estatut* and its expansion. Only

the awareness that a situation of mutual balance, created by the stable infighting of the parties, is deleterious for both, would push Madrid and Barcelona toward the acceptance of a solution, mediated by the institutions, and achieve international solutions satisfying for both parties. The international institutions, thanks to the greater independence of their structures and instruments of analysis, would then have more opportunities to identify adequate solutions for balance and compensations appropriate to a cooperative agreement.

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Chapter 5

The Cyprus Conflict and the Failure of Its Europeanization

Patrick Morgan and Elena Baracani

Introduction

In the modern history of efforts to cope with ethnic conflicts, few cases are more complex than Cyprus. The conflict was generated in the context of an ethnically mixed British colony achieving its independence and experiencing difficulties in creating new state institutions. Quite typically, the specific developments, negotiations and outcomes were also significantly shaped by various states and international institutions. By the mid-1990s the conflict was Europeanized, as the European Union became involved through its accession-of-members process, initially with the Republic of Cyprus and then Turkey. Unlike the South Tyrol case (see the essay by Castelli in this volume), and notwithstanding the efforts by the UN—at a very high level through the elaboration of the “Annan Plan”—and the unique framework provided by the accession process to determine when and how Cyprus and Turkey could enter the EU, the conflict was not solved. The parties do not recognize each other, and there is still a *de facto* partition of the island. Indeed, while Turkish Cypriots accepted the Annan Plan, with an eye to the island’s joining the EU, Greek Cypriots rejected it.

This chapter traces how the conflict arose as a serious and deep-seated clash between two ethnic groups that was active well before Cyprus became independent. It traces how, with independence, the parties could not construct institutional and political arrangements that were mutually tolerable, much less highly satisfactory, and how the pre-independence deadlock and violence between the two sides returned despite several efforts by outside players to intervene via mediation. The resulting division of the island into two political systems, economies, and societies, initiated by the machinations of one outside state and

the violent intervention of another, has been deplored by numerous states and international organizations, leading to still more efforts to intervene, all without success. We trace these failures ultimately to the lack of important prerequisite conditions for years, conditions that have been highlighted as very important for conflict management in a number of studies of severely divided countries.

However, we also trace the most recent significant failure, another effort to knit the island together into a cohesive and effective state and society, to an unfortunate confluence of poor EU decision making and the emergence of unpromising domestic political conditions in both parts of the island. We show how this failure reflected the parties' assessments of their contrasting relative costs and benefits as they approached the prospect of EU membership. We argue that Turkish Cypriots decided to cooperate because the benefits of entering as a reunited island were higher than the costs of also having to accept the provisions of Kofi Annan's plan for reunification. Turkey also supported the Annan Plan because by cooperating it might enhance its chances of opening membership negotiations with the EU, with greater benefits than otherwise. Indeed, for the new Justice and Development Party the benefits of moving toward EU membership were higher than the political and other internal costs of radically changing Turkey's policies on Cyprus. Meanwhile, lack of cooperation by Greek Cypriots can be explained by their being in a stronger position, stemming from Greece's already having begun the process for entering the EU, which favored rejection of the Annan Plan.

Finally, the paper reviews an analytical perspective that delves more deeply into the ways around making manageable states and societies where ethnic and other differences are deeply rooted. It points out the kinds of preconditions that might have enabled the people of Cyprus and their leaders to make the most of the opportunity that the island's independence offered.

To summarize, the first two sections of this chapter reconstruct the origins of the conflict and its escalation into the island's bifurcation, while the third focuses on the Europeanization of the conflict and evaluates how, over the course of three periods, key EU-level decisions shaped cooperation or rejection of it by the parties to the conflict during the UN mediation efforts. The final section then reviews more fundamental deficiencies that also helped create, then sustain, the Cyprus problem and make it so notoriously complicated and enduring. In doing so it suggests how a successfully unified Cyprus might yet emerge.

Independence and the origins of the Cyprus problem

The Cyprus problem was an offshoot of the changing fortunes of the British Empire in the twentieth century. The exhausting World Wars led Britain after World War II to shed many of the burdens and responsibilities of empire, and it eventually began looking into letting Cyprus become independent. It still had interests in the Middle East and therefore wanted to retain strategically valuable bases on Cyprus. But it was not interested in a post-colonial alliance, or in further stewardship of Cypriote affairs. Nor, it turned out, was it willing to lead in dealing with the problems that making Cyprus independent would create. Such indifference was not present vis-à-vis all British colonies and it was one source of the Cyprus problem.

Also involved was the natural concern of the Turkish government about the Turks on the island and what would happen to them after independence—it very much wanted some say in that. Turkey also did not want someone else, particularly a major power (i.e. the Soviet Union)¹ or a known and nasty antagonist (i.e. Greece) to dominate or exercise substantial influence in Cyprus and, by placing new military forces there (alongside British bases), perhaps exercise major influence in the eastern Mediterranean.

The heart of the Cyprus problem was, of course, conflict between Greek and Turkish Cypriots. Cyprus had been ruled by the Ottoman Empire from 1571 to 1878, with both Greeks and Turks living there. The Empire favored the Turks and discriminated against the Greeks. It left oversight of the latter largely to the Orthodox Church, which became the caretaker of Greek life and interests and nourished Greek national feelings.

The island was handed to the British in 1878 in exchange for British promises to support the Empire if it was attacked by the Tsarist Empire. Apparently at that point the two ethnic groups on Cyprus lived together fairly quietly but mainly in separate communities². Of considerable future importance was that under British rule each community soon had

¹ Turkey had long feuded with the USSR, which sought to expand its influence in the Mediterranean and Middle East. It would also display a similar interest in Cyprus, troubling Turkey and the West. Moscow also developed an association with the Greek Cypriots after their independence, seeing possibilities for disrupting NATO via a Greek-Turkey conflict, a prospect greatly at odds with Washington's strategic interests. This also helped shape the outcome in Cyprus.

² The percentage of ethnically mixed villages began declining by the 1930s, going from roughly 43% to 18 % at the time of independence.

its own schools and school system, with the Orthodox Church running the Greek system. Each ended up becoming a system for inculcating nationalist orientations, each side emphasizing its heroic and distinctive qualities and feelings while disparaging the other's culture³. Thus Greek and Turkish nationalism grew, each at least partly in reaction to the other⁴. Spreading nationalist feelings had the effect of displacing the development of a solid Cypriote identity for many people on the island. This deserves emphasis—it was a nationalist opposition to colonial rule but of a separatist character rather than a unifying force.

Anti-Turk rallies on Cyprus go back to at least 1912, along with rallies against British colonial rule in favor of *enosis* (unity) with Greece well before World War II, and with the Church consistently preaching *enosis*. Archbishop Makarios eventually led this effort in the years before independence arrived, which included describing *enosis* as the only reliable path to independence. In turn, the Turks eventually moved toward support for *taksim* or partition of the island into Greek and Turkish sectors after independence⁵. Therefore, the British had, for years, faced rising unrest from growing nationalism, including serious demonstrations against British rule, as well as violent clashes between Greek and Turkish Cypriots. To help manage the colony, years earlier the British had taken advantage of frictions between Greek and Turkish elements to employ many of the latter in the island's police and security forces or other positions in the British administration, playing one nationality off against the other. In addition, the British used Turkish Cypriote units to try to suppress the organized Greek Cypriote insurgency against British rule in the 1950s, using them to fight EOKA (the National Organization of Cypriot Fighters) which conducted the rebellion, further separating Greek and Turkish elements on the island. All this added to the antagonism between the two ethnicities and, in the process, added to the Cyprus problem.

By 1955 the Greek Cypriote rebellion had erupted, led by General George Grivas, a Greek officer sent to Cyprus to orchestrate it, with

³ The British eventually shut the school systems in the 1950s due to their disruptive effects, long after the damage had been done in island life. Analysts have naturally depicted the schools as intensifying the development of the ethnic conflict and its eventual effects later on.

⁴ According to one analyst (Loizides 2007, p. 174) Greek Cypriots, from the late nineteenth century on, "increasingly saw their destinies as linked to the ancient Hellenic past of Cyprus and their future to its revival through unification with Greece."

⁵ A large demonstration in 1949 called for Cyprus being turned over to Turkey again, and in 1956 a Turkish Cypriote campaign called for the island's partition.

Archbishop Makarios being more or less the political leader. In response to EOKA, the Turkish community had organized what was eventually called the Turkish Resistance Organization (TMT). Soon fighting between British forces and the EOKA, between EOKA and TMT and various other civilian groups was taking place. This would continue for another three years, with some 600 people killed.

State building and the escalation of the conflict

Cyprus was granted independence in 1960. There was no disagreement among the external parties involved about doing this, and the negotiations were not particularly long or arduous. The resulting agreements were placed under the joint supervision of Britain, Greece, and Turkey, acting as the agreement's guarantors. Each was entitled to intervene if, in its view, the arrangements began to deteriorate. Their specific plans for the island's independence began with a constitution that provided a federation, with the two ethnic groups sharing many powers but also having numerous other powers or responsibilities to independently exercise at lower levels⁶.

It proved somewhat unworkable almost from the start, at least in the view of Greek Cypriots, and it seems clear they accepted it only to gain independence for the island. There were consistent disagreements between the communities' representatives that froze decision-making or made it very laborious. And when in 1963 Archbishop Makarios, as head of the national government, proposed major constitutional changes to centralize the government and reduce or eliminate the vetoes Turkish Cypriot officials could exercise in decision making and legislating, this posed a direct threat to the Turkish community and set off serious confrontations, with considerable tensions and periodic fighting. One of its responses was to begin consolidating Turks in enclaves, with armed guards. Turkish community leaders also began pulling Turkish government employees out of work, disrupting the state's ability to operate. Tensions naturally rose, and the impact of the emerging security dilemma intensified. Forces on each side had long been getting military equipment covertly from Greece and Turkey and this now expanded and those forces continued to grow. In late 1963 things escalated when Turkey threatened to take military action if necessary. It was apparently

⁶ The decentralization of power and authority on many matters, thus significant autonomy for lower level political and administrative units, reflected major concerns of Turkish villages.

about to implement secret plans to do so in the following summer but backed off because of very strong American opposition⁷. This provoked outsider peacekeeping intervention efforts. British troops established a Green (dividing) Line of sorts between the two communities in Nicosia, and in March 1964 the UN Security Council authorized a mediator⁸. Then things settled down. Life went on and in the next decade there were various efforts to design new institutional arrangements. The Greek side continued to stress cutting back the Turkish Community's privileges in the political system and ending significant autonomy for Turkish local communities. The Turkish side continued to stress maintaining its sectors' autonomy, including in its small communities. Turkish Cypriots also worked to solidify their cohesion while relying on Turkey's backing for protection⁹, even while offering at least some concessions in the various negotiations. For his part, Makarios had become less driven to promote *enosis*, and more focused on running the country.

On July 15, 1974 the Greek military junta¹⁰ orchestrated a coup on the island to oust Makarios from power and pave the way for merging the island with Greece. Local forces seized control in Nicosia, forcing Makarios to flee the island. Turkey responded on July 20 with a limited invasion of the island. When Greece did not budge on the issues, Turkey resumed its invasion and consolidated its position, eventually occupying over one-third of the island. Eventually it would announce creation of a "Turkish Cypriote Federated State" in the north. The island was thus split into two sectors, each of which eventually became a separate political entity. One was the internationally recognized state of the Republic of Cyprus (RoC), the other being the Turkish Republic of Northern Cyprus (Trnc) which remained a subunit of Turkey—referred to by Ankara as a state but never able to gain international recognition because it had been created by force over UN objections. An estimated 250,000 Greek Cypriots were essentially forced to move to the south, losing their properties in the north, and roughly 30,000 Turks were, in effect, ordered

⁷ Meanwhile, Grivas had been sent back from Greece to Nicosia to again lead EOKA and reinforce the *enosis* efforts.

⁸ The Turkish side was now talking about installing a fully bi-communal arrangement—separate communities with one state. It rejected the mediator's proposal for a more centralized state even though he supported autonomy on national traditions, religion, education, and related areas for the Turkish community—with the UN to be guarantor.

⁹ Turkey continued to be very concerned about the future of the Turkish community, its safety having become a significant domestic political issue.

¹⁰ Greece had experienced a military coup in 1963, instituting a junta committed to pursuing *enosis*, but in ensuing years Greek Cypriot and junta efforts to promote it made no real progress.

by Turkey to move to the northern part for protection. It was a clear case of ethnic cleansing before that term became notorious.

In some ways the partition has been a success. It created a decisive break with the existing conflict, which had dragged on for some time. The Cyprus issue was “solved” in that the occupation and resulting division happened quickly with modest casualties, and ended the fighting. Cyprus remained independent within smaller boundaries than before, which became the true “solution.” However, the problem was not considered solved by the UN and many Cypriotes. The UN has maintained token peacekeepers on Cyprus ever since because there has been no international acceptance of the partition as legitimate. However, the solution was unilateral, externally imposed, and involved ethnic cleansing, all basically unacceptable in proper conflict management today. It was certainly costly, given more than 2000 casualties and significant population shifts that included substantial property losses, plus serious damage to livelihoods, businesses, and neighborhoods. Partition was not an equitable overall outcome either. The Republic of Cyprus came to enjoy very considerable economic development, membership in the UN and the EU, and an emerging national identity. The Turkish side did not.

The Europeanization of the conflict

Three main periods stand out in the EU involvement in the Cyprus issue, and this section shows how, during each period, the Union was/has been able to employ different incentives to influence the behavior of the parties to the conflict. The first period started with an EU Council decision in September 1990 to treat the Republic of Cyprus as eligible to apply for EU membership, which it did. With this the EU had laid groundwork for using the accession process framework to drive settlement of the conflict on the island via the prospect of EU membership by enticing more cooperation out of both sides on settling the island’s division. The second period began with the Helsinki European Council session of December 1999, which granted accession candidate status to Turkey. With this the Union had (and still has) the chance to also entice Turkey into agreeing to settle the conflict, thereby also influencing the behavior of Turkish Cypriotes. This was potentially the most promising period in terms of EU leverage on the parties.

The third period began on May 1, 2004, when Cyprus joined the EU and thus the conflict officially became an EU problem. The period

has been characterized by: (1) a lack of suitable instruments for the EU to affect Greek Cypriot behavior once they could participate in EU decision making¹¹, (2) continuous EU conditionality pressure on Turkey (and thus indirectly on Turkish Cypriots)—requiring it to meet conditions on settling the conflict in order to be considered for EU membership, and (3) the presence for the first time of EU incentives to entice Turkish Cypriots into cooperating in settling the conflict on the island. The following sections evaluate, for each period, how EU decisions helped generate cooperative or uncooperative behavior by the parties during parallel UN mediation efforts to resolve the conflict.

EU leverage on the Greek Cypriots (1990-1998)

In July 1990 the RoC government applied for membership in the European Communities. This was supported by all Greek Cypriot political parties (Disy, Diko, Akel, and Edek) since they thought accession could have a catalytic effect on getting the kind of settlement they wanted. But Turkish Cypriots and Turkey considered it illegitimate and illegal because the application was submitted on behalf of the whole island, not just the southern portion; they saw this as a Greek strategy to obtain an indirect (through EU membership) *enosis* with Cyprus while leaving Turkey outside the EU (Theophanous 2004, pp. 38-40). The EU Council of September 1990 gave the application a green light, confirming its legitimacy in line with the EU position that the status quo, created with the 1974 Turkish invasion and the continuing occupation of 37% of the island, was unacceptable. The necessary procedures for dealing with the application were initiated. It should be noted that while the Commission, in a June 1993 opinion, established a clear link between progress in the accession process and settling the conflict on the island, the European Council of Corfu, in June 1994, delinked the two, establishing that the next phase of enlargement would include the island whether there was a settlement or not¹².

This was actually both a turning point and a major mistake in terms of prospects for a settlement, because it discarded one of the EU's most valuable incentives for promoting cooperation from the Greek Cypriots

¹¹ The North has had lower living standards. People there have often complained about the influx of Turks from the mainland, introducing a significant cultural clash. The North is not recognized as a country.

¹² Quoted in Hill and Smith 2000, p. 354.

as well. Ensuing decisions by EU institutions followed the same path. The General Affairs Council, on March 6, 1995, affirmed that accession negotiations with the RoC should start six months after conclusion of the 1996 intergovernmental conference, establishing a precise schedule for starting accession negotiations not tied to progress on settling the Cyprus conflict itself. In its July 1997 document, *Agenda 2000*, the European Commission said if progress toward a settlement was not made before the accession negotiations were scheduled to begin, they should be opened with the RoC as the only party on the island recognized by international law (European Commission 1997, p. 43). And the Luxembourg European Council in December 1997 established a date for starting accession negotiations—March 30, 1998—and simultaneously decided not to grant Turkey accession candidate status.

Obviously these EU decisions incited defection far more than cooperation on a settlement. The Greek Cypriotes knew that even if they did not cooperate in a settlement, EU negotiations would start as scheduled with the RoC, whereas in cooperating they would have allowed Turkish Cypriotes to be involved as well. EU decisions in this period on the Cyprus accession also had consequences for other parties. The decisions provoked hostility from Turkish Cypriotes and Turkey towards the EU and the RoC government, inhibiting their cooperation on settling the conflict (Turkey-Trnc joint declarations 1995; 1997a; 1997b; 1998a; 1998b). The Turkey-Trnc joint declaration of December 1995 insisted that “accession talks with the EU should be carried out only after the final settlement, within the framework of the common positions to be agreed upon by the Turkish and Greek Cypriot sides and with the participation of a joint delegation” (Turkey-Trnc Joint Declaration 1995, point 5).

The tone became harsher in ensuing joint declarations. In January 1997 they affirmed that “the green light given by the EU, as a result of the pressures exerted by Greece, to full membership of the Greek Cypriot administration in the Union, constitutes a historic error which has had a destructive effect on the negotiating process. The Greek Cypriot side has no other interest than entering the EU as a second Greek state and thus achieving indirect integration with Greece, without having to seek a settlement with the Turkish side” (Turkey-Trnc Joint Declaration 1997a, point 11). Thus in a Joint Statement of July 20, 1997, Turkey and the Trnc evaluated the direct talks in New York a week before and insisted that the stance displayed by the EU, through the “*Agenda 2000*” report of the EU Commission on opening negotiations for full membership with the RoC would make negotiations between Turkish and Greek Cypriot

leaders “useless”, and that it would now be very difficult to reach a positive outcome in this fashion (Turkey-Trnc Joint Declaration 1997b).

Their reactions to the later Luxembourg European Council were even more hostile. Turkey froze its political dialogue with Brussels and initiated steps to economically integrate with the Trnc. The March 1998 opening of accession negotiations with the RoC dashed any hope of reopening a UN mediation process. On April 28, Presidents Demirel and Denktas affirmed that by “deciding to open accession negotiations with the Greek Cypriot administration of Southern Cyprus, the EU has ... dealt a blow to the efforts for a solution ... By opening accession negotiations ... the EU has demonstrated that it totally ignores the balance between the two peoples in Cyprus and between Turkey and Greece ... It has also destroyed the parameters for a solution established during the Cyprus negotiating process. By continuing its mentality and approach of attempting to ascribe minority status to the Turkish Cypriot people, the EU has turned the Luxembourg Summit into a historic mistake” (Turkey-Trnc Joint Declaration 1998a, points 2 and 3).

EU leverage on Greek Cypriots and Turkey (1999-2003)

The Helsinki European Council of December 10-12, 1999 tried to repair relations with Turkey by granting it “accession candidate status” (European Council 1999, point 12). But it also noted that if “no settlement has been reached by the completion of accession negotiations, the Council’s decision on accession [of Cyprus] will be made without the above being a precondition” (European Council 1999, point 9). Without settlement as a precondition Cyprus was simply asked to continue seeking one under UN auspices while moving toward membership) while Turkey was asked to “strongly support” the Secretary General’s efforts at a comprehensive settlement as a precondition. In 2002 Cyprus was invited to join the EU as of May 1, 2004 (European Council 2002, point 3)¹³, while in regard to the Turkish Cypriots the Council settled for only urging the two parts of

¹³ The Ministry of Foreign Affairs of the Republic of Turkey considers this translation, which is published on its website, as unofficial. In the same vein of this declaration in the Turkey-Trnc joint statement of November 14, 1998, it is affirmed that “contrary to what is claimed by the Greek-Greek Cypriot duo, the membership process of the Greek Cypriot administration to the EU will not facilitate the process of finding a solution to the Cyprus question. On the contrary, continuation of the accession process without finding a solution to the Cyprus problem and establishing a balance between Turkey and Greece over Cyprus, in connection with the EU issue, will only perpetuate the division and lack of a solution in the island” (Turkey-Trnc Joint Statement 1998b).

Cyprus to keep working to seize the opportunity for a comprehensive settlement.

The opportunity was not seized. In late March 2004, Secretary General Annan made a last attempt at reunification¹⁴, calling for a referendum on the last version of his plan on April 24, so accession of the entire island into the EU could take place. The plan envisaged a federation of the two parts with a single international legal personality. Included were provisions for:

- return of territory to Greek Cypriots and shrinking the Turkish Cypriote share of the island to 26%;
- a Presidential Council, with 1/3 Turkish members, acting by majority rule if at least one member of the minority voted with it;
- a Chamber of Deputies with majority decisions as long as 1/3 or sometimes 2/5 of the Turkish members were in that majority;
- a Senate with the two communities having an equal numbers of members;
- a rotating Presidency/Vice-Presidency—Greek Cypriotes having two out of every three terms;
- a Supreme Court with 3 Greek, 3 Turkish, and other judges;
- a civil service with at least 1/3 Turkish members;
- a Federal Police with equal numbers drawn from each community.

However, while 65% of the Turkish Cypriote voters favored the plan, only 24% of the Greek Cypriote voters supported it, ending the Annan effort (Christophorou 2005). Such an opportunity may well never come again. The island as a whole joined the EU but the *acquis communautaire* applied to only the southern part.

What EU-level factors, and domestic factors, contributed to the willingness of the Turkish Cypriots to reach a final political settlement and the rejection of that by the Greek Cypriots? EU decisions helped promote the cooperative posture of the Turkish Cypriots, who saw the referendum as the last chance to end the status quo and gain the economic and political rewards of EU membership. But the Greek Cypriot

¹⁴ Annan sought to use the lure of Cyprus joining the EU to get Turkey and the Trnc to reach a settlement of the Cyprus problem so Turkish Cypriots could also join the EU.

side had little incentive to reach a settlement because even without implementation of the Annan Plan it would gain EU membership. Then it could use this additional influence as greater leverage, as a stronger position from which to promote its conditions for a settlement, rather than having to compromise with the Turkish side.

The impact of these factors interacted with domestic ones. In Turkey, parliamentary elections in November 2002 produced a change that favored settlement of the conflict. The Justice and Development Party (Akp) formed a majority government that approached entering the EU as a priority. Unlike its predecessor, it was willing to comply with the EU prerequisite of settling the Cyprus split. Prime Minister Erdogan repeatedly declared that “non-solution was not a solution,” and endorsed the Annan Plan (Pericleous 2009, pp. 72, 245). Notable here was the interaction of EU-level and domestic factors leading the new Islamic government to seize the EU- accession opportunity.

There was a favorable domestic development in the Trnc as well. Parliamentary elections in December 2003 produced a coalition government under Mehmet Ali Talat who favored the Annan Plan and the island’s accession to the EU. Though Denktash remained President, these results displayed rising discontent over his position on a settlement, splitting the Turkish Cypriote community. In fact, the Annan Plan and possibly joining the EU was the only issue debated during the election campaign (Christophorou 2005, p. 87). The two center-right parties favoring the status quo garnered about 45% of the vote and the two left parties supporting the Annan Plan had over 48% (Carkoglu and Sozen 2004).

By contrast, a change in political leadership for Greek Cypriotes, combined with decisions in the EU, was unfavorable. Tassos Papadopoulos, leader of the centrist Democratic Party (Diko), strongly favored a unitary solution as opposed to a federal structure for Cyprus. Papadopoulos won the presidential election of February 2003, the most important topic in the campaign being the second Annan Plan. He played on Greek Cypriot security concerns and stressed that they could afford to wait in view of impending developments with the EU (Theophanous 2004, p. 50), and these views appealed to the voters.

EU leverage on Turkey and Turkish Cypriots (2004-2012)

On the whole, relations between the Turkish side and the EU after the accession of Cyprus had less capacity for generating cooperation toward

a settlement. This was reinforced by the non-cooperative behavior of the Greek Cypriots in EU decisions as they sought to block decisions favoring the Turkish Cypriots (as on the regulation on direct trade) or Turkey (such as on further accession talks). On Turkish Cypriot matters the European Commission managed to approve only one of the two measures it had announced for ending Turkish Cypriot isolation. The EU idea was to promote reunification by encouraging the Turkish community's economic development. But it adopted a proposal on economic aid to the community in February 2006 (EU Council 2006a), while not doing so on direct trade with the Turkish community (European Commission 2004). The aid program allocated 259 million euros for 5 years, and 28 million euros annually since 2011, in all a significant sum. It was intended to: develop and restructure infrastructure (44% of total funding); promote social and economic development (29%); foster reconciliation (9.3%); foster closer EU-Turkish Cypriot relations (5.5%); and prepare the Turkish Cypriots for introducing and implementing the *acquis* (7.4%).

The Commission's proposal for direct trade could have been important in ending the isolation of the Turkish Cypriot community. But it has yet to be adopted, first because of opposition from the RoC government as a voting (veto wielding) member in the Council, and second, because of a ruling by the Committee on Legal Affairs in 2010. With the adoption of the Lisbon Treaty, the Commission had hoped to bypass the RoC's veto power in the Council via Article 207 (on common commercial policy), which provides for co-decision via a vote in the Parliament and a qualified majority vote in the Council. But Legal Affairs said Parliament should not have taken part in the regulations because the proper legal basis for action was Article 1 (2) of Protocol 10 of the treaty of accession under which only the Council, acting unanimously, can decide on withdrawing suspension of the *acquis* for northern Cyprus.

Also, EU relations with Turkey deteriorated, making Ankara less interested in cooperating to end the conflict. Accession negotiations opened in October 2005, but the Council partially suspended them in December 2006 because there had been no implementation of the Additional Protocol on the RoC, i.e., on opening Turkish ports and airports to vessels and flights from the RoC¹⁵.

¹⁵ EU Council 2006b, p. 9. The Council agreed "it will not decide on opening chapters covering policy areas relevant to Turkey's restrictions as regards the Republic of Cyprus (free movement of goods, right of establishment and freedom to provide service, financial services, agriculture and rural development, fisheries, transport policy, customs union and external relations) until the Commission verifies that Turkey has fulfilled its commitments related to the Additional

It is significant that progress on Turkey's possible accession path was closely linked to the Cyprus problem. Indeed, the accession negotiating framework presented in 2005 indicated that Turkey's progress would require meeting these requirements:

- the Copenhagen criteria;
- “Turkey’s unequivocal commitment to good neighborly relations”;
- Turkey’s continued support for achieving a comprehensive settlement on Cyprus within the UN framework;
- “the fulfillment of Turkey’s obligations under the Association Agreement and its Additional Protocol extending the Association Agreement to all new EU Member States, in particular those pertaining to the EU-Turkey customs union”.

It is understandable, therefore, that with no implementation of the Additional Protocol on the RoC, the Foreign Affairs Council partly suspended accession negotiations with Turkey.

No direct aid also had negative consequences for EU-Turkey relations, as its approval might have stimulated a re-launching of accession negotiations. Indeed, Ankara had offered “a port for a port:” if the EU adopted the direct trade regulation, Turkey would implement the Additional Protocol (Tocci 2010, pp. 3-4). The 8 chapters blocked by the Council decision of 2006 would have been unfrozen and chapters already negotiated could have been provisionally closed.

Though the incentives offered by Europe’s entering into the conflict did not fully favor cooperation among the parties, political changes at the end of 2008 eventually boosted expectations of a settlement (Faustmann 2008, p. 453). Denktash and Papadopoulos were replaced by Talat (in April 2005) and Demetris Christofias (in February 2008)¹⁶, and after a four-year impasse a new round of UN mediated direct negotiations opened. However they produced no significant progress by April 2009, when political leadership in the Trnc shifted again. The parliamentary elections were won by the National Unity Party (Udp), which favored the two-state model and closer relations with Turkey, and a year later

Protocol” and that the member states “will not decide on provisionally closing chapters until the Commission verifies that Turkey has fulfilled its commitments related to the Additional Protocol” (European Council 2006b, p. 9).

¹⁶ A member of the Communist Party (Akel), he favored a settlement and reunification of the island (Kahveci 2008).

the negotiations suffered a second blow with the election victory in the Trnc of incumbent Prime Minister Dervis Eroglu. The negotiations, if continued, were quite unlikely to result in a successful compromise with the south, and during the Cyprus government's presidency of the EU (July-December 2012) direct negotiations were suspended.

Further analysis and some conclusions

The initial problem in this conflict was that there was no underlying social-political basis for constructing the new independent state, as the two sides lacked a history of good collaboration in securing its independence, which was then designed by the guarantors—Britain, Greece and Turkey—instead. The two sides never really agreed on the nature of a Cypriot state, in part because they had plans for either *enosis* or partition. Cyprus was the product of a compromise designed to handle a complicated situation (ending colonial rule) to the satisfaction of many external players, but that was not really acceptable to the main domestic players. The guarantor system for the constitution and resulting political system on the island should have been constructed very differently, because it eventually facilitated one guarantor's ability to take over a substantial part of the country. After all, one guarantor had earlier sought to undermine the Cypriot state in order to merge the country with itself, the second showed no desire to participate in Cypriot political affairs as long as its interests on the island were not disturbed, and the third seized on the unrest to intervene not to protect the constitutional provisions but to grab a major portion of the nation. None of the three was suitable as a guarantor in the way the term is usually used with respect to internal conflicts in divided societies. Compounding the problem was the fact that the one most ready to use force to intervene was the most powerful militarily in the immediate area.

On the whole, the political system of the new state, as designed by the guarantors, was not perceived as politically legitimate, especially by Greek Cypriots, who did not find appropriate the exceptional guarantees in the Constitution for the Turkish Cypriots, reflecting Turkey's negotiating power.

The most important attempt to settle the conflict proposed by the international community was the Annan Plan. Was it a good idea? The plan, like the overall UN effort over many years, involved an approach that falls under the heading of a consociational/democratic political system.

This sort of system was outlined and analyzed by Eric Nordlinger and later Arendt Lijphart many years ago, Lijphart's work being particularly influential. He sought to explain how certain democratic systems are stable despite their societies having significant political or other frictions, divisions not readily handled by standard, or majoritarian, democratic processes because the demographically dominant group will normally win any election. Citing various examples, he suggested that in a successful consociational system, the major relevant groups are represented at the top by their elites, especially elite leaders, and these leaders and groups have sufficient experience in interactions and negotiations to cut deals with each other based on credible agreements. As a result they operate the system in ways that meet the desires of the significant groups, assuaging their fears or complaints. Thus power is shared or jointly exercised rather than divided. There is mutual acceptance of an informal, and sometimes formal, concurrent majority arrangement, under which the major groups must ratify important decisions and each has an informal veto. The groups have representation in the legislature, the police, the civil service, or other agencies in keeping with their portion of the population. They also enjoy significant autonomy in running their affairs—much of the political power in the system is decentralized.

Lijphart (1977) suggested that this system benefits from a variety of other preconditions as well, such as:

- the country being of small size;
- with overarching citizen loyalties to the country;
- segmented distribution of the groups—they are largely separated;
- a prior tradition of elite groups accommodating each other and cooperating in running the country;
- crosscutting cleavages that political leaders must accommodate to maintain their positions, plus a willingness to lose at times on the part of leaders and their groups, facilitating political give and take.

Applying this pattern to Cyprus, clearly missing from the consociational design put forward in the Annan mediation effort was an overarching loyalty to Cyprus in the two communities. In the years before independence and right after its arrival, the Greeks remained supportive of *enosis* while the Turkish Cypriots displayed a strong inclination toward partition if not sufficiently conciliated. It was only later on, by the time of the Annan proposal, that Greek Cypriots had cooled considerably on

the idea of *enosis* while Turkish Cypriots were ready to give a modified consociational arrangement another try. However, missing as well was a prior tradition of elite accommodation at high levels—the Cypriot government had been in existence for only a relatively short time and the arrangements for shared rule established in the constitution did not work well from the start. There is also little to suggest the existence of strong cross-cutting cleavages with or across the two communities.

While there were people on both sides who sought moderate cooperative solutions, the more powerful desires, to which leaders responded or did much to intensify, were not crosscutting at all. There was also no long history of Cypriote leaders in charge and cooperating; instead, the island's history featured significant outsider influence on the two sides and repeated internal bickering.

Most important, however, is that, in effect, the outsiders (mainly the UN) sought to install a consociational system in order to develop what analysts had earlier said were the *antecedent* conditions under which such a system would successfully operate, rather than public officials being able, from the start, to utilize conditions that Lijphart had said were “good” for consociationalism and which already existed. Thus the cart was being placed before the horse. For instance, as various analysts have suggested, the Cyprus problem was a contested legitimacy problem, commonly seen in other divided societies. Neither side's political status was accepted as legitimate by the other—each had little or no political legitimacy in the eyes of the other—a clear departure from one of Lijphart's preconditions.

The term “Europeanization” was used earlier to refer to the involvement of the EU in the conflict, elaborating on its position in the dispute and implementation of EU attitudes in dealing with the two Cypriot ethnic groups. The EU had a unique opportunity to use its strongest foreign policy instrument—the incentive of EU membership—to try to shape the behavior of both the Greek-Cypriot side through the RoC government and the Turkish side through Turkey. The membership prospects dangled before them could have allowed them to accept a solution to the conflict that otherwise would have been too costly politically. However, gaining membership had to be explicitly linked to prior or parallel settlement of the conflict. Unfortunately, the EU used double standards in setting conditions for membership. For Cyprus, the EU delinked progress toward accession to membership from progress on settling the conflict, while for Turkey normalization of its relations with

Cyprus (meaning settlement of the conflict) was a condition for making progress in joining the EU. This helps explain why Ankara supported the Annan Plan and Turkish Cypriots voted in favor of it, while Greek Cypriots refused to do so. Unlike the Turks, Greek Cypriots had no incentives for approving it, as they would be joining the EU without the Annan Plan in place, and they knew that once Cyprus became an EU member state they could use this role inside EU decision-making to influence decisions on Turkey and Turkish Cypriots. The double standards towards the conflict parties annulled the EU's potential for conflict settlement in this particular case. The use of double standards was the result of support within the EU by one member state—Greece—for one side on the island—the Greek Cypriots. It appears that to exert its potential for conflict settlement, EU efforts should be neutral rather than oriented toward one side by a specific member. In particular, once an unsettled conflict is taken up by the EU for resolution, such a state cannot be, from then on, considered as external in depicting, assessing, and resolving the matter.

Some Cypriots on each side still express regrets over the partition, and public opinion polls reveal continuing interest in a possible merger. There are many ways in which it could be beneficial. In various ways the attachments of the two communities on the island to their old patrons, Greece and Turkey, have notably declined. And the two communities now have a much higher level of interactions. Maybe the time is coming soon for yet another effort to achieve reconciliation and unity, arising from the communities or once again brokered by an external player. Hopefully, it will be motivated and guided by deep respect for the lessons of the past.

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Chapter 6

Does Liberalization Make Peace?

Political Opening and the Karen Insurgency in Myanmar

Matteo Dian

Introduction

The theoretical framework adopted for this research project outlines a variety of problems that parties face when working toward a negotiated solution aimed at terminating a civil war. Parties typically face a number of problems, including issues with coordination, asymmetric information, and commitment (Fearon 1995). The case of Trentino-South Tyrol is an example of positive resolution of an identity-based conflict. Italy and Austria were able to reach a negotiated solution, which guaranteed peace and stability throughout the region and avoided conflict, a costly and suboptimal outcome for all the parties involved.

As the theoretical framework clearly highlights, these problems are related mainly to the parties' capacity to seriously commit to a course of action, prevent cheating and dismiss incentives to misrepresent their strength or resolve. The positive outcome of the negotiation was also determined by the democratic nature of the Italian and Austrian states, which made the threat of the actual use of force on a large scale unforeseeable. Democratic institutions make parties more reliable, and parties negotiating in the interests of electorates are more capable of making commitments and enforcing negotiated solutions compared to non-democratic, political regimes (Lipson 2003).

This chapter will highlight how domestic political regimes decisively influence the outcome of negotiations aimed at terminating an identity-based conflict. The case under examination, the Karen insurgency in Burma-Myanmar, is at the opposite end of the spectrum compared to the Trentino-South Tyrol resolution.

Burma-Myanmar has been a military dictatorship for a great part of its history as an independent country, initiated in 1948 (Charney 2009). Moreover, as opposed to the Trentino-South Tyrol case, the parties involved in this conflict obtained a very costly and sub-optimal outcome. The armed conflict between the Karen insurgents and the central government in Myanmar is the world's longest-running civil war (Steinberg 2011; Timo and Pasch 2009) The process of opening and liberalization begun by the regime under the leadership of President Thein Sein appears to favor a process directed toward a negotiated settlement of the civil conflict, opposing the central government and the insurgent ethnic groups such as the Karen National Union. Consequently, an analysis of this conflict and of these attempts to reach a negotiated settlement are particularly relevant for that part of the discipline which studies civil conflicts and the negotiation processes aimed at terminating them.

Karen-populated parts of the country have been affected by armed conflict since 1949, when Myanmar (at the time called Burma) gained independence from the British Empire. Since then a large part of the country experienced protracted periods of fighting between insurgent forces and the Burmese army (Ashley 2011).

Recently, the Karen insurgents, as well as more than twenty other different ethnic groups, have signed ceasefire agreements with the military government (Egreteau 2012). Even in regions where insurgency and counter-insurgency operations have ceased, local communities remain vulnerable to the social and economic consequences of the conflict (Thawngmung 2011), as a result of which some 160,000 Burmese citizens live as refugees live in Thailand and other countries of the region.

Since the beginning of the country's opening and liberalization process and the end of its international isolation, the government has promoted several initiatives aimed at finding a negotiated settlement to the Karen question (Taylor 2009). This chapter will describe how the liberalization process has been providing the government political incentives to reach a compromise with the Karen insurgents and to create a commitment mechanism functional to the enforcement of this compromise.

Liberalization and violence in theory

Few topics have been investigated by International Relations theory as much as the relation between the nature of political regimes and use

of violence, and in particular the causal link between the diffusion of democracy and war. The scholarly community has reached ample consensus on the idea that stable and consolidated democracies establish a “separated peace” and avoid resolving their disputes but without recurring to violence (Doyle 1983; Russett 1993; Panebianco 1997).

But the community is highly divided on the effects that processes of transition and democratization have on the use of violence, both internationally and domestically. In this case we are more interested in the latter, since this chapter is aimed at analyzing the impact of the opening of the Burmese regime on negotiations to end the conflict between the Karen insurgents and the central government.

The literature can be divided into three main groups. The first argues in favor of the existence of a significant and positive causal relation between liberalization and democratization and domestic violence. A number of qualitative and quantitative studies have highlighted that the process of democratization is likely to lead to an increased propensity to recur to violence both externally, i.e., generating inter-state wars, and internally, causing the onset of civil war or creating the condition to escalate already existing intra-state conflicts. The second is somewhat skeptical on the existence of these causal relationships. They impute the possible correlation between democratization and violence to other variables such as state capacity. A third approach argues in favor of a positive relation between democratization and a decrease in domestic violence. This approach notes that a transition to democracy or, more broadly, a process of liberalization and opening of a previously repressive regime, can alter the political opportunity structure and favor a process of pacification at the domestic level.

The first and second theories draw upon a classic argument proposed by Samuel Huntington, who analyzed the relationship between increasing levels of mobilization, political stability and violence in *Political Order in Changing Societies*. If political institutions are not prepared to channel increased levels of political activity and participation, this will lead to the collapse of the state’s authority and to higher levels of domestic violence.

The first theory states that a process of political transition entails an increasing level of mobilization, which can cause violence if political institutions are not prepared to channel the increased levels of political activity and participation into democratic processes. This argument has been developed by Mansfield and Snyder (2005). Focusing mostly on

inter-state wars, they described how the process of democratization can trigger the use of violence. Political elites need to mobilize newly-enfranchised citizens in the process of democratization. Incomplete transitions are particularly dangerous for peace and stability. If the political structure of an authoritarian regime is in decay and the new democratic institutions have not consolidated in its place, political leaders tend to turn to ideological, xenophobic or charismatic appeals to cement their control of political authority.

Other research has analyzed the correlation between the process of transition and the onset of civil wars. Several analyses have supported the hypothesis of an inverted U-shaped curve between democracy and domestic violence. Using the Polity Democracy Index, they show how regimes with an intermediate score are disproportionately subject to violence and civil war (Cederman, Hug, and Krebs 2010).

Elections are particularly risky for new and unconsolidated democracies. Authors such as Anderson, Collier and Mendes have shown how post-conflict elections can cause a “sore losers” effect. Minorities in new democracies are more prone to recur to violence after being defeated in the first post-conflict election (Anderson and Mendes 2005; Collier 2009).

The literature on civil war highlights another potentially important factor for the analysis of the Myanmar case. Ethnically divided countries are more prone to conflict both in general and during the process of democratization. As Cederman has shown, the process of democratization often entails “attempts by political entrepreneurs to make the *demos* coincide with a given *ethnos*” (Cederman, Gleditsch, and Hug 2013). Consequently the leadership of a majoritarian group is likely to resort to ethnic cleansing and other acts of discrimination in order to strengthen political identity between its ethnic group and the new regime. Moreover, in ethnically divided societies ethnic affiliations fundamentally shape political cleavages in post-authoritarian political competition. As a consequence, political elites have a number of incentives to raise tensions to mobilize their constituencies and maximize their electoral support (Rubushka and Shepsle 1972). Even if the hypothesis linking the process of liberalization and democratization to increasing levels of violence and decreasing possibilities to resolve ethnic and civil conflicts has been supported by a number of statistical analyses, the literature has not reached a consensus.

The second theory, which also draws from Huntington's classic argument, does not consider the process of liberalization or transition to democracy as the key explanatory factor for increased domestic violence. Scholars such as Sobek, Hendrix and Thies have stressed the correlation between state capacity, defined in terms of extractive abilities, economic development and bureaucratic quality, and the likelihood of domestic conflict. According to the supporters of this approach, the onset of civil wars and the capacity to reach a negotiated solution are more related to the state's capacity to maintain control over economic and institutional resources rather than by one party's determination to mobilize against the other to fulfill political objectives, such as the exclusion of ethnic or political minorities from access to power (Sobek 2010; Thies 2010; Hendrix 2010).

This theory is rather agnostic about domestic regimes. The capacity to avoid civil conflicts or to find a negotiated solution to them is related to the strength of state's institutions rather than to their democratic or authoritarian character. Sobek notes that Huntington himself considered the state's capacity as a key explanatory variable, stating "the most important political distinction among countries concerns not their form of government but their degree of government" (Sobek 2010). Consequently, they argue, increasing levels of mobilization and participation are the most common cause of the collapse of state authority and of civil conflicts. The increased level of mobilization is not necessarily related to a democratic transition (Gates, Hegre, Jones, and Strand 2006). In line with Huntington, they note that mobilization and political participation is related to socio-economic variables rather than to strictly political factors. A higher degree of participation in politics and an increased level of contestation can be related to social trends stemming from a process of modernization, such as urbanization, increased levels of literacy, and industrialization.

Consequently, according to this approach the onset of civil wars and the state's capacity to credibly commit to a negotiated solution depends on its capacity to control resources and to effectively enforce political and bureaucratic control of the territory. The failure to do so is not necessarily related to political pressure deriving from the process of political inclusion and participation consequential to liberalization and democratization, but instead is related to a larger cluster of socio-economic trends deriving from transition to modernity.

Other studies have essentially reversed the “ballot to bullet theory”, claiming that polities undergoing a process of liberalization and democratization are significantly less war-prone than other studies argue. These studies explain that democracies are less likely to experiment with civil wars because they “both allow discontent to be expressed and have mechanisms to handle it” (Hegre 2001). Gleditsch and Ward highlight that when contemporary polities become more democratic they reduce their overall chances of being involved in war. Moreover, the risks of war are reduced by democratization and exacerbated by reversals in the democratization process (Ward and Gleditsch 1998; Hegre, Ellingsen, Gates, and Gleditsch 2001). Democracy contributes to accommodating interests of incumbent elites and of insurgent groups as they try to maintain their political and economic interests through the democratic processes. Democratic institutions and procedures enable parties to pursue their interests through peaceful means. Both the government and opposition movements have electoral incentives to avoid violence (Joshi 2010). Democracies indeed offer institutionalized mechanisms for peaceful management of conflicts and provide incentives for negotiated solutions of existing ones. The relation between conflict and domestic peace is summarized in two mechanisms facilitating stabilization and pacification: conflict moderation and conflict alleviation. The first entails the use of institutionalized channels aimed at reducing escalatory “tit for tat” processes and favoring commitment. The second is at work when publicly expressed grievances can be dealt with by political measures advanced by institutions considered politically legitimate by all parties directly involved in a conflict (Wolff 2009).

To offer the most meaningful analysis of the Myanmar and Karen conflicts, this study does not consider simply the aggregate level of domestic violence associated with the process of liberalization and democratization. The analysis focuses on problems associated with the negotiations aimed at achieving an end to the civil conflict.

The literature lists a number of problems the parties involved in conflicts have to overcome in order to reach a peaceful settlement. The first is related to the combatants’ determination to reach an agreement. The main problems associated with negotiations aimed at ending a civil conflict can be related to the lack of leaders’ intention to end the conflict (Fearon 1995; Lake 1998); leaders might have incentives to withhold or misrepresent private information regarding their military strength or staying power (Stedman 1997).

A second main obstacle is represented by commitment problems. Combatants are often unable to commit themselves to a negotiated solution and to enforce the terms of the peace agreement. In order to succeed, a negotiated solution to a civil conflict must consolidate the previously warring factions into a single state, promote a new government able to represent the interest of every group, and develop a national nonpartisan military force, possibly able to include former rebel groups.

Former armed rebels must be able to credibly commit to demobilize, surrender control of their territories, and disarm. When a group disarms, it is particularly vulnerable to resumption of the conflict. Therefore, the capacity to commit to a negotiated solution must necessarily be present on both sides. In cases of conflict between a rebel group and the government, both must be able to assume credible commitment. The first has to be able to effectively disarm and demobilize. The second should credibly promise not to exploit the process of demobilization to suppress the rebel group. The more the groups have incentives to “cheat” and to break the agreement, the greater the difficulty in enforcing the negotiated settlement. The more a rebel group feels vulnerable to violations, the less likely it is to keep its promises.

A third problem is represented by the nature of the final negotiated solution. In order to end the conflict, the parties should gain a reward in terms of political influence or fulfillment of economic or reputational interests. As several chapters in the book pointed out, the most common way to fulfill the aspiration of an insurgent group or a party to a civil conflict is to include them in a power sharing agreement that gives them the prospect of political representation without resorting to violence to protect their economic and political interests or advance issues related to the identity of their group. Therefore, to terminate a prolonged civil war it is necessary both to include the former armed insurgent group into the structure of the national military and to reach a power sharing agreement that gives political voice to the former insurgents (Glassmyer 2008)

This aspect is strongly related to the parties’ sensitivity to relative gains (the so called Grieco’s K). If the parties are too sensitive to relative gains, they will probably reject a solution even if it entails mutual advantages. For a power sharing agreement to be achieved and enforced, all sides must be sufficiently willing to accept a compromise, even if one of them stands to gain more in relative terms (see the Theoretical Framework in the Appendix).

The nature of the power sharing agreement is fundamentally influenced by the constitutional settlement enacted by the central government. A federal system giving representation to all ethnic groups is more likely to provide long-term stability and pacification. Ethnic, political and linguistic minorities should be over-represented at the national level in order to avoid the “sore loser effect” after democratic elections.

These three problems shape the structure of political opportunities, which ultimately determines whether or not the different parties can reach and enforce a compromise to end a civil conflict. This structure of incentives is the key causal factor linking liberalization and democratization with termination of a civil conflict and settlement of a dispute.

Historical background

Military dictatorship in Myanmar

Until recently, Burma/Myanmar was considered the most durable military regime in the world¹. The country gained independence from Great Britain in 1948, and initially the new Burmese state established itself as a democratic Republic. Competitive elections were held in 1951 and 1956, but in the late 1950s the military assumed a central position on the country’s political scene, which led a few years later to the establishment of a military dictatorship. In 1958, Prime Minister U Nu invited Army Chief of Staff Ne Win to assume temporary control of political power in order to re-establish political stability and counter communist and ethnic insurgencies. After two years of the military “Caretaker Government”, the Army returned power to the civilian authority.

In 1962, armed forces guided by Ne Win staged a coup d’état and overthrew the civilian government. Ne Win and his Revolutionary Council abolished the constitution and all political parties. In 1974, the regime approved a new constitution that aimed to turn Burma into a socialist one-party system based on Marxist-Leninist principles. The Burma Socialist Programme Party, backed by the army, promoted

¹ In July 1989, the military regime changed the country’s name from Burma to Myanmar. At the same time, a number of other titles and places were changed in an attempt to remove any traces of the colonial era. In subsequent years, the new name was accepted by the UN and other states and institutions. A number of countries and pro-democracy groups have, however, refused to acknowledge the new name as a protest against the human rights abuses of the military and its refusal to hand over power to an elected civilian government. Aung San Suu Kiy refers to her country as “Burma”.

an intense campaign of nationalization and economic planning. The Burmese Way to Socialism however failed to modernize the country or to generate economic development. On the contrary, economic planning introduced heavy and prolonged economic stagnation that contributed to consolidating widespread opposition to the regime.

In 1988, discontent with the regime led to the so called 8888 (August 8, 1988) uprising, namely a vast wave of protests throughout the country. The uprising led to the resignation of Ne Win and the emergence of Aung San Suu Kiy as a leader of the pro-democracy front. The regime reacted by cracking down on the opposition, killing thousands of activists and protesters. Moreover, the military abolished the 1974 constitution as well as the single party and established the State and Law Order Restoration Council. The repression of the 8888 uprising led the military to impose martial law and to control political power even more directly. The junta allowed multiparty elections only two years later. After the overwhelming victory of Aung San Suu Kiy's National League for Democracy, the military refused to acknowledge the result of the elections and maintained its control over the government. The military junta turned again to repression of the democratic opposition and the ethnic insurgency to maintain power (Charney 2009).

The repression of the 8888 uprising and the non-recognition of the results of the 1990 elections, together with the Nobel Peace Prize awarded to Aung San Suu Kiy, contributed to international condemnation of the military regime's conduct. In 1993, the new leader, Than Shwe, released U Nu, the country's first prime minister, from prison and established a National Convention with the aim of approving a new constitution. The Convention was formed by the regime's supporters, and members of the NLD failed to reach a compromise. In 1995, it was dissolved without producing any proposal for a new constitution. The following period was characterized by increased repression against the opposition and further consolidation of military rule. The international community reacted by increasing the regime's isolation and enforcing several waves of increasingly severe economic and political sanctions.

Opening up and liberalization

The first sign of opening up appeared only in 2003, when General Khin Nyut called for a transition to a "disciplined democracy" that would include the approval of a new constitution and ultimately the transfer of political power to an elected government (Bünthe 2009).

The first step was the convocation of a new National Convention aimed at approving a new constitution. San Suu Kiy's NLD and other opposition groups, such as the Shan National League for Democracy, boycotted the Convention. Other ethnic groups accepted a participatory role. The new constitution was drafted and approved by a national referendum in 2008, turning Myanmar into a presidential republic, which allowed increased political participation and the mandated election of a new parliament. However, even if it formally foresaw a multi-party system, it maintained military control as the defining feature of Myanmar's political system. A quarter of parliamentary seats were reserved for the military, together with all the security-related ministries (defense, home affairs and foreign affairs). The military enjoyed autonomous status, and was is not subject to any civilian control. The military junta also established the Union Solidarity and Development Party as its direct emanation. Consequently many former officers abandoned their positions in the army to join the party and run for civilian political offices (Nilsen and Tønnesson 2012).

The transition to "disciplined democracy" promoted a process of privatisation, but this process has generated a property grabbing, which contributed to transforming members of the military into an oligarchy and the country's new economic elite.

In November 2010, the regime promoted presidential and parliamentary elections, which were marked by extensive fraud and were substantially controlled by the regime. Former General Thien Sein was elected president, succeeding Than Shwe. The military-backed Union Solidarity and Development Party maintained an overwhelming majority in Parliament. The National League for Democracy, the party led by Aung Sang Suu Kiy, was not allowed to participate, but the main niche parties could participate in elections for the first time.

In early 2011, the regime began a gradual, prudent but substantial process of opening, surprising a large part of the international community as well as the scholarly community, which did not foresee this development, especially after the 2010 elections. Meanwhile, the government, still largely composed of former members of the military, freed a large number of political prisoners, including Aung San Suu Kyi. In December 2011, for the first time, the government allowed the opposition group to demonstrate peacefully. Several reforms began to be implemented, particularly in the fields of labour law and political freedoms. Moreover, the government allowed the National League for Democracy and other ethnic-based parties to conduct regular political activity, relaxed control

of the media and allowed greater forms of dissent. As a result, the NLD won 44 of the 45 seats in the by-elections held in 2012, considered the first free and fair elections in Myanmar since the military coup d'état of 1962 (Nilsen 2013).

This process of opening also had important consequences for Myanmar's foreign policy. The United States and the European Union partially lifted their sanctions against the country. Moreover, the government promoted a bilateral summit with American Secretary of State Hillary Clinton, British Prime Minister Cameron, and UN General Secretary Ban Ki Moon. This process of rapprochement with the West culminated with the visit of US President Obama in November 2012. In addition, Myanmar will be the chairman of the ASEAN (Callahan 2013).

The process of political liberalization and opening to the West has been associated with a process of economic reforms. The country is now experimenting with a transition from a planned economy to a mixed economy, which has been aided by the lifting of economic sanctions and by a consequent influx of capital. The Burmese economy has been growing an average of 5% since the opening in 2011. This pace is significant even if it does not match the rapid pace of other states such as Indonesia and Thailand when they opened to global markets in the 1980s. Limits in rule of law, poorly developed banking and financial systems, and very low integration with the global economy still impede the country's faster economic development (International Crisis Group 2012).

Despite this substantial progress, Myanmar cannot by any standard be considered a democracy. The Burmese regime does not meet any of the minimum standards that scholars use to define a political regime as a democracy, such as universal suffrage; recurring, free, competitive and fair elections; more than one political party; more than one source of information, and freedom of expression (Morlino 1998). At this stage, Myanmar can be defined as something similar to a hybrid regime (Morlino 2009), a "partial democracy" (Epstein 2006).

The process of opening has not yet experimented with what scholars call "consolidation", i.e., the phase in which democratic structures and norms are adapted and "frozen" and accepted as legitimate, in whole or in part, by civil society and the elite (Morlino 1998). Myanmar is still in a transitional phase. The ruling elite still retains the power to recover complete control and is still in the driver's seat of the process. While the most repressive features of the dictatorship, such as the persecution of

political opponents and the suppression of any freedom of expression, have been largely abandoned, the process of recognizing the complete rule of law and basic political freedoms has not been completed. The country is experiencing a high level of political inclusion and is opening to the possibility of a limited degree of political contestation (Dahl 1971).

The scholarly community also disputes whether the current leadership is genuinely committed to liberalization and reform. The military junta, it has been argued, is promoting a process of “defensive liberalization”. The political elite is acting to alleviate external and internal pressure in order to continue its overall control of the country. According to this interpretation, the military elite considers a process of opening and liberalization the only feasible strategy for keeping some control of political power, given the increasing amount of domestic dissent, coupled with internal insurgency and, above all, external pressure.

The changing international environment and, in particular, the evolving relationship with China, has played a decisive role in persuading the military elite to undertake the process of defensive liberalization. After the suppression of the 8888 uprising, China represented the only source of economic, military and political support, because the rest of the international community isolated the country and enforced increasingly harsh sanctions.

The Chinese saw a precious ally in Myanmar, which could offer strategic expansion to the Indian Ocean and increasingly important access to hydroelectric resources. Starting in 2006, Beijing promoted a vast hydroelectric project centered around a series of dams on the Irrawaddy river. Moreover, the Chinese promoted the construction of two pipelines between Yunnan and the West coast of Myanmar. These projects represented a security problem for Myanmar, since they entailed the mass removal of local populations, largely composed of minority ethnic groups. These developments could have re-ignited civil conflict in the areas of the projects. The regime blocked the Irrawaddy dam, causing significant irritation in bilateral relations with Beijing. As a consequence, the regime tried to alleviate its over-dependence on China with careful but progressive engagement of the United States and the EU (Taylor 2013). To do this, the military junta initiated a process of political opening, which enabled it to deal with the West and to obtain the removal of sanctions, political recognition, and economic aid.

The Myanmar liberalization process will face an important crossroads in 2015 when the next general elections are scheduled. If the mil-

itary respects the outcome of the elections the opening can consolidate into a genuine process of democratization. If the USDP are not ready to accept the result, or try to manipulate the result, Myanmar would see another reversal if not a return to military dictatorship. Nevertheless, the liberalization process is an important development for this study, since it allows testing of the effect of an important, although partial, change of political regime on efforts to terminate a lengthy civil and ethnic conflict. Specifically, the opening allows the analysis of the effect of a liberalization process involving power sharing agreements on negotiations aimed at terminating the conflict between ethnic groups such as the Karen and the central government.

The Karen insurgency

Myanmar is ethnically divided. Of a total population of around 56 million, only two thirds belong to the ethnically Burmese group, the Baman. Since independence the group has almost entirely monopolized political and economic power. The Burmese government has always had very conflicting relations with other ethnic groups, many of which have fought to achieve independence or greater autonomy since the country's independence. In 1947, the year before independence, Burmese authorities represented by General Aung San², and the representatives of most ethnic groups, such as the Kachin, Shan, Chin, and Karen, signed the Panglong Agreement, which promised ethnic groups a great amount of autonomy in exchange for their support of Burma's independence and unity. The agreement foresaw wide powers for local communities and even included a clause allowing withdrawal from the federal state of Burma. In 1948, when Burma was declared independent from the British Empire, the government controlled only a relatively small area surrounding the then capital Rangoon. In the following years the government seized control of a great part of the country's sovereign territory. However, the newly independent government guided by U Nu never fully implemented the agreement and did not concede any form of local autonomy and self determination to ethnic communities.

Since the 1950s the government has tried to turn Burma into an ethnically homogeneous nation state through policies forcing ethnic,

² General Aung San was the father of Aung San Suu Kiy. He was killed six months after independence. He is considered the founder of the Burmese army and the "father" of the modern independent state of Burma.

cultural, linguistic, and religious assimilation. Non-Burmese ethnic groups have been widely discriminated against and completely excluded from power. Policies of ethnic discrimination led to widespread human rights abuses, forced relations, and substantial economic underdevelopment. Minority ethnic groups, such as the Kachin, Karen, and Shan, resorted to violence and armed rebellion in order to obtain recognition and protection of their cultural and ethnic specificity and to have some access to political and economic power. The Karen ethnic group began its quest for independence in 1949, guided by the Karen National Union (KNU), which has represented the Karen quest for independence since its formation in 1881 (Callahan 2008).

Even if the majority of the Karen population is not Christian, the Karen cause has often been interpreted as motivated by religious as well as ethnic aims. During the colonial era, the Karen minority and the diffusion of the Christian religion and education led to the identification of the Karen group as a strong supporter of the British colonial presence. This likely enforced anti-Karen sentiments in the Burmese population after independence. For 50 years after the start of the Karen insurgency, the KNU controlled vast areas of the eastern part of the country and the Irrawaddy Delta (South 2008). In 1956 the KNU fundamentally changed its political objectives, calling for a democratic federation based on the principle of self determination and recognition of ethnic identities.

Since the 1990s, the KNU has lost control of a large part of these territories, even if it still exerts varying degrees of influence over the contested area. As a result of decades of insurgency and counter-insurgency operations, tens of thousands of mostly ethnic Karen refugees were living in several small camps spread out along the Thai border. In addition, large numbers of Karen have been internally displaced in Burma. The KNU has never been recognized internationally, but has managed to produce state-like structures and provides essential public services to the population under its control.

Post-opening negotiations

The liberalization process has been accompanied by an attempt to finally reach a negotiated solution to the ethnic insurgencies that have engulfed the country since its independence. The first attempts toward progress with the KNU were made in 2009, when for the first time the government proposed that ethnic militias join the Border Guard Force, a special unit of the Burmese Army, as a precondition for a comprehensive

ceasefire. At the time, the KNU and other ethnic groups did not accept the government's proposal and as a consequence, the Burmese Army carried out several major attacks against the insurgents.

In 2010 however, three different parties related to the Karen minority (Ploung-sgaw Democracy Party, Karen Peoples Party, and Karen State Democracy and Development Party) participated in the first general elections after two decades³. The inclusion of institutionalized representation of the Karen people and recognition of the legitimacy of the KNU and its military branches can be interpreted as the implementation of commitment mechanisms able to avoid reiteration of the "tit for tat" strategies which impeded resolution of the conflict.

After the 2010 elections, President Thein Sein created a Government Peace Negotiating Team led by the Minister of Railways U Aung Min, with the aim of negotiating a long-lasting agreement with insurgent ethnic groups. In October 2010, the Karen leadership met with Burmese Government Peace representatives for the first time. Minor clashes continued until August 2011, when President U Thein Sein offered a peace proposal that was accepted by twelve different insurgent groups. A second meeting between the KNU and government representatives took place in December 2011.

The government granted amnesty to over 6000 Karen prisoners and asked the KNU to turn itself into a border guard force under the control of the Burmese army. This agreement marked a radical departure from how previous Burmese governments have dealt with ethnic grievances (Egreteau 2012). While previous governments, especially after the coup d'état in 1988, tried to suffocate the rebellion primarily by military means, the new government led by Thien Sein is trying to reach a negotiated solution together with the rebels.

The KNU negotiator expressed his commitment to reaching a negotiated settlement and issued a statement announcing the formal opening of negotiations with the government for January 2012. The first round of negotiations led to the approval of a second statement calling for an immediate ceasefire, respect of human rights for ethnic minorities, wide media coverage of the negotiations, the end of arbitrary taxation for local villagers, the creation of a new system of representation in

³ The 1990 elections were the first multi-party elections since 1960, after which the country was ruled by a military dictatorship. The elections were won by Aung San Suu Kyi's National League for Democracy. However, the military junta refused to acknowledge the results and ruled the country as the State Peace and Development Council until 2010.

the national institutions for ethnic minorities, and, lastly, the creation of a supervision mechanism for implementation of the peace process.

The proposal foresaw the implementation of three different phases aimed at stabilizing the areas previously involved in the conflict, creating confidence and trust between the insurgents and the government. During the first phase, liaison offices were set up and representatives of the army and of the insurgents were allowed to travel without arms in the former enemy's territory. The second phase included a series of confidence-building measures, such as the implementation of political dialogue and joint development programs in the education, health, and communication. The third phase, which has not yet been reached, foresees the signing of an agreement "for eternal peace" and the election of a parliament representing all nationalities, ethnic groups, and political parties.

In December 2013 the KNU leadership released a statement declaring its appreciation of the government's efforts to reach a negotiated solution for the Karen situation as well as to end ethnic conflicts with other groups (Karen National Union 2013).

Assessing the progress of peace talks

This final section assesses the progress of the peace negotiations by considering whether the process of opening up and liberalization is contributing to the achievement and enforcement of a negotiated solution. To do this, I evaluate recent progress in terms of the different factors taken into consideration (intent, commitment, credible demobilization, and nature of the final power-sharing agreement).

Both the government and the Karen insurgency have demonstrated their intent to reach a negotiated conclusion to the conflict. The KNU has repeatedly declared optimism that talks can represent a genuine chance for peace. The government considers stabilization of the country and the solution of the problem of ethnic insurgencies as a key component of its path toward opening and reform.

The country's current political and military elite see the resolution of ethnic conflicts as a necessary part of a more complicated process of opening up and transition. Reaching a negotiated solution to ethnic conflicts would facilitate the process of opening and reform of the Burmese economy and would help Myanmar to further integrate

itself as a legitimate member of the international community, whereas continuing the conflict could compromise both political transition and economic reform.

Beyond the parties' intention to achieve progress, the key element is their capacity to credibly commit to a negotiated solution. In this case, the most important factor is the government's credibility in abstaining from resorting to force in the long term. In the current situation, the main causal factor determining the government's commitment is not the genuine democratic nature of the national institutions. Instead, it is related to its intent and the necessity to continue the country's opening up and liberalization. This process has been largely influenced by the evolving international position of the country and in particular by the necessity to open up to the West in order to avoid excessive dependence upon China, after a period in which relations with Beijing were deteriorating. This opening up to the West demands decisive progress in the peace talks and the transition to democracy, which in turn creates incentives to credibly commit and avoid cheating.

Another relevant factor that reinforces the commitment to reform, as well as to reaching a negotiated solution, is the future role of key members of the current political elite. Key members of the USDP (such as Aung Min, Soe Thane, and Shwe Mann) are likely to remain key players in Myanmar's future political arena including after the next general political elections of 2015. Moreover, under the current constitution, members of the military will maintain key ministerial posts in the future government (defense and foreign affairs). As a consequence, single members, as well as political factions within the current elite, are keen to form political alliances in order to maintain a relevant role on the future political scene, even in the event of an electoral triumph for the National League for Democracy led by Aung San Suu Kiy. Other members of the elite, particularly of the military, are supporting the process of opening since they are directly exploiting their political networks to gain economic profits. Their economic interest is strictly related to the continuation of economic opening and to progressive lifting of economic sanctions against Myanmar.

This would be a fundamental side payment aimed at reinforcing the current elites' commitment to economic and political reform as well as to a negotiated solution to ethnic conflict. As noted in the opening chapter of this book, side payments represent a viable solution, specifically when, as in this case, one of the parties is somehow disadvantaged

by the agreement and needs to be compensated. In the Myanmar case, similar to those of Kurdistan, Catalonia, and South Tyrol, side payments related to economic interests of the parties involved may be essential for reaching a negotiated solution.

Ethnic groups have substantial interests in reaching a negotiated solution before 2015, in order to maximize their influence on Myanmar politics before the elections and guarantee themselves strong representation in the new parliament.

Another important issue is credible demobilization of armed groups coupled with the government's credible commitment not to exploit demobilization by resorting to force again. It appears that the peace talks considered this point as central. Since the beginning of the negotiations, the government has proposed the integration of ethnic military groups into a border guard force. This has several advantages for the peace process. On the one hand, it avoids the complete disarmament of ethnic militias. Completely depriving local war lords of their military and political power would probably have undermined the commitment of groups such as the KNU to the talks. On the other hand, the proposed integration of the ethnic militias into government-controlled forces retains some military resources for minorities, even if they will be integrated into the national army.

This would represent an issue-linkage mechanism, which, as mentioned in the opening chapter of this book, is one of the key factors that might enable the parties to reach a satisfying and long-lasting solution. The integration of ethnic militias into the army would indeed represent a viable compensatory solution for groups such as the KNU. Karens and other minorities will probably be more likely to accept the loss of their armed forces if they receive substantial compensation, such as the presence of their representatives in the Burmese Army.

Linking different issues in the negotiation and compensating a party for a potential loss in one sector with a possible gain into another is a recurrent pattern in post-conflict negotiations. As noted in other chapters of this book, this has also been the case in South Tyrol, Kurdistan, and Catalonia.

As stressed by Pulice in her chapter, as in the South Tyrol case, along with commitment, the other key variable for the success of peace negotiations is related to the nature of the power-sharing agreement. Here we should consider two different aspects: military and political inclusion.

The government's proposals appear to promote integration of ethnic armed forces into the national army along with the creation of the Border Guard Force. These proposals are fundamental to military leaders if they are to participate in the peace process and maintain their support. Any attempt to completely disarm them would deprive them of their power and their status, while including them would probably ensure the support of key political and military figures in the ethnic insurgency.

The second aspect is political. The substance of the peace talks revolves around constitutional amendments. The current constitution, approved in 2008, does not fully satisfy ethnic groups. Although a large number of delegates from ethnic groups were invited to participate in the National Convention that approved the Constitution⁴, their influence was very limited. Their call for federalism, respect of political equality for all nationalities, and the right to internal self-determination were only partially codified (Nilsen 2012).

As Nilsen and Tønnesson stated "the 2008 constitution holds the Union as sacred and rejects any solution that might compromise the first three basic principles of non-disintegration of the Union, non-disintegration of national sovereignty, and perpetuation of sovereignty". This is considered a major obstacle to long-term stabilization of the ethnic question. The constitution, however, holds that the Union should assist minorities in developing their culture and languages as well as promoting their socio-economic development, even if it does not explicitly recognize them as fundamental rights of minorities. From these points of view, the negotiations have made significant progress, since the government is increasingly allowing minority cultures and languages to be taught in schools. As demonstrated in the Trentino-South Tyrol case (see Pulice in this book), allowing the preservation of minority languages and cultures is a fundamental step toward the resolution of civil conflicts.

The most important provision of the 2008 constitution is the establishment of elected regional and state assemblies which might guarantee minorities higher levels of self governance, even if the law currently assigns them limited power and limited budgets. The budget allocated to local assemblies will be a valid indicator of the balance of power between the central government and the assemblies. Ethnic groups are pressuring for more decentralized division of financial resources, but

⁴ The KNU was not invited because it had refused the proposal of ceasefire advanced by the government in 2004.

so far it is unclear what resources will be allocated to the regions and their assemblies. Once again, the result of the 2015 elections will be decisive. The degree of participation of ethnic minorities and the success of ethnic parties in the election will fundamentally influence the level of financial resources the local authorities have access to.

Conclusions

We can summarize the main findings of this chapter by analyzing the relation between the ongoing process of political opening and the peace talks between the central government and the Karen National Union, representing the Karen minority in Myanmar.

Myanmar has not completed its transition to democracy and has not yet even entered the consolidation phase. However, the opening and liberalization process has brought a number of positive signals related to peace talks aimed at terminating the civil war. As the analysis of the negotiations between the KNU and the government shows, the evolution of the political context in which the government operates has generated a number of incentives that led it to credibly commit to the peace talks.

The chapter highlights how the government's will and commitment are probably not driven by sudden conversion to democratic and liberal values by the country's military and political elite. Third-party interventions, in the form of external pressure, due to deteriorating relations with China and the attempt to promote a rapprochement with the West, and internal pressure, produced by opposition forces, have stimulated the country's elite to embark on a process of opening and liberalization.

The main factors that ensure commitment and provide incentives not to reverse the government's recent conduct are related to issue linkages between different political arenas and to side payments. In order to continue and strengthen its opening to the West and its return to the international community, Myanmar has to continue its political reforms and peace talks with ethnic groups. Political opening is fundamental to increase the influx of foreign capital that is driving the recent economic revival. The personal fate of single members of the political and military elite is related to both. Some of them want to remain key players on the political scene even after the transition process is completed, while others are exploiting their political connections to become entrepreneurs and accumulate large fortunes. This

would represent a form of side payment that would provide incentives for the current elite to pursue the path of reforms and opening even if their relative power would decline.

Since these issues are interlocked and a positive outcome is fundamentally conditioned by parties' will and capacity to seriously engage in peace talks, their commitment is likely to be credible.

Moreover, the integration of rebel forces into the Burmese army, together with initiatives aimed at extending the state's central administrative structures into rebel areas, is likely to enhance the state's capacity. This is in line with the prediction of Thies and Sobek and will make positive resolution of the conflict more likely (Sobek 2010, Thies 2010). Avoiding total dismantlement of ethnic armed forces and achieving their integration into the national army would be another case of issue linkage contributing to a positive solution of the conflict. If groups such as the KNU have a net loss in one area (loosing direct control of armed forces), they are compensated by a gain in another issue area, such as the ethnic composition of the new national armed forces. Nevertheless, the possibility of a reversal cannot be excluded. The next round of political elections in 2015 will be a key critical juncture. Different outcomes are possible. Aung San Suu Kiy's NLD is likely to conquer a vast majority of parliamentary seats. The current political and military elite may or may not accept the result of the elections. An overwhelming victory of the NDP is likely to lead to a more destabilizing result. If the military and the current elite feel threatened by the possibility of complete exclusion from power they might resort to violence and repression again. If the election results guarantee them some control of the situation and the preservation of political and economic privileges, they would probably accept the election result.

The peace process is linked to the general political equilibrium. In case of a peaceful transfer of power to the opposition or of a power-sharing agreement between the current government and the NDP, the government and the military would probably have incentives to continue the peace talks. But if the country experiences a new crackdown and reversal of its opening, it will face renewed international isolation and incentives to make peace with groups such the KSU would suddenly diminish, with the likely effect of generating new tensions and instability.

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Chapter 7

Oil, Federalism, and Third-Party Intervention: An Assessment of Conflict Risk in Iraqi Kurdistan

Massimo Morelli and Costantino Pischedda

Introduction

Ten years after the US invasion and one and a half years after the withdrawal of all American forces from the country, Iraq faces a number of challenges to its long-term stability and development, ranging from corruption, poor public services, and persistent terrorist violence to ethno-sectarian tensions in the context of a complex power-sharing system. In this chapter, we focus on one important aspect of the country's contemporary political scene—the dispute between Iraq's federal government and the Kurdish Regional Government (KRG) over management of the country's and the Kurdish region's natural resources and over appropriate mechanisms to allocate revenues from hydrocarbon exports between the federal government and sub-federal entities. The parties have been mired in a costly political stalemate for the past few years. The creation of new pipelines, representing an outlet to international markets for KRG-controlled resources beyond the existing export infrastructure under federal control, offers some hope of ending the stalemate and unlocking the Kurdish region's hydrocarbon wealth. However, US policymakers have expressed concerns that Turkey's move could actually have destabilizing effects for Iraq, starting a chain reaction that could lead to the violent breakdown of the country.

In this chapter, we take part in this policy debate by attempting to make sense of the ongoing dispute between Baghdad and Erbil and to assess the likely impact of the new pipelines on prospects for its resolution or escalation. We do this by combining an informal bargaining model of Baghdad-Erbil interactions and information collected through

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about two dozen interviews with KRG's policy makers, Turkish officials, third-country diplomats and analysts as well as from newspaper articles and analytical pieces on Iraq and Turkey.

We argue that the negotiating stalemate between the federal government and the KRG is to a large extent due to the existence of serious commitment problems on both sides. Erbil is concerned that Baghdad may renege in the future on its revenue sharing promises, and thus it insists on maintaining control of the Kurdish region's hydrocarbon industry and on the adoption of mechanism for automatic revenue allocation to sub-federal entities. On its part, Baghdad likely fears that KRG's control of the region's hydrocarbon industry may enable it to extract further concessions on revenue sharing and other pending issues, while also representing a preliminary step towards a Kurdish secessionist bid. Moreover, Baghdad worries that other sub-federal entities may feel emboldened by a Kurdish success and advance similar requests for control of their hydrocarbon resources, thus weakening the central government and potentially even unleashing a process that could lead to the break-up of the country.

We expect the creation of new pipelines to assuage Erbil's long-running fears of exploitation by Baghdad, which should eliminate a powerful motive for Kurdish secessionist aspirations and thus reduce the corresponding risk of war. Moreover, given Turkey's stakes in the new pipelines, Baghdad is likely to be deterred from resorting to force against Erbil due to the likelihood of Turkish intervention on KRG's behalf. On the other hand, the new pipelines should lead to a strengthening of Erbil's bargaining hand vis-à-vis Baghdad, which could generate incentives for the latter to launch a preventive attack before these effects fully materialize. However, we consider the probability of Baghdad initiating war in the short-term low, due to the federal government's concern with the ongoing civil war in Syria and the corresponding risks of spill-over into Iraq as well as ongoing unrest in Sunni areas. Thus we argue that the United States should abandon its current opposition to the use of the new pipelines but rather focus its efforts on convincing the relevant players (in particular Baghdad in the short-term) not to resort to force to resolve disputes.

Our theoretical argument is relevant to a set of intersecting literatures in International Relations on war as bargaining breakdown¹,

¹ The classic references are Fearon 1995 and Powell 2006. For reviews of the literature, see Jackson and Morelli 2011 and Powell 2002.

the effects of natural resources on the risk of different forms of political violence², and the impact of third-party intervention on relations between states and their ethnic minorities³. The closest existing works are a book chapter by James Fearon (“Commitment Problems and the Spread of Ethnic Conflict”) and a working paper by Arman Grigoryan (“Commitment Problems, Third Parties and State-Minority Conflicts”), which identify commitment concerns, respectively, by the minority and the government as the driver of violent conflict⁴. We combine elements of the two models by positing that both the government and the minority are haunted by commitment fears when engaged in negotiations over natural resources. As in Grigoryan’s model, we show that third-party intervention in support of the minority can intensify a government’s commitment fears by prospectively strengthening the minority’s bargaining hand, which can prompt the government to launch a preventive attack against the minority. However, unlike in Grigoryan’s model, our argument suggests that short-term preventive war incentives associated with third-party intervention can be offset by a corresponding long-term reduction of the minority’s fears of exploitation and by the deterrent effect towards the government of third-party support for the minority.

The applicability of our finding goes beyond the case of Iraq. As the case study presented in chapter 1 of this volume points out, Austria played the stabilizing role of an international guarantor for the agreement between the Italian government and the South-Tyrolean community. By contrast, international intervention in Bosnia and Kosovo contributed to the escalation of violence⁵. Our argument can help make sense of these divergent dynamics by showing that third-party intervention in government-minority disputes may have competing destabilizing and pacifying effects in different phases of the intervention. When considering the merits of intervention in a specific case, policymakers should carefully weigh the probability of both positive and negative effects on the risk of conflict escalation and design strategies to mitigate the latter.

The remainder of this paper is structured as follows. Section 2 discusses the current state of relations between Baghdad and Erbil and

² See, for example, Fearon and Laitin 2003, Ross 2004, Walter 2006, Caselli, Morelli and Rohner 2013, and Esteban, Morelli and Rohner 2013.

³ See, in particular, Cetinyan 2002, Fearon 1998, Crawford 2001, Kuperman 2008, Grigoryan 2010 and 2013.

⁴ See fn. 3 above.

⁵ Kuperman 2008 and Grigoryan 2010.

the ongoing deepening of Turkish-KRG ties. Section 3 presents an analysis of the strategic interaction between Baghdad and Erbil and assesses the likely impact on this interaction of the creation of new pipelines, which Turkey approved. Section 4 concludes by summarizing our findings.

Snapshot of the current situation

Baghdad-Erbil relations

The toppling of Saddam Hussein in 2003 ushered in the emergence of a federal democratic regime in Iraq. After a long history of Kurdish marginalization and victimization at the hands of the central government, the 2005 Iraqi constitution enshrined Kurdish rights and granted significant autonomous powers to the Kurdish Regional Government (KRG), which had de facto ruled the Kurdish region of Iraq in the decade following the first Gulf war⁶. However, the constitution left unaddressed or ill-defined important aspects of the division of competences between federal government and sub-federal entities, which have been the focus of intense disputes between Baghdad and Erbil in recent years.

One key bone of contention concerns natural resources, which provide for over 90% of the federal budget⁷. Negotiations over the oil and gas sector framework law and the revenue sharing law have stalled since 2007 due to unbridgeable disagreements between the federal government and the KRG⁸. In the absence of federal legislation clarifying jurisdiction over hydrocarbon exploration and development, the KRG passed its own oil and gas law in August 2007, which it claims is consistent with the federal constitution. The KRG has since proceeded to sign production-sharing contracts (PSC) with international oil companies—small companies at first, followed by larger ones and majors such as Exxon Mobile, Chevron, Total and Gazprom⁹. Baghdad disputes the KRG's right to sign contracts with oil companies without its approval

⁶ For good overviews of the recent history of relations between the central government and Iraqi Kurds, see, for example, Gunter 2008 and McDowall 2004. For an analysis of the Iraqi constitution in comparative political perspective, see McGarry and O'Leary 2007.

⁷ In 2011, oil revenues accounted for around 95% of the federal budget (International Energy Agency 2012, p. 19).

⁸ The package of hydrocarbon laws under consideration also includes the reorganization of the Iraqi ministry of oil and the creation of the Iraq National Oil Company (INOC).

⁹ Osgood, Lando and Van Heuvelen 2012. Baghdad adopts technical service agreements. For a discussion of different types of contracts and their fiscal terms, see Johnston 2007.

and in particular claims that, by offering oil companies excessively favorable terms, the KRG's PSCs violate the constitutional requirement of developing "oil and gas wealth in a way that yields the greatest benefit to the Iraqi people"¹⁰. Besides the specific legal arguments, Baghdad is vocal in its opposition to decentralized development and management of natural resources, which it claims could bring about civil war and disintegration of the country¹¹. On its part, the KRG is adamant in saying that, in light of a history of violence against the Kurds by government forces financed with oil revenues, centralization is unacceptable¹². Kurds' fears of creeping re-centralization of political power are not limited to the hydrocarbon sector, and underlay attempts by KRG President Masoud Barzani to unseat Iraqi Prime Minister Nouri al-Maliki with a non-confidence vote last year¹³.

Revenues from all of Iraq's oil exports go to the federal budget¹⁴. In accordance with an agreement among Iraq's main political parties included in the annual federal budget law, revenues are then distributed to governorates in proportion to their population, with the exception of the KRG, which receives a flat 17% (before deductions for federal expenditures from which the region benefits). The KRG complains that Baghdad provides it with a smaller share of revenues than agreed upon and that the funds are disbursed capriciously through myriad small installments, which hinders Erbil's policy planning and implementation¹⁵. Hence the KRG demands the establishment of a mechanism for automatic allocation to sub-federal entities of their share of the federal budget, but, as noted, no progress has been made toward the revenue sharing law over the past few years.

¹⁰ Article 112(2) of the Iraqi constitution states: "The federal government and the governments of the producing regions and governorates shall jointly formulate the necessary strategic policies to develop oil and gas wealth in a way that yields the greatest benefit to the Iraqi people and relies on the most advanced techniques of market principles and investment promotion" (translated from Arabic in International Crisis Group 2012a). For an example of Baghdad's views, see Lando 2010, which reports an interview with Iraqi Deputy Prime Minister for Energy Affairs, Hussain al-Shahristani.

¹¹ See, for example, Van Heuvelen 2011.

¹² Interview with Minister Falah Mustafa Bakir, Head of the KRG Department of Foreign Relations, Erbil, 24 October 2012; speech by KRG Prime Minister Nechirvan Barzani, CWC Kurdistan-Iraq Oil and Gas Conference, Erbil, 4 December 2012.

¹³ International Crisis Group 2012b.

¹⁴ Iraq does not yet export gas.

¹⁵ Interview with Minister Falah Mustafa Bakir, 24 October 2012; interview with Qubad Talabani, KRG Presidency of the Council of Ministers, Head of Department of Coordination and Follow Up, Erbil, 2 December 2012; interview with KRG Natural Resources Ministry official, Erbil, December 2012; Blanchard 2010.

The natural resources issue is deeply intertwined with territorial disputes between the KRG and the federal government over areas of Kirkuk, Ninewa, Salahaddin and Diyala provinces. These territories are ethnically mixed (mostly inhabited by Sunni Arabs, Turkmens and Kurds) and rich in natural resources, and include Kirkuk and its “super-giant” oil field, an historic flashpoint between Iraq’s Kurds and Baghdad¹⁶.

The Kurdistan region is landlocked and until recently depended for its oil exports to Turkey on the Baghdad-controlled export infrastructure¹⁷. Over the past years, Baghdad and Erbil reached a series of stopgap agreements for the export of Kurdistan’s oil by which revenues would be allocated to the federal budget and Baghdad would compensate production companies. Implementation of the agreements was marred by disputes over partial and delayed payments to the companies by Baghdad and over KRG’s compliance with agreed export volumes¹⁸. The last agreement, reached in September 2012, broke down within less than three months: under pressure from oil companies operating in Kurdistan complaining about Baghdad’s unreliable payments, the KRG essentially stopped its exports through the pipeline. As of the time of this writing (October 2013), Kurdistan’s oil is being sold within the region (at a significantly lower price than on the international market) but small amounts have been exported via truck to Turkey. Baghdad responded by threatening legal action, claiming that unauthorized exports to Turkey represent an unconstitutional infringement of the federal government’s authority¹⁹.

¹⁶ There are six other super-giant oil fields in Iraq, five in the south near Basra and one in the center near Baghdad (International Energy Agency, 2012, p. 52).

¹⁷ In principle, Iran and Syria represent alternative export routes. In practice, several geo-political factors undermine their viability. Iran plays an important economic role in Iraq’s Kurdish region but is under oil sanctions and the United States has been pressuring third parties to stop purchasing its gas. In addition, Tehran has much closer relations with the Shia-dominated government in Baghdad (which has been opposing KRG’s natural resources initiatives) and in any case has less of a powerful incentive than Turkey to tap Kurdish resources due to its own resource wealth. The ongoing civil war rules out Syria as an export outlet for KRG’s resources; moreover, Syria is an oil exporter and thus has less of a thirst for Kurdish crude than Turkey (the country imports gas but KRG’s gas exports are unlikely to start before a couple of years).

¹⁸ For a concise overview of Baghdad-Erbil export deals, see International Crisis Group 2012a, pp. 6-7.

¹⁹ Osgood and Al-Najar 2012.

The deterioration of Baghdad-Erbil relations over the past few years stands in stark contrast to the deepening political and economic partnership between Turkey and the KRG. In 2011, Iraq was the second largest export market for Turkey, with the Kurdistan region accounting for 70% of flows; an overwhelming majority of goods sold in the region and about half of its foreign companies are from Turkey (Turkish investment has been especially prominent in construction and natural resources)²⁰. Politics has proceeded hand in hand with economics. As Aydin Selcen, Turkish Consul-General in Erbil, put it: “Our prime minister’s vision is full economic integration. One day you won’t notice the frontier between Turkey and Iraq”²¹. In October 2009, Turkish Foreign Minister Ahmet Davutoğlu visited Iraqi Kurdistan with a delegation of officials and businessmen and announced the opening of a consulate in Erbil²². In March 2011, Recep Tayyip Erdogan visited the Kurdistan Region—the first time for a Turkish prime minister²³. Iraqi Kurdish leaders also regularly visit Ankara; KRG president Massoud Barzani’s participation in the general congress of Erdogan’s Justice and Development Party (AKP) in October 2012 was of special symbolic importance²⁴.

Relations between Ankara and Iraq’s Kurds were historically much more difficult. For many years, the key driver of Turkey’s policy *vis-à-vis* Iraq’s Kurds was fear that any step toward enhanced Kurdish rights in Iraq would have negative repercussions on Turkey’s own Kurdish “problem”. In 1984 (the year marking the onset of the PKK insurgency), Turkey bullied Saddam Hussein into not signing an agreement on Kurdish autonomy that Baghdad had negotiated with the Patriotic Union of Kurdistan (PUK)²⁵. Throughout the 1990s, in spite of Turkey’s contributions to “Operation Provide Comfort” and “Operation Northern Watch” in support of Iraq’s Kurds after the first Gulf War, Ankara remained deeply suspicious of the experiment in Kurdish self-rule in Iraq, both for fear that its example could somehow incite the Kurds in Turkey and because of the ongoing

²⁰ Interview with Turkish diplomat, Ankara, 14 January 2013.

²¹ Quoted in Fielding-Smith 2010.

²² Hasanoğlu 2009.

²³ Aqraqi 2011.

²⁴ Barzani 2012.

²⁵ Interview with Adel Murad, Secretary of the PUK Central Council, Sulaimani, 15 November 2012.

PKK insurgency, which benefited from bases in Iraq²⁶. Analogous concerns loomed large in Ankara's ambivalence vis-à-vis the US-led invasion of Iraq in 2003 and motivated Turkish efforts to prevent recognition of the Kurdish region in the new Iraqi constitution²⁷.

The improvement in Erbil-Ankara relations in the past few years reflects both long-term trends in Turkish domestic politics and changes in the strategic environment faced by Turkey. Following the defeat of the PKK and the European Union's grant of accession candidate status to Ankara in 1999, Turkey embarked on a process of political liberalization entailing significant improvements in the human rights treatment of the country's Kurds²⁸. The victory of Erdogan's AKP in 2002 (with widespread support among Turkey's Kurds) led to an acceleration of reforms. Erdogan liberalized the political system through legislative and constitutional reforms enhancing freedom of the press, association, and expression as well as lifting the state of emergency in several southeastern provinces and strengthening civilian control over the country's powerful military. Moreover, Erdogan amended Article 28 of the Constitution, which banned the use of Kurdish language in public²⁹. These reforms contributed to the emergence of a climate conducive to improved relations between Ankara and Erbil³⁰. The recent ceasefire declaration by PKK's jailed leader Abdullah Ocalan and the ongoing initiatives to amend Turkey's constitution so as to reduce its emphasis on Turkish ethnicity, expand Kurdish cultural and political rights, and increase administrative decentralization, are further important steps in the same direction³¹.

Turkey has experienced the fastest growth in energy demand among OECD countries over the past two years, and its energy use is projected to double over the next decade³². The overwhelming majority of this growing demand is met with oil and gas imports, mostly from Iran

²⁶ Phillips 2009, pp. 9-10.

²⁷ International Crisis Group 2003, pp. 7-9; Yavuz and Özcan 2006.

²⁸ By 1999, with a series of Turkish military thrusts against PKK bases in northern Iraq and the interruption of Syrian support to the PKK (leading to its leader's, Abdullah Ocalan, arrest), Turkey managed to significantly weaken the insurgent group, which announced it was laying down its arms in 2000 (Cornell 2001). Significant PKK operations in Turkey have resumed since 2011 (International Crisis Group 2012c).

²⁹ Phillips 2009, pp. 7-8.

³⁰ Iraqi Kurdish politicians often stress this point (interview with Saadi Pirah, PUK Politburo member, Erbil, 23 October 2012; interview with Jafaar Ibrahim, KDP spokesperson, Erbil, 20 November 2012).

³¹ Larrabee 2013.

³² US Energy Information Administration 2013, p. 1.

and Russia³³. KRG's natural resources would be a welcome opportunity to diversify from these sources. Iranian gas supplies are unreliable, as they are often cut off during the winter in response to Iran's domestic demand peaks; Ankara has also experienced difficulties in paying for its gas purchases from Iran, due to the tightening of sanctions against the Iranian financial sector³⁴. Turkey has long expressed a desire to reduce its dependence on gas imports from Russia so as to gain foreign policy leeway³⁵. KRG's resources represent a source of energy security for Ankara because Turkey is their only plausible outlet, which makes them essentially captive sources of supply in the event of disruptions elsewhere; this fact also puts Turkey in a good position to obtain a favorable gas price and/or reduce prices charged by other suppliers³⁶. Moreover, access to Kurdish resources serves Ankara's goal of becoming a major energy hub connecting the Middle East, Russia and the Caucasus to Europe, with both geopolitical advantages and economic benefits in the form of transit fees³⁷. Finally, the geopolitical value of closer relations with the KRG has significantly increased for Ankara with the deterioration of its relationship with Baghdad in the past few years, as Turkey sees Erbil as a counterweight to Iranian influence on the Shia-dominated government of Iraq³⁸.

The rapprochement between Turkey and the KRG has climaxed in a major energy deal based on which a Turkish state company would acquire stakes in several exploration blocks in Iraqi Kurdistan and gas and oil pipelines would be built for export of natural resources under KRG's control to Turkey (the oil pipeline is expected to become operational by the end of the year, while it will likely take a few years for the KRG to start gas exports). The new pipelines would provide an outlet to international markets for KRG-controlled natural resources, thus cir-

³³ US Energy Information Administration 2013. Turkey's existing plans for nuclear energy would meet only a small fraction of the country's energy demand (Özdemir 2008, p. 100).

³⁴ Mills 2013, p. 58; Reuters 2013.

³⁵ Evin et al. 2010, p. 15. Tapping Kurdistan's resources would more generally provide Turkey with increased leverage in its neighborhood (Mills 2013, p 58).

³⁶ Mills 2013, pp. 57-59; Zualal 2012, p. 152. Mills also notes that Turkish demand for oil could be fully satisfied by the amount of oil that the KRG claims it would be able to export by 2015 (1 million barrels per day), while projected gas exports would be sufficient to entirely replace Iranian exports.

³⁷ Mills 2013, p. 58.

³⁸ Baghdad's and Ankara's contrasting positions vis-à-vis the ongoing Syrian crisis have been a major source of tension between the two countries. The deepening of Ankara-Erbil political and economic relations as disagreements between the KRG and the federal government festered has also played a role (interview with Turkish diplomat, November 2012).

cumventing the present deadlock between Erbil and Baghdad over oil exports³⁹. Turkish and KRG policymakers, however, have repeatedly stated that any export agreement between Ankara and Erbil would respect the existing revenue sharing scheme by which revenues go to Iraq's federal coffers, with the KRG entitled to 17% of the total.

Ankara's willingness to allow natural resource exports from KRG's territory without Baghdad's permission and in defiance of Washington's warnings seems to suggest that fears that enhanced autonomy for the KRG could lead to more unrest among Turkish Kurds have largely subsided in Turkey's calculus. In fact, it is quite likely that, besides the economic and geopolitical considerations mentioned above, Ankara sees the pursuit of a closer relationship with the KRG as instrumental to solving Turkey's Kurdish "problem". On the one hand, Kurdish areas in the south of Turkey would benefit handsomely from deeper economic ties with the KRG, which in turn should reduce the Kurdish population's willingness to support armed struggle against the state. On the other hand, increasing KRG's economic and political reliance on Turkey is likely to strengthen Ankara's leverage in that relation, thus ensuring that Erbil stick to policy positions on the PKK and the Kurdish issue in Turkey to Ankara's satisfaction.

Strategic interaction

In this section, we informally analyze the interaction between Baghdad and Erbil based on a two-player bargaining game. Our objective is to assess the impact of Ankara's policies toward Iraq on the prospects of cooperation and conflict between Baghdad and Erbil. This analysis entails a major simplification of a very complex reality. However, this stylization is warranted because our goal is not detailed description but rather a simple analytical framework that can shed light on ongoing developments in Iraq and might help us understand other cases with similar characteristics.

In standard zero-sum bargaining games on the distribution of a surplus, the "pie" to be shared is a continuous variable. However, in weakly institutionalized political environments, where the rule of law is weak or absent, the parties may not be able to credibly commit to specific divisions of resources: whatever is agreed upon today could

³⁹ Van Heuvelen 2013b; Al Arabiya 2013; Al-Tamimi 2013.

be renegotiated in the future in light of changes in bargaining power. Commitment problems can thus reduce the number of realistic negotiated solutions, making the surplus share variable effectively discrete.

The existence of commitment problems goes a long way in explaining the fact that negotiations between Erbil and Baghdad have focused on the KRG's right to sign its own oil and gas contracts and on procedures for the sharing of national resource revenues rather than the size of each side's shares, and the fact that the gap between their positions has so far proven unbridgeable⁴⁰. Erbil sees as inherently non-credible any revenue-sharing scheme that does not ensure the KRG's control of the region's hydrocarbon industry and does not include a mechanism for automatic revenue allocation to sub-federal entities, as Baghdad could renege on any agreement⁴¹. On its part, Baghdad is concerned about the possibility that if the KRG gets its way in the ongoing disputes, Erbil would be in a better position to subsequently renegotiate its share of the federal budget or prevail in other disputes with distributional implications⁴². Baghdad may also fear that the KRG covets direct control of the region's hydrocarbon industry as a preliminary step toward outright Kurdish independence from Iraq. Moreover, there is evidence that Baghdad worries about some sort of demonstration effect associated with concessions on control of the Kurdish region's natural resource industry: other sub-federal entities may feel emboldened to advance similar requests, thus weakening the central government and, in the worst case scenario, paving the road to disintegration of the country⁴³.

⁴⁰ To be sure, some aspects of the dispute between Baghdad and Erbil can be thought of as bargaining over the share of federal revenues allocated to the KRG. In particular, members of the Iraqi parliament aligned with Maliki have repeatedly tried to reduce from 17 to 12% the KRG's share of the federal budget. Moreover, the amount of federal payments to the companies under KRG's contracts pumping oil through the existing pipeline was a central focus of the negotiations for the 2013 federal budget. However, both of these issues are connected with the broader negotiations over the degree of decentralization of the natural resources sector, with Baghdad trying to use the threat of reducing federal transfers to the KRG and the stalled payments to the oil companies as tools for leverage (Van Heuvelen and Lando 2012; Patrick Osgood 2013).

⁴¹ KRG officials are explicit about the fact that the history of violence perpetrated by the Iraqi government against the its Kurdish citizens makes them distrustful of centralized control of natural resources and of revenue sharing arrangement that leave room for central government's discretion. Interview with Minister Falah Mustafa Bakir, 24 October 2012; interview with Qubad Talabani, 2 December 2012; interview with KRG Natural Resources Ministry official, December 2012.

⁴² There is, for example, a long standing dispute between Erbil and Baghdad about whether the KRG's peshmerga forces should be financed via the central government's or the KRG's budget.

⁴³ For example, Maliki has argued that the KRG's oil policy threatens to unravel Iraq's fragile federal structure by tempting its other oil-rich regions to strike their own independent deals. Similarly, Abdullah al-Amir, a personal advisor to Hussein al-Shahristani, Iraq's deputy prime

Baghdad and Erbil have thus found themselves locked in a costly political stalemate, as the absence of a comprehensive legal framework for Iraq's hydrocarbon sector is widely seen as a deterrent to international investment and therefore a hindrance to its development, while the breakdown of export deals between the federal government and the KRG has curtailed the country's revenues. Erbil and Baghdad have been pursuing diametrically opposite strategies to overcome the stalemate in their favor. Erbil has been attracting international investments in natural resources under its control and lobbying Ankara to provide an alternative export outlet for the corresponding output. These two initiatives have been mutually reinforcing. On the one hand, attracting international companies has required offering some guarantee of their right to monetize (i.e., sell on international markets the natural resources that they extract), which necessitates either a solution of the dispute between Baghdad and Erbil or the creation of an alternative export route through Turkey. On the other hand, Ankara's willingness to allow hydrocarbon exports from Iraq's Kurdistan without Baghdad's permission is a function of the ability of KRG-controlled resources to satisfy its growing energy demand, which crucially depends on attracting international investments to the region. The KRG's ultimate objective seems to be to create facts on the ground so as to convince Baghdad to soften its negotiating position or, if no compromise is possible, to gain *de facto* financial independence from the federal government with oil and gas exports to Turkey.

The federal government's strategy aims to undermine the KRG's initiatives towards international companies and Ankara with the ultimate objective of making Erbil capitulate to Baghdad's demands. Baghdad has increased the legal-political risk of energy companies operating in Kurdistan by threatening legal consequences for signing PSCs with the KRG and exporting oil without the federal government's approval, and by hinting at the possibility of resorting to force if Exxon Mobile were to start its planned drilling activities in disputed territories⁴⁴. The rows over

minister for energy affairs, argued: "If you have one part of the country producing and exporting and selling the oil, then Basra, the southern part, will do the same, and the other governorates will do the same, and this will have no government planning" (Saber 2013). Baghdad's fear of setting a precedent represents a different kind of commitment concern from those associated with Erbil's behavior after concessions: here the focus is on the lessons that third-parties may draw by observing interactions between the federal government and the KRG (for a theoretical treatment and empirical analysis, see Walter 2006).

⁴⁴ Van Heuvelen 2012; Lando 2012a and 2012B. Baghdad has threatened to blacklist companies signing agreements with KRG, but the policy has been inconsistently applied. Baghdad

payments to KRG-contracted companies, which led to the breakdown of export agreements between Baghdad and Erbil, may also serve the purpose of punishing companies working with Erbil and discouraging “fence-sitters” from following in their footsteps. Baghdad has also signaled to Ankara its displeasure at the deepening of relations between Turkey and the KRG through a variety of political and diplomatic channels and has lobbied the United States to persuade the Turkish government not to allow energy exports without the federal government’s approval⁴⁵.

Some ambiguity remains about the extent of Ankara’s willingness to defy Baghdad’s wishes, in particular by importing large volumes of oil through a new pipeline without authorization from Iraq’s federal government. However, Turkey’s decision to invest in KRG-controlled blocks and allow the creation of new pipelines (for simplicity, the “pipeline decision”) is a major game changer⁴⁶. Turkey’s decision signifies the failure of Baghdad’s attempts to discourage Ankara from supporting Erbil in its dispute with the federal government and thus significantly reassures international companies about the viability of the KRG’s natural resource industry. Turkey’s decision on this issue undoubtedly dampened Baghdad’s hopes to undermine the KRG’s strategy with the current policy, while emboldening the KRG. At that point it is unlikely that Baghdad would want to stick to a failing strategy whose costs would be increasing (besides the forgone investments due to investors’ concerns for the absence of a federal hydrocarbon framework law,

has told Exxon Mobile that it needs to choose between its investments in southern Iraq and in the Kurdistan region, while Chevron has been banned from investing in the rest of Iraq after signing a contract with the KRG. By contrast, the federal government has warned Total and Gazprom that their contracts with the KRG are illegal but has not asked them to choose between investing in the south and the north of Iraq.

⁴⁵ Parkinson 2012.

⁴⁶ For a variety of reasons Ankara may abstain from making a crystal clear announcement about its pipeline decision for some time and may instead continue to make statements to the effect that unlocking the KRG’s energy potential is in Turkey’s national interest and that there is no provision in the Iraqi constitution that bars the regional government from signing export agreements. However, the emergence of evidence that the pipelines are in fact being constructed and that Turkey has invested in KRG-controlled exploration blocks would likely drastically reduce Baghdad’s uncertainty about Ankara’s intentions. Two recent events are likely to have had this effect. In late April 2013, the KRG parliament authorized independent oil exports to Turkey in case Baghdad did not pay its past dues for KRG-contracted oil companies within 90 days; the timeframe coincides with the expected completion of a pipeline connecting KRG’s gas fields with a power plant on the border with Turkey, which, according to KRG and operating companies’ officials, could be easily converted to export crude (Osgood 2013). Moreover, on his way to a meeting with US President Barack Obama in Washington, DC, Erdogan confirmed a long-rumored investment in KRG-controlled exploration blocks by a Turkish state-run oil company partnering with Exxon Mobile (*Today’s Zaman* 2013).

lost revenues from KRG's oil production would likely grow faster once investors are reassured about their right to monetize). Baghdad would thus face the alternative of making concessions to Kurdish demands on the hydrocarbon framework and revenue sharing laws or escalating by resorting to force.

Baghdad's concessions could be coupled with Kurdish concessions on other pending issues so as to sweeten the pill; this would be particularly useful for Maliki to deflect likely accusations from his political rivals of having made concessions to the Kurds under duress. However, the fact would remain that by making concessions on the key bones of contention of the hydrocarbon framework and revenue sharing laws, Baghdad would be agreeing to live with the commitment concerns mentioned above. In particular, when the new pipelines are fully operational Baghdad would be dealing with a KRG with significantly more bargaining power. On the one hand, the existence of new pipelines would allow Erbil to export oil (and gas at some point in the future) even in case of continued stalemate with the federal government, and to shield itself from the financial consequences of a possible decision by Baghdad to cut off federal budget transfers to the KRG⁴⁷. On the other hand, Turkey's investment in the pipelines and exploration blocks represent a credible signal of Ankara's willingness to intervene on the KRG's behalf in case of violent confrontation with Baghdad. Both factors are likely to increase Erbil's bargaining power and correspondingly weaken Baghdad's.

Baghdad may be tempted to escalate the dispute with Erbil by resorting to force to forestall the increase in the KRG's bargaining power associated with Ankara's pipeline decision. The basic logic here is that Baghdad may anticipate that once the new pipelines are fully operational Erbil will be in a stronger bargaining position, which would

⁴⁷ Back-of-the-envelope calculations suggest that the KRG could offset the loss of federal budget transfers by exporting about 500,000 barrels of oil per day (bpd) in 2015. Assuming that the federal budget grows in 2014 and 2015 at the same speed at which it has been growing since 2009 (17% a year) and that the KRG would be allocated the same percentage as in 2013, federal transfers to Erbil in 2015 would amount to approximately \$17 billion, which would require 500,000 bpd at \$90 per barrel for Erbil to break even (this calculation does not take into account federal expenditures on services that the Kurdish areas benefit from). There is wide variation in estimates of KRG's oil production in 2015: the KRG estimates 1 million bpd, while the International Energy Agency considers this estimate too high and expects between 800,000 and 1 million bpd of overall northern production (including both KRG and non-KRG oil). The International Energy Agency does not provide a breakdown of estimated Northern Iraqi production for 2015 but only for the years 2020 and 2035. Given that for those two years, KRG and non-KRG northern production are approximately equal and the KRG production is expected to grow faster, we can identify 400,000 bpd as the high bound of the International Energy Agency's estimate of KRG oil production in 2015. Thus 500,000 bpd can be considered as an intermediate estimate of the KRG's export potential in 2015.

allow it to prevail in negotiations on the hydrocarbon framework and revenue sharing laws. Baghdad may thus decide to take the gamble of preventive war to coerce Erbil to capitulate now rather than waiting to find itself in the position of having to acquiesce to the KRG's demands in the future⁴⁸. Using force sooner rather than later may also make sense from Baghdad's point of view under the assumption that Turkey's commitment to intervene on the KRG's behalf in case of violent conflict would solidify over time as Ankara sinks more investments in the KRG's hydrocarbon industry. Baghdad may not be very optimistic about Turkey not intervening if large-scale violence were to erupt in the near future, but it may think that its only hope lies in the early use of force as the probability of Turkish intervention would increase with the passing of time.

These short-term destabilizing effects of Ankara's pipeline decision stand in contrast to its long-term pacifying effects. In a sense, Ankara's pipeline decision creates a window of opportunity for Baghdad to use force to forestall an unfavorable change in the balance of power between the federal government and the KRG. Once this window closes, the probability of large-scale violence between Baghdad and Erbil should be lower compared to a scenario in which Turkey decides not to invest in KRG-controlled exploration blocks and not to allow the creation of new pipelines. This reduction in war risk is a function of the attenuation of Erbil's commitment concerns about remaining part of Iraq and the deterrent effect on Baghdad represented by Ankara's increased stakes in the KRG's natural resources. Ankara's pipeline decision entails the important effect of assuaging Erbil's fears that at some point in the future Baghdad could renege on power and revenue sharing arrangements and re-centralize political control. With new pipelines in Kurdish-controlled territory and a vibrant hydrocarbon industry, Erbil would be in a position

⁴⁸ It should be noted that the meaning of successful use of force in this context is less straightforward than in the typical bargaining model, in which it is assumed that victory automatically gives access to the good under dispute (e.g., Fearon 1995's model). This conceptualization makes intuitive sense when the dispute is over territory and victory enables territorial grabs. By contrast, we assume that Baghdad and Erbil are negotiating over institutional arrangements rather than the physical control of some asset. Thus it makes more sense to think of military victory in terms of coercion. For example, victory for the federal government could be represented by a scenario in which the Iraqi army manages to seize KRG-controlled oil fields, essentially forcing Erbil to accept Baghdad's position. Alternatively, a more limited use of force by Baghdad signaling its ability to take control of KRG-controlled oil fields could discourage further investments by international companies in the Kurdish region, thus undermining the KRG's strategy for development of its hydrocarbon industry and prompting Erbil to accept Baghdad's requests. By contrast, a scenario in which Baghdad proves unable to make any headway in Kurdish territory would amount to a Kurdish victory.

to shield itself from the financial consequences of such a development by relying on the revenues deriving from its direct hydrocarbon exports to Turkey. The economic interdependence between Turkey and the KRG brought about by the new pipelines would work as a form of insurance for Erbil against a worst-case scenario of opportunistic behavior by Baghdad (i.e., a naked power grab), which in turn should make the Kurds more comfortable with the idea of remaining part of Iraq. By removing an important motive for Kurdish secession, the creation of the new pipelines reduces the probability of war provoked by a KRG bid for independence. Moreover, as noted, once the new pipelines are fully operational, the probability that Ankara would help Erbil in case of aggression by Baghdad (and thus protect its own investments) is likely to be sufficiently high to discourage Iraq's use of force to settle ongoing disputes.

A critical reader may point out that the creation of a hydrocarbon export infrastructure outside federal control and the prospect of Turkish political and military support may embolden the KRG, which would then advance excessive demands to the federal government and perhaps even attempt secession, thus somehow provoking a war. The logic of our argument does in fact suggest that Erbil's demands *might* grow with its bargaining power. However, this is not necessarily the case: inasmuch as our assessment that commitment fears are a key determinant of Erbil's negotiating position is correct, the reduction of those concerns associated with the creation of new pipelines (in a context in which the KRG maintains its hold on the region's hydrocarbon sector) could lead Erbil to be less intransigent in negotiations with the federal government. Even if an escalation of Kurdish demands does occur, we should not expect this to translate automatically into an increased risk of armed conflict between Baghdad and Erbil, but rather in a bargaining outcome more favorable to Erbil as both players are aware of the KRG's stronger position. (Baghdad may be concerned about the prospect of negotiating from a position of weakness with Erbil and having to make concessions down the road and may thus prefer to fight in the present; this is, however, the short-term preventive war incentive that is already part of our argument.) Moreover, Kurdish politicians are explicit (both in public statements and private conversations) about their preference for overcoming the hydrocarbon deadlock with an agreement with Baghdad and in the framework of the existing 17-83% revenue sharing formula, rather than by achieving *de facto* financial independence or even *de jure* independence. To be sure, they openly acknowledge the

Kurdish people's historic aspiration to statehood, but they also clearly state that this is a long-term goal to be achieved by peaceful means under changed geopolitical circumstances—in particular, Turkish and US support for independence is considered an absolutely necessary condition⁴⁹. There is no evidence that Ankara (let alone Washington) would back a potential secessionist bid by Erbil. Turkey's position toward Iraq's Kurds has certainly dramatically changed over the past few years, but it seems highly doubtful that Ankara would be willing to support the KRG all the way to statehood. Turkey is much more likely to accept a condition of de facto financial independence in which the KRG helps Ankara satisfy its growing energy demand and geopolitical ambitions, without the higher risks of war with Baghdad and the demonstration effect among Turkey's Kurds that de jure sovereignty would entail. The KRG's complete reliance on Turkey for access to international hydrocarbon markets suggests that Ankara should be able to keep Kurdish secessionist aspirations at bay (if needed) by threatening to shut down the pipelines. Carrying out this threat would be costly for Ankara, but the costs would be significantly higher for Erbil given its economy's almost complete dependence on natural resources.

Our theoretical argument identifies competing short-term and long-term effects of Turkey's pipeline decision on the prospects of conflict between Baghdad and Erbil. The key question from a policy point of view is: are the long-term benefits worth the short-term risks? This is an empirical, rather than theoretical, question. The answer hinges on whether Baghdad's preventive war incentives are sufficiently strong to push it to take the gamble of war. We argue that Baghdad is highly unlikely to consider the open use of force against Erbil in the short run as a realistic option. Baghdad is monitoring with great concern devel-

⁴⁹ One could question the reliability of these kinds of statements by pointing out that they are likely tailored to international audiences with the objective of projecting an image of moderation. However, history suggests that minority leaders' moderate political claims should not be automatically dismissed as "cheap talk" because they sometimes adopt hardline positions. The case of Kosovo offers a useful illustration. Several analysts consider it a clear-cut example of an ethnic minority emboldened by the prospect of external intervention (Kuperman 2008; Grigoryan 2010), but its leaders did not try to underplay their aspiration to independence. In 1992, Serbian Prime Minister Milan Panic offered Kosovo Albanians' leader Ibrahim Rugova to reopen schools and hospitals in Kosovo, as well as restore the province's autonomy, but Rugova insisted on Kosovo's outright independence as the only possible solution to the conflict (Vickers 1998, p. 266; Johnstone 2002, p. 226). In 1996, shortly after the Dayton agreement put an end to the war in Bosnia, Slobodan Milosevic expressed willingness to negotiate a compromise, but the Kosovo Albanians' response was the dismissal of any settlement short of Kosovo's full independence and the insurgency launched by the Kosovo Liberation Army, which eventually led to the NATO intervention in 1999 and the Serbian retaliatory ethnic cleansing (Burg 2003, p. 73; Grigoryan 2010).

opments in neighboring Syria. A victory by Sunni rebels in the civil war there would mean a significant risk of political and military spillovers in Iraq, in particular strengthening and emboldening the Sunni protest movement and terrorist groups⁵⁰. The Iraqi government is unlikely to be willing to gamble on war against the KRG when it faces a mounting Sunni challenge both across the border and at home. Moreover, even if the probability of Ankara's intervention in a Baghdad-Erbil war would be highest when Turkish investments and the all new pipelines are in place, there would be a non-negligible risk of Turkey's providing military support to KRG forces in the aftermath of Ankara's pipeline decision, which should be a powerful deterrent to Baghdad's decision to use force⁵¹.

Baghdad is more likely to consider the use of more limited violent measures, in particular sabotage of the new pipelines, but these are unlikely to pose major obstacles to hydrocarbon flows. Pipelines in northern Iraq are often targeted by Sunni groups but are typically repaired quickly without major impact on export volumes; the attacks tend to occur in areas under federal government rather than KRG control⁵². The federal government would have a hard time carrying out any plan to launch attacks on the new pipelines on a larger scale than under present conditions: the Shia groups that may be willing to help would probably experience serious difficulties organizing and executing operations in Sunni- and Kurdish-dominated areas, while the Sunni groups that may more easily operate in mixed areas are unlikely to offer their services to Baghdad, given the growing ethno-sectarian tensions agitating the country.

In sum, Ankara's pipeline decision would offer the prospect of unlocking international markets for the Kurdistan region's resource wealth. The corresponding significant economic benefits for both Iraq and Turkey (and probably energy-importing European countries) would be coupled with a net reduction in the probability of war between Baghdad and Erbil, in spite of an increased risk of preventive war by Baghdad in the short-run. US policy on this issue should reflect awareness of both the

⁵⁰ See, for example, Londoño 2013, Arraf 2012, and Arango 2013.

⁵¹ Baghdad may feel in a better position to wage war against Kurdish forces after the planned delivery of M1A1 tanks and F-16s (Sullivan 2013, p. 36). However, it is unclear whether this increase in Baghdad's military power would be sufficient to prevail over the factors, discussed above, that make war against the KRG unpalatable in the short-run. In addition, the military equipment may well be delivered after the new pipelines are in place, in which case the increase in Baghdad's military power would likely be dwarfed by the increase in the probability of Turkey—the regional powerhouse—intervening on the KRG's behalf in case of aggression by the central government.

⁵² See, for example, Al-Najr 2013 and Van Heuvelen 2013a.

opportunities and risks involved and thus abandon its current focus on discouraging Ankara and Erbil from pursuing closer energy ties for fear that Iraq may once again plunge into civil war. In fact, altering the trajectory of Ankara-Erbil relations may well be beyond Washington's power, given the high stakes for both Turkey and the KRG. However, US policy could help reduce the risk of short-term instability associated with Ankara's pipeline decision by clearly stating that the United States will punish aggression by any party in the Ankara-Baghdad-Erbil triangle and that it expects the parties to solve their disputes in a peaceful manner. Moreover, Washington should carefully time the delivery of military hardware to Iraq's federal government to make sure that the corresponding increase in Baghdad's military power occurs only after Turkish investments and the new pipelines are fully in place, i.e., when Baghdad no longer has an incentive to launch a preventive war. Finally, Washington should pressure Ankara to provide credible assurances to Baghdad that the pipeline decision will not affect Turkey's commitment to Iraqi sovereignty, territorial integrity and the existing revenue sharing arrangement between Baghdad and Erbil.

Conclusions

Due to deep-seated commitment problems, Baghdad and Erbil are in a political deadlock over hydrocarbon framework and revenue sharing laws. Erbil has tried to attract international investments in hydrocarbons and to persuade Ankara to provide an alternative export outlet with the ultimate objective of mollifying Baghdad's negotiating position or to gain de facto financial independence from the federal government with hydrocarbon exports to Turkey if no agreement emerges. Baghdad has tried to undermine the KRG's initiatives by manipulating the legal-political risk faced by energy companies operating in Kurdistan and voicing to Ankara its unease with closer relations between Turkey and the KRG.

Ankara's decision to invest in KRG-controlled exploration blocks and allow the creation of new pipelines is a major game changer, as it signifies the failure of Baghdad's attempts to discourage Ankara from supporting Erbil in its dispute with the federal government and significantly reassures international companies of the viability of the KRG's natural resource industry. Given its costly and ineffective strategy, Baghdad would face a choice of making concessions to Kurdish demands on the hydrocarbon framework and revenue sharing laws or escalating by resorting to force.

Baghdad's concessions would amplify the prospective strengthening of Erbil's hand deriving from Turkish investments and the new pipelines. The KRG would be in a position to bargain harder because the new pipelines would provide an alternative source of revenues in case Baghdad threatens to suspend federal budget transfers. In addition, Turkish intervention on Erbil's behalf in case of aggression by Baghdad would be more likely after Ankara has made its investments and the new pipelines are fully in place, which also should reduce the federal government's leverage vis-à-vis the KRG. Baghdad may be tempted to launch a preventive war to forestall the unfavorable change in the balance of power, perhaps also in the hope of convincing Turkey to change course. However, we consider the probability of Baghdad's initiating war in the short term to be low, in particular due to its concern with the civil war in Syria and the corresponding risks of spill-over in Iraq as well as ongoing unrest among Iraq's Sunnis. In any case, responsible policy-making requires comparing the short-term increase in the risk of war with the corresponding long-term benefits, which we argue are greater. Ankara's pipeline decision offers the prospect of unlocking international markets for the Kurdistan region's resource wealth, with a strong potential of contributing to Iraq's and Turkey's socio-economic development (and probably to the well-being of energy-importing European countries). Moreover, Ankara's decision would have the long-term effect of assuaging Erbil's entrenched fears of exploitation by Baghdad, which should eliminate a powerful motive for Kurdish secessionist aspirations and reduce the corresponding risk of war. Thus, US policy on the issue should not aim at blocking the Turkish initiative (which, in any case, is unlikely to succeed) but rather attempt to contain the risk of conflict escalation in the short term.

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Chapter 8

EU Mediation in Montenegro

Normative Power as a Source of Linkage Strategies and Non-material Side Payments

Siniša Vuković

Introduction

In a referendum held on May 21, 2006, the citizens of Montenegro voted for independence. Although a rare example of peaceful transition to independence in the context of violent dissolution of the former Yugoslavia, the referendum on independence was not a result of a peaceful compromise of Montenegrin political players. Rather, the crucial role of mediating the rules and procedures for the referendum was performed by Miroslav Lajčák, appointed as a “personal representative” of Javier Solana, at that time the EU High Representative for the Common Foreign and Security Policy (EU CFPS statement S415/05). From the start of the mediation process, he faced unyielding positions from both camps that showed no intent to compromise. The Unionist camp—which endorsed a view that Montenegro should remain with Serbia—was voicing its unwillingness to participate in the referendum procedures, as it was aware that under the present referendum law it would be unable to produce a majority vote against independence. On the other hand, the government—which was headed by pro-independence parties—was adamant that a referendum needed to take place, with or without the other side. It was obvious that in order to find a compromise, Lajčák and his team had to find a solution that would make the referendum result “clear, visible and convincing” (Lipka 2011). After a series of negotiation rounds, Lajčák and his team “imposed a formula that two conditions be met for a successful independence vote: participation of 50 per cent +1 of all eligible voters and 55 percent of those voting in favor” (ICG 2006, p. 2). Such an option was never within the disputants’ range of viable alternatives. While the disputants bat-

tled with formulas that were used in other similar circumstances, such as an unprecedented solution was never thought possible. Nevertheless, despite the apparent undemocratic spirit of such a formula, both sides accepted the terms, making Lajčák's mediation efforts a complete success. In fact, compared to other cases discussed in this book, the mediated agreement, once reached, was never contested by either side, nor were there any significant commitment problems in its implementation. So what explains this outcome?

This chapter examines the mediation process and the most significant factors leading to a mutually acceptable solution. Given the main theme of the present volume, the Montenegro case is an example of a mediated conflict which had the issue of contested identity at its core. The parties had diverging opinions of what being Montenegrin actually entailed, which in turn had a polarizing effect on their political preferences. Although, similar to the Catalonia case (see the essay by Miriam Rossi on Catalonia in this volume), there was never actual systemic use of violence in Montenegro, the constructive and highly effective engagement of the EU officials as mediators could be only understood if this case is viewed within the larger context of the (highly violent) dissolution of the former Yugoslavia. In fact, as discussed in the following section, the EU's interest to get involved had a strong preventive dimension, as previous reactive approaches to manage fully escalated conflicts in the region were inadequate. At the same time, the destructive repercussions of managing similar identity conflicts in the region were a clear warning for the parties in Montenegro that violent methods actually could not yield expected results, and as such increased the appeal of negotiations and diplomatic efforts. However, the high level of distrust between the parties, coupled with their unwillingness to compromise and communicate directly with one another, set the stage for the EU mediators' involvement in the process. As this chapter will show, the evident success of Lajcak and his team to produce a mutually acceptable solution which was not contested by either side in the later stages of the referendum process is directly related to a particular type of leverage that the EU had in the process. Thanks to its normative power, Lajcak was first able to formulate a solution which linked a number of salient issues into one comprehensive package, and then, given the fact that such solutions were far from the parties' initial range of acceptable solutions, "sell" it to the parties thanks to the normative appeal of accepting "the European way" of solving the dispute as the only side payment.

Background of the conflict

The issue of Montenegrin independence emerged in the early 1990s, at the same time as other constituent republics of socialist Yugoslavia voiced their intention to secede from the federal state. In October 1991, with the backdrop of a rapidly escalating conflict in Croatia, and fear that violence might spill over to other parts of Yugoslavia, five of the six constituent republics accepted a European Community proposal, mediated by Lord Carrington in the Hague, which would reorganize Yugoslavia in way to permit the establishment of “sovereign and independent republics with international personality for those that wish it” and “a free association of the republics with an international personality” (Trifunovska 1994, p. 357). Momir Bulatović, at that time the President of the Socialist Republic of Montenegro, voted in favor of this plan, leaving Milošević and his Socialist Republic of Serbia in minority. Despite his previous endorsement for Montenegrin sovereignty and the right to decide its own political destiny, and faced with strong pressure from Belgrade, a few days after the conference Bulatović withdrew his support from the plan and sided with Milošević. Soon after that the Montenegrin authorities expressly called for a referendum, asking the citizens if they wanted to remain in a federal union with other interested Yugoslav republics. Given the context in which it was held—characterized by extreme government control of resources, propaganda and means of communication, coupled with a very short campaign period—this referendum has been widely regarded as unfair and undemocratic (OSCE/ODHIR Report 2006). Despite being boycotted by all pro-independence forces and parties of national minorities, on the day of the referendum—March 1, 1992—the voter turnout was 66%, of which nearly 96% voted in favor of remaining in Yugoslavia. Following the favorable results, the government immediately started negotiating a new federation with Serbian authorities. On April 27, 1992, Montenegrin and Serbian authorities passed the constitution for a new federal union: the Federal Republic of Yugoslavia.

This arrangement soon proved dysfunctional and subject to constant attempts by Milošević to further marginalize the role of the authorities in Podgorica by centralizing the federal system. Frustrated by such treatment, several politicians of the ruling Democratic Party of Socialists (DPS) started to openly oppose Milošević—a loyal ally up to that point—and challenge his authority in Montenegro. They started voicing their discontent by claiming that the “economic and political consequences of the alliance with Milosevic had become too burden-

some” (Friis 2007, p. 69). In 1997, the Prime Minister Milo Đukanović, took control of the DPS and defeated the pro-Milošević president, Momir Bulatović in presidential elections (ICG 2005, p. 3). Expelled members of the DPS, loyal to Milošević and Bulatović, formed a new party, the Socialist People’s Party (SNP), and became the key opposition force in the country.

By 1999, Montenegro had formalized its status as a de facto independent state. It introduced the German (Deutsche) Mark as its official currency, created its own fiscal system, established new institutions such as the Central Bank and the Ministry of Foreign Affairs, strengthened its police forces as a way of counterbalancing the Yugoslav Army loyal to Milošević, and openly sided with opposition forces in Serbia and the international community during the Kosovo campaign. Until the downfall of Milošević on October 5, 2002 “the West actively courted Đukanović, supporting him politically, financially and with veiled security assurances” (ICG 2005, p. 3). The issue of Montenegrin independence started to dominate the political discourse of the ruling elite and government officials.

However, when the Democratic Opposition in Serbia (DOS) took over power from Milošević, the West changed its priorities in the region. They started focusing on supporting the new regime in Belgrade and sent clear signals to Montenegro that they should engage in re-establishing good relations between the two republics. Montenegrin authorities did not want to give up any of the powers achieved up to that point. The government officials argued that the best solution “was either to thoroughly revise the federation or to call a referendum on the state and legal status of Montenegro” (Friis 2007, p. 70). They pointed out that the need for redefined relations between the two republics is not only political in nature, but derives from evident structural differences between the two, reflected in their relative sizes (Serbia had around 10 million inhabitants, while Montenegro only 620,000), economic systems (Serbia was highly industrialized, while Montenegro’s economy was based on the service sector, such as tourism), fiscal and monetary policies, etc. The proposal of a ‘union of two independent states’ was immediately rejected by Belgrade, which wanted to continue the process of centralization started under Milošević. According to Friis, “as these talks failed in the fall of 2001, the political elites in both republics concluded that a referendum in Montenegro was the most likely step” (Friis 2007, p. 70).

Fearing the potentially destabilizing regional effect of Montenegrin independence, especially in terms of the fragile situation in Kosovo,

EU High Representative for CFSP, Javier Solana, made future relations between Montenegro and Serbia a matter of priority for the EU's CFSP (Keane 2004). After a series of negotiations, on March 14, 2002, the two republics signed "the Belgrade Agreement", which transformed the Federal Republic of Yugoslavia into a confederation called the State Union of Serbia and Montenegro (SCG). Solana induced the parties to accept this arrangement with a promise of a fast track to the EU for the State Union (ICG 2005; Papić 2006; Friis 2007). However, Montenegrin authorities agreed to the State Union under the condition that there be an "opt-out clause permitting either republic to begin independence procedures within three years of the Constitutional Charter coming into effect" (ICG 2006, p. 2). In order to make this option less attractive, the Agreement prescribed repercussions for holding a referendum only for Montenegro, indicating that if Montenegro left the State Union, the formal successor of both FRY and SCG would be Serbia. At the same time Montenegro would not inherit any right to subjectivity under international law, and as a consequence would have to gain such status from the beginning. The same provisions were not prescribed for Serbia (ICG 2005, p. 12). Solana's insistence on promoting the State Union and hampering Montenegrin aspirations for independence, made people in both Montenegro and Serbia refer to the State Union as "Solania" (ICG 2005; Friis 2007; Darmanović 2007).

Even though the constitutional arrangement was redesigned, the structural differences in the two systems, their acquired powers, and the political preferences of their governments remained the same. As a consequence, neither side invested much effort in making the State Union a functional entity. For instance, their Constitutions were never synchronized with the Constitutional Charter, and the institutions of the Union were never fully operational. It appeared as if both sides perceived this arrangement to be transitional, pending an imminent referendum on Montenegro's state-status. As the transitional period of three years was coming to an end, the EU was faced with a contractual responsibility to accept a Montenegrin referendum on independence.

At this point, the EU's primary concern was to find a way to make the referendum and its result "legitimate" (ICG 2006, p. 2). The first issue that the EU addressed was the existing Montenegrin legislation concerning organization of the referendum. On this matter, Brussels received valuable assistance from the Council of Europe and its Commission for Democracy through Law, also known as the Venice Commission. In its opinion adopted in December 2005, the Venice Commission stated that

“the majority requirement in the Law (50 percent of the turnout) was not inconsistent with international standards ... [however] while the legal requirements may vary from country to country, the Commission notes that the dimension on such issues have in practice been commonly accepted by more than 50% of the registered voters ... [therefore] the Commission invites all political parties to reach a negotiated solution on the majority required to ensure the *legitimacy* of the referendum” (emphasis added, Opinion quoted in Friis 2007, p. 79; for further details see also Venice Commission 2005).

The other issue addressed in the Opinion was regarded voting rights. The Commission concluded and recommended that only residents of Montenegro that were on the regular voter’s list should be granted the right to vote. It meant that citizens of Montenegro residing in Serbia, already exercising their voting rights in Serbia and listed on Serbian voter’s lists, could not be granted the right to vote in the referendum, as this would give them a possibility to vote in both systems (Venice Commission 2005).

According to Friis, “the adaptation of the Opinion by the Venice Commission meant that the international community had given a symbolic ‘green light’ for referendum to take place” (Friis 2007, p. 80). In principle the opinion provided a needed starting point for the upcoming negotiations, where other key issues of a political nature were to be solved; namely, the exact formula of the majority requirements, the broader legislative framework and the post-referendum proceedings (Friis 2007, p. 79). As was expected, each side in the referendum debate interpreted the Opinion in line with their political agenda, making a compromise unreachable. Involvement of a third-party was an absolute necessity, and the EU was perceived as the most suitable player for that role.

Main players and their interests

In the period leading to referendum, Montenegrin political discourse was polarized in two camps: pro-independence and unionist. Both camps were formally organized as “movements”. While they obviously differed in terms of their political goals and visions of the country’s future, these differences were based on diverging interpretations of the spirit of Montenegrin nationhood (Malešević and Uzelac, 2007). These interpretations unequivocally resonated historical divisions, especially from the first decade of 1900s, which saw the emergence of two po-

litical and cultural elites in Montenegro. This division primarily evolved around the question of Montenegro's future relations with Serbia. On the one hand, Bjelaši supported unconditional unification and claimed that Serbs and Montenegrins were one people and as such should live in one country. On the other, Zelenaši endorsed the notion of equality between two people and thus advocated a separate Montenegrin state identity (Malešević and Uzelac 2007, p. 701). Following the establishment of the Kingdom of Serbs, Croats and Slovenes in 1918, which was preceded by Montenegrin annexation on behalf of Serbia and political elimination of a separate Montenegrin identity, Zelenaši began an open guerilla resistance against the regime in Belgrade and their political and military exponents in Montenegro. Although the resistance lasted for several years (starting on January 7, 1919, it was known as the Christmas uprising) it was generally a taboo topic within Montenegro (Rastoder 2003). However, once the issue of Montenegrin independence began dominating the public discourse once again, the memories of resistance were a useful tool for mobilizing the public around the idea of separate Montenegrin statehood.

The Movement for independent Montenegro gathered around the political parties that were in power: DPS, and their coalition partner, Social Democratic Party (SDP). These two had a majority of seats in the parliament (38 out of 75). At the same time, some of the opposition parties also favored independence, such as the Liberal Union of Montenegro (LSCG) and Liberal Party of Montenegro (LPCG). Finally, parties of national minorities (Albanian, Croat and Bosniak/Muslim) were also supportive of the idea of an independent Montenegro, as the movement endorsed the vision of the Montenegrin nation as a civic nation, rejecting an ethnic approach to the question (Malešević and Uzelac 2007).

The electoral victory of DPS-SDP in 2002 was based on a promise that a referendum on independence would be held. This promise was a reaction to the signing of the Belgrade Agreement, which in the eyes of many who supported independence was interpreted as a huge disappointment, as the transition period would only prolong the agony of the union with Serbia. Evidently, postponing the referendum any further would produce unbearable political costs to the ruling coalition. So despite several attempts from the EU to hamper the Montenegrin drive toward independence, the ruling coalition was insistent upon holding a referendum. On several occasions, coalition leaders stated that the referendum would be held no matter what. However, they also knew that they needed the other side to participate if the results were to

be perceived as valid and legitimate in the eyes of the international community, especially the EU.

Knowing that their participation was of the utmost importance, proponents of the Movement for the State Union of Serbia and Montenegro started playing hardball. This movement was organized around four main opposition parties—SNP, the People’s Party (NS), the Serbian People’s Party (SNS) and the Democratic Serbian Party (DSS)—all of which appealed predominantly to the ethnic Serb population. This was directly reflected in their interpretation of Montenegro as a “territorial region of Serbdom” (Malešević and Uzelac 2007, p. 710). Pro-unionists saw the EU’s indecisiveness in supporting the referendum as an opportunity to hamper the prospects of the referendum being held. Their electoral experience taught them that, under the present referendum law, they would be unable to gather sufficient votes to prevent Montenegro from becoming independent, so their only strategy was to rob the result of legitimacy by boycotting the process altogether (ICG 2005, p. 9). An important exception to this was the position of Predrag Bulatović, head of the SNP (the strongest opposition party), who publicly stated that his party would “not boycott if the EU indicates that it approves of a referendum” (ICG 2005, p. 10). Such statement was based on a belief that an unenthused EU would not push further for the referendum to take place. It was also based on a significant shift in paradigm that most of the unionist parties experienced with the fall of Milošević in 2000. The new authorities in Belgrade, which were strongly supported by the EU, saw no problems in cooperating with the pro-unionist Montenegrin opposition, as they were the only forces still interested in maintaining some form of union with Serbia. The new level of legitimacy that the authorities in Belgrade obtained was quite appealing for the opposition in Montenegro, so they redefined their stance towards the EU and voiced their commitment to European values and principles as well. In other words, they recognized the legitimate power of the EU in the region.

On November 10, 2005, the EU Presidency prepared a non-paper with the aim of discouraging the referendum. The paper emphasized the need for negotiation between the government and the opposition, concluding with a warning “that failure to hold dialogue on the matter would have severely negative consequences for Montenegro’s future aspirations of European integration” (ICG 2005, p. 10). Knowing that this was a stick that could hurt only the government, the opposition leaders followed up on this by communicating to the EU officials their belief that the referendum was unnecessary and that they had no intention

of talking to the government (ICG 2005, p. 10). Soon after, they got a response from Solana, who once again emphasized the need for a broad consensus on the rules of the procedure, in order for the referendum to be perceived as legitimate. More importantly, he underlined the fact that “the EU would not accept the outcome of a unilateral process, in which the Montenegrin authorities and the opposition fail to cooperate with the EU and other responsible international bodies” (ICG 2005, p. 10).

For the opposition leaders this was a clear sign that the EU was unwilling to support the referendum, and they continued to claim their intent to boycott. However, as the three-year transitional period was coming to an end, the EU was quite aware that it would inevitably have to respect the terms of the Belgrade Agreement and accept the referendum. Thus in December 2005, Javier Solana appointed Miroslav Lajčák as his special envoy in the matter.

One of the most powerful tools of EU foreign policy in dealing with neighboring countries that aspire to become EU members is that of political conditionality (Schimmelfennig and Sedelmeier 2005, Papić 2006). With Montenegro, this power was primarily used to dissuade Montenegrin authorities from exercising the right to call for a referendum on independence (Papić 2006; ICG 2005; ICG 2006). However, as the time for referendum was approaching, these ‘carrots and sticks’ started losing their appeal and consequent impact on the government in Podgorica. Faced with the imminent, the EU started exploring how it might ensure that the referendum and its result be widely considered legitimate (ICG 2006, 2). As it turned out, the power of conditionality was directly related to the more general appeal of joining the EU—political aspiration indicated through “rational action”—to become a part of a wider socio-political community that shares particular norms and values that prescribe behavior both on a collective and individual (i.e. member-state) level. As Schimmelfennig notes, self-interested political players are drawn by the power of legitimacy that derives from participating in an institutionalized international society, which they can use to extend their power and assume more authority (Schimmelfennig 2000, pp. 116-117). In order to achieve this, they have to play according to the international system’s values and rules that enable them to be perceived as legitimate, although this does not require personal internalization of those values and rules. The EU represented such an institutionalized, international society for all major political forces in Montenegro. As a consequence they accepted its legitimate power to prescribe (and if

necessary even impose) “rules of the game” under which the referendum would be held.

The mediation process and the final result

Mediation is best understood as a process through which one or more external players help the parties find a solution which they are unable or unwilling to find on their own (Zartman and Touval 1996). Once the bilateral attempts to negotiate a solution prove to be ineffective, the parties in conflict might seek or be offered assistance from the outside. The appeal of mediation as a conflict management tool resides in its voluntary, non-coercive and legally non-binding character (Bercovitch 2009). In other words, through mediation the conflicting parties may seek to find a solution that is both better than their available alternatives and better than what they can get through direct negotiations, while still keeping the option to reject any proposal that is not in line with their interests.

For mediation to take place, the parties need to perceive mediation as a suitable alternative to their belligerent approaches to the conflict. In fact, by accepting mediation the parties also accept the prospective costs that such a process might generate. Parties might be apprehensive that their willingness to negotiate and compromise with the “enemy” might be treated as a sign of both treason and weakness by their constituencies. At the same time, unwillingness to accept a solution once the mediation process has begun might have severe repercussions on the parties’ international reputation. As such, the parties’ readiness to accept mediation and negotiate with one another grows as the costs of continuing conflict increase (“pain”) and the appeal of settling the dispute through peaceful means outweighs the expected utility of continued belligerent activities (“promise”) (Grieg and Diehl 2012, p. 107). Thus, as the situation becomes more unbearable, and the parties start perceiving it as a ‘mutually hurting stalemate’ from which they can’t escalate into victory through unilateral action, they start viewing negotiation as an attractive “way out” of this predicament, making the overall situation ripe for resolution (Zartman 2001). Mediation, however, does not take place only after the parties have realized on their own that the present state of conduct is not yielding the expected results. Given the high lack of trust that characterizes relations between the parties—which is usually a result of incomplete information at their

disposal (Fearon 1995)—the mediators generally assume a more direct role in ‘ripening the conflict’ for them (Zartman and de Soto 2010).

In Montenegro, the EU played a crucial role in ripening the situation and making the parties realize that their current strategies and attitudes were not going to generate the expected outcomes. The mediating team had already realized during the prenegotiation phase that both parties had reached an impasse, and were becoming quite exhausted from their confrontational tactics. According to Ambassador Lipka, the parties were fully aware that the continuation of the present situation would only lead to “agony and stagnation” (Lipka 2011). Failed attempts to solve similar identity conflicts in the region through violence, and the overall fatigue with the present situation that was driving the political discourse and competition into a deadlock, were setting the stage for the EU’s involvement. At the same time, the hurting stalemate existed not only for the parties, but for the mediator as well. The obvious poor record in managing violent conflicts in the former Yugoslavia made the EU reevaluate its reactive approach to emerging disputes in the region. Thus, for the first time the EU wanted to prevent any situation in Montenegro from further deteriorating into violence by assuming a more ‘pro-active’ approach to the existing crisis (Lipka 2011).

However, even when the parties formally agree to participate in the mediation process, they still might not have an interest in reaching a peaceful solution to the problem. In fact, parties might use mediation for ‘devious reasons’, in order to buy time and consolidate their position both domestically and internationally (Beardsley 2009). According to Grieg and Diehl, in such cases “unless the third party can provide sufficient incentives to the two sides once they get to the bargaining table to make them more amenable to a settlement, the mediation effort will fail” (Grieg and Diehl 2012, p. 107). Such incentives, or ‘side payments’ might be both material and non-material in nature, and vary from different types of ‘carrots and sticks’ to improved international reputation or enhanced relations with the third-party. Incentives are directly related to the mediator’s characteristics and ability to muster particular types of side payments. The ability to move the other party in an intended direction reflects one’s power in the negotiation process (Zartman and Touval 1996, p. 455). In mediation, this power is generally referred to as “leverage”, and takes the form of previously mentioned incentives or side payments. According to Carnevale (2002), there are two basic types of power or leverage that are characteristic of any mediator, and are best differentiated according to the player’s “will” and

“skill”. The “will” reflects those resource-based types of social power that the mediator might bring to the table. Using French and Raven’s (1959) classification of social power, Carnevale identifies six types of resource-based leverage: reward (i.e. “carrots”), coercive (i.e. “sticks”), expert, legitimate, referent, information, and relational (Carnevale 2002, pp. 29-30). On the other hand, the “skill” reflects the behavioral dimension of the mediator’s involvement. By mirroring what the mediator does at the table, this type of ‘tactical strength’ allows the third-party to influence the bargaining process through procedural aspects, careful dissemination of crucial information, and creation of an environment that fosters trust not only among the parties but also in the process itself.

According to numerous studies (Manners 2002; Diez 2005; Nye 2011) the EU’s main strength in international affairs resides in its ‘soft’ or “normative” power. In fact, in Montenegro, the EU never resorted to any type of coercive power, either by threats and/or punishments, nor did it try to leverage the parties toward an agreement by using different forms of tangible “carrots”. Throughout the process, it mainly resorted to soft forms of power that were able to co-opt (instead of coerce) the parties into cooperating and compromising. The EU primarily relied on its legitimate power, which “derives from a norm that has been accepted by the disputants” and its “influence rests on a judgment of how one should act, and the authority determines the standards”. According to Ambassador Lipka, at the beginning of the process both sides had already unequivocally accepted that the dispute should be settled in “a European way”. Keeping in mind the (recent) EU enlargement to Central and Eastern Europe in 2004, the acceptance of following the ‘European way’ was directly linked with the aspirations of both sides of governing a country that would one day become a full member of the EU. It should be noted that until the moment of Lajčák’s appointment, the EU exercised different forms of coercive and reward powers, such as threats or promises of faster EU perspective within the State Union, to dissuade Montenegro from organizing the referendum. However, once the time for such actions lapsed without producing considerable results, the EU accepted its new role as a mediator, making it clear that “the EU this time intended to conclude this chapter in the Western Balkans relatively swiftly” (Friis 2007, p. 80).

Lajčák’s first move was to request that both sides appoint a negotiating team to deal with the legislative framework (Friis 2007, 80). From the beginning, some of the most radical players in the pro-union camp, namely SNS, openly refused to engage in any talks with the EU.

Their limited impact (measured through their electoral weight) in the movement allowed Lajcak to ignore their unwillingness to partake in the process, and consequently isolate them from the bargaining procedure. This isolation of spoilers was successful since he was able to maintain the most powerful players in the pro-unionist camp engaged in the negotiation process. And this was possible only thanks to their openly stated commitment to European values and norms. At the same time, Lajčák focused on expanding his team by forming a mediating coalition composed of experts from the EU, OSCE, and the Venice Commission. The intent was to give more leverage to the EU in the negotiation. The pooling of leverages is a very useful mechanisms that, if possible, third-parties employ to improve their bargaining position by expanding the range of potential side payments. Expert opinions from the OSCE and Venice Commission were used to further solidify and confirm the EU's view and preferences, and to leverage the parties toward an outcome is in line with the EU's expectations.

Similar to the core case study of this volume dealing with South Tyrol (see the essay by Emanuele Castelli on South Tyrol in this volume), in Montenegro there was enduring mistrust and a complete breakdown of communication between the parties. Faced with a total deadlock in communication between the two sides, the mediators drafted a document entitled "Key principles of a democratic referendum process in the republic of Montenegro", intended to address the key issues that had to be negotiated between the two sides: legislative framework, majority requirements, the referendum question, campaign, access to media, finances, administration and observation (Friis 2007, p. 81). As expected, the two sides did not share common ground on any of the matters. On the one hand, the pro-independence movement objected to any need for additional legislation on the matter and insisted that the existing legal framework was solid and sufficient to allow a fair and transparent process. On the other, unionists were demanding a new "concentration government" which would allow opposition forces to control state resources and institutions, claimed that the referendum was non-binding and that additional new legislation needed to be adopted for a referendum to be seen as legitimate (*ibid.*).

Since mediation is by definition entrusted with the most resistant cases (Bercovitch 2005), the principal role of any mediator is to improve deteriorated communication between the parties, which generates incomplete information and incentivizes them to misrepresent their strength in the bargaining process (Fearon 1995). Thus the most fundamental

mediation strategy is that of a communicator (Touval and Zartman 1985; Zartman and Touval 1996) or facilitator (Bercovitch 2009; Bercovitch et al. 1991; Bercovitch and Houston 1996; Hopmann 1996) through which external players assist the conflicting parties in communicating more efficiently while remaining unassertive in the process. Due to the high level of distrust that conflicts often generate, incomplete information on the other side's interests and strengths prevents the parties from recognizing the range of possible and mutually acceptable solutions to their conflict. As a communicator or facilitator, the mediator helps the parties recognize their "zone of possible agreement" (Raiffa 1982). However, even when the parties recognize that there might be a potential overlap of their interests and preferences, they might have problems agreeing on a specific outcome. In fact, given the high level of distrust, the parties often perceive solutions as mutually exclusive even though in effect they fall within a mutually acceptable zone of possible agreement. Such zero-sum attitudes inevitably lead the bargaining process into a deadlock, prompting the mediators to assume a more assertive role by reframing the issues at stake and formulating specific solutions (Beardsley et al. 2006, p. 63). So, instead of resorting only to facilitating communication, the mediators might act as formulators (Touval and Zartman 1985; Hopmann 1996) and offer suitable formulas that could reduce the parties' commitment constraints.

Once Lajčák and his team familiarized themselves with the positions of both sides and realized that the parties were in an obvious deadlock, they started drafting potential formulas for the solution. It was clear that the unionists asked for radical "changes of the legal-political context", which in the eyes of the mediators were seen as very "controversial" (Friis 2007, p. 82). According to Friis, "Lajčák made it very clear that the EU would help find a political common ground between the two sides but would not reverse the reform process or undermine the existing institutions" (*ibid.*). Thus the real challenge was to convince the pro-unionists that some of their demands were unacceptable. Aware of their leverage, the EU mediators indicated to the unionist camp that their demands "contradicted the EU standards and positions", and should be reconsidered (Friis 2007, p. 82). Appealing to the norms and values of the EU, Lajčák exercised strong pressure on the unionist camp to abandon their positions and start compromising with the other side.

The negotiation process started from topics in which the mediators saw the most potential for finding a compromise, and used this momentum to build up to more difficult topics. The issues of media,

campaign, finances and process oversight were addressed first. In a matter of days, by invoking EU principles and norms, the mediators managed to produce a compromise acceptable to both sides. Their biggest challenge was to soften up the opposition to the unfolding reality of an imminent referendum. While Lajcak was adamant not to interfere in internal institutional arrangements, he showed more flexibility in finding suitable formulas that would incentivize the opposition to stay within the process. Thus, instead of endorsing the request for “concentration government”, Lajcak offered an option where the administrative bodies (such as the Republic Referendum Commission, the Municipal Commissions, and the Polling Boards) would have parity representation from both camps. This was an incentive for the opposition, which openly objected to the standard norm of proportional representation in administrative bodies. However, the pro-independence camp was strongly against this proposal, as they feared that this model would most likely jeopardize the entire referendum process since the opposition forces could simply boycott the administrative bodies and as such prevent the referendum from taking place. As a countermeasure, the pro-independence government proposed that in case of parity representation the Republic Referendum Commission should be chaired by an EU representative who would have a final vote (a so-called “golden vote”) in case any controversy arose (Friis 2007, pp. 82-83). Despite the fact that according to the existing Law on Referendum in Montenegro and other legal acts which never allowed a foreign national to be involved in any voting procedure (seen as meddling in the country’s internal affairs), this solution was accepted by both sides.

The most difficult question—majority requirements—was left for last. The challenge was to find a solution that would make both sides feel as if they were able to win (Friis 2007; Lipka 2011). The government insisted that the democratic principle of 50% +1 of voters was prescribed for a successful outcome. The opposition insisted on a very high qualified majority, somewhere between 70-75%. Knowing that the parties would never be able to reach a compromise themselves, the mediators started exploring viable options to be offered as “take it or leave it”. They tried to find something that would be perceived as barely but nonetheless reachable by both sides. Looking at the previous elections in Montenegro, they realized that the government never won with a margin exceeding 10%. This margin was translated into a buffer zone, needed for both sides to have a “clear, visible and convincing” result (Lipka 2011). After some deliberation, the mediators came up

with a tailor-made proposal “of 50 per cent +1 of all eligible voters and 55 percent of those voting in favor” (ICG 2006, p. 2). Neither side was enthusiastic. The unionists hoped for a higher threshold, but consequently accepted it because they still perceived it to be within their reach (Friis 2007, p. 84). The pro-independence movement was far more frustrated with this formula, which had no precedent in any democratic society, and was in collision with “European standards”. They voiced a valid concern that a minority could overrule a majority, in case the vote for independence was in the “grey zone”—between 50-55%. However, they knew that they needed the EU’s recognition of the result for the referendum to be perceived as legitimate. The EU knew this as well, and was ready to use its leverage to push for this specific solution. Not surprisingly, the offer was presented as a condition that needed to be accepted for the referendum to be approved by the EU. According to Friis, “the prospect of EU partnership and conversely the fear of losing it probably made the DPS swallow the bitter pill and accept the 55 per cent formula” (Friis 2007, p. 85).

In general, apart from integrative strategies such as communication-facilitation and formulation, which primarily help the parties recognize a mutually acceptable outcome within the already existing zone of possible agreements, mediators might assume a more assertive role in the peacemaking process. In fact, in cases where the disputants show no intention of compromising and settling their discord in a peaceful way, more powerful intervention from an external player is required (Rubin 1980; Hiltrop 1989; Carnevale and Pruitt 1992; Sisk 2009). The most intrusive type of mediation strategy is called “mediation with muscle” (Svensson 2007), and entails attempts “to shift the reservation points of each player, thereby increasing the probability that the players will be able to identify some alternative within the expanding [zone of possible agreement]” (Beardsley 2006, p. 64). As other cases in this volume show, the expansion of the range of available alternatives is generally attributed to side payments in the form of material incentives that third parties might provide the disputing sides. In the case of Kurdistan these side payments were directly related to revenues from oil (see the essay by Massimo Morelli and Constantino Pischedda on Kurdistan in this volume); in the cases of South Tyrol and Catalonia side payments were linked to financial autonomy (see the essay by Miriam Rossi on Catalonia in this volume), while in Myanmar they were linked to the economic interests of key players in the process (see the essay by Matteo Dian on Myanmar in this volume). In Montenegro, as noted

above, the EU never employed any side payments of a material nature. Instead, it used its soft and normative power to persuade the parties to change their priorities, and co-opt them in accepting a formula that was never within their range of possibly acceptable outcomes. The appeal of solving this issue “in a European way” allowed the EU to push for a formula which, once presented as a European norm, created implicit and non-tangible incentives for the parties to accept it as a suitable solution. More importantly, in the case of Montenegro the side payments and linkage strategies employed by the EU were unequivocally intertwined. So, thanks to its normative leverage in the process, the EU was able to link various issues (voting threshold, voting rights, composition of referendum commission) into a single formula which in turn was presented as a “European model” and then offered to the parties as the only solution that would be legitimized and approved by the EU. The EU’s endorsement was a sufficient side payment for both parties to abandon their uncompromising zero-sum positions and accept the proposed formula. Although the EU did not have a clear bias toward either of the parties, it obviously had a strong bias toward a particular solution, which Carnevale and Arad (1996) call “bias-of-source”. In light of a strong preference, the EU assumed an assertive role in the process and made it clear to the parties that this option was the only one that would legitimize not only the referendum itself, but more importantly would legitimize any future political gain that the parties might yield from participating in the referendum process.

As Friis notes, “there is little doubt, however, that this was a gamble on the part of the EU” (Friis 2007, p. 84). The EU did not have any plan B in case the ‘grey zone’ scenario materialized. It was obvious that in such a situation, the country would be deadlocked in another transition period, pending a new referendum on independence. In case of a win between 50-55%, it was quite implausible to expect that the pro-independence camp would offer another chance to make the State Union a functioning entity. Despite such concerns, the EU pushed this formula forward. Using its legitimate power it managed to produce a mutually accepted agreement that allowed the referendum to take place. On May 21, 2006, 55.5% of voters in Montenegro voted for independence. The grey zone scenario was barely avoided, and the results of the referendum were immediately recognized by the EU, giving it the necessary degree of legitimacy.

Conclusion

EU involvement in Montenegro is a unique illustration of how international players that possess legitimate power can use this power to manipulate the process and guide the parties toward a mutually acceptable solution that is still in line with the mediator's interests. In this case, legitimacy derived from the belief that the EU represented a socio-political community that shares particular norms and values and could prescribe specific behavior for the parties in dispute. Political players attributed this role to the EU, as they were drawn by the power of legitimacy that derives from participating in such an institutionalized international society. As a consequence they accepted its legitimate power to prescribe and, if necessary, even impose the "rules of the game" under which the referendum was to be held.

Liabilities of legitimate power are associated with a vague mandate. Lajčák and his team considered all possible solutions and imposed one that could potentially have backfired and produced serious repercussions for the EU's credibility in addressing issues in the region and its reputation as a player that could prescribe behavior by invoking particular norms and principles.

As the case shows, the use of legitimate power does not exclude or marginalize the utility of other forms of social power. In fact, the most efficient mediation strategy involves the tailor-made application of different forms of social power, taking into consideration the context in which the process takes place. It is clear that the EU's carrots and sticks were able to influence only the government, whereas the appeal of the EU made its legitimate power much more applicable to both sides. Once the carrots and sticks proved insufficient to dissuade the government from holding a referendum, it was clear that in the negotiation process that followed, the EU would have to use a form of leverage that could influence the behavior of both sides. Legitimate power proved to be the most effective tool for producing cooperative behavior by appealing to the norms and values of an international system. Even in cases where parties showed no intention to compromise, legitimate power was not abandoned but used in a directive/manipulative way to push the parties toward an agreement.

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Chapter 9

The Coptic Community and Religious Strife in Egypt

Marco Pinfari

Introduction

Despite being by far the largest Christian community in the Middle East (Pew 2011), Egypt's Copts have rarely caught the eye of scholars of comparative conflict resolution, primarily because their relations with the Egyptian state and its Muslim majority have rarely spilled into open conflict. However, especially since the Qiddisin and Maspero massacres in 2010/11, both the academic community and the general public have paid increased attention to inter-religious relations in Egypt.

This chapter will discuss the development of inter-communal relations and identity conflict in Egypt, concentrating on the post-1952 period and the emergence of "religious strife" since the 1970s. It will focus in particular on the role of the Coptic Orthodox Church of Alexandria, which represents around 95% of Egypt's Christians¹, in the management of such conflict.

It will show that in Egypt inter-communal relations have been managed informally and through extra-legal means and that, despite some significant similarities with other identity conflicts (such as the one in Trentino-South Tyrol), major obstacles exist on the road to the potential realization of an integrative framework for conflict resolution and of forms of consociational democracy, both at a regional and at a

¹ The remaining 5% is composed of members of the Coptic Catholic Church and other Orthodox or Evangelical denominations. In this chapter, in line with the general practice among scholars in this field and unless otherwise specified, we use the term "Coptic Church" exclusively with reference to the Coptic Orthodox Church of Alexandria. This use of the term "Copt" also does not include other non-Egyptian monophysite traditions, such as the Ethiopian Orthodox *Tewahedo* Church.

national level. Understanding the nature of such obstacles, however, can pave the way for a more informed and effective discussion of the steps that can lead to more peaceful inter-communal relations in the country.

The Copts and inter-religious relations in Egypt

Historical setting

The Copts are one of the oldest Christian communities in the Middle East. The word “Copt” derives from the Greek word “Aiggyptos” through the Arabic “Qibt” and has historically been used to refer simply to the native inhabitants of the Nile valley. Native Egyptians embraced Christianity in the first century CE following (according to a well-established tradition) the predication of the evangelist St. Mark, and provided some of the most original and significant contributions to the development of Christian doctrines and practices, for example in the area of monasticism.

It is not possible in this context to provide an accurate overview of the rich and long history of the Coptic community. Yet, some aspects of this history will need to be briefly introduced since they provide the necessary background for understanding the dynamics of inter-religious relations in contemporary Egypt.

First, Christians in Egypt have been subject to various waves of repression or persecution since the times of the Roman Empire, from the reign of Emperor Diocletian in the late third century CE to the times of the Byzantine empire, and then under some Muslim rulers in the Middle Ages. The persecutions under the Byzantines, a Christian empire, are particularly important for at least two reasons. First, they followed the event that formally set Coptic Christianity on a separate doctrinal path—its dispute with dyophysites at the Council of Chalcedon in 451 CE—and therefore reinforced the identity of Egyptian Christians as a unique, somehow isolated community not just within the Middle East but also within Christendom. Second, these persecutions help understand why, as often noted, the Copts at first “welcomed the invading Arabs ... as deliverers” in 641 CE (Pennington 1982, p. 159). Christians ceased to be a majority in Egypt around the ninth century (*ibid.*) and yet “experienced a general attitude of tolerance” (Meinardus 2002, p. 65) until the end of the Ayyubid dynasty (1250), followed by a series of bloody pogroms directed especially against Coptic civil servants between 1289 and 1447, during the rule of the Mamluks.

Since the Ottoman conquest of Egypt in 1517, Copts did not suffer “any serious persecution” (Meinardus 2002, p. 66) and the Coptic hierarchy was given “substantial freedom to govern its followers” (Tadros 2013, p. 27) under the *millet* system, that accorded to Christian and Jewish communities a right to self-government in most areas relevant to the everyday life of their members, especially personal law and religious affairs. However, this right was counter-balanced by the imposition of extra taxation (*jizya*), the duty to wear distinctive clothing and other measures—such as their exemption from military service—which, while certainly welcome by some, set the community aside from the rest of the population. This, plus the fact that Coptic spirituality “declined sadly” in these centuries and showed an “almost complete absence of theological creativity” (Meinardus 2002, p. 66), contributed to the marginalization of the Coptic community both in Egyptian society and among Christians worldwide.

The beginning of the modern era in Egypt—normally associated with the French invasion in 1798 or the beginning of Mohammed Ali’s dynasty in 1805—brought with it some important changes. In 1815 the *jizya* tax was revoked and in 1856 the Hamayouni Edict established equality between Christians and Muslims in employment and stipulated that Copts were allowed (and expected) to serve in the army, even if most showed no particular interest in an army career. Also, the desire of Egypt’s viceroys (*khedives*) to “gain favor and secure interests with Europeans” (Tadros 2013, p. 29) convinced them to pay special attention to the rights of all Christian communities—including the native Copts—opening up opportunities to members of the Coptic community to climb the social and political ladder and forcing the Coptic church to invest more in areas, such as education, in which they faced the active competition of foreign missionaries from other Christian denominations. In 1874 the so-called *Majlis al-Milli* was created—a “lay council” representing the Coptic community that had an essentially secular character and was “parallel” to the Coptic church, with a mandate to “oversee Coptic endowments (*awqaf*), Coptic schools and institutions, and personal status courts” (Tadros 2009, p. 270).

Since the beginning of the British Protectorate in 1882, Copts played an important role in the nationalist movement that culminated in the 1919 revolution and that eventually convinced the British to unilaterally end the Protectorate in 1922. In this period two Copts (Boutros Ghali and Yusef Wehbeh) were prime ministers and, even in the absence of formal quotas, Copts were normally over-represented

in the elected parliaments. However, in the inter-war period scholars also record occasional political frictions that developed along religious lines (Hasan 2003, pp. 48-49).

After the 1952 Free Officers revolution, Copts “increasingly withdrew from the political process” (Scott 2010, p. 41) at first as the result of a variety of policies implemented by Gamal Abd el-Nasser that, even if they “were not necessarily connected with religion, isolated the Coptic community” (*ibid.*). In the aftermath of the defeat in the 1967 war and especially since the ascent to power of Anwar el-Sadat, previous episodes of “religious tension” escalated into waves of “religious strife” (Farah 1986, p. xi) and violent “sectarian conflict” (Ansari 1984; Iskander 2012), which were intermixed with a variety of informal attempts to manage and quell such tensions.

While we lack an accurate estimate of casualties in episodes of inter-religious violence in Egypt since the 1970s, in the four most serious massacres between 1981 and the 2011 revolution (el-Zawya el-Hamra; el-Kosheh; Nag Hammadi and el-Qiddisin in Alexandria) at least eighty people died (the vast majority of which Copts) and several hundred were injured. Mariz Tadros has associated the 2011 revolution with a further increase in the number of “sectarian incidents,” including some particularly violent ones, such as the Maspero Massacre in October 2011 that left 28 dead and 212 injured.

The Copts today: Two controversies

The complex history of Christianity in Egypt, and the many socio-economic and political transformations undergone by the country since the nineteenth century, create a variety of hurdles to an uncontroversial description of the position of Copts.

A first debate derives from an absence of clear and undisputed demographic figures on the proportion of Copts in Egypt’s population. According to official censuses, the relative weight of Christian communities in the modern era peaked in 1927, when they amounted to 8.3% of Egypt’s population. Since then it has gradually declined in relative terms; the last known precise estimate of the Coptic population in Egypt can be traced back to the 1986 census (the last in which the respondents were required to indicate their religious affiliation), according to which Christians made up approximately 5.7% of Egypt’s 48.2m population. Also considering that the latest census (2006) sets Egypt’s resident population

at 72.3m, and that even more recent estimates suggest that Egypt's population might have exceeded 90m by 2013, it is unsurprising that the continuing use of the 1986 ratio is object of substantial disagreement.

On the one hand, senior members of the Coptic community have repeatedly suggested that official figures—even before the 1986 census—have underestimated the actual size of their community. In January 2012, a member of the *Majlis al-Milli* suggested that the total number of Copts was approx. 18.6m, equivalent to 22.8% of the Egyptian population (Tadros 2013, pp. 32-33). This is in line with the rough estimates normally used by the Coptic church that set the ratio of Christians to Muslims at around 1:5.

Others, however, have argued that the Copts might be even fewer than the 1986 ratio suggests. According to Mariz Tadros (2013, p. 32), in 1978 President Anwar el-Sadat estimated the number of Copts in Egypt at two million, or around 5.5% of Egypt's population at the time. A recent and often-cited study by the Pew Research Centre's Forum on Religion and Public Life (2011) puts the estimated Christian population of Egypt in 2010 at 4.3m, equivalent to approximately 5.3% of the estimated population of the country. This study takes stock of the gradual decline of the Christian population over the twentieth century, suggesting that it might have further accelerated in recent years due to emigration and a lower fertility rate compared to the rest of the population.

These polar positions are difficult to adjudicate. While some have criticized the official authorities for not providing accurate and up-to-date estimates of the weight of each community based on the civil register (since religion is part of each citizen's civil status), others have blamed the Coptic church for refusing to provide their own, official estimate based on the records kept by each diocese. In fact, both sides seem to have an interest in not providing fully accurate and up-to-date estimates of the relative weight of each community, preferring to position themselves somewhere between the two extremes of the range mentioned above (from 5% to 23%) depending on the issue at stake.

A second area of controversy regards the appropriateness of describing the Coptic community as a "minority". In Egypt the debate on the status of minorities (*aqalliyyat*) has little to do with demographic or numerical considerations and is, instead, indissolubly related to the colonial era and the attempts by British authorities to use these as an excuse for continuing to exercise control over Egypt's internal affairs, especially after the formal end of the Protectorate in 1922. As mentioned

above, Copts played a key role in the Egyptian nationalist movement since the 1880s and in the 1919 anti-British revolution, thus establishing their patriotic credentials. Moreover, in light of their claim of being the true descendants of the native Egyptian population, they feared being equated to migrant Christian minorities, such as the Greek and Armenian communities, and, as such, being treated as alien to the Egyptian society. As a consequence, in the 1920s the Coptic community rejected in the strongest terms the prospect of the British acting as guarantors of their “minority” rights; as put by the prominent Coptic intellectual Salama Musa, “the Copts prefer to sustain all the sufferings ... rather than to record in Egypt’s constitution ... that which makes them look like foreigners ... and impute to their compatriots the charge of fanaticism” (Hasan 2003, p. 53).

The echoes of this debate resonate until the current era. In 1994 a conference co-organized by the Cairo-based Ibn Khaldun Centre and the London-based Minorities Rights Group that planned to discuss the condition of Copts (among that of other Christian minorities in the Middle East) aroused a wave of public outrage, in which leading Muslim and Coptic intellectuals restated that the Copts are “part of Egypt’s unbreakable fabric” (al-Gawhary 1996, p. 21).

In this chapter, the use of the term “minority” with reference to the Coptic or Christian communities in Egypt will not carry any value judgment on their right to be treated as part of the Egyptian fabric, nor is it meant to put them at the same level as communities of European migrants (which, incidentally, have declined to almost irrelevant numbers since World War II), but will rather reflect the use of this term by comparative projects such as “Minorities At Risk” (MAR). This project identifies a variety of “ethno-political groups”, understood as “groups that define themselves by reference to some combination of common descent, shared historical experiences, and valued cultural traits who make claims on behalf of their collective interests against either a state or other groups” (Gurr and Moore 1997, p. 1081). An ethno-political group is then defined by the MAR project as a “minority at risk” when it “collectively suffers, or benefits from, systematic discriminatory treatment vis-à-vis other groups in a society; and/or collectively mobilizes in defense or promotion of its self-defined interests” (MAR 2008). The Copts of Egypt are included by MAR among such “minorities at risk”.

Conflict and conflict resolution since 1952

As mentioned above, relations between Christians and Muslims in modern Egypt have never erupted into phases of open and bloody inter-religious war. However, at least since the Free Officers revolution in 1952 inter-religious tensions have grown significantly, generating a substantial number of episodes of violence, at times very severe.

For the sake of simplicity, since 1952 inter-religious relations in Egypt and conflict resolution attempts can be split into the following six main periods:

1. A first phase of “legal reforms and changes in practices” instigated unilaterally by the new ruling elite led by Gamal Abd el-Nasser in the early 1950s, which affected (according to Coptic accounts, in a deeply negative way) the standing of Christians within Egypt.
2. A second phase which, after Tadros (2009), could be defined as the “first entente” between the Coptic church and the regime—a first, informal attempt by Nasser and the military regime to avoid the worsening of inter-religious tensions. This phase lasted approximately from the late 1950s to the death of Nasser and Pope Cyril (*Kyrillos/Kyrollos*) VI, in 1970 and 1971, respectively.
3. A third phase of “deepening religious strife” that began with the gradual erosion of the Nasser-Cyril entente in the first part of the 1970s and lasted until the release of Pope Shenouda in 1985. This is arguably the first period in the modern history of Egypt with a number of severe episodes of inter-religious violence.
4. A fourth phase with a “second or restored entente” between the Coptic church and the military regime that lasted approximately ten years (between the mid-1990s and the mid-2000s) and that can now be described openly as a “conflict management” strategy.
5. A fifth phase of “increased contestation of Church-state relations and inter-religious violence” that began in the early 2000s, culminating in the second half of the decade and the 2011 revolution.
6. A sixth, last and fluid phase that corresponds with the “2011 revolution” and its aftermath.

The 1952 Free Officers revolution ended Mohammed Ali's dynasty and replaced it with a military-led republic, first headed by Mohammed Naguib and then, starting in 1954, by Gamal Abd el-Nasser. In the 1940s the reputation of the Coptic minority had been partly tainted by a variety of allegations, including its alleged support for the creation of the state of Israel, and it is now documented that some Free Officers had sympathized with movements encouraging an Islamic revival such as the Muslim Brotherhood. However, it is clear that the revolution did not have a definite religious or factional dimension, and in fact the new regime's first domestic policies were directed at tackling socio-economic inequalities and at building a single identity or sense of "Egyptian-ness".

Still, as a minority, the Copts lost out in this process. In 1955 Nasser abolished both *shari'a* and *millet* courts with the purpose of creating a unified system of "civil courts". However, the law applied by these courts was heavily influenced by Islamic jurisprudence and, as such, this process resulted in Egypt's minorities (especially Copts and Jews) losing most of their control over civil status issues, such as the granting of divorce. The Copts also felt strongly under-represented in the new regime; none of the Free Officers were Copts and since 1957 the Christians, who had been present in substantial numbers in pre-1952 parliaments, gradually became marginal presences in the National Assembly, among ministers and among senior officials in many branches of public service. In 1957 Nasser also made religious education a compulsory part of the national curriculum and restricted access to al-Azhar University to Muslims only.

Again, the extent to which these measures were an explicit attempt to discriminate against Christians is unclear. The creation of civil courts had long been advocated by some leading Coptic intellectuals, who nevertheless had also called for a parallel reform of civil law that did not take place in Nasser's time (Scott 2010). Similarly, Nasser passed no law to formally cap the presence of Copts in the army, the National Assembly or public offices, even if Pennington (1982, p. 164) argues that informal "steps" were taken by some ministries to limit the recruitment of Christians. Therefore, the reasons for these practices may possibly be found in a mix of "government discouragement" short of formal discrimination, a general "loss of prestige" of Copts since the 1940s also associated with the new regime's heavy reliance on anti-colonial rhetoric and, perhaps, a longer-term "lack of interest" of Copts for some careers, such as army service (*ibid.*, pp. 164-165).

Nevertheless, starting in the late 1950s there were also a series of initiatives that would set the framework for the Egyptian regime's

attempts to manage inter-communal relations until the present day, and that evolved into what Tadros (2009) described as an “informal entente”. This arrangement consisted primarily of a series of ad hoc, informal and often extra-legal measures by the regime to redress specific grievances raised by the Copts and, in parallel, the identification of the Coptic church (and of its leader, the Coptic Patriarch of Alexandria or “Pope”) as the only interlocutor considered by the military regime for requesting and informally discussing such measures. In exchange, the Coptic church guaranteed its official support for the regime and quelled or managed dissent and dissatisfaction within its own community.

Indeed, most of the key decisions affecting the Coptic community gradually became the object of direct discussion between Nasser and the Coptic Pope, Cyril VI, especially as the “personal relationship” between the two developed into “personal friendship” (Tadros 2009, pp. 271-272). In this setting, Nasser agreed on ring-fencing public money for the construction of the new Coptic cathedral in Cairo’s suburb of Abbasiyya and, according to an oft-cited anecdote (*ibid.*, p. 272), on allowing the construction of up to twenty-five new churches per year. Some also argued that the Pope maintained control and a veto right on the inclusion of Copts in the National Assembly by being asked to approve the electoral lists of Nasser’s single party electoral body, the Liberation Rally (*ibid.*).

Nasser and Cyril died in 1970 and 1971, respectively, and the relationship between their successors, Anwar el-Sadat and Pope Shenouda III, after a short honeymoon, was soon put to the test. Between August 1971 and November 1972, ten minor sectarian incidents took place in the country, culminating on November 6, 1972, in the burning of a Christian building turned into an informal church and six apartments belonging to Christians in the town of al-Khanka, in the Qalyubia governorate, north of Cairo². No one died on this occasion but, according to some reports, this incident “shook all Egypt because the Egyptians were not used to sectarian incidents organized on such a scale” (Ibrahim 2000). A parliamentary committee was formed under the leadership of Gamal al-Oteifi (the deputy speaker of the lower chamber of Egypt’s parliament) to investigate this incident; its recommendations, issued just few weeks after the events, “shyly” highlighted the responsibility of security forces for not containing the spread of violence and recommended more

² “Governorates” (*muhafazat*) are Egypt’s main administrative divisions, or regions. After the latest reform (April 2011) there are 27 governorates in the country.

flexible rules for the construction of churches and stricter control over speeches in mosques and churches (*ibid.*).

Despite being formally accepted by the regime, none of the main recommendations of the al-Oteifi Report were implemented and relations between the Church and the regime rapidly deteriorated, not aided by the clash of personalities between Shenouda's public and "revolutionary style of politics" and Sadat's keenness to be perceived as the (Muslim) "Believer President" (*al-Ra'is al-Mu'min* - Sullivan and Abed-Kotob 1999, p. 72). Moreover, Sadat grew increasingly irritated by the activism of the Coptic diaspora, especially in the United States, which tainted his international reputation.

At the end of the decade, during a new phase of (minor) episodes of sectarian violence that had begun in 1977 (Hasan 2003, pp. 107-108), Sadat and Shenouda clashed. The main bone of contention was Sadat's intention, announced in 1979, to amend article 2 of the Constitution so that it would identify Islamic *shari'a* as "the principal source of legislation"—a wording that could allow judges to dismiss civil law that is not compatible with Islamic law. Shenouda strongly and publicly objected to this move and was attacked head-on by Sadat during a speech to the parliament on May 14, 1980, in which he resurrected an old rumor suggesting that Copts intended to create a separatist Coptic state with Assiut as its capital, and concluded: "The Pope must understand that I am the Muslim president of a Muslim country" (Hasan 2003, p. 109).

Sadat's speech, according to Sana Hasan, "contributed to the igniting of religious tensions" that "culminated" in June 1981, when at least 17 people (of which nine Copts, seven Muslims and one unidentified, according to the official report) died in a land dispute on the construction of a church and in a following mob in the Cairo district of al-Zawya al-Hamra (Kent Brown 2000, p. 1062; Amer 2010)³. This incident provided Sadat with a pretext for implementing a crackdown on the Coptic leadership, arresting hundreds of members of the Coptic community and, most importantly, revoking Shenouda's appointment as Pope, secluding him in the Wadi al-Natrun monastery and entrust-

³ The Coptic community contests the official death toll of this incident, suggesting that up to 81 Copts died (e.g. Zaki Osman 2013). This figure alone would almost double the death toll of sectarian violence in Egypt since the 1980s; however, no accurate report seems to exist as to how such number was calculated or on whether the number of Muslim casualties may have also been underestimated. On these grounds, we decided to present the official figures, while acknowledging that they constitute a lower-end estimate of the total number of casualties in the event.

ing leadership of the Church to a “papal committee” composed of five bishops (Guirguis 2012, p. 518).

Shenouda remained in internal exile until 1985, well after Sadat’s assassination in October 1981. The circumstances of his release during the rule of Sadat’s successor, Hosni Mubarak, remain unclear but, according to Tadros (2009, p. 275), “substantial evidence suggests that the patriarch made a new commitment to abandon his earlier confrontational style of politics” and his attitude throughout the 1980s showed a restoration of at least “some elements of the tactical agreement existing in the Kyrollos-Nasser entente”. Even if his personal relation with Mubarak was never warm, he strongly supported the regime well into the new millennium, ordering churches nationwide to ring their bells to celebrate Mubarak’s electoral victories and punishing members of the clergy who supported opposition parties (*ibid.*, p. 276).

The 1980s and most of the 1990s were devoid of major episodes of sectarian violence, except for some clashes in Upper Egypt in 1992. However, a major recrudescence of sectarian violence took place at the end of the decade, once again starting from Upper Egypt. Between 1998 and 2000 the city of Sohag and its surroundings, especially the village of Kosheh, became a theatre of violent confrontations that resulted in more than 20 deaths.

The Kosheh massacre and the allegations of miscarriage of justice that followed led to Shenouda’s adopting an increasingly obtrusive attitude and stepping up, once again, his public presence. In December 2004, Shenouda, protesting the police’s handling of a disputed case of conversion to Islam by the wife of a Coptic priest, Wafaa Constantine, withdrew to Wadi al-Natrun until, in unclear circumstances, the woman renounced her intention to convert. After that relations between Shenouda and the regime gradually deteriorated and the Church leadership became increasingly vocal in denouncing the unwillingness of police forces to protect Christians, and the reluctance of the judiciary to pursue the perpetrators of such acts. Sectarian violence climaxed in 2010 and 2011, when two major incidents (in Nag Hammadi in January 2010 and at the church of al-Qiddisin in Alexandria in January 2011) left more than 34 dead and more than a hundred injured, and another disputed conversion case took place involving once again the wife of a Coptic priest, Camilia Shehata.

The al-Qiddisin incident preceded by few weeks the beginning of the January 25, 2011, revolution that would force Mubarak to tender his

resignation in February 2011 and leave power to the Supreme Council of the Armed Forces (SCAF). Rule by the SCAF would then be replaced in June 2012 by that of an elected civilian president, Mohammed Morsi, who would in turn be toppled by a military coup on July 3, 2013.

The 2011 revolution was characterized by a remarkable unity of purpose across confessional lines, especially among Egypt's youth—similar, in this sense, to the 1919 revolution against British rule. Yet the Coptic church maintained a deeply skeptical attitude and Shenouda himself repeatedly voiced his opposition to the demonstrations (Guirguis 2012, p. 512). The reasons for this have not been accurately studied yet but, according to Guirguis (*ibid.*, p. 529), Shenouda still saw in Mubarak a guarantor, if not of the safety of Copts in the country, of the privileges and status of the Coptic elite against the lay members of their own community.

Still, 2011 saw an increase, not a decrease, in sectarian incidents in the country. According to Tadros' recent analysis (2013, p. 46), there were 70 sectarian incidents in 2011, up from 45 in 2010 (+36%). These include at least one major event—the killing of around 28 demonstrators, mostly Copts, outside the Maspero television building in central Cairo at the hands of the Egyptian army and security forces. Tadros also reports that sectarian incidents increased to 112 in 2012 (2013, p. 242); the political hegemony of the Muslim Brotherhood and other Islamic groups is often blamed for this trend and for “contributing to a divisive social and political reality” (*ibid.*), also by reinforcing the Islamic identity of the country in the 2012 amendment of the constitution. However, Tadros herself recognizes that 2011 was “far bloodier than 2012 in terms of lives lost in sectarian attacks” (*ibid.*). Furthermore, it is not clear if the responsibility of the major incidents during Morsi's rule, such as the siege of St Mark's Cathedral in April 2013, should be attributed entirely to the Muslim Brotherhood leadership or rather to Egypt's security services, which were largely out of Morsi's control (Kingsley 2013).

Both before and after the military coup, Copts were seen as strongly in favor of Morsi's ouster and strongly supportive of the reform of the 2012 constitution that followed it. Such support created further bases for inter-communal violence, especially in August 2013, when 30 to 40 churches were damaged or destroyed across the country (Brownlee 2013).

Shared features

Inter-religious strife in Egypt bears a number of similarities with other conflicts based on contrasting ethno-nationalist claims, including the conflict in Trentino-South Tyrol.

A first, important shared feature is their reliance on core national narratives or “myths” (Smith 1983) that are instrumental to reinforcing the sense of belonging to the ethnic community and in crystallizing in-group/out-group relations. In Trentino-South Tyrol such narratives converged especially around Andreas Hofer, an innkeeper from the Passeier valley who, in the early nineteenth century, became the leader a popular revolt against Napoleon’s short-lived Kingdom of Italy. Hofer was eventually captured and later executed at the fortress of Mantua in 1810, and his life story soon began to symbolize Tyrol’s plight against foreign rule. Since 1918, therefore, Italian authorities were well aware that references to Hofer and his revolt “implied that Italian rule ... is ephemeral in the South Tyrol and that those who resist it are treading in Hofer’s footsteps” (Wiskemann 1959, p. 447), and in 1922 a Decree from the Prefect of Trento requested the directors of all schools in the region to remove “all pictures of local heroes such as Andreas Hofer” from their premises (Kunz 1927, p. 504). A folk song telling the story of Hofer’s last journey to Mantua and of his execution (*Zu Mantua in Banden*) is to this day considered Tyrol’s official anthem.

Copts in Egypt do not have a similar sense of reverence for a single figure or hero in their past. However, as suggested by Saphinaz Amal Naguib (1997) and Vivian Ibrahim (2013: 4), after the persecutions of Christians at the hands of Diocletian in the third century “the Coptic Church built around the community a shared history of persecution”. Such “shared history” has “surrounded a narrative arc of events” dating back to the beginning of Diocletian’s reign in 284 CE—a date that is considered the first year of a peculiar calendar called “The Era of Martyrs” whose years are coded as *Anni Martyrum* or AM (*ibid.*). The “Era of Martyrs” narrative is, according to Ibrahim, “a useful tool by which modern Copts can identify any form of persecution or discrimination as part of a historical process of eternal martyrdom ... through the recreation of the image of the Coptic martyr throughout history” and has provided the backdrop for the “persecuted minority discourse” that has emerged especially since the 1970s (*ibid.*, p. 5).

Second, and partly as the result of these narratives, one of the main obstacles to constructive in-group/out-group relations in both conflicts has been the absence of trust and the presence of strong mutual suspicion of the other side's willingness to compromise. Trust is often seen as a key "precondition for cooperation both at the elite and mass levels" (Marko 2008, p. 376) in ethnically-divided countries. In Trentino-South Tyrol, the assimilationist policies of Italian fascists, according to Katzenstein, left a "burdensome legacy of ... mistrust" that cast its shadow over how German-speaking inhabitants saw "postwar Italian policies" (Katzenstein 1977, p. 289). Throughout the acute phase of the conflict in Trentino-South Tyrol, the South Tyrolean People's Party (SVP) is in fact described as lacking trust for the "promises of the Italian government" (Engene 2004, p. 140).

Enduring mistrust between Christians and Muslims in Egypt has similarly been an important factor in preventing a resolution to inter-communal grievances. Copts have repeatedly suggested that, even in phases that saw few or no major inter-communal clashes (like the mid-1980s), "the desire to make Christians submit under Islamic rule remain[ed]", even if it took "a less violent approach" and continued through "psychological and economic warfares" (Henderson 2005, p. 164). These processes, Randall Henderson concludes, show that "distrust and suspicions are social" and that "spiritual wounds are difficult to heal" (*ibid.*). Copts, however, have arguably contributed to such "psychological warfare" by sticking to some arguments that are known to be particularly heinous for the Muslim majority of Egyptians, especially the suggestion that Muslims are "guests" in Egypt and "Christians are [its] original residents" (Leila 2010). This argument emerged most recently in the public debate in September 2010, when it was employed by the secretary of the Church Synod, Bishop Bishoi (*ibid.*). The sides to this conflict use the idea that Islam inherently aims to subdue minorities and obliterate their presence, and the suggestion that Copts continue to see themselves as the only pure and autochthonous Egyptians in opposition to Arab "immigrants", to show that the other side to the conflict has no true interest in finding a mutually acceptable compromise on ethnopolitical grievances, but would rather take advantage of the other side's weakness to further its own maximalist agenda.

But the conflicts in Trentino-South Tyrol and in Egypt also show some substantive differences that make it difficult to apply the “South Tyrolean Model” (Marko 2008) to the Egyptian case.

A first difference lies in the different type of ethnic differences that characterize these two conflicts, and their direct political and social implications. In South Tyrol, “both the different language and the historical experiences of the German population are referred to as the most important elements in coming to terms with the long-lasting political mobilization in the region” (Schmidke 1998, p. 27). Language can be a strong force in ethnic polarization because it has a direct effect on public life and it can literally raise a barrier of incommunicability between different communities. Moreover, as noted by Martha Ward (1993, p. 175), in Südtirol “people who spoke German also ate dark bread, raised cows, lived on hillsides, farmed for a living, told each other stories with Teutonic themes, passed down their lands intact to their heir, sent surplus children off to work and had hierarchical family structures”. Yet one could argue that, in Trentino-South Tyrol, the presence of a cultural-linguistic divide combined with the absence of a religious cleavage significantly eased the search for a divisible bargaining solution. Ward continues:

“The clergy and ecclesiastic organizations were strongly anti-communist and pro-Tyrolean. But they were also catholic, in the global sense of that word, and tied to the leadership in Rome. Whenever possible, church leaders cornered the influence of television, radio and schools to work for ethnic accommodation and solution to the conflicts ... During the explosive stages of the conflict Catholic churches held mass meetings. They were better attended than the political meetings” (Ward 1993, p. 175).

That is, according to Ward, in South Tyrol the accommodation of the ethnic conflict passed through the recognition of specific rights to linguistic and cultural communities, but religion played a role as a unifying force.

The situation of Egypt’s Copts is essentially the opposite. Copts are “physically and linguistically indistinguishable from the rest of Egypt’s population” (MAR 2006); the Coptic language is reserved almost exclusively to liturgical purposes and, while many bear names that are typical of the Christian community, often with Greek roots, a comparable number uses Arabic names shared with the Muslim majority (cf. Meinardus, pp. 266-272). Indeed, many Copts *choose* to make

themselves physically distinguishable, for instance by tattooing a cross on the insides of their right wrists (*ibid.*, p. 265). The absence of apparent differences between Copts and Muslims has historically facilitated their integration in the “Egyptian fabric”, for instance in the interwar period, and eased the task of reformers, like Nasser, who fostered the creation of a single Egyptian identity. However, religious cleavages are more intractable than linguistic ones and, focusing on many intangible and symbolic issues, tend to be less divisible and less amenable to being resolved through mediation and negotiation (cf. Brams and Taylor 1996; Greig and Diehl 2005).

Secondly, in the presence of an intractable religious divide, combined with the strength of in-group narratives and the lack of mutual trust, the role of external actors as mediators or facilitators appears in theory to be particularly important. In Trentino-South Tyrol, the role of Austria has been repeatedly highlighted as central to the conflict, at first in encouraging German nationalism (Wiskemann 1959) and later—as discussed in Castelli’s chapter—in acting as international guarantor and facilitating confidence-building before and after the signing of the “Package”.

In Egypt, instead, the idea of foreign powers acting as guarantors for the rights of minorities is indissolubly related to British policies during the colonial era and, as such, is rejected in the strongest terms by the Coptic community itself. Furthermore, while the name itself “South Tyrol” highlights the direct connection between the inhabitants of this region and their (former) compatriots in the Tyrol region in Austria, Copts in Egypt have historically developed as a unique and somehow isolated community even within Christendom. At least from an institutionalist/rationalist perspective, this immediately deprives any negotiation process in the country of a potential force for good.

Thirdly, the conflict in Egypt does not have a distinctive territorial dimension. At a symbolic level (as reinforced by history, religion and in-group narratives) both Christians and Muslims have strong and intractable claims over the *entire* land of Egypt. Practically, while Copts are concentrated in some governorates (Assiut, el-Minia, Sohag, but also Fayoum and Qalyubia and others in Upper Egypt and the delta—cf. F. Ibrahim 1981, pp. 64-65; Purcell 1998, p. 435) and specific districts within the main urban centers (such as Abbasiyya, Shubra and Moqattam in Cairo), there is no such a thing as a “Coptic region” that has sufficient territorial contiguity to consider claiming a degree of territorial autonomy.

As a result, Egypt does not naturally lend itself to the implementation of a system of consociational democracy *à la* South Tyrol because it would be unclear, as a starting point, at what level such system could be implemented. If it were implemented at the level of individual governorates, the identification of “Coptic” governorates would be problematic because no single governorate has a Coptic majority; even if this were possible, they would be scattered around the country and might not include areas with substantial Coptic presence (such as Abbasiyya in Cairo, where St Mark’s Cathedral and the papal palace are located) that are currently part of larger governorates with a strong Muslim majority. On the other hand, the low proportion of Copts in the entire Egyptian population is at odds with implementation of the consociational model at the national level; in countries where this has happened, like in Lebanon, the proportion of ethnic minorities in the entire population is much higher than that of Christians in Egypt.

A last, very important and yet somehow less intuitive difference between the conflicts in Trentino-South Tyrol and Egypt lies in the different role that law and formal agreements, as opposed to informal or extra-legal accommodation, play in these two contexts. Resolution of inter-communal grievances in Trentino-South Tyrol was achieved in the context of an international and formalized agreement—the 1972 “Package”—that detailed the settlement reached by the parties involved. So far, not only has Egypt failed to reach a comparable agreement on inter-communal grievances, but both the Egyptian state and the Coptic community have shown an ambiguous and often inconsistent approach as to how such grievances can or should be managed. In other words, if both conflicts essentially focus on supplementing “formal quality” with “qualitative equality” (cf. Katzenstein 1977, p. 316), tackling the complex network of practices, regulations and laws that stands in the way of realizing “qualitative equality” appears to be much more difficult in Egypt than in Trentino-South Tyrol.

Some examples drawn from the dynamics discussed in section 2 will clarify this issue. At least since 1952, there have been three main grievances raised by the Coptic community: the presence of Copts in public offices; the regulations on building churches; and the procedures for the conversion of Christians to Islam.

In relation to the first issue, it is often noted that at least since 1952 Copts have been dramatically under-represented among governors, in the foreign service and among university deans (F. Ibrahim 1982,

p. 66). Yet there appear to be no explicit regulations banning Copts from such positions; that is, in this area Copts essentially contest the presence of extra-legal or informal discriminatory practices. Recently some Copts have called for legally-sanctioned quotas or norms for affirmative action, but these policies have been traditionally opposed by Coptic intellectuals as being in themselves a form of discrimination (Kortam 2013). In this regard, Muslims also retort, on an equally informal basis, that Copts are over-represented among highly-skilled professions and that, according to “unofficial economic reports”, they own 75% of the means of transportation, 44% of industries, 51% of banks and 34% of agricultural land in the country (Bishara et al. 2011, p. 16).

Regarding the construction of churches, Copts complain about the literal application of ten administrative conditions set in 1934 which, being both restrictive and vague, create substantial *de facto* hurdles to the construction of new religious buildings depending on the whim of civil servants and police officers (Fastenrath and Kazanjian 2008, pp. 31-36). Since 2001 similar conditions exist for the construction of mosques (*ibid.*, pp. 43-44), but they are objectively easier to comply with and are normally applied more laxly. That is, in this area Copts *contest* the presence of a mix of discriminatory informal practices and administrative norms that are deemed “unjust and flawed” (Guardian 2010) and this time unanimously call for legal reform (Essam El-Din 2013). Currently, these regulations are often bypassed either through ad hoc presidential decrees (as in the case of Nasser’s concession to Cyril, discussed above), or informally by utilizing as churches buildings licensed as service buildings or community centers. In turn, these informal practices are often tolerated as they allow discreet and ad hoc management of Christian grievances without affecting the overall legal framework.

Lastly, in the field of Christian conversions to Islam, Copts defend the long-standing practice of so-called “guidance sessions”, that has its origin in a khedival decree dating back to 1863 and has since been confirmed and regulated in low-key ministerial decisions or administrative regulations (Khalil 2008). It requires Christians that intend to convert to Islam (but not Muslims who want to convert to Christianity) to meet a member of their religious denomination in the presence of state officers; only if, after such meeting, they do not change their mind, their conversion is officially recorded by a public notary. The failure of the police to apply this procedure for Wafaa Constantine was probably the source of Shenouda’s anger during that crisis, and Copts resent that, since that occasion in 2004, it has not been implemented anymore by

state authorities (El-Gergawi 2013). That is, in this area Copts defend the presence of discriminatory informal practices and administrative norms because, in their view, they informally compensate for the fact that the religious regulations for conversion from Christianity to Islam are much quicker and simpler than the opposite (*ibid.*). In this area, Muslims easily point out that this practice results in individuals being secluded against their will until the “guidance” has taken place—that is, that this practice is in breach of penal law and is a form of kidnapping.

Therefore, the weakness of rule of law and the presence of discretionality and informality are seen by both Christians and Muslims as part of the problem and as a solution. In this context, agreeing on formal rules in the absence of a broader reform of the security sector and in the presence of corruption and lax public ethics, especially in the political class, may do little to resolve the key social problems of contemporary Egypt, including those faced by Christians.

Identity, expediency, and security dilemmas

Until now we have essentially adopted a primordialist approach to the emergence of religious strife in Egypt—that is, we have by and large assumed that religious differences in Egypt have been an important source of friction in Egyptian history and that this, combined with specific political decisions since the 1950s, explains the emergence of religious violence since the 1970s. Some scholars, however, strongly contest this approach: focusing on the process of “identity construction” (Fearon and Laitin 2000), they treat religious identity as a dependent variable and highlight the role of political expediency in the emergence of religious strife in the 1970s and in the absence, to date, of any formal solution to key Coptic grievances.

Some, like Nadia Farah, have associated the rise of Islamic discourses during Sadat’s rule with the desire to rely on the remaining strong source of identity politics in the country (Islam) after the demise of pan-Arabism after 1967, but also with the attempt by elites to “circumvent the popular unrest” that had exploded in the 1970s “by rechanneling the general frustration and dissatisfaction into religious animosity” (Farah 1985, p. 29). Others, especially Mariz Tadros, have highlighted the perverse rationale behind the church-state ententes by suggesting that Church elites explicitly used this framework to secure their power within the Coptic community; in the medium term, Tadros (2013, p. 63) suggests, “Coptic citizens have ... not benefited from such an entente”, which did

not resolve the underlying problems of inter-communal relations in the country and also resulted in the curbing of the powers of representative bodies within the Coptic community, such as the Majlis al-Milli (*ibid.*, p. 78). Still others, like Magdi Guirguis, have even argued that the Coptic elite has an interest in financing the construction of oversized churches in the countryside (even if they are known to exacerbate relations with local Muslims and generate “architectural struggle[s] over space”, as the latter try to respond by building even grander mosques) because “the building of churches allowed the church hierarchy to justify its interest in maintaining strong relations with the regime” (Guirguis 2013, pp. 526-527). This is because each church permit, as discussed above, requires ad hoc negotiations with political elites.

These positions are not necessarily at odds with the analysis we presented earlier, but highlight the importance of approaching conflict resolution as a two- or multi-level process in which the position and interests of players at all levels need to be understood. More specifically, they problematize the role of intermediate players, especially the Coptic church, whose perceptions of the conflict and parochial interests may not be a force for good. Incidentally, this approach is not different from the problematization of the role of the SVP in Trentino-South Tyrol in the 1950s as presented by Katzenstein (1977, pp. 316-320).

Another, last type of explanation for the rise of sectarian conflict in the 1970s may be found in the role of “security dilemmas” (cf. Kaufmann 1996). This argument would suggest that, in areas with a substantial degree of ethnic intermingling, religious violence may arise out of petty disputes, often with causes not related with religion, such as land disputes or family feuds. However, some of these are eventually framed as identity issues because this facilitates mobilization and, in the absence of rule of law and police enforcement, can escalate into major episodes of violence.

Even if it suggests that religious discrimination may not be the actual root cause of events that we may categorize as religious violence, this intuition does not contradict the analysis presented earlier; rather, it reinforces the idea that resolving the root causes of sectarian violence is particularly important for a society because, once the idea of “sectarian strife” has entered the public sphere, it may have a momentum of its own. These dynamics appear to explain particularly well the above-mentioned increase in sectarian incidents in 2011 as compared to 2010 (Tadros 2013, p. 46). In this period, incidents related to the

“escalation of small disputes/fights” or “untriggered” increased from 4 to 27, while episodes caused by religious discrimination remained stable or decreased; for instance, between 2010 and 2011 clashes related to conversions decreased from 13 to 6.

Conclusion and three scenarios

This chapter did not aim to find easy fixes for “religious strife” in Egypt, but rather to discuss its main features and highlight some key obstacles to its resolution, with an eye to the lesson learned from the successful conflict resolution in Trentino-South Tyrol. In this sense, this chapter suggested that the inter-communal or identity conflict in Egypt is unlikely to be resolved soon. Even if it resurfaced only a few decades ago and even if it has not resulted in a substantial number of casualties, it is deeply ingrained in a long history of inter-communal mistrust and centers on a variety of intractable claims and grievances, reinforced by a number of (modern or ancient) in-group narratives. Also, some of the factors that played a crucial role in formulating the 1972 agreement in Trentino-South Tyrol—including implementation of the consociational formula at a sub-regional level and the role of Austria as external guarantor of the agreement—appear to be unavailable in the Egyptian case.

In the coming months and years, however, Egypt’s domestic politics will remain in a state of flux, and it is likely that inter-religious relations in the country will be reconfigured. At the moment, three scenarios are possible, and this chapter helps shed light on their potential implications and on possible reforms that could help take advantage of this transitional phase for resolving the underlying causes of this conflict.

Since the July 2013 coup, Shenouda’s successor, Tawadros II, has invested all his political capital in supporting the new military-led regime. On these bases, the most likely scenario for the near future appears to be the presence of a third version of the entente, managed by Tawadros Abdel Fattah el-Sisi, the newly elected Egyptian President. El-Sisi, formally a civilian at the time of his election, was the Army Chief that oversaw the removal of Mohammed Morsi in July 2013 and therefore, not unlike his predecessors between 1952 and 2012, is a product of Egypt’s powerful military establishment. This chapter revealed a number of potential risks that can be attached to such scenario. Since the 1950s, Church-State ententes have greatly benefited the Church hierarchies but have not succeeded in resolving the key

grievances of the Coptic community. Also, the current demonization of the Muslim Brotherhood and Islamic movements may make Copts oblivious of the fact that most of the grievances they have raised since the 1950s were against the military-led regime itself. That is, a new entente may simply set the condition for a continuation of “business as usual” in inter-communal relations, resulting in another phase of ad hoc, elitist and inconclusive conflict management.

A second scenario would involve the (delayed) implementation of some key recommendations of the al-Oteifi Report, especially on the reform of regulations for the construction of churches, control of hate speech and, more broadly, stricter control over security forces and their management of local clashes that often escalate into major episodes of violence. The al-Oteifi report is interesting from the perspective of conflict resolution because it already provides, from the “inside” of Egypt’s state, a recipe for addressing some key root causes of inter-religious violence. However, the implementation of its letter (and its spirit) requires Copts and Muslims alike to engage with Egypt’s “deep state” and the power exercised by local administrators and police officers; this, as suggested by Guirguis and Tadros, may run against some interests of the Church itself. This scenario, therefore, requires a broader overhaul of Egypt’s public sphere that is unlikely to happen in the current climate, especially if the first scenario materializes.

A third scenario would therefore be the implementation of wider reforms at a legal or administrative level, following the recent approval of the constitution, also inspired by non-Egyptian experiences in the management of identity conflicts. A particularly important contribution in this sense could come from the experience of Trentino-South Tyrol and the introduction in Egypt of some elements of the consociational model, at least at the national level, given the absence of a clear territorial dimension of the conflict. In particular, it would be interesting to consider the implementation of quota systems in Trentino-South Tyrol (*proporzionale etnica/Ethnischer Proporz*), and especially the notions of “soft” or “combined” quotas, to inform the debate on quotas in Egypt, that appears not to have changed much (both in its proposals and in its rhetoric) since the 1920s. Quotas alone are no panacea for ethnic conflicts but tackling the under-representation of Christians in some areas of public service in a formal, fair and flexible way could do much to redress inter-communal grievances, even if it would require (at the very least) updated and uncontroversial figures on the numerical weight of each group.

Building on Egypt's rich history and political culture, the hope remains that the members of different communities will eventually endorse the ideals of the January 25 revolution, creating a more open and inclusive political system and resisting siren calls leading to another era of authoritarianism, factionalism and elitism.

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Chapter 10

Resolving the Tuareg Question

Internationalizing the Implementation of Peace Agreements in Mali

Arrigo Pallotti and Lorenzo Zambernardi

Introduction

On January 16, 2012, a heterogeneous coalition of rebel groups launched a military campaign against the Malian army. The insurgents were mainly formed by the Tuareg militias of the National Movement for the Liberation of Azawad (MNLA), and by three Islamist organizations: Ansar Dine, the Movement for Unity and Jihad in West Africa (MUJWA), and Al-Qaeda in the Islamic Maghreb (AQIM). After initial cooperation among the rebel movements, internal armed strife broke out between the Tuareg and Islamist militias. The two different groups were, indeed, pursuing different objectives. On the one hand, the MNLA had the goal of creating a separate secular state in the northern region of Mali, known as Azawad. On the other, Ansar Dine and the other Islamist groups aimed to take control of most of the Malian territory and to impose Sharia law.

From April 2012 to January 2013 Mali was divided into two separate areas. The north was controlled by jihadi groups, which had militarily and politically marginalized the MNLA, while the south was under the weak military junta led by Captain Amadou Haya Sanogo. In January 2013, France launched a military intervention (Operation Serval) at the request of the government of Bamako. With the backing of the French armed forces, in a matter of weeks, the Malian army succeeded in retaking control of the main cities of northern Mali. However, despite a ceasefire signed by the government and the MNLA on the basis of autonomy rather than independence, tensions and small armed clashes have not yet ceased.

A number of proximate drivers and structural factors are at the basis of the conflict in Mali. While the limits and contradictions of the

Malian postcolonial state have historically contributed to fostering instability in the northern part of the country, the fall in 2011 of Gaddafi's regime in Libya greatly contributed to the timing of the conflict. As a result of the Libyan crisis, the country experienced a massive inflow of people, weapons, ammunitions, and vehicles. An estimated 2,000 Tuareg fighters returned from Libya, where they served in Gaddafi's Islamic Legion (a pan-Arab paramilitary force). However, such a massive inflow of fighters and arms appears to be only a proximate driver of a conflict with roots in a much deeper and older territorial struggle. At the heart of the conflict lies, on one side, the historical claim to self-determination of large sections of the Tuareg population, and on the other, the Malian government's inability to provide an effective answer to the security, economic and social needs of the northern communities. Indeed, Tuareg rebellions against the Malian state, often referred to as "the problem of the north" (Wing 2013, p. 478), have been a recurrent phenomenon in the history of the country.

The armed conflict in Mali is an extremely complex political and social phenomenon. Accordingly, this chapter will try to analyze its origins with a special focus on the key actors involved in the conflict and on their different interests and agendas. Without underestimating the threat posed by some jihadi groups in the north, this essay argues that the main challenge to Mali's political stability and long-term security lies in the resolution of the Tuareg question. Actually, available evidence suggests that during the last decade, as in other cases, such as Syria and Iraq, Islamist organizations have exploited political resentment among local communities in order to pursue their own political agendas.

The chapter is organized as follows. In the first section we provide an analysis of the events that led to the outbreak of the rebellion in January 2012. In the second part we examine the historical grievances of the Tuareg populations in Mali. Here we start from the conflict onset, which took place immediately after decolonization, and we trace the main developments of the dispute. In the third, fourth, and fifth sections we consider why, despite different successful negotiations, conflict resolution has not yet been achieved. We analyze why neither the promotion of decentralization and economic development (section three), nor the democratization process (section four) have effectively solved the Tuareg issue. In particular, we contend that the root cause of the armed conflict in Mali must be found in the historical marginalization of the Tuareg population in postcolonial national politics and development efforts. Such a systematic marginalization also brings to

the surface the limits and contradictions of Mali's democratization process, which was set in motion in the early 1990s. Not only has such a process proved unable to effectively address the political grievances of the Tuareg communities, but the political legitimacy of Mali's state institutions was also deeply undermined by the widespread corruption and the persistence of high poverty rates within a context of rapid economic growth. In the fifth section we argue that one of the main obstacles to long-term peace in Northern Mali has been the partial implementation of the successive peace agreements. Here we contend that the main problem that explains the difficulties of achieving a stable compromise lies in the enforcement stage of implementation rather than in the bargaining phase. In particular, we argue that success in negotiations, based largely on side-payment mechanisms, have failed to solve controversies between the Tuareg groups and the Malian government because they were neither simultaneous to negotiation nor was there an external guarantor for the implementation of the provisions contained in the peace agreements. Accordingly, in the sixth and final section, we argue that an internationalization of the implementation of the peace agreement might help to prevent further violence in Mali and contribute to a peaceful and lasting resolution of the conflict.

The 2012 rebellion

The outbreak of the rebellion in January 2012 and the fall of Mali into a spiral of political instability and armed conflict caught most international analysts by surprise. The beginning of the democratic transition in the early 1990s, the conclusion of a peace agreement (National Pact) with some groups of Tuareg rebels in 1992, and the apparent political stability of the regime had led most scholars and practitioners to conclude that the democratic transition in Mali had paved the way to a phase of democratic consolidation. In 2006, former US Ambassador to Mali, Robert Pringle (2006, p. 7), argued that: "Mali has achieved a record of democratization ... that is among the very best of Africa ... In the process, the country has changed from an authoritarian state to one in which all civil liberties are respected". Pringle also contended that "Malian Islam remains diverse and tolerant, and there is no significant pressure to eliminate the secular state".

Why was a country generally portrayed as an example of successful democratization in Sub-Saharan Africa suddenly overwhelmed by an

outburst of political violence? Contrary to scholarly analyses celebrating the process of democracy consolidation in Mali, the eruption of the armed rebellion in the northern regions of the country and the military coup that ousted President Amadou Toumani Touré in March 2012 highlighted the deep fragility of Malian institutions. The rebels' rapid advance towards the south and the parallel disintegration of the national army posed the risk that the entire country could fall into the hands of the rebels. Given the lack of an effective government's response to the growing threat, on March 21-22, 2012, a group of young army officers started a mutiny, which soon turned into a putsch. While President Touré left the country, the new military junta seized the power under the leadership of Captain Sanogo, who suspended the constitution and established a *Comité national pour le redressement de la démocratie et la restauration de l'Etat*.

The outbreak of the rebellion not only led to the military coup, but also left the northern regions of the country under the control of a heterogeneous coalition of Tuareg separatists and radical Islamists. While the rebels threatened to conquer southern Mali, in April 2012 the MNLA leadership declared the independence of Azawad. Unable to stop the rebels' advance, the military junta asked for international military support. Given the political and practical difficulties of a rapid military intervention by organizations like the African Union (AU) and the Economic Community of West African States (ECOWAS) (Weiss and Welz 2014), in January 2013 president François Hollande decided to send French troops to Mali.

Not only did the French military intervention prevent the rebel groups from conquering Bamako, but it also helped the national army to regain control of the main urban centres of the north, and contributed to the political and military marginalization of Islamist organizations.

Although the French-led intervention succeeded in arresting the rebels' advance, it quickly highlighted the need for a comprehensive political approach to effectively addressing the Tuareg question (Lounnas 2013) and overcoming the serious limitations of the counterterrorism strategy employed in the Sahel region in previous years (Nyang'oro and Walther 2012). As Roland Marchal has recently explained:

"The French government has focused mainly on the military dimension of the current crisis, but a more comprehensive approach is needed—one that recognizes the need for a more inclusive political settlement that could provide a model of how to build a more inclusive political system for the whole region" (Marchal 2013, p. 497).

In order to foster long-term stability in Mali, such an inclusive settlement will need to foster the democratization of state institutions, to address the main shortcomings of the unbalanced pattern of economic growth, and to tackle the Tuareg question. The consolidation of Mali's democratic institutions and the resolution of the "problem of the north" are deeply interrelated issues, as the analysis of the historical marginalization of the Tuareg population in the next section clearly shows.

The Tuareg question

In order to fully grasp the relevance of the Tuareg issue in Mali, it is necessary to analyze the historical evolution of the relations between the Tuareg communities and the central government during colonialism and after independence in 1960.

Tuareg are seminomadic Berber people with a long tradition of self-rule over their lands, who have traditionally lived off of pastoralist activities in the desert parts of Mali, Algeria, Burkina Faso, Niger, and Libya. Like other nomadic populations, they live and move across state borders. In Mali they are mainly located in the desert and mountainous terrain of the north, an area which constitutes approximately two thirds of the country (Humphreys and Mohamed 2005, p. 249). Although most Malian Tuareg live in the northern regions, it should be noted that these areas are also inhabited by other ethnic groups like Arabs, Songhai, Fulani, and others.

Since the beginning of the French colonization of the Sahel, Tuareg groups have tried to resist European domination. Such a resistance convinced French authorities to adopt a peculiar attitude towards these seminomadic people. In particular, imbued with notions of racial "diversity" and "superiority" of the Tuareg population in relation to the other ethnic groups of the colony, French authorities exempted the Tuareg from forced labour and military conscription, and delayed the emancipation of their slaves (Lecocq 2010, p. 85). However, the attitude of the Tuareg towards the French colonial administration remained ambiguous. They, for example, turned down opportunities for European education and often refused to pay taxes. Moreover, due to their geographic distance from the centre of political power, they "were not actively involved in the politics of the post-war period [and] they did not participate in elections" (*ibid.*, p. 35); a factor that explains why only a few of them obtained jobs within the ranks of the colonial administration.

On the eve of Mali's independence, relations between the Tuareg chiefs and the leaders of the *Union Soudanaise—Rassemblement Démocratique Africain*, which was poised to seize political power from the departing colonial authorities, were made more difficult by Tuareg support for the *Parti Progressiste du Sudan* and for a French plan to establish a new colony in the Sahara. This plan, which was finally dropped in 1962, would have meant the loss for the Malian government of its northern regions. Not surprisingly, "after independence [the Tuareg] were seen as enemies of the Malian state and even 'vassals' to the 'French neo-imperialist' cause" (*ibid.*, p. 41).

After independence, the implementation of a top-down, socialist state building project by the government of president Modibo Keïta further worsened relations between the Tuareg population and the government of Bamako. Considering the traditional chiefs to be collaborators of French colonialism, the government did not hesitate to deprive them of their political power. In addition, the government imposed taxes on cattle exports in the north and tried to enforce the sedentarization of the Tuareg population, meaning that, according to the government's development vision, they had to abandon pastoralism and embrace sedentary agriculture.

Not coincidentally, the first Tuareg uprising dates to 1963. The main goal of the rebellion, which not all Tuareg groups supported, was to obtain the independence of the Tuareg population from the Malian state. The revolt (*Alfellagha*), which took place in the region of Adag, lasted only for a year and was brutally repressed by the Malian army under the command of Diby Sillas Diarra, who came later to be known as the "butcher of Kidal". An estimated 1,000 people were killed by the army and thousands left the country. Such a harsh repression was driven by president Modibo Keïta's fears of a French secret plan aimed at weakening his authority and strengthening France's influence over the country. Violent repression, combined with a military occupation of the northern regions, fed the political grievances of large sections of the Tuareg population.

In the following two decades, the Tuareg were again repressed by the authoritarian government of Lieutenant Moussa Traoré, who within a context of intense political turmoil and deep economic crisis had deposed Modibo Keïta in 1968 (Châu 1992). Since then, the Tuareg question has remained the Achilles' heel of the process of post-colonial state building in Mali. As Sidibé (2000, p. 212) explained:

“while eliminating the national vision of unity in diversity, it challenged the model of state legitimation starting from the central tenets of its pre-colonial and colonial history, to which the Tuareg world was no stranger”.

Tuareg migration to countries such as Algeria and Libya increased during the 1970s and 1980s, after the region was hit by two severe droughts (1970-1973, 1980-1985), that decimated livestock and intensified competition for scarce livelihood resources (Krings 1995, p. 58).

In 1990 a new rebellion (*Al-Jeba*) broke out in the northeastern part of the country and spread across the northern territories. The uprising was spearheaded by the Popular Movement for the Liberation of the Azawad (MPLA), an organization originally based in Libya (Bernus 1992, p. 29). While initially President Moussa Traoré tried to suppress the rebellion militarily, he was eventually forced to open negotiations with the rebels.

In 1991 the Tamanrasset Accords, sponsored by Algeria, were signed by the government and the representatives of some rebel movements. Following this agreement, most Tuareg militias laid down their arms, though some continued fighting the central government, which suggests clear evidence of the deep divisions existing among Tuareg groups.

In spite of the high expectations produced by the signing of the peace accords, they were only partially implemented, due to the opposition of a number of actors on the field. In the first place, sections of the Malian armed forces opposed the Tamanrasset Accords and military attacks against both the insurgents and the civilian population continued. In the second place, frustrated by the security and economic situation prevailing in the Northern regions, some Tuareg and Arab militias searched for revenge and revenue through raids. Other communities followed by organizing their own militias, and as a consequence, armed violence in the region escalated. In turn, military instability in northern Mali contributed to undermining the beleaguered regime of Moussa Traoré (Diarrah 1991), who, in March 1991 did not hesitate to order the repression of demonstrations in the cities of the country. The removal of the Traoré regime through a military coup led by General Amadou Toumani Touré set in motion the transition to democracy.

As in other Western African countries like Benin, the terms and phases of the democratic transition were defined by a *conference nationale*. In August 1991 the conference produced a multi-party constitution, which was adopted following a national referendum held in January

1992 (Nzouankeu 1993). The following June, Alpha Oumar Konaré became president of Mali. In the same year, a new political agreement with the Tuareg—the National Pact (*Pacte National*)—was drafted under Algerian mediation and then signed by the government and the newly created Mouvement et Front Unifié de l’Azawad (MFUA). Unlike the previous accords, the National Pact contained a detailed roadmap for its implementation.

The agreement, which put a temporary end to the hostilities in the north, included a number of measures that could potentially contribute to a lasting solution to the problem of Tuareg separatism, such as the integration of Tuareg fighters into the Malian army, the reduction of the armed forces stationed in the northern regions, economic help for returning refugees, the creation of a commission of inquiry on the causes and the perpetrators of violence in the north of the country, the establishment of a new system of decentralized government meant to guarantee a broad autonomy of the northern territories, and the implementation of a ten-year economic development programme (*Pacte National* 1992).

The *Pacte National*, too, was not signed by all Tuareg rebel movements and did not put an end to armed violence in the north. It was not until 1996 that all Tuareg rebel groups agreed to lay down their weapons. The ambitious decentralization policy launched by president Alpha Oumar Konaré played an important role in securing such an important outcome. According to Seely (2001, p. 514), the decentralization policy provided an effective response to Tuareg grievances, since it ensured a broad degree of political autonomy. At the same time, the implementation of the new decentralization policy, not only in the northern regions but in the whole country, strengthened the political legitimacy of president Konaré (*ibid.*, p. 517).

At the end of the 1990s not only did the democratization process in Mali seem to be entering a phase of consolidation, but the Tuareg question also appeared to be largely solved. Ibrahima Baba Sidibé (2000, p. 209) observed that:

“Mali became the laboratory of an unusual experiment in political liberalization. The democratization process in Mali differed from those of the neighboring countries because of [the government’s] capacity to overcome the many political and economic problems”.

Sidibé argued also that:

“by favouring intercommunal dialogue and national consultations throughout the country [the Tuareg question] was successfully resolved [and] in doing so national unity and the historical foundations of the state were strengthened” (*ibid.*, p. 212).

Likewise, according to Seely (2001, p. 516), president Alpha Oumar Konaré’s approach to the Tuareg issue had successfully addressed the separatist threat from the north.

In fact, recent studies have highlighted the partiality and contradictions that undermined the process of political co-optation of the Tuareg communities within the institutions of the Malian state. As Bøås and Torheim have noted:

“the benefits of [the National Pact and] the 1996 peace agreement never materialised beyond a few regional ‘big men’ who had come to dominate the political landscape of northern Mali [and gained] positions of power and privilege. Based on this they could extract handsome rents from the state and return rents to the Bamako political elite who were allowing this to happen. Large amounts of money have been deployed to northern Mali but with few tangible results. Nevertheless, these processes have created and exacerbated tensions among the Tuaregs that have torn the social fabric apart” (Bøås and Torheim 2013, p. 1284).

A number of factors negatively affected the volatile situation in the northern regions, such as the partial fulfilment of the peace agreements, difficulties and suspicion in the integration of Tuareg fighters into the Malian army, the return of increasing numbers of refugees, the new (legal and illegal) economic opportunities offered by the restoration of peace, the deepening economic and social inequalities, the spread of radical Islam, and the growing international interest in the natural resources of northern Mali (Abdalla 2009, p. 5). All these factors greatly contributed to the outburst of a new rebellion in May 2006. In spite of another negotiated settlement (the Algiers Agreement of July 2006), outbursts of violence continued to be reported in the north of the country, due to the unresolved tensions within the Tuareg society and between some Tuareg groups and the government of Bamako.

The failure of “traditional” conflict resolution mechanisms

Partition, democratization, decentralization, and side payments are traditional solutions employed to solve identity-based conflicts. However, as we explain below, they have failed to effectively address the Tuareg question in Mali. Let us begin with partition.

In a variety of cases partition has been used as a successful instrument to resolve identity-based conflicts (Kaufmann 1998). As noted above, independence from Bamako has been a major goal of large sections of the Tuareg population. However, in line with the principle of the inviolability of African state borders “existing on their achievement of national independence” (Pallotti and Zamponi 2010, pp. 38-42), the national government has always considered the territorial integrity of the country as a non-negotiable issue, and any change in the borders of the country to be utterly out of the question. Moreover, the Tuareg are only one among several ethnic groups in northern Mali, which is home to several ethnic communities that do not identify with the secessionist demands. Not only is it the case that this plurality “complicates the demand for an independent Tuareg state of Azawad” (Wing 2013, p. 482), but it has also made partition an impracticable solution for the conflict.

Since the early 1990s decentralization had been a major policy tool in the hands of the Malian government. In 1993 Act 93-008 was passed with the goal of building a general scheme for initiating administrative decentralization. According to Hesseling and Van Dijk (2005, p. 180) president Konaré’s decision to start an ambitious decentralization programme was meant less to politically appease the north than to placate the south, which deeply resented the concessions to the Tuareg made by Moussa Traoré and Amadou Toumani Touré. Despite the government’s efforts to boost decentralization, two major problems have hampered it. In the first place, as in many other African countries (Ribot 2002; Olowu and Wunsch 2004; Pallotti 2008), devolution in Mali was only partially implemented, since local authorities remained heavily dependent on the financial transfers from the central government. Only in a few cases did local authorities have the human capacities and the financial resources required to provide efficient services to the local population (Seely 2001). In the second place, rather than facilitating peaceful relations among different ethnic groups, decentralization complicated them, because of the tense competition over natural resources such as land and pastures within the context of a deepening environmental crisis (Hesseling and Van Dijk 2005, p. 183).

In other words, the way decentralization was carried out failed to tackle the grievances of the Tuareg population. In the following section, we try to explain why the democratization process has not succeeded in producing a stable and inclusive political system in Mali.

The pitfalls of the democratization process

In spite of a relative degree of political stability, regular multi-party elections (though sometimes marked by tensions, as in the case of the parliamentary elections of 1997), and greater respect for civil rights, Mali's democratic institutions have shown serious limitations.

Firstly, as in several other African countries (Hout 2005), political power remained heavily concentrated in the hands of the presidency and the role of the parliament was severely limited. Secondly, as in many other African political regimes (Olukoshi 1998, Gentili 2005), opposition parties were weak and highly fragmented. This ensured the undisputed predominance of the *Alliance pour la démocratie au Mali—Parti africain pour la solidarité et la justice*, which supported Alpha Oumar Konaré in parliament. Later, the *Alliance* was co-opted in the “platform of national unity” created by the former coup maker and president Amadou Toumani Touré (2002-2012), whose model of consensual democracy strongly limited political pluralism (Van Vliet 2014, p. 53).

At a deeper level of analysis, the democratization process in Mali was undermined by two structural factors. In the first place, the transition to democracy did not translate into a process of real democratization of state institutions. In the public administration, “with few exceptions, those who were guilty of corruption and abuse of power were neither punished nor transferred” (Hesseling and Van Dijk 2005, p. 177). In the second place, in spite of the high but volatile economic growth rates recorded during the 2000s (Programme des Nations Unies 2012, p. 26), the human development index of Mali has remained among the lowest in the world, and the slight reduction of the poverty rate has primarily been limited to the region of Bamako (*ibid.*, pp. 35-36).

By the mid-1990s Vengroff and Kone (1995, p. 68) pointed out that “with its continuing poverty, limited prospects for economic growth and development, high illiteracy and lack of democratic traditions, democracy remains very fragile in Mali”. Indeed in Mali, as in many other African economies (Lewis 2008; Pallotti 2013a), growth has not been translated into a process of inclusive development. This situation had negative repercussions on the legitimacy of state institutions, which was also damaged by widespread corruption and weakness of the rule of law.

Dissatisfaction with the political system was clearly visible in voter turnout. In the presidential elections in 1997 and 2002, for example, the turnout was less than 30% (Hesseling and Van Dijk 2005, p. 176).

This low level of participation was a clear indication of the growing gap between voters and political institutions. This chasm was fed by “doubts about the utility of elections, mistrust towards the political class and septicism about the real possibilities of action of the elected politicians” (Boilley 2003, p. 82). In other words, the process of political liberalization in Mali was not followed by a real process of democratization because, as in several other African countries, in spite of the “widening of the political space, the conditions to access socioeconomic rights did not improve” (Kanyinga and Katumanga 2003, p. 154).

The fragility of the democratization process has had two relevant and negative consequences for the political stability of the country. Firstly, a model of national citizenship has never consolidated, and regional cleavages have gradually deepened. Secondly, the legitimacy of the democratic institutions have been gradually undermined, as the popular support for the coup which ousted President Amadou Toumani Touré clearly showed. When Captain Sanogo seized power in March 2012, he explained that the military’s takeover was motivated not only by corporative claims, but also by the government’s ineffective response to the Tuareg rebellion, and by the need to reinvigorate the democratization process, which had been undermined by corruption, high poverty rates, and the concentration of economic opportunities in the hands of a small oligarchy (Whitehouse 2012, pp. 94-95). Although Sanogo’s words were meant to justify the coup, they also captured some of the real problems affecting democracy in Mali.

Compromise without enforcement

As noted above, during the last two decades, Tuareg rebellions in Mali have been followed by negotiated settlements. On paper, these peace agreements, and in particular the National Pact of 1992, looked satisfactory for each of the warring parties: the Tuareg rebels would give up their claim for independence in exchange for greater autonomy and economic transfers, and the central government would consolidate the territorial integrity of the Malian state. Yet, these agreements produced only temporary suspensions of hostilities, and not a long-lasting solution to the Tuareg question.

Why was successful bargaining between the parties insufficient to solve the conflict? We contend that it was the lack of implementation of the provisions contained in the accords that led to significant and

mounting tensions between the government and the Tuareg. Within a context of deepening environmental crisis in northern Mali (International Crisis Group 2012), the partial implementation of the peace agreements reinvigorated political tensions between the government and the Tuareg population and contributed to the outbreak of new military hostilities. Although several questions remained unaddressed, and some Tuareg groups opposed the accords, the partial implementation of the National Pact (1992) and the Algiers Accord (2006) was one major contributing factor to the recent crisis (Wing 2013, p. 481). While an economic recovery plan was promised and the central government transferred significant amounts of financial resources to the northern regions in the 1990s and the mid-2000s, most Tuareg communities did not benefit from these policies. Accordingly, the economic marginalization of the Tuareg population continued unabated in spite of the signing of successive peace agreements. From this viewpoint, the use of violence by Tuareg groups can be interpreted as a sort of “costly signaling” (Kydd and Walter 2006) meant to communicate to the central government that the lack of implementation of peace agreements is unacceptable.

As explained in the introduction to this volume, reaching an agreement is not in itself a sufficient condition for stability because:

“... on one the hand, the side that was willing to cooperate can refuse to do so after receiving compensation; on the other, the side that was willing to compensate its partner’s loss, after obtaining cooperation, can simply refuse to pay” (Introduction, p. 15).

Unlike bargaining issues, the problems regarding enforcement can be solved neither through side payments nor through issue linkage. These policies are helpful in finding an agreement in the bargaining phase, but they do not eliminate the incentive to renege on the part of the agreement that is disadvantageous to the actors involved (Grieco 1993; Fearon 1998).

In order to guarantee that a peace agreement creates a situation of long-term stability, rationalist theory of cooperation suggests that the negotiation stage be simultaneous with the enforcement phase; otherwise parties might have the incentive to defect and renege on the accord. In theory, one way to solve the problems related to enforcement is to make bargaining and enforcement simultaneous—that is, direct or indirect compensations should take place with negotiations. However, in practice self-enforcing peace agreements were neither possible in Mali nor in many other cases of identity-based conflicts (Fearon 2004).

Since no substitute for the lack of simultaneity between negotiations and enforcement existed, the accords were never fully implemented.

In order to tackle the deep-seated problems that have undermined political stability in Mali more decisively, one needs to find a “functional substitute” to simultaneity. Indeed, continuing to address Tuareg grievances only on paper will not resolve the conflict. In order to persuade Tuareg groups to cease engaging in criminal activities and supporting terrorist organizations, they should be offered a viable social and economic alternative.

Within this context it can be argued that, although the French military intervention has temporarily stabilized the country, a simple restoration of the political *status quo ante* would not help to tackle the deep roots of the “problem of the north”. The solution to this long-term conflict seems to lie less in the creation of new peace building mechanisms than in the effective implementation of the previously negotiated settlements. In the following and final section, we suggest that one way to promote government compliance with the provisions of the peace agreements might be the internationalization of their implementation.

Conclusion: From peace agreements to long-term stability

The recent conflict in Mali is the outcome of a complex combination of domestic and regional factors. Clearly, there is neither an easy solution nor a precise political formula for such a long, deeply entrenched, and complex conflict. The presence of myriad actors with different agendas (e.g., Tuareg secessionist groups, a variety of Islamist organizations, drug traffickers, etc.) in the northern regions further complicates the situation. Within a context of economic marginalization and widespread poverty, jihadist organizations have used financial resources from criminal activities not only to buy weapons, but also to fund social investments, which have strengthened popular support for their religious vision and political project. This points to the urgent need for a comprehensive solution to “the problem of the north” that addresses not only the security aspects of the conflict, but also the social and economic needs of the local population and the governance crisis of the Malian state. Moreover, although this essay has mainly focused on the internal causes of the armed conflict in Mali, a long-term solution to the latter seems to require a broad regional strategy aimed at addressing political, military, and economic instability in the Sahel region (Gazibo 2013).

The implementation of the peace agreements and the realization of a comprehensive solution to the Tuareg question might benefit from a broader international involvement in Mali's post-conflict reconstruction programs and political dialogue. In particular, the functional substitute for the lack of simultaneity could be played by an international third party that monitors compliance with the provisions contained in the peace agreements. As more and more research has shown (Doyle and Sambanis 2006; Fortna 2004; Hartzell and Hoddie 2003; Walter 2009, p. 255), the presence of a third party can reduce incentives to cheat (i.e. renege the agreement) as the cases of South Tyrol, Myanmar, and Montenegro in this volume clearly show.

The international community should attempt to find appropriate ways to ensure that peace agreements are effectively implemented. In doing so, the international community should admit its responsibility for the failure of previous development policies in Mali (International Crisis Group, 2014, p. 34), and play not only the role of donor, but the more challenging function of third party guarantor. This seems particularly important because although international donors in the past have been aware of the political and economic failings of the Malian government, they have abstained from publicly criticizing the authorities in Bamako because "in spite of the fact that the country remained amongst the world's poorest countries [it] had stable—although decaying—governance features" (Bergamaschi 2014, p. 361; Van de Walle 2012).

In particular, African multilateral organizations such as ECOWAS and the AU could play a relevant role in the resolution of the Malian crisis. During the last decade, both organizations have committed themselves to the promotion not only of peace and security, but also of democracy, the respect for human rights, and economic development in Western Africa and Africa, respectively. At the same time, both institutions have repeatedly affirmed their commitment to the principle of non-interference in the domestic affairs of a state. Given the difficulties the political dialogue between the government of the new Malian president Ibrahim Boubacar Keïta and the representatives of the three main rebel groups (i.e., MNLA, the Haut Conseil pour l'unité de l'Azawad, and the Mouvement arabe de l'Azawad) is experiencing, promoting the implementation of a comprehensive solution to the Tuareg question would be a challenge for the ECOWAS and the AU. While the two organizations were taken by surprise by the outbreak of the armed conflict in Mali, and were militarily and politically marginalized by Operation Serval and by the establishment of the United Nations Multidimensional Integrated Stabilization Mission

in Mali (MINUSMA) (Weiss and Welz 2014), they can still play a significant role in facilitating both the political dialogue between the central government and the Tuareg representatives and, most importantly, the compliance with peace accords. Such an involvement would not only assuage the Malian government's fears of external interference in its own domestic affairs, but also force ECOWAS and the AU to undertake an in-depth re-evaluation of their roles in promoting democracy and development on the continent (Pallotti 2013b; Schmidt 2013).

Inter-communal violence is likely to remain a threat in northern Mali for the foreseeable future. Regardless of who is in charge of the mediation and dialogue between the Malian parties, there will be no solution to the conflict if the provisions of the peace agreements are not fully implemented. The involvement of a third-party in the implementation of the peace agreements offers a better chance for long-term political stability in the country. African multilateral organizations like ECOWAS and the AU are the most suitable candidates to play such a role. Indeed, in the absence of an international guarantor for the implementation process, the future is likely to resemble the past: "Rebels would fight for a period of time, negotiations would take place, money would circulate, and everything would settle in to a new status quo for a year or two, or maybe five, until the dance began again" (McGovern 2013, p. 16).

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Appendix

Solutions and Failures in Identity-based Conflicts

The Theoretical Framework

Filippo Andreatta and Emanuele Castelli

Introduction

Why do some conflicts between two parties lead to open violence while others are resolved without resorting to (or with a limited use of) force? In the latter case, what allows both sides to reach a peaceful and durable agreement? Based on the assumptions of rationalist theory, we offer some thoughts on how cooperation might be possible, both between and within states. Our aim is to sketch a theoretical model that considers neorealist skepticism about cooperation, and that explains what happened in Trentino-South Tyrol from the end of World War II (the “De Gasperi-Gruber” Agreement) to 1992 (when Austria declared the dispute closed). In the first section, of this appendix, we briefly review the main hypotheses of the institutionalist literature on cooperation and related neorealist critiques; then, we draft our theoretical framework which was originally proposed by Andreatta and Koenig-Archibugi (2001), as a synthesis of the two traditions.

Rationalist theory of cooperation and neorealist critiques

According to the rationalist theory of cooperation, war is always inefficient (Fearon 1995) because it involves costs, both human and economic, when there are peaceful alternatives that could resolve the dispute and leave both parties better off. As pointed out by Fearon (*ibid.*), the situation is similar to that of two people bargaining over the division of 100 dollars: since the fight is costly for both, there should always be an *ex ante* agreement that can benefit both parties, for example by giving them an amount of money higher than their reserve price (the price below which they both decide to fight)¹. Unfortunately, an agreement

¹ In particular, Fearon describes the example as follows: suppose that the price of war is \$20 for each side, and each player has a 50% chances of winning. This means that—if both parties

is not always possible, due to information asymmetries and incentives to misrepresent. In this case, uncertainty over the other side's behavior and lack of information about mutual capabilities draws each side into a prisoner's dilemma (PD) situation:

Figure 1. *The Prisoner's Dilemma*

		Player 2	
		C	D
Player 1	C	3,3	1,4
	D	4,1	2,2

Preferences order for both players: $DC > CC > DD > CD$

According to the Nash criterion, the dominant strategy for both sides is to defect (i.e., to bluff, claiming to have more power or resolve than it actually has), because that is the best strategy whether the other side cooperates or defects. The game ends with the Nash equilibrium (DD), which is inefficient relative to mutual cooperation (CC). The latter is also Pareto-efficient, since it makes both better off without making either worse off (3,3).

Therefore, the prisoner's dilemma describes a situation in which the pursuit of individual rationality results in collective irrationality, which is something very close to a "political market failure" (Gowa 1995). If played only once, in an occasional encounter, defection will be preferred. But such incentives do not mean that mutual cooperation is impossible: according to institutionalists, three factors can be crucial in encouraging both sides to change their dominant strategy, thus achieving a Pareto-efficient result. First, game repetition: in fact, the PD results in the DD equilibrium if played only once; if played several times, according to Axelrod (1984), both players realize that defection today is more costly than the benefits of long-term cooperation, and that the risk of being the victim of the other party's defection decreases if the game is repeated (Keohane, 1984, pp. 75-78). Therefore, the so-called "shadow of the future" makes cooperation more likely because it increases the opportunity costs of defection. If repeated, the PD also allows each side to implement reciprocity strategies (such as "Tit for Tat"), meaning

are risk-neutral—the expected gain from the war option is \$30 for each (\$50, that is the half of the whole stake, minus \$20, the cost of war). It should be noted, as Fearon argues, that an ex ante agreement that can make both parties better off (for example by giving \$31 and \$69 to them) is always preferable for both.

that after the first move by one side, the other side makes the same move (i.e., cooperating if and only if the other cooperates), thus coming to a Pareto-optimal result in the case of cooperation, and retaliating following non-cooperative behavior by the other side. Furthermore, an increased “shadow of the future” allows players to acquire information on the other side’s actions, thus getting a sense of the other player’s reputation. In fact, the longer the game is expected to continue, the greater the value of reputation, because it increases the likelihood that the other player (and others) will cooperate in the future. According to Keohane (1984, p. 94): “a government’s reputation therefore becomes an important asset in persuading others to enter in agreements with it. International regimes help governments to assess others’ reputations by providing standards of behavior against which performance can be measured ... and by providing forums ... in which these evaluations can be made”. And again: “a good reputation makes it easier for a government to enter into advantageous international agreements, tarnishing that reputation imposes costs by making agreements more difficult to reach” (*ibid.*, pp. 106-107).

Sometimes, however, the prospect of a Pareto-efficient result achieved through the use of institutions is not enough to persuade parties to cooperate. Indeed, neorealists reply to these conclusions by criticizing their basic assumptions, arguing that, as usually happens among states, parties can be interested not only in the absolute advantages of cooperation, but also in relative gains, which may or may not result from cooperation (Waltz 1979, Grieco 1988). In other words, since mutual cooperation—as defined above—confers advantages upon both sides, each player may wonder how resources will be allocated once the agreement is signed: if one side is going to benefit more, then the other might refuse to cooperate. Defection in these circumstances may not be sub-optimal and perfectly rational for states wishing to survive, and this is why neorealists anticipate much less cooperation than do institutionalists². Cooperation can be discouraged by these concerns, because anything that gives an advantage to one side today may result in a more dangerous enemy in the future (Grieco 1988, p. 487). Therefore, the chances of cooperation between the two sides are influenced by an additional factor—sensitivity to relative gains—which Grieco (*ibid.*) calls the “*k* factor.” This means that, in order to understand whether cooperation is possible notwithstanding relative gains considerations,

² Krasner (1991) mentions the Pareto frontier, implying that an absolute gain and a relative loss would not be an improvement of the player’s utility.

utility functions (u_i) of both players (1 and 2), which were previously independent of each other (in terms of $u_i = w_i$, where w is the total gain from an agreement and $i = 1,2$), now have to include Grieco's k factor.

In addition to the relative gains critique, Fearon (1995) adds that conflict can erupt in the presence of private information, i.e., if the two sides disagree about their relative power (and if this disagreement cannot easily be resolved). In the example above, if one player is convinced that he will win the conflict (i.e., if he thinks that his likelihood of victory is not 50%, but rather 100%), then he will not accept an agreement that gives him a payoff of less than \$80 from bargaining (*ibid.*, p. 391). That is, \$100 (the whole stake) minus \$20 (the cost of war). Therefore, according to Fearon, the presence of private information, coupled with incentives to misrepresent one's strength or resolve, can be a stumbling block for the peaceful resolution of conflict. Private information has the effect of obscuring the set of mutually acceptable deals, while incentives to misrepresent make it difficult to determine exactly what is being hidden. Thus, the two parties are unable to ascertain precisely which agreements would be mutually acceptable. Moreover, during the bargaining phase, the presence of a wide "shadow of the future" can encourage both sides to bargain harder and to postpone the solution in the hope that there will be more favorable conditions in the future. Thus the shadow of the future, which can facilitate agreement during the bargaining phase, can also encourage actors (especially the weaker side) to delay the agreement indefinitely (Fearon 1998).

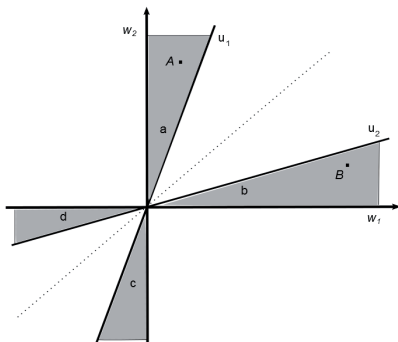
Furthermore, while bargaining is difficult to conduct, enforcement is even more difficult (Grieco 1993). In other words, if there are no external forces compelling actors to hold to the agreement once it is reached, they will always have the incentive to renege on it if it is advantageous to do so. The issue is therefore twofold (Fearon 1998): although the two phases are related (during the bargaining, parties take into consideration only the set of agreements that can be enforced, Andreatta and Koenig-Archibugi 2001). According to neorealists, the enforcement phase returns to the initial prisoner's dilemma. How, then, can cooperation be guaranteed in the absence of external structural bonds? Does a theoretical model exist that can assure repetition and structured bargaining between the parties, while also taking into account relative gains considerations? How can the problem of information asymmetry during bargaining be solved? How can one ensure that bargaining will be grounded on reciprocity (i.e., on symmetric exchange of resources) and on mutual trust (reputation) between the parties?

Cooperation possibilities in relative advantages situations

One institutionalist method of calculating cooperation possibilities, while also taking into account neorealist critiques of relative advantages, includes Grieco's (1988) k factor in each player's strategic considerations. Starting from the proposal by Andreatta and Koenig-Archibugi (2001), who in turn derived their hypothesis from Keck (1993), the issue can be represented graphically on a single Cartesian coordinate system through two indifference curves. For each side the function is:

$$\begin{aligned} \text{For player one: } 1) \quad u_1 &= (1 - r_1) w_1 + r_1 (w_1 - w_2) & 1 \geq r_1 \geq 0 \\ \text{For player two: } 2) \quad u_2 &= (1 - r_2) w_2 + r_2 (w_2 - w_1) & 1 \geq r_2 \geq 0 \end{aligned}$$

Graph 1. *Relative Gains*



where w_1 and w_2 are players' resources (or advantages, or gains), while r —which is similar to Grieco's k —represents the importance that each side attributes to the difference between his and the opponent's resources. Graph 1 shows this situation, supposing that, for both players, r is between 0 and 1. Indeed, if r is equal to 0 for both players (i.e., if each player is interested only in absolute gains), both functions would return to the utility functions proposed by institutionalists (i.e., for both sides, $u_i = w_i$, for $i = 1, 2$), and both indifference curves would be congruent to the x -axis for player one and the y -axis for player two, respectively. In this case, both sides would prefer every point in the northeast quadrant to the status quo (0,0). If, on the other hand, r is equal to 1 for both players (i.e., if both players are interested only in relative advantages), the first addend in the player's utility function would simply be 0, leaving only the difference in players' resources. This would bring the inclination of both indifference curves to the 45° line (shown in the dotted line in

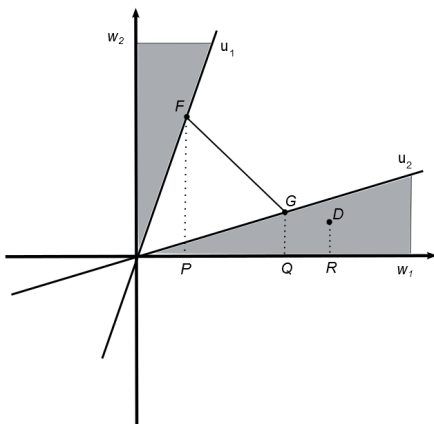
Graph 1). In this case, there would be no chance of agreement, because any point preferred by one side would be disadvantageous to the other, relative to the status quo. In reality, however, states' attitudes toward gains in bargaining are generally mixed (r tends to be strictly between 0 and 1), meaning that each side's preferences are simultaneously toward both absolute and relative gains. We can represent this mixed situation in the graph by differentiating between two different types of areas: the dark areas, a and b in the northeast quadrant, enclose the set of agreements that are disadvantageous for players 1 and 2, respectively. In other words, these regions encapsulate all agreements that both parties would refuse, given the status quo (i.e., player one would prefer the status quo to agreement A , while player two would rather stay in a status quo situation with respect to agreement B). The shared white area in the northeast quadrant encloses the set of all possible points of cooperation between the two sides (i.e., all of the agreements that can make both parties better off with respect to the status quo).

Two points should be noted. First, in the northeast quadrant, the inclination of both indifference curves, u_1 and u_2 , represent both sides' sensitivity to relative gains: the closer the two curves come to each other (i.e., the more r tends toward 1 and the farther the two curves go from the Cartesian axes), the smaller the possible area of cooperation between the parties. According to institutionalist assumptions, the inclinations of the curves are given (i.e., it is not possible either to change a side's attitude toward relative gains or to enlarge the possible area of cooperation). Constructivists, on the other hand, would argue that the curves' inclinations can be changed by means of confidence-building measures, thus enlarging the white area of cooperation: if the curves are close to each other, meaning that both inclinations are close to 45° (little room for cooperation), then it would be possible to reduce both parties' worries about relative gains and bring the curves back toward the Cartesian axes (in Graph 1, bringing u_1 toward the x -axis, w_2 , and u_2 toward the y -axis, w_1). Second, it should be clear that the (lack of) cooperation between parties can also affect preferences in the other quadrants. Specifically, in the southwest quadrant, two different areas—opposite in meaning to those of the northeast quadrant—are present: the white area encloses the set of the mutually disadvantageous points (those points that both parties would never choose, given the status quo, as it would significantly decrease the level of resources of both). The dark areas represent the set of results that are unfavorable for one side, but much more harmful for the other: the c area includes the set of

results that are bad for player 1, but much worse for player 2 (with the opposite being true of the d area). In other words, the two dark areas enclose all results that, although mutually disadvantageous, might be chosen by either player because they are much worse for the other side.

If $0 < r < 1$ (i.e., the attitude toward relative and absolute gains is mixed), and if a proposal is divisible, then the two sides can split it, (e.g., between F and G in Graph 2). This is an especially easy case, as the set of possible results are in the mutually advantageous area and both sides can agree to split the product equally. But sometimes the proposal can be in one of the two dark areas (as in point D , which is advantageous for player 1 but not for player 2). In this case, there remains a possibility of agreement if the player that is disadvantaged by the arrangement can be compensated in some way through a side payment.

Graph 2. *Side Payments*

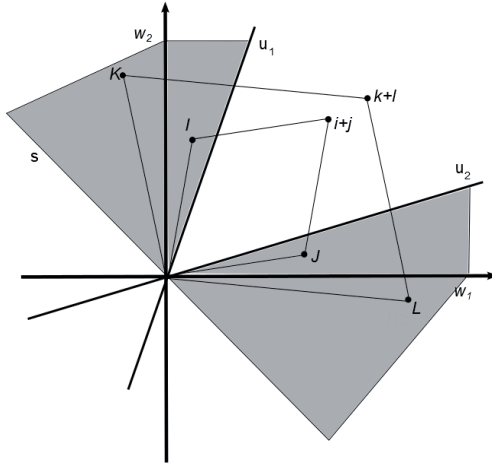


Since D represents a poor result for player 2, player 1 can compensate him directly for the loss. The total amount of the side payments should be not less than segment QR (otherwise, it will remain unacceptable for player 2) and not more than PR (because it would become unacceptable for player 1).

However, this is not always possible, as the proposal can sometimes be indivisible (think, for example, of the dynastic wars in the eighteenth century, where the issue at stake was often a throne), or because the result is unique and both sides can simply decide to take it or leave it. In this case, as always, the product of cooperation will either be in the

mutually advantageous region or in the dark sectors. Because the prize in dispute cannot be split, direct side payments are excluded, but this does not mean that an agreement cannot be reached: parties can always come to an agreement through a kind of “indirect compensation”, i.e., by linking two projects of cooperation (issue linkage).

Graph 3. *Issue Linkage*



In this case, cooperation on one issue is linked to cooperation on another: each actor will lose one dispute, but the gain in the other will compensate the loss. An example is shown in Graph 3, which presents two different situations. In the first, the proposal for cooperation, J (good for 1 but bad for 2), is linked to the proposal I on a second issue through the vector sum of OI and OJ (the segments that run from the origin to points I and J , respectively), which leads to agreement at $I+J$. The second situation shows that cooperation is possible even if the starting point is a condition of absolute disadvantage for either. This means that cooperative agreements are possible (i.e., they remain in the northeast quadrant) if the total payoff amount is positive (i.e., if the result is northeast of diagonal line s running through the origin from southeast to northwest). In this case, point L is highly disadvantageous for player 2, even if he is interested only in absolute gains, while K is highly disadvantageous for player 1 for the same reason. Through the linkage of the two proposals, L and K , both players can reach the mutually advantageous result $L+K$. With this result, player 1 loses something with respect to L , but his loss is equally compensated by the loss of player 2 in K (and vice versa). Through this mechanism, not only the northeast

quadrant but the entire area northeast of diagonal line s (i.e., the area in which the algebraic sum of gains between the two players is positive) encloses possible points of cooperation. This is because, according to the Kaldor criterion, even absolute loss can (theoretically) be compensated through side payments or issue linkage, leaving both sides better off even after compensation. According to Kaldor (1939, p. 550), in order to make a result mutually beneficial (thus facilitating cooperation), it is sufficient that “Even if all those who suffer are fully compensated for their loss, the rest ... will still be better off than before”.

Therefore, even if the prize cannot be divided, cooperation can occur through direct (side payments) or indirect (issue linkage) compensations. According to Keohane (1984, p. 91), “clustering of issues under a regime facilitates side-payments among these issues, more potential quids are available for the quo”. However, proposing direct and indirect compensation as possible facilitators of cooperation even in the face of issue divisibility does not address the problem of enforcement, because in both cases (side payments and issue linkage), once the agreement is reached in the bargaining phase, both parties have an incentive to renege on the portion of the deal that is disadvantageous for them. On the one hand, the side that was willing to cooperate can refuse to do so after receiving compensation; on the other, the side that was willing to compensate its partner’s loss, after obtaining cooperation, can simply refuse to pay. For both direct and indirect compensations to have a real effect on cooperation possibilities, enforcement must be contemporaneous with bargaining. The possibility of cooperation is therefore enhanced if the issues in questions are divisible and if compensation can take place simultaneously. Or, as the analysis of the Trentino-South Tyrol case will show, some other factor must present a “functional substitute” for divisibility or simultaneity.

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