POST-CONFLICT SOCIETIES: 

STATE STRUCTURE AND ELECTORAL SYSTEM

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1 Introduction

1.1 The purpose of the paper

How can peace and democracy be brought to a country that has recently been torn by conflict?

This fundamental and wide-ranging question is not discussed in all its aspects and details. Attention is concentrated on issues relating to the structure of the state, the composition and powers of its decision-making bodies, and the electoral process through which these bodies are constituted and get their legitimacy.

The discussion concerns situations where a country has been plagued by bitter internal conflict. Perhaps there has even been a civil war. There are regrettably many recent examples of this, some of which are discussed or mentioned below.) When peace is restored or the level of conflict sufficiently reduced, time has come to start building stable institutions for the future.

At this point, the international community is often called upon to give assistance and advice. What kind of advice should be given? There is obviously no simple and general answer to this; it must depend on the circumstances of the case. Nevertheless, something can be said about the issue.

It is taken for granted that the institutions to be established shall be democratic, at least in the minimal sense that a minority shall not be allowed to dominate at the expense of the majority. A more difficult question is whether and to what extent minorities shall have

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their rights and interests protected. Any such protection is "undemocratic" in the sense that it removes certain decisions from the power of the majority. Nevertheless, in a post-conflict society special protection of minorities is definitely called for, be it achieved through the structure of the state, the composition of the decision-making bodies or the electoral system.\(^1\) The principal task is to weigh the need for such protection off against the interests of other groups, including the majority (if one exists), and to find ways to achieve the desired protection at minimal harm to other valid considerations, such as the effectiveness of government. Most of the paper is devoted to these issues.

The basic cause of a conflict cannot always be removed, nor is it necessarily desirable to remove it. Tension among ethnic groups must be expected, and ideological struggle is a natural part of democratic life. The aim is to establish institutions that can handle conflicts in a civilized way, so that they are not played out on the battlefield, but solved democratically and peacefully.

1.2 Parties to the conflict

The parties involved in the conflict will often be groups defined by ethnicity, language, religion or the like. Other possibilities are a purely political or ideological conflict, or simply a power struggle between competing elites. The nature of the conflict is important when post-conflict institutions shall be designed.

Political identity may be tied to groups of many different types. The divisions dealt with in this paper may be between ethnic, linguistic, religious or sectarian groups, or simply between people living in different geographical areas or having different political views. The vague and general term "group" is used in all these cases. It can refer to any of the divisions mentioned, or even more generally to any division that seems politically relevant for those involved.

In a divided society there often exists a dominant group, as well as one or more minority groups, each with its own group identity. The dominant group can be a majority, that is, it consists of more than half the population. It can, however, also be just a plurality, that is, less than half the population but the largest of three or more groups.

Minorities are important in the discussion because they often need some kind of protection against decisions taken by the majority (the dominant group).

There is sometimes a need for distinguishing between small and large minorities. However, no attempt is made to draw a sharp line between the two concepts.

A small minority will typically have a strength of a few percent of the population (for example, less than ten), but their characteristics are such that they may need special protection in such areas as the use of language, the promotion of culture etc. A group

\(^1\) Whether such special protection might sometimes also be called for under "normal" and peaceful circumstances, is not discussed here.
which in the country as a whole is a large minority or a majority may in some areas constitute a small minority and may need protection there.

Except when a small minority is geographically concentrated, it will typically not be involved in civil wars and other major conflicts, or it will at least not be among the principal parties to such conflicts.

The major parties to conflicts of the type discussed in this paper are normally the majority and one or more large minorities, or several large minorities in cases where no majority exists.

A large minority runs the risk of losing all influence by systematically being voted down by the majority or a coalition of other large minorities. Protection against this would typically take the form organizing the state so that the group interests are balance, or by introducing an electoral system which secures a balance between competing groups.

To use Bosnia and Herzegovina as an example, the main groups involved in the civil war – Bosniacs, Croats and Serbs – are large minorities in the country as a whole, and each of them is a majority in certain regions. Moreover, there are several small minorities like Romas, Slovenians, Montenegrans etc. (More information about Bosnia and Herzegovina can be found in Chapter 4.)

1.3 Issues not separately discussed

Immediately after the end of a bitter conflict such as a civil war, many tasks may seem more important, or at least more urgent, than building democracy by establishing state institution and designing electoral systems. Holding elections too soon could even be detrimental to peace and stability. There exists conclusive evidence that mature democracies rarely go to war against each other. On the other hand, there are reasons to believe that in emerging or immature democracies the danger of conflict, including war, is particularly high. Therefore, the order in which things are done in a post-conflict situation is important, with the building of democratic institutions not necessarily coming first in time.

There is an urgent need for securing peace and guaranteeing security. If there has actually been a war or if combat forces have been mobilized, high priority must be put on disarmament, demobilization and reintegration of these forces. Other important tasks include the protection of human rights and the rebuilding of destroyed infrastructure. More generally, economic and social life must be put back on track.

The conflict itself, especially if it has reached the level of a civil war, may have caused demographical changes in the country or parts of it. This may have been brought about deliberately by parties to the conflict ("ethnic cleansing"), or it may be the incidental effect of people fleeing hostilities. In any case, people who have had to leave their homes

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2 See; for example, Mansfield and Snyder (2005).
must be taken care of, and ideally they should be allowed to return to their pre-war place of residence as soon as possible.

These issues, although important in post-conflict situations, fall outside the scope of this paper and are not discussed separately, but may be touched upon when relevant for the main topic.

During civil wars and similar conflicts, atrocities are often committed. Afterwards, it must be decided whether and to what extent to bring those responsible to account. That is, issues of retribution must be addressed. In the conflict, innocent people may have been injured or had their property destroyed, or they may have had to leave their homes. This raises issues of compensation or restitution. Similar questions can arise in other circumstances, for example, during the (re)establishing of democracy after a country has been freed from foreign occupation or an authoritarian regime has been deposed. There is an extensive literature on retribution and restitution, discussing theoretical issues and describing actual cases. These issues are certainly relevant for the type of post-conflict situations considered here, but they fall outside the scope of the paper.

2 Post-conflict situations

A country has recently been plagued by bitter internal conflict, perhaps even at the level of a civil war. Then peace has been restored or the level of conflict has been significantly reduced, and time has come to start building stable institutions for the future. Phrases like "peace is restored", "peace process", "peace agreement" etc. are used both when there has actually been armed conflict, and when conflict and tension never reached that level.

2.1 The peace process and its repercussions

In a sense, the discussion starts after peace has been restored or the level of conflict is sufficiently reduced. During the process that led to peace or brought the country back from the brink of war, commitments may have been made and deals struck that have consequences for the future organization of the state.

These deals are often intended to balance the interests of the groups involved in the conflict or provide protection for vulnerable groups. These are legitimate objectives; indeed, a central theme of the paper is the need for such arrangements in post-conflict situations.

In particular, commitments and guarantees may be needed to end the conflict in cases where the conflict itself has caused demographic changes, for example, if a previous majority has been turned into a minority or vice versa, or if other changes have occurred.

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3 An insightful treatment of the subject is found in Elster (2004). The examples considered range from the restoration of democracy in Athens after a short oligarchic reign in the year 411 BC till modern times.
concerning the positions of the various groups.

Although making commitments during the peace process is necessary and legitimate, it can go too far. Deals struck and commitments made can have undesirable consequences for the future organization of the state.

A case in point is Bosnia and Herzegovina. A bloody civil war raged from 1992 until it was ended by the so-called Dayton accord of 1995. The agreement stopped the war, but it contains a complicated system of ethnic quotas and veto powers which has turned out to be a strong impediment to effective government. It has also been claimed that some of the rules contradict international human rights conventions. Since Bosnia and Herzegovina is repeatedly used as an example, a comprehensive description and evaluation of its government system is given in Chapter 4.

Although the peace process as such is not discussed, the considerations and arguments of this paper are relevant even at this stage. When entering into agreements, one should keep in mind their consequences for the long-term functioning of the political system. In particular, when representatives of the international community are aiding the peace-making process, it is incumbent upon them to advice the parties of possible conflicts between suggested agreements and sound principles of democratic and effective government.

In this connection, hard choices may have to be made. The overriding importance of ending indiscriminate killing of innocent people in a civil war, or preventing such a war from breaking out, can justify accepting rules and institutions one would ideally want to avoid. Nevertheless, one should be aware of the long-term consequences of the choices made and take them into account in the decision making.

2.2 Recourse to pre-existing institutions

In the best of cases, the institutions that have to be established in a post-conflict situation already exist. One can simply revitalize the legal system that existed before the conflict broke out, reestablish the previous institutions and go on from there.

Even a bitter conflict need not have affected the existence of the country or the state. In such cases, precedents concerning state structure, electoral system etc. may be strong. Then there are good reasons for building on these precedents.

This is not always possible, however. There may not ever have existed institutions that satisfy, or come close to, international standards of democracy. Even where previous institutions have been based on democratic principles and have adequately represented the majority of the population, they may – in whole or in part – have been the cause of the conflict. For example, a minority may have felt, and had reason to feel, that it and its interests were not sufficiently represented and taken account of in the old system. In such a case, perpetuating the pre-conflict institutions is not likely to solve the problem, but
would rather lead to renewed conflict.

The discussion of this paper is for the most part based on the assumption that after a conflict of the type considered, one should more or less start from scratch, establishing new institutions. There is nothing wrong in maintaining aspects of a pre-existing system, but in any case the main emphasis should be put on the post-conflict situation and the interests and concerns of the various groups that make up the population of the country.

2.3 Priorities and timing

Immediately after the end of a bitter conflict, there are tasks that may seem more important – or at least more urgent – than establishing state institution and designing electoral systems. Holding elections too soon might even be detrimental to peace and stability. A lasting solution requires, however, that democratic institutions be established within reasonable time. The process should start immediately, and if possible even be prepared before the conflict has ended. As pointed out in Section 2.1, it may be necessary – but not always desirable – that decisions concerning the future structure of government be taken as a part of the peace agreement.

When starting from scratch, the process of establishing democratic institutions should ideally go through the following three phases:

– Election of a constituent assembly.
– Drafting of a constitution and its adoption and ratification.
– Elections of representative bodies and establishment of other permanent state organs, as provided for by the constitution.

When pre-existing institutions can be relied on in whole or in part, this process may be abbreviated. In some cases, amending an old constitution could be preferable to writing a wholly new one. For the most part, however, the discussion assumes that the process is structured as described above.

Until democratic institutions are established, the country must necessarily be governed by (interim) authorities that do not have democratic legitimacy. Moreover, the process must be put in motion by such bodies, in the sense that they must adopt rules for the election of the constituent assembly. It can be left to the assembly itself to adopt its rules of procedure and to determine how the draft constitution shall be ratified, but it can also be argued that these decisions should be taken before the assembly convenes, even if they must then be made by non-elected authorities.

The interim authorities can be appointed in different ways. They can get their mandate from the United Nations or other international organs, they can be established by agreement during the peace-making process, or they can simply have taken power and declared themselves "council of the revolution" or the like. In the best of cases, the interim governing bodies have real legitimacy, in the sense that most of the population, including the groups recently involved in the conflict, regards them as representative of national and group interests. Nevertheless, they will always lack formal democratic
legitimacy. Therefore, the interim period should not be unnecessarily prolonged.

On the other hand, there are disadvantages to holding elections immediately after the end of a conflict. Some of these are of a purely practical nature. The necessary infrastructure, including reliable voters' lists, may not exist, and other tasks may be considered more urgent than preparing for and holding elections. With international assistance, however, it might be possible to carry out meaningful elections within a relatively short time, and in some countries this has actually been done.

More importantly, there are arguments of a principal nature for not holding elections too soon. Peace and stability may be best served by taking other steps before elections are held and democratic institutions established. Even when attention is restricted to the political system, it should be noted that in many post-conflict situations (though not all), no party system has yet developed and there exists no democratic culture or tradition. In such cases, immediate elections may aggravate the conflict rather than solve it.

The first elections cannot and should not be postponed until a full-fledged party system and a mature democratic culture is in place. Indeed, if no elections are held, this state is likely never to be reached. The development of the party system and the democratic culture requires a process of trial and error, where imperfect institutions are put to the test of actual elections and thereby develop. It is also possible that the holding of elections in itself contributes to the establishment of peace and conflict reduction.

Another relevant consideration is the relationship between on the one hand the elected bodies, and on the other hand the legal system and the rest of the state apparatus. An elected parliament cannot operate in a vacuum; it needs an administration to carry out its decisions and a basic legal structure within which to function. These elements must therefore be in place before the first elections can be held, although they must then be established by non-elected interim authorities or be inherited from a – possibly non-democratic – previous regime. In the long run, the legal system and the administrative structure of government shall be shaped by democratic decisions taken by elected bodies, but it will necessarily take time to reach that state of affairs.

In conclusion, the first elections should be held reasonable soon after the end of the conflict, even if they must take place under less-than-ideal circumstances. On the other hand, insisting on elections within a few months, which has sometimes been done, can do more harm than good. How soon the elections should be held, will depend on the circumstances and cannot be specified in the abstract. In difficult cases, it might be appropriate to wait as much as two to four years after the end of the conflict before elections are held. In any case, the process for establishing democratic institutions should start much sooner than this.

There are arguments for electing the first ordinary parliament for a shorter period than that stipulated by the permanent rules. The results of the first elections may be somewhat arbitrary due to the imperfectly developed political system, and it is desirable to limit the temporal consequence of this. Also, frequent elections may itself contribute to a more
rapid development of the political system. On the other hand, if people are called to the polls again and again with short intervals, the interest in electoral politics is likely to be reduced, which in turn could lead to low voter participation. A succession of parliaments elected for short periods is therefore not to be recommended.

2.4 The constituent assembly

Should a constituent assembly also serve as a (provisional) parliament? There are theoretical reasons for answering this question in the negative.

Ideally, a constitution should be written behind a "veil of ignorance", at least a partial one. That is, general facts about the country, in terms of geography, composition of the population etc., should be known to the constitution makers, but they should not know the specific issues that will be decided by the state bodies they establish. Otherwise, there is a danger that the constitution will be tailored specifically to current conflicts, to the detriment of more important long-term considerations.

Hence one should perhaps attempt to keep the constitution-making process and ordinary parliamentary work separate. To this end, one might prohibit the constituent assembly from doing anything but writing a draft constitution. One could go even further by baring members of the constituent assembly from being elected to the ordinary parliament, at least for a period after the adoption of the constitution.

These measures will prevent members of the constituent assembly from taking account of their personal interests, as present or future legislators, when drafting the constitution. In all likelihood, they will represent groups of various kinds, such as political parties, participants in the previous conflict, or any other type of groups. Nothing prevents them for attempting to tailor the constitution to the (perceived) interests of these groups. The desire to have the constitution written behind a veil of ignorance is a laudable one, but it is not achieved by the measures discussed here. It could be achieved by letting the constitution not come into force until a very long time after it has been adopted, for example a generation, but the disadvantages of this solution are strong and obvious.

If the constituent assembly is not also an interim parliament, either elections must be held at (about) the same time both to a constituent assembly and to an interim parliament, or the period in which parliamentary functions are carried out by non-elected bodies must be prolonged. Both alternatives are undesirable.

There are arguments in both directions, but all things considered the best solution will in most cases probably consist in letting the constituent assembly also serve as an interim parliament.
2.5 The draft constitution

Should the constituent assembly have the power to adopt the constitution, or should it only present a draft, to be ratified by somebody else, for example, by the people in a referendum?

A constitution will normally contain a lot of technical rules, concerning composition of government organs, electoral system, division of power etc. Such rules are hardly suited for decision by referendum; they represent a clear instance of issues for which representative democracy is the appropriate form of decision making. In addition, the constitution will typically include provisions codifying basic human and civil right, which should not be at the disposal of a popular majority. These considerations count against putting the draft constitution to a referendum.

On the other hand, the legitimacy of the constitution could be enhanced by it having been adopted by the people in a referendum. Moreover, there may be disagreement on specific and important issues that are well suited for debate among the general public and decision by referendum, such as whether the state shall have a unitary or a federal structure.

In any case, in a post-conflict situation one should strive for a constitution that can be adopted by broad consensus. Ratification by referendum should therefore require more than a simple majority. By way of example, in the October 2005 constitutional referendum in Iraq, the draft would have been rejected if there had been an overall majority against it, and also if there had been a two-thirds majority against it in each of at least three of the country's 18 governorates (provinces).

This exact rule can hardly be copied in other cases. Moreover, the appropriateness of the specific rule has been challenged. On the one hand, by its very design it allowed two major groups (Shiite Arabs and Kurds) to pass the constitution in spite of almost unanimous opposition from a third large group (Sunni Arabs). On the other hand, any rule requiring more than an ordinary majority increases the probability that no constitution will be adopted. Hence the costs of not having a constitution must be traded off against the need for it receiving general support from all groups. Very strict requirements may in the aftermath discredit the process because a general opinion may be formed that a small group has been able to block the decision.

Nevertheless, arrangements similar to those of Iraq may be suitable when a broad consensus, cutting across groups of various types, is required for the constitution to function satisfactorily.

2.6 "All public power originates with the people"

This slogan is a basic principle of modern democratic rule, and it is explicitly stated in the constitutions of many countries.
In a transitional period after the end of a conflict, the principle cannot always be respected. The country must be governed, and often there exists no institutions with democratic legitimacy. Then rule by non-elected bodies must be accepted, but only for a limited period.

Even in established democracies, the principle does not require that only elected officials exercise public power.

For one thing, parliaments and similar supreme bodies of state cannot and should not themselves run the government on a daily bases. Public power must necessarily be vested in executive and judicial officials who are not elected, but whose power – perhaps through a long and complicated chain – originates with elected bodies or officials and therefore with the people. This is the natural state of affairs and causes no problems from a democratic point of view.

Historically, it has been the rule rather than the exception that public decision makers, even at the top level of society, have not been elected and have derived their power from other sources than the people. In some unquestionably democratic countries, this would appear still to be the case. The most obvious examples are the constitutional monarchies of Western Europe. In practice, these monarchs do not exert personal power. To the extent they formally make decisions, they automatically approve what has been decided by their ministers, who (albeit indirectly) derive their power from the people. These systems are therefore acceptable from a democratic point of view.

Legislative bodies with real power should always derive this power from the people. It is often stated that in a democracy at least one legislative chamber should be directly elected by universal and equal suffrage. The requirement of equal suffrage must be taken to imply that the electoral system for this chamber should give all votes (approximately) equal weight. An additional chamber may be indirectly elected or appointed. In a federal system, in particular, there may be good reasons for having legislative bodies that represent the regional units of the federation, or at least are based on these units. Such bodies need not be directly elected. Even a non-elected (appointed) legislative chamber can be acceptable, provided that its powers are limited; see the discussion of "weak bicameralism" in Section 5.2. An example of a non-elected chamber with limited powers is the House of Lords in the United Kingdom, which can only delay a bill but not stop it.

The question remains whether it could, on a permanent basis, be acceptable that decisive public power is vested in bodies or persons who are not elected at all, and who cannot claim that their power is legitimimized through a chain of authority originating with the people.

There are examples of post-conflict situations in which a group of people have seized power, and arguably could justify this by reference to the necessities of the situation. They have then tried to perpetuate their influence by establishing a non-elected permanent body with (at least) veto power over legislative and/or executive decision, and whose task should be to "defend the ideals of the revolution" or the like.
From a democratic point of view, permanent arrangements of this kind are not acceptable.

3 State structure – unitary or federal

3.1 Federalism as an instrument to reduce conflict

Internal conflict in a country is often caused by one or more groups feeling that their interests are not adequately protected by the existing government structure. Post-conflict solutions must take account of this. A central task is to design institutions that respect the interests of the various groups, including the majority, if one exists.

Could one give each group a piece of the country and let them rule themselves? This might seem like a simple and straightforward solution, but it has obvious problems. The groups need not be geographically segregated, in which case the proposal would require extensive relocation of people. If the groups are ethnically defined, this would imply ethnic cleansing on a grand scale, and for other types of groups the consequences may be equally undesirable. Moreover, in many areas of public life there is probably a real need for coordination on a national level. This can only – or at least most conveniently – be achieved through a national government. Hence there is a considerable cost to abolishing the national government altogether.

There is also another objection to the arrangement just mentioned. It may perpetuate a situation in which group division is the main conflict dimension. As things develop and the situation is normalized, it may be that the ordinary political dimension comes to dominate in people's minds, but borders once drawn, cannot easily be abolished or redrawn. Dividing up the country could even create group conflicts where none existed before.

Nevertheless, a case can be made for dividing the country into regional units, which are given a considerable degree of autonomy. This amounts to introducing a federal structure of government. If the regional units approximately correspond to the groups whose interests are at stake, federalism can contribute significantly to the reduction of conflict. On the other hand, this solution usually creates another problem, namely that of the minority within the minority. Unless the population structure is or is made perfectly segregated, some people will live in a regional unit dominated by another group. Their interests must also be taken into account when the post-conflict institutions are designed. The objection that conflict lines may be perpetuated, applies to federalism as well, but it is not as important as in the case of dividing the country into separate states.
3.2 Federalism – definition and basic characteristics

In a unitary state, sovereignty is undivided, it rests with the people as a whole, and it is exercised by the institutions of the national government. Democratically elected bodies can exist on regional and local level, but they have no other power than that which is delegated to them by national decision makers.

In a federal state, the national constitution provides that the country shall be divided into regional units, and a measure of autonomy is guaranteed to these units. Regional autonomy can only be restricted by constitutional amendment. In such a case, one might say that sovereignty is divided and rests partially with the nation as a whole and partially with the regional units.

Just as a federal state must be distinguished from a unitary one, it must – in the opposite direction – be distinguished from a confederation or a union of independent states. In the latter case, sovereignty rests with each member state. The union is a system of treaties or agreements between these states, involving delegation of authority from the members to the union.

When discussing federalism generally and in the abstract, the two levels of government are called the national and the regional one. The actual terminology varies.

There might appear to be a clear-cut distinction between unitary and federal states, but it is possible to imagine cases that are hard to classify. If the constitution merely states that the country is divided into communes, which are governed by elected bodies and whose authority is defined by law, the state is clearly unitary. What if the constitution gives the communes the right to levy taxes, within limits stipulated by law? Still the communes do not have independent and constitutionally guaranteed power, but the example can be continued, the communes' constitutionally mandated power being expanded in small steps, so that it is unclear when the line to federalism has been passed. In spite of this, the concepts unitary and federal are precise enough to be useful.

The establishment of a federal state need not be motivated by the concerns of Section 3.1. Even if the population is homogenous and there are no particular group conflicts, a general preference for decentralization of power can justify federalism. Giving power to regional units decreases the distance between those who govern and those who are governed, but this can also be achieved through delegation in a unitary state. More fundamentally, division of power reduces the danger that it be abused.

Typically, the national constitution of a federal state is the supreme law of the land. It is binding on governmental authorities on all levels and takes precedence over any other law, including the constitutions of the regional units (if such documents exist). This must be seen as a defining characteristic of a federal state; had the regional constitutions been superior to the national one, the whole arrangement would be more like a confederation or a union of independent states.
The procedure for amending the national constitution will usually involve the regional units. If the constitution, which presumably shall protect the autonomy of the regional units, could be amended by a decision taken solely by national political bodies, this protection would be quite weak. This does not mean that one regional unit on its own can veto a constitutional amendment. Typically, what is required is not unanimity but a qualified majority. (In a union of independent states, by contrast, a change in the basic rules will require a new treaty which must be approved by all member states.)

Traditional federalism is symmetric, in the sense that all regional units have the same degree of autonomy and the same powers. In some cases, however, the appropriate state structure may be asymmetric federalism, where different regions have varying degree of autonomy. Assume that the population of a country consists of a majority and one or more regionally concentrated minorities. (Sri Lanka is an example of a country having such a demographic structure.) Then the minorities may want autonomy for their regions, while the population of regions dominated by the national majority may feel no need for similar arrangements. Whether asymmetric federalism is a good solution must be determined in the individual case, but it should not a priori be ruled out. Spain has a state structure which can perhaps be classified as asymmetric federalism. In general, it is a unitary state, but Catalonia has wide-ranging, and the Basque Country somewhat less extensive, regional autonomy.

The number of regional units in a federation varies a lot. In some cases it is quite high, for example, it is 50 in the United States of America and 16 in the Federal Republic of Germany, to take the two cases discussed in Section 3.5. However, there also exist federations with a smaller number of members, all the way down to two. Potentially, there are special problems related to a federation of two units. The smaller one may feel that it is permanently in the minority, but if power is equally divided, the larger unit may feel that the system is unfair. With three or more units, alliances can change, so that nobody is permanently in the minority. In the recent past, Czechoslovakia has broken apart, as has the federation between Serbia and Montenegro. Belgium can be seen as a union of two parts, since the language divide is important and there are two large linguistic groups (Dutch and French). The Belgian state still exists, but many functions have over the last decades been transferred to units below state level.

3.3 The national parliament in a federal state

The defining characteristic of a federal state is the autonomy of the regional units. This must logically be distinguished from the rules for decision making on the national level, including the electoral system for (the various chambers of) the national parliament. In practice, however, there is a connection.

A unitary state consists of its inhabitants or citizens. To the extent equal treatment is an ideal, it must necessarily be individuals (inhabitants, citizens, voters) who are treated equally.
A federal state has, in a sense, two types of members, the citizens and the regional units. Therefore, "equal treatment" can be given two different interpretations:

A  Equal treatment of individuals (inhabitants, citizens, voters)
B  Equal treatment of regional units

Corresponding to these two notions of equality, there are two relevant but competing considerations that are relevant when designing the system for representation in the national parliament. On the one hand, it can be argued that individuals shall have equal influence, in which case representation of the regional units should be proportional to their numbers. (Alternatively, the electoral system could pay no attention to the division into regional units, but that seems unnatural in a federal state.) On the other hand, the federation can be seen as a cooperative arrangement between the regional units, in which case these units are to be treated equally and given equal representation on the national level. By analogy, traditional international cooperation is based on equal treatment of member state, regardless of size (although actual power may vary).

It is hardly conceivable, and it would be problematic from a democratic point of view, if the composition of the national parliament was based solely on B, so that each regional unit – large or small – had equal representation. The oft-stated requirement that in a democracy at least one legislative chamber shall be directly elected by universal and equal suffrage, must be interpreted as requiring that the electoral system for this chamber shall give all votes (approximately) equal weight, which means that representation must be based on A. Hence the regional units cannot be equally represented. In federal states there will typically be a chamber that satisfies these requirements, but in addition there may be a chamber whose composition in whole or in part is based on B. The members of such a chamber may be directly elected, but other modes of election or appointment are also conceivable.

Even in a unitary state, parliamentary representation need not be based solely on A. Therefore, the existence of a chamber with representation based on regional subdivisions and influenced by principle B, does not imply that the state is federal. On the other hand, there are limits to how far the electoral system of a unitary state can deviate from equal treatment of individuals without violating basic democratic principles. Such limits exist in federal states as well, but they are wider, since it is legitimate to take account of the intrinsic features of federalism when designing the electoral system on the national level.

3.4 "Non-geographic federalism"

In Section 3.1, the point of departure was a wish to protect the interests of different groups. Ordinary federalism, based on geographical units as described in Section 3.2, will achieve this goal if the groups concerned are simply the population of different regions. For other types of groups, federalism is at best an imperfect solution, unless the population structure is, or is made, fully segregated.

Could this problem be solved by what might be called non-geographic federalism? By this is meant a system in which power is divided between a national government and
governmental units on a lower level, but each of the latter units has authority not over a specific geographic area, but over a group of the population defined by some other criterion. Then everyone will belong to the "right" lower-level unit, and the problem of minorities within minorities does not exist. Also, the country has a national government, which can secure coordination and take care of tasks that necessarily must be solved nationally. Hence the problems mentioned at the end of Section 3.1 are solved.

In order to implement such a solution, it must somehow be registered who belong to which of the lower-level government units, which requires compulsory revelation of, for example, ethnic affiliation. There are serious problems with imposing this requirement on all citizens.

There are other objections as well. Significant parts of the legal system and many government functions are intrinsically tied to the land. This includes property law, zoning regulations, construction of physical infrastructure, exploration of natural resources, and many other issues. In a non-geographic federal system, all of this must remain the responsibility of the national government. This limits the degree to which power can be decentralized on a non-geographic basis. Moreover, if the non-geographic lower-level government units are given substantial power over a broad range of issues, people who live in the same community will be governed by different legal systems. This necessary causes significant coordination problems. It is not easy to foresee the extent and nature of these problems.

No country seems to have implemented non-geographic federalism in a genuine sense. Given the objections discussed above, there are good reasons for this.

One can, however, imagine a system in which there exist bodies representing groups not defined by place of residence, but these bodies do not exercise substantial power over a broad range of issues. Instead their authority is restricted to more narrowly defined fields. Typical examples will be bodies representing ethnic or linguistic groups, with competence in areas such as culture or education. The rules for electing or appointing the bodies need not require compulsory registration of group affiliation, and significant coordination problems can be avoided. At the same time, such an arrangement might be sufficient to meet the needs of those who feel that their interests are not adequately taken care of by a traditional (unitary) form of government.

In some countries, family law varies or has varied between religious communities. This can be seen as an arrangement of the type just mentioned, but it creates coordination problems – though perhaps not insurmountable ones – in cases such as inter-community marriages. More importantly, there may be a tension between the wish to protect universal human rights, including non-discrimination of women, and group autonomy.

The state structure of Belgian contains elements of non-geographic federalism. According to the constitution, Belgium is a federal state made up of communities and regions. The regions are geographically defined, but the communities are not. They are the French Community, the Flemish Community, and the German-speaking Community.
For each community, there is a Community Parliament with authority within specific fields. The whole system is quite complicated, which is in itself a disadvantage. Arrangements of the Belgian type might nevertheless be worthy of consideration in post-conflict situations.

3.5 Examples and discussion

General aspects of federalism are illustrated with reference to two examples, namely the United States of America and the Federal Republic of Germany (Bundesrepublik Deutschland). Other cases could have been used instead, but these are chosen because they are important and well-known countries with long, stable and well-developed traditions for democratic federalism. The US Constitution took effect in 1789 and the Federal Republic of Germany was established in 1949.

In the USA the national level of government is referred to as the union, while a regional unit is a state. The corresponding German words are Bund and Land (plural Länder).

In both countries, the national constitution is the supreme law of the land, not only in the sense of being the superior source of federal law, but also by being superior to the regional legal systems. The consequence is not that regional law must always yield to national legislation. The national constitution divides the legislative power between the two levels of government, and a statute adopted by the national legislature may be invalid if it intrudes into the sphere of regional legislative power.

Legislative power is regional unless the national constitution explicitly provides otherwise. That is, national laws must have explicit constitutional authorization. The constitution may rule out certain types of legislation altogether, for example, in order to protect individual rights. Apart from this, the regional level has the right to legislate in all areas not constitutionally assigned to the national level.

The composition of the national legislatures of the two countries is clearly influenced by the ideals of federalism; see Section 3.3 and the principles A and B discussed there. In each country, there is a legislative body with a composition based solely on principle A, and another body where the representation is wholly (the USA) or predominantly (Germany) based on B.

The national legislature of the USA, the Congress, consists of two chambers, the Senate and the House of Representatives. Each of the two principles A and B, equality among individuals and equality among states, is applied in pure form to one of the chambers. The seats in the House of Representatives are apportioned among the states in proportion to population. In the Senate, the states are equally represented. The most populous state has about 68.5 times as many inhabitants as the least populous one. All members of Congress are directly elected by plurality vote. It should be noted that the Senators do not represent their states in the sense of being appointed by or responsible to any body of

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The computation is based on the 2000 census; see Huckabee (2001) Table 3.
state government. It is often said that the Senate is the states' chamber. This is only true in the sense that its composition is based on equality among the states.

The two chambers have essentially equal power, since all laws must be approved by both. The Senate has some special functions relating to the appointment of public officials and the ratification of international treaties, and the House of Representatives has a privileged position concerning revenue bills, but the general picture is that of two equally powerful chambers.

In Germany, national legislative power is shared between the Federal Parliament (Bundestag) and the Federal Council (Bundesrat). The Federal Parliament is directly elected by a so-called mixed member proportional system. Half the members are elected by plurality vote in single-member constituencies, while the other half of the seats are distributed among the political parties so as to achieve overall political proportionality. The system guarantees proportional representation of political views and leads to the Länder being represented in (approximate) proportion to their population. The Federal Council consists of delegates from the Länder governments. Each Land has between three and six votes depending on population. The ratio between the populations of the most and least populous Land is more than 25. That is, representation is not equal, but compared to their population the smaller units are strongly overrepresented. Hence a compromise has been struck between principles A and B, with emphasis on B. Voting rights in the Federal Council belong to the Länder governments as such. The delegates can be instructed to vote in a specific way and can not be regarded as representatives with an independent mandate. The power of the Federal Council originates with the people, but through a fairly complicated chain. In each Land there is a parliament directly elected by the people, the government is elected by and responsible to this parliament, and the government decides how the votes in the Federal Council are cast.

The two bodies do not have equal power. For some types of laws, both must agree, and hence the Federal Council has veto power. In other cases, the Federal Council only has the right to object and delay, but it does not in the end have veto power. The directly elected Federal Parliament is the more powerful body.

There are several possible procedures for amending the US constitution, but the one used most often in practice requires a two thirds majority in both houses of Congress and the ratification of the amendment by the state legislatures of three quarters of the states. In Germany, an amendment must be adopted by a two thirds majority in both the Federal Parliament and the Federal Council. In both cases, therefore, an amendment will fail if a significant number of the regional units, through their legislatures or governments, do not approve it.

The US Constitution is old and relatively short. It has been amended only 27 times over a period of more than 200 years. The German constitution (Grundgesetz, literally "Basic Law") is long and detailed, and it is frequently amended. Since 1949 more than 50 laws to amend the constitution have been adopted, some of them affecting a large number of provisions.
In both countries, there is a strong tradition for judicial review of legislation. That is, the courts can be called upon to judge whether a law is consistent with the constitution. If this is answered in the negative, the court has the right and duty to declare the law null and void or refuse to apply it. This makes constitutional protection of individual rights more effective, since the individual need not rely on the legislature voluntarily respecting the constitution when adopting laws, but can have the question of constitutionality determined by an independent body. In addition, in a federal state judicial review provides a mechanism for solving conflicts of authority between national and regional units of government. Such conflicts can hardly be avoided, even if the relevant constitutional rules are precise and detailed.

The US Constitution contains no explicit provision mandating judicial review. The practice has been created and developed through decisions of the US Supreme Court, starting in 1803. Judicial review is exercised by the ordinary federal courts, with the Supreme Court having the last word. (State courts have similar functions within their jurisdictions.)

The German constitution of 1949 established a separate body, the Federal Constitutional Court (Bundesverfassungsgericht), to serve as the "guardian of the constitution". The Court can adjudicate cases of many different kinds. Numerically most important are individual constitutional complaints (Verfassungsbeschwerden), which can be raised by anybody who claim that their basic constitutional rights have been violated. More pertinent to the federal system, the Court can be called upon to solve conflicts of authority between Bund and Länder. Moreover, an individual complaint can be based on a claim that legislation has been adopted in violation of the constitutionally determined division of power.

Since the US Constitution is short and rarely is amended, a large body of constitutional jurisprudence has developed, in which the Supreme Court has interpreted and developed the text, and also to a considerable extent amended it. The constitution can hardly be understood without reference to this jurisprudence. In spite of the different nature of the two constitutions, the same is true for Germany. The real meaning of the constitution can only be grasped if the practice of the Federal Constitutional Court is taken into account.

4 Bosnia and Herzegovina

Bosnia and Herzegovina provides an example of the type of situations discussed in this paper. The country has been through a civil war, and the international community has been deeply involved in the attempts to end the conflict and build stable institutions. Therefore, a relatively detailed account of the country's government structure is given. It is also used as a point of departure for the discussion of general issues.
4.1 Background

The population of Bosnia and Herzegovina consists of three large groups, Bosniacs, Croats and Serbs, none of which constitute a majority, as well as a number of small minorities.

After a bloody civil war, the so-called Dayton accord was signed in 1995. The Constitution of Bosnia and Herzegovina is part of the Dayton accord.

The agreement ended the war, but also created a complicated government structure, to be described below. In fact, the institutions established by the Dayton accord have been almost unable to make decisions. Stalemate has been the rule rather than the exception.

For a long period, the international community appointed a High Representative to Bosnia and Herzegovina, who was given wide-ranging power. In the period since 1995, most important decisions have been taken by the High Representative, not by the elected parliament. The office is now abolished.

4.2 State organization on the national level

Bosnia and Herzegovina consists of two so-called entities, named the Federation of Bosnia and Herzegovina and Republika Srpska.

The terminology is a little confusing. The country as a whole must be considered a federal state, consisting of the two regional units just mentioned. In spite of its name, therefore, the Federation of Bosnia and Herzegovina is a part of the federal state Bosnia and Herzegovina.

The national parliament, the Parliamentary Assembly, has two chambers, the House of Representatives and the House of Peoples. The House of Representatives has 42 members, 28 elected from the Federation of Bosnia and Herzegovina and 14 from the Republika Srpska. This chamber is directly elected and there are no ethnic quotas. The House of Peoples consists of five Bosniacs and five Croats elected by the respective ethnic groups in the House of Peoples of the Federation of Bosnia and Herzegovina, and five Serbs elected by the National Assembly of Republika Srpska.

Legislation must pass both chambers. A majority must contain at least one third of the votes from each of the two entities. If that condition is not met, legislation may still pass, provided that the dissenting votes do not include two thirds or more of the representatives from an entity. In the House of Peoples this means that seven Croats and Bosniacs, or four Serbs, can stop a proposal.

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5 It is officially called the "General Framework Agreement for Peace in Bosnia and Herzegovina".
6 The Federation of Bosnia and Herzegovina is divided into ten cantons and can itself be said to have a federal internal structure; see Sections 8.1 and 8.3.
In addition to these conditions, legislation may be vetoed by an ethnic caucus of the House of Peoples if it is declared to be "destructive of a vital interest" of that ethnic group. Since each caucus has five members, three votes suffice for a veto. This veto power can be said to make the House of Peoples more powerful than the directly elected House of Representatives, since the members of the House of Representatives do not have this special veto power. There is probably no other country in which an indirectly elected chamber is more powerful than the directly elected one. The construction is problematic from a democratic point of view.

Basically, the government system of Bosnia and Herzegovina is a parliamentary one. The role as head of state is, however, vested in a multi-member Presidency. This follows a tradition from the former Yugoslavia. The presidency of Bosnia and Herzegovina has three members, one Bosniac and one Croat, each directly elected from the territory of the Federation of Bosnia and Herzegovina, and one Serb directly elected from the territory of Republika Srpska. The members rotate in chairing the presidency.

4.3 Ineffective decision making

During the Dayton talks, representatives of the international community promoted a unicameral national parliament. This was not supported by Serbs and Croats, who feared that their vital interests would be violated by majority decisions in a parliament dominated by Bosniacs. Then the solution described in Section 4.2 was chosen. As pointed out in Section 4.1, the Parliamentary Assembly of Bosnia and Herzegovina has been almost unable to make decisions.

Even with the fairly straightforward composition of the House of Representatives, it has been difficult to have legislation passed in that house. The real challenge, however, is the House of Peoples where very few members can veto legislation. In particular, if a proposal is declared to be destructive of a vital interest of a group, only three members of the House of Peoples are needed for a veto.

4.4 Possible human rights problems

The composition of the House of Peoples has been challenged for violating international human rights. The ethnic provisions written into the constitution mean that only members of the so-called constituent peoples – Bosniacs, Croats and Serbs – can be elected to the House of Peoples. Moreover, they must be voters in the right entity. Serbs residing in the Federation of Bosnia and Herzegovina cannot be elected to the House of Peoples. The same holds for Bosniacs and Croats in the Republika Srpska. All adult citizens can (indirectly) influence the composition of the House of Peoples, but the right to be elected is severely restricted.

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7 The relevant provisions are found in the European Convention for Human Rights and the International Covenant on Civil and Political Rights, quoted in Section 6.2.
Similar restrictions apply to the Presidency. Serbs living in the Federation and Bosniacs and Croats living in the Republika Srpska cannot be elected.

In Republika Srpska, there is no problem concerning voting rights. All members of the National Assembly of Republika Srpska can, according to a decision of the Constitutional Court, vote for the Serb members of the House of Peoples. (It could even be argued that non-Serbs can also be elected. As the slogan goes, "whoever is elected to represent Republika Srpska, is by definition a Serb".)

The Bosniac and Croat members of the House of Peoples are, however, elected by the respective caucuses in the Federation House of Peoples, and only members of the respective ethnic group can be elected.

The House of Peoples is not just a reviewing body, but a chamber of parliament with definitive powers. In the terminology of Section 5.2, the system is one of strong bicameralism. It can be argued that the restrictions of voting rights and the right to be elected violate international human rights. On the other hand, if such provisions had not been introduced, there was a real danger that the Dayton accord would never have been signed and the war would not have ended.

5 Division of power

5.1 General considerations

In a federal structure, power is divided between national and regional units of government. This is not, however, the only way power can be divided. Here two issues will be discussed, namely the choice between a unicameral and a bicameral parliament, and the choice between a parliamentary and a presidential system of government.

The existence of an independent judiciary, which is an essential element of liberal democracy, also represents division of power. Certain executive agencies can also have some degree of independence from the supreme, political bodies of state. This is not discussed further.

Traditionally, division of power has been justified as a means to prevent the abuse of power. This is certainly a valid consideration, but in the present context it may be more relevant to point out that such arrangements may improve the chances that the political system will take account not only of the interests of a majority or dominant group, but also of those of various minorities.

Division of power has its costs. In the best of cases, when everybody is interested in reaching compromises that take account of the various group interests, the chances of

\[8\] See the discussion in Nystuen (2005). The relevant conventions are mentioned in note 7.
achieving this may be improved by power being divided. When conflicts are sharper, however, the result can be a complete stalemate. The various bodies, among which power is divided, will often be unable to reach a common decision, and the machinery of government is brought to a halt. This will have immediate detrimental effects, and it could also in the longer term create popular dissatisfaction with the government structure and spur (renewed) conflict.

Moreover, in spite of the importance of taking all group interests into account, it cannot be denied that in a democracy there are situations in which the majority legitimately can force its will through, even if minorities disagree. It is not easy to say exactly when this is the case, but the possibility certainly exist. Division of power can prevent the majority from getting its way even in clear-cut cases of this type.

The task, therefore, is to trade off the advantages and disadvantages of power being divided. Clearly, the solution must depend on the circumstances, so there cannot generally and in the abstract be identified an "optimal degree of division of power". Nevertheless, some general considerations can be of relevance.

5.2 Unicameral or bicameral parliament

In theory, a parliament can have more than two chambers, but this possibility will be ignored in the subsequent discussion.

As pointed out in Section 2.6, in a democracy at least one legislative chamber should be directly elected by universal suffrage and by an electoral system which gives all votes (approximately) equal weight. This is referred to as the principal chamber. It can be the only chamber or one of two. In the latter case, democratic principles require that the principal chamber has at least as much power as the other one.

Bicameral systems vary a lot, both concerning the power and status of the chambers and their composition. A distinction can be drawn between weak and strong bicameralism. In some bicameral systems, one chamber is essentially only a consultative body. In the end, the principal chamber decides. This is called weak bicameralism. Alternatively, the other chamber has real power, in the sense that it not only has the right to review legislation and raise objections, but must approve the final law, generally or within large and important areas of public policy. This is called strong bicameralism. The dividing line is not sharp, but the concepts are nevertheless useful.

Weak bicameralism

Weak bicameralism causes no problems from a democratic point of view, even if the "consultative chamber" is not democratically elected.

It might appear that weak bicameralism is harmless, but also pointless. In a situation of strong conflict, this may be true. Then the majority in the principal chamber is likely to
ignore comments and advice from the other chamber, which will therefore have limited influence. Things may be different, however, if conflicts are not strong, so that everybody is interested in reaching compromises that take account of the various group interests. Then the principal chamber will probably be willing to listen to advice, and the final decisions may better take account of varying group interests, in addition to being better from a purely technical point of view, than would have been the case if the consultative chamber had not existed.

The statement that weak bicameralism is harmless from a democratic point of view, should perhaps be somewhat modified. Situations can arise in which the majority in the principal chamber finds it important that a certain measure be adopted immediately, so that even a delay caused by the other chamber exerting its right of review might be seen as a violation of democratic ideals. Although possible, the situation seems remote and improbable, and the possibility of it occurring would seem a price worth paying. Issues that typically are urgent, like the budget, can be – and in practice often are – excluded from the other chamber's right of review.

**Strong bicameralism**

As is evident from the discussion above, weak bicameralism is not likely to contribute significantly to the solution of bitter conflicts. More substantial division of power is needed. In addition to the principal chamber, there must exist one which has real power and in which interests other than those of the majority or dominant group are represented.

The arguments for and against strong bicameralism basically correspond to the general advantages and disadvantages of power being divided.

In a federal state, one chamber of the national parliament will typically not be directly elected, or not elected by a system giving all votes (approximately) equal weight. Two examples are given in Section 3.5, the US Senate (directly elected, but with inhabitants of the most populous states being drastically underrepresented), and the Federal Council in Germany (no elected members, voting rights belong to the Länder governments).

For these chambers, the composition is intrinsically tied to the country's federal structure, and the arguments that can be put forward in favor of federalism, also justify some deviation from the standards of elections applied to the principal chamber. This does not mean that no standards should exist for the composition of the other chamber. If a chamber has real power, this power must be derived from the people through a democratic process. For example, if a body whose membership is based on inheritance or appointment not limited to a term of years, like the House of Lords in the United Kingdom, was given veto power over all or important parts of the legislation, a serious democratic problem would arise.

What is and what is not acceptable in this connection? It is not easy to draw a sharp line. However, the rules actually in effect in established democracies with strong bicameralism – like the USA and Germany – could give some guidelines for what should be considered
consistent with democratic principles.

5.3 Parliamentary or presidential system of government

In a parliamentary system, the government is responsible to parliament or to its principal chamber. If a motion of no confidence is passed, the government cannot continue in office. This is the defining characteristic of parliamentarism, but otherwise the rules vary.

When parliament has adopted a motion of no confidence, the government can choose to resign. In many parliamentary systems, however, it can instead "appeal to the people", that is, dissolve parliament and call new elections. The results of these elections will then determine the new government. The government’s right to call new elections may be subject to restrictions and procedural requirements, or may not exist at all.

It is generally not required that the government has the active support of a majority in parliament, though it is often seen as preferable to form governments with such support.

In some parliamentary systems, the government or the prime minister is elected by parliament. In other cases, the head of state, after formal or informal consultations, chooses a candidate for prime minister.

The German Constitution of 1949 introduced the constructive motion of no confidence. This means that parliament can only force the government to resign by simultaneously electing a new head of government. The purpose is to contribute to stability by preventing factions that cannot cooperate among themselves, from joining forces to remove the incumbent government. Several countries have followed the German example. In most parliamentary systems, however, a simple motion of no confidence is sufficient to force the government out of office.

Typically, in a parliamentary system the head of state does not have extensive powers, but serves mainly as a symbol of the nation and of national unity. The head of state can be a constitutional monarch or a directly or indirectly elected president.

It might seem pointless to hold direct elections to a position without substantial power. It may even create confusion and conflict, since a directly elected president could claim to have a separate mandate from the people and therefore be inclined to try to exert real power. Nevertheless, there are countries where the president is directly elected but has only formal powers, Austria and Iceland being examples. In addition, the construction has been explored in some post-conflict situations, as a way to reward a senior leader with an elected presidency, without giving the position substantive powers.

In a presidential system, the president is not only head of state, but also – both formally and in political reality – leader of the executive branch of government. The president’s authority is derived from the people through elections. The government is responsible to
the president, not to parliament.

The prime example of a presidential system is the USA. The national legislature and the president are popularly elected through separate election procedures, and hence both derive their authority from the people.

In addition to the pure parliamentary and presidential systems, combinations of the two are possible. In France and Russia, for example, the government is ultimately responsible to parliament and must resign if a motion of no confidence is passed, but parts of the executive power is vested not in the government, but in the president personally, who is directly elected and in these areas can act independently of parliament.

Variants of such systems exist in several Latin American countries and in some of the new democracies in Central and Eastern Europe, and have also been discussed in several post-conflict situations. Not much can be said about them in general. Since they are combinations of two "pure" systems, they will share some properties with each of these. In most cases, they are probably a compromise between factions wanting one or the other of the pure systems, rather than the result of more principled considerations.

When executive power is shared between an elected president and a government responsible to an elected legislature, the possibility exists that the president comes from one party and the government from another party or coalition. This situation is not inherently undesirable, as it may reflect the voters’ desire to balance competing interests and agendas. Without strong institutions for managing the conflict between the parliament and the president, however, this situation can lead to governmental crises. While combinations of a pure parliamentary and a presidential system may be an attractive compromise in some instances, it can only be implemented within a sufficiently robust legal framework and after careful consideration of its political dynamics.

In a parliamentary system, the government takes part in the legislative process by its right of initiative, that is, its right to make proposals to parliament. Perhaps laws must be approved or promulgated by the government or the head of state, but this is a purely formal step in the legislative process. A government which is responsible to parliament can hardly have a real veto power over laws pasted by that same parliament.

In a presidential system, however, executive veto of legislation can be a reality. The veto power can take different forms. It could be an absolute veto, so that no law can pass without the president's approval. Alternatively, the legislature can have the right to overturn a presidential veto, but only by a special majority or through a special procedure. In the USA, a two thirds majority in both houses of Congress is needed to set aside a presidential veto.

The presidential system represents division of power between parliament and president. In a parliamentary system, there is a division of functions between parliament and government, but no real division of power. The power rests undivided with parliament. Therefore, the general arguments for and against division of power are relevant when a
choice shall be made between a parliamentary and a presidential system.

Could a presidential system, through its division of power between parliament and president, contribute to solving conflicts of the type discussed in this paper? The answer is probably no. For the present purpose, division of power is a means to protect the interests of groups other than the majority or dominant group. An elected president will, in all likelihood, primarily represent that group. The same holds for the majority in the principal chamber of parliament. Hence little is gained by dividing power between parliament and president. This contrasts with dividing power between the chambers of a bicameral parliament, which can serve a meaningful purpose in post-conflict situations.

In the best of cases, the elected president will be willing and able to take account of all relevant group interests when carrying out the presidential duties. There is, however, no institutional guarantee that this will happen. When one president is to be elected, the winner will most likely be a candidate from the dominant group, nor would it be preferable from a democratic point of view if the president systematically came from another group than the biggest one. One could try to build the protection of various group interests into the executive branch by electing a multi-member presidency, like the one in Bosnia and Herzegovina; see Section 4.2. This has been proposed in other places as well, but it would be alien to the traditions of most countries and is not discussed further.

In conclusion, whatever are the general arguments for and against parliamentary and presidential systems, the presidential system is not likely to contribute to solving conflicts of the type discussed in this paper.

6 Electoral systems – general issues

The discussion in this chapter is mainly concerned with elections to legislative assemblies, but many of the considerations may also be relevant for presidential elections etc.

First, a few words are said about the historical background, since this can explain why the various electoral systems have emerged and why there today is such a diversity of systems (Section 6.1). Thereafter, international standards for elections are quoted (Section 6.2), and criteria for good electoral systems are discussed, first in general terms (Section 6.3) and then by listing and discussing specific criteria (Section 6.4). Equality or equal suffrage is a criterion of particular importance, but at the same time a difficult one; it is discussed thoroughly in Section 6.5. The chapter ends with an overview of electoral systems (Section 6.6).9

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9 The systems are described and discussed in detail in Blanc et al. (2006), Part II Chapters 8 – 11.
6.1 **Historical background**

In some countries, elections predate political parties, by decades or perhaps centuries. These elections were not democratic by modern standards, since suffrage was restricted. This is not, however, relevant for the present discussion, which is concerned with electoral systems.

When political parties do not exist, elections must necessarily be based on individual candidates. Then plurality or majority systems might appear to be the only options. This is actually not true; preferential systems like the single transferable vote can also be used, but it is a fact that pre-party elections almost invariably were based on plurality or majority principles.

In such cases, elections primarily consist in choosing the persons who are best qualified to serve as representatives. The relevant qualifications can vary; some voters look for the candidates who are most able to govern the country, others want to elect those who best represent local interests or other group interests. In any case, the attention is concentrated on qualifications rather than opinions. When voters pay more attention to the candidates' positions and opinions, the process towards formation of political parties has essentially started.

Those who are regarded as best qualified by the largest number of voters, will most probably also be the best. There is at least no reason to assume otherwise. When parties do not exist, therefore, it seems reasonable that elections are conducted by a plurality or majority system, and such a system can function quite well. Other aspects of the electoral system can vary. For example, the country can be divided into districts each electing one member (single-member constituencies), or there can be larger districts each electing several members (multi-member constituencies).

Things change when political parties are formed and come to dominate political life. (The "political parties" need not be known by that name or exactly correspond to modern parties. Other organizational forms can have the same effects.) Then most voters will not primarily ask which candidates are best qualified. Instead they ask whose positions best correspond to their own views. This change in voters' behavior also changes the character and effects of plurality and majority electoral systems, which are not well suited for producing representative results, in the sense that the elected assembly mirrors the voters along various relevant dimensions.

In an attempt to secure more representative results, the idea of proportional elections emerged in the last decades of the 1800s. Over the years, a number of different proportional systems have been designed. Among the first countries to introduce proportional parliamentary elections were Belgium, Germany and the Scandinavian countries. Such systems have become more widespread over the last decades. In the United Kingdom, however, parliament is still elected by plurality vote, and the same is true in most (but not all) countries whose legal and political system is based on the British model.
These two traditions have shaped the two principal types of electoral systems, which are discussed in detail later.

6.2 International standards

There exist some international standards for the conduct of elections.

The International Covenant on Civil and Political Rights, adopted in 1966, regulates elections in Article 25, the relevant part of which reads:

«Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
  a. ...
  b. to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
  c. ...»

Article 2 obliges the countries to ensure to all individuals "the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

In addition there are regional conventions and protocols governing election, some of which are quoted below.

In 2002, the Organization of African Unity (the forerunner of the African Union) adopted a "Declaration on the principles governing democratic elections in Africa", containing the following provisions:

«1. Democratic elections are the basis of the authority of any representative government;
2. Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development;
3. The holding of democratic elections is an important dimension in conflict prevention, management and resolution;
4. Democratic elections should be conducted:
   a) freely and fairly;
   b) under democratic constitutions and in compliance with supportive legal instruments;
   c) under a system of separation of powers that ensures in particular, the independence of the judiciary;
   d) at regular intervals, as provided for in National Constitutions;
   e) by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics;
...»

Article 23 of the American Convention on Human Rights, adopted in 1969, regulates the right to participate in government. The relevant provisions read as follows:
«1. Every citizen shall enjoy the following rights and opportunities:
   a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
   b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; ...»

Article 3 of Protocol No. 1 (adopted 1952) to the European Convention for the Protection of Human Rights and Fundamental Freedoms is entitled "Right to free elections" and reads:

«The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.»

Concerning Europe, more detailed standards are laid down in the so-called Copenhagen Document. The most relevant provisions are the following:

«(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will
(7.1) – hold free elections at reasonable intervals, as established by law;
(7.2) – permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
(7.3) – guarantee universal and equal suffrage to adult citizens;
(7.4) – ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
(7.5) – respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
...»

Items (7.2) and (7.3) are taken to imply that at least one legislative chamber, called the principal chamber, should be directly elected by universal suffrage and by an electoral system that gives all votes (approximately) equal weight.

6.3 Criteria for good electoral systems – overview

In established democracies, the constitution may contain more or less detailed provisions on the electoral system. If details are not given, the constitution will usually lay down general principles for elections, much like the ones quoted from international texts in Section 6.2. For example, the German constitution provides that the members of the Federal Parliament be elected by universal, direct, free, equal and secret elections.

Below, criteria for good electoral systems are discussed in greater detail, in general terms in this section and by listing and discussing specific criteria in Section 6.4.

The requirement that elections be periodic or held at reasonable intervals is certainly an

10 See CSCE (1990), paragraph 7. The Conference on Security and Co-operation in Europe, CSCE, was the forerunner of the Organization for Security and Co-operation in Europe, OSCE.
important one. Democracy is undermined if election periods are very long. In Section 2.3, the question is raised whether the first ordinary parliament after the (re)establishment of democracy should be elected for a shorter period than that stipulated by the permanent rules.

Secrecy of the ballot is needed to guarantee that the voters freely and independently can express their will.

Universal suffrage is today taken for granted almost everywhere. However, in order to specify exactly who shall have the right to vote, a number of questions must be answered, some of which are listed here, but not discussed further:

– What should be the voting-right age?
– Should only citizens have the right to vote, or should other residents also be allowed to take part in (certain types of) elections?
– Should some minimum length of residence be required for being registered as a voter?
– To what extent should criminal convictions lead to the loss of voting rights?

Another question is how a person's right to vote shall be documented. In established democracies, there usually exists a voters' list. Being on that list is a condition for exercising one's voting rights.

In post-conflict situations, it may sometimes be impossible to prepare reliable voters' lists before the first elections, so that other means must be employed for controlling who can vote. This can perhaps be acceptable on an interim basis, but eventually the questions asked above must be answered and a system must be designed which guarantees that all those who satisfy the suffrage criteria, and only those, are allowed to take part in the elections. The system must also effectively prevent multiple voting.

Reliable voter registration is essential to prevent fraud and the perception of fraud, be it through multiple voting, by manipulation of the eligibility criteria, or in other ways. Especially where there is disagreement about the size of the various groups, which is frequently the case in post-conflict situations, voter registration allows the public to learn the size of the voting population some time before the elections. The alternative, that the size of the electorate only becomes known when the election results are announced, can easily lead to accusations of fraud.

The question of direct or indirect elections has been discussed on several occasions earlier; see, for example, Section 3.3 (on federalism) and Section 5.2 (on bicameralism).

Among the criteria mentioned in the international standards quoted in Section 6.2, equality or equal suffrage has not yet been mentioned. Although it might seem obvious that voters should be treated equally, the criterion also raises difficult questions; see Section 6.5.

It is not always easy to know how different electoral systems will contribute to
reconciliation and dialogue in post-conflict situations. The effects of the system will be mixed with the tradition of the country and a number of other factors.

The range of systems being used in multi-party democracies is wide, and there is no general consensus on what kind of electoral system is the best or the most "democratic". There is certainly no generally accepted international standard which singles out one system as the "correct" one; see the discussion above of international standards. As indicated in Section 6.1, the historical and political context has been decisive for the system chosen in different countries.

It is common to distinguish between on the one hand the plurality or majority systems, which usually give the largest party or parties a significant advantage, and on the other hand the proportional systems, which give each party a share of the seats close to its share of the votes. Within each of the major types there are many different electoral systems, varying along a number of dimensions. The two types can also be combined in various ways.

Traditionally, both the two principal types of electoral systems are regarded as "democratic", and they are widely accepted by the international community. This also holds for combinations of the two types.

This does not mean that everything should be accepted or that all systems are equally good. Some systems that are being used in practice have been constructed to solve special problems in a particular situation, but have many undesirable side-effects and hardly qualify as satisfactory. A better system could have been found if a more systematic approach had been adopted. Such cases are not discussed in this paper.11

6.4 Criteria for good electoral systems – specific criteria

Even though a large variety of systems are used in established democracies, general criteria for good electoral systems can be defined. Some of these are listed here, and certain aspects of each criterion are discussed. Most of the criteria apply to elections generally, not just to elections in post-conflict situations, but some are particularly important in such situations.

The weight put on each criterion would vary, among experts as well as among political decision makers.

Create representative assemblies. In simple terms this criterion means that a party running in an election shall get a number of seats in the assembly that corresponds approximately to its proportional share of the vote. This is often regarded as the overriding criterion for a fair electoral system, and it is the most important justification for proportional elections. An elected assembly should reflect the political composition of the electorate, as well as other aspects such as geography, gender etc. The decisions

11 Examples of unsatisfactory systems are given in Blanc et al. (2006) Sections 9.3, 13.4, 14.5 and 15.3.
made by the assembly should be representative of the opinions of the electorate.

**Support accountability of the elected members.** Another important aspect of elections is the relationship between the electorate and the elected member of the assembly. Elections in single-member constituencies are often justified by the need for strong accountability, since a comparatively small electorate will elect its own member of parliament and can maintain direct contact with the elected member.

**Support stable governments.** It has been argued that a fully proportional electoral system may result in an assembly split into a large number of parties, which in turn will lead to coalition governments. The empirical data does not necessarily support this claim, at least not in countries with some kind of threshold for representation.

**Give equal weight to each voter.** This requirement can be interpreted in various ways when applied to different electoral systems. The most general formulation is that voters shall not be discriminated against on account of ethnicity, geography, gender and so on, except for what may follow from justifiable affirmative action. The criterion is discussed further in Section 6.5. In that section, a formal and technical version of the criterion, called "anonymity", is also introduced.

**Resist tactical voting behavior.** A system should support an immediate link between the voters' primary preferences and the result. Tactical voting means that the voters do not vote according to their primary preferences. Instead, they vote according to, for example, their secondary preferences, because they believe they can thereby get an advantage.

**Be simple for the voters.** Systems can be designed to meet many requirements, but could end up being extremely complicated for the voters, both in the sense that it is difficult to cast a valid and effective vote, and in the sense that it is not easy to understand how the system works.

**Be simple for the election administration.** Systems can be very complicated for those implementing them. However, what may seem difficult to implement, need not be complicated from a voter's point of view.

**Be generally accepted by the parties and the public.** Degree of acceptance should be taken into account when choosing a system. This is particularly important in post-conflict elections, because of the level of mistrust, frequently occurring disorder in election administrations, and the immaturity of the party system. One should not, however, refrain from proposing a system one genuinely regards as good because of fear that it might not be accepted.

**Promote conciliation among different groups.** In post-conflict situations this is an important criterion, and it is the main focus of this paper.

**Promote cross-community parties.** This is related to the previous item, but is not exactly identical as a criterion for electoral systems. Community may refer to ethnic, linguistic,
religious or sectarian groups as well as geographical areas; see the discussion of the concept "group" in Section 1.2.

**Promote dialogue and compromise.** The electoral system should in general support dialogue and conciliation in post-conflict situations. When possible, the system should promote compromise candidates instead of extremist ones. However, there are limits to what an electoral system can and should do in this respect. If the voters really support extremist candidates, the system should not prevent these candidates from being elected.

**Be robust against changes.** This may be a fairly technical issue, but a system should be designed in such a way that small changes in some aspect of the system, such as constituency boundaries, will not have a drastic effect on the outcome of the elections. In a system based on single-member constituencies, the drawing of boundaries can significantly affect the outcome, even if it is required that all constituencies be of equal size. If the boundaries are determined through a political process, there is a danger that the present majority will try to perpetuate its power by carefully taking account of how its support is distributed when boundaries are drawn, so-called "gerrymandering".

**Respond logically to changing support.** Increased support for a group or a political party should normally lead to increased (or at least not decreased) representation, with as few unforeseen and illogical side effects as possible.

**Be sustainable.** This means that even though there may be particular needs in a transitional period, the electoral system should be adapted to a normalized situation and should also support the process of normalization. One should keep in mind that systems which are adopted after a conflict, even if they are tailor-made to the current situation, will create precedent, that is, they will have a tendency to perpetuate themselves.

6.5 **Equality**

Equality is an almost universally acclaimed value in modern, democratic states, but it is not always clear what equality means. The precise definition of equal voting rights could even be different for different electoral systems.

Moreover, and perhaps more importantly, not every deviation from equality is unacceptable. In post-conflict situations, preferential treatment of certain groups may be necessary in order that these groups' interest be adequately represented in the political decision making. Hence some deviations from strict equality could be not only acceptable, but an essential part of a solution intended to restore peace and stability.

When a conflict is brought to an end through negotiations and agreement, elements of the electoral system may be part of the settlement, implying deviations from equality over and above what would ideally be justified. The outcome will be determined, at least partially, by the negotiation strength of the parties. Deviations from equality in the interest of ending a war, is probably quite common and should not be considered
unacceptable. There must, however, be a limit to what can be characterized as "democratic". See the discussion of the repercussions of the peace process in Section 2.1 and the description of the situation in Bosnia and Herzegovina and the Dayton accord in Section 4.1.

What is equal suffrage?

It seems appropriate to start with an attempt to define the concept of equality, ignoring – for the time being – the possible reasons for deviating from equality.

In general, equality in the electoral system means that people are not deprived of their voting rights on account of ethnicity, geography, gender etc. Neither should voting rights be differentiated on such grounds.

On the formal and technical level, political equality can be identified with the condition of anonymity, which is defined as follows: Suppose, initially, that voter $K$ has voted for party $X$, while voter $L$ has voted for party $Y$. Then $K$ and $L$ change their votes, so that $K$ votes for $Y$ and $L$ for $X$, while all other votes are unchanged. This shall not lead to any change in the number of seats won by the parties. Note that the condition should ideally be satisfied for any two voters $K$ and $L$, whether they cast their votes in the same or in different constituencies. Similarly, if $K$ and $L$ are candidates rather than parties, the switch of votes described above shall not change the election result.

In systems based on single-member constituencies, equal treatment of the voters must mean that the constituencies are of equal size. Then everybody elects an equal "share" of a representative, and in this sense equal treatment is secured. This does not guarantee, however, that all votes have the same effective weight. In particular, voters in "swing constituencies" will typically have greater influence on the outcome of the elections than voters in constituencies where one party has traditionally had a strong lead and is almost certain to win. It is not, however, possible to measure the effective weight of a vote. Even if this had been possible, it would hardly be acceptable to create constituencies of unequal size in order to equalize effective voting weight.

In a proportional system, however, equality requires that each vote contributes equally to the representation of the party for which it is cast.

Most countries with proportional electoral systems are divided into (multi-member) constituencies. (Israel, Moldova, the Netherlands, Slovakia and Ukraine are counterexamples.) Equality requires that the constituencies be represented in proportion to their population (or number of inhabitants or voters).

Deviations from equality – the principal chamber

As pointed out in Section 2.6 and several other places, at least one legislative chamber should be directly elected by universal suffrage. It can be the only chamber or one of two chambers under bicameralism.
To this chamber, strict standards of equality should be applied. Even here, however, some deviations must be accepted.

In plurality and majority systems based on single-member constituencies, these should be of equal size. There are, however, arguments for letting constituency boundaries follow administrative borders. This can justify some differences in constituency size. For example, the seats in the House of Representatives of the USA are apportioned among the states according to population, by a proportional system which guarantees at least one seat to every state. In each state, constituencies of close to equal size are created. The least populous states get one seat each, although these states are by no means equal in population. This creates significant differences in constituency size. Presently, the smallest constituency has a population some 23 percent below the national average, while the largest is 40 percent above that average. Hence the largest constituency is more than 80 percent bigger than the smallest. These differences can only be avoided by letting constituencies cross state borders, which would run counter to the country's federal structure and also cause practical difficulties.

Half the members of the Federal Parliament in Germany are elected in single-member constituencies, which must not cross Länder borders. When boundaries are drawn, no constituency shall have a population deviating more than 15 percent (up or down) from the national average. Demographic changes do not immediately lead to revision of the boundaries, but if some constituency deviate more than 25 percent from the average, a new map must be drawn. The Federal Parliament is elected by a so-called mixed member proportional system, which gives the parties an overall representation in parliament proportional to their national voting strength. Hence the constituency boundaries do not have a significant impact on the political composition of the assembly. This makes it less important to insist on constituencies of equal size than in pure plurality and majority systems, where the results in the single-member constituencies alone determine the parties' parliamentary strength.

Turning to pure proportional systems, it might appear that the very idea of proportional distribution of seats guarantees equal political weight to every vote. There are, however, different methods of proportional representation, which vary somewhat in the way they treat large parties as compared to small ones. It is also considered acceptable to introduce a threshold for representation, so that a party not reaching this threshold will not be represented although by strict proportionality it may be entitled to a few seats. It must be required that each vote has an equal influence on whether the party reaches the threshold. Technically, if $K$ and $L$ change their votes as described in the definition of anonymity, no change shall occur in which parties pass the threshold.

In systems based on single-member constituencies, geographical equality can only be guaranteed by appropriate drawing of constituency boundaries. In proportional systems with multi-member constituencies, there is an additional instrument available, namely the number of seats allocated to each constituency. Therefore, administrative borders can

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12 This is according to the 2000 census; see Huckabee (2001) Table 3.
more easily be respected, that is, constituencies can be based on municipalities, provinces or similar units. Moreover, instead of redrawing boundaries to maintain geographic equality in response to demographical changes, seats can be redistributed. To minimize the danger of manipulation, the redistribution should not be determined discretionary by political bodies but be based on a predetermined formula.

Most countries with proportional elections in multi-member constituencies base the constituencies on administrative units and allow the number of seats in each constituency to vary.

The political consequences of unequal geographical distribution depend on the specific rules and vary among proportional systems. If all seats are allocated to multi-member constituencies and the seats in each constituency are distributed among the parties based on their local votes, inequalities in the geographical distribution necessarily imply that votes differ in their political weight. If, on the other hand, there are mechanisms that guarantee nationwide proportionality in the distribution of seats among parties, geographical inequalities will have no or very limited effect on the political weight of the votes. In particular, the introduction of "compensatory seats" can serve this purpose. Therefore, deviations from equality in the geographical distribution can more easily be accepted in the latter case than in the former. (This is analogous to the difference pointed out between the US House of Representatives and the German Federal Parliament. In the former, differences in constituency size imply similar differences in political influence, while this is not the case in the latter.)

In many established democracies, sparsely populated areas far from the capital have traditionally been given more than their proportional share of the seats. This holds both in plurality and majority systems and in proportional ones. The argument is that people living far from the center of power face difficulties in having their voices heard. Hence real equality is not achieved by strict, numerical equality, but rather by giving remote areas increased representation. In the United Kingdom, for example, constituencies in Scotland have been smaller than those in England. Usually, the overrepresentation of remote areas is the result of specific political decisions, but more than 50 years ago Denmark adopted a system for systematic overrepresentation of sparsely populated areas. Seats in the legislature, which since 1953 has been unicameral, are distributed among the constituencies in Denmark proper on the basis of an index that takes account of the constituencies' areas as well population and the number of voters. (These rules do not apply to Greenland and the Faeroe Islands, which by law have two seats each.) A similar system was recently introduced in Norway. Both in Denmark and Norway the electoral system includes a mechanism for achieving overall political proportionality based on nationwide votes. Hence the overrepresentation of sparsely populated areas has only limited effects on the political weight of the votes.

Giving remote and sparsely populated areas relatively stronger representation is not necessarily unacceptable. It is not, however, in itself likely to promote cooperation in post-conflict situations. In any case, limits must be imposed on how strongly the remote areas can be favored. In particular, in electoral systems where geographical inequalities
automatically lead to votes having unequal political weight, one should not go very far in favoring remote and sparsely populated areas. This includes systems where all members of the assembly are elected in single-member constituencies, but it also includes some proportional systems. On the other hand, larger geographical inequalities can be accepted if the electoral system contains mechanisms guaranteeing (approximately) equal political weight for all votes. This includes the systems used for electing the German Federal Parliament and the parliaments of Denmark and Norway.

Systematic overrepresentation based on rules is preferable to discretionary and politically determined distribution of seats. The latter can be subject to manipulation, in the sense that the present majority can be tempted to adopt a geographic distribution of seats which is carefully tailored to its own expected support and thereby strengthens its position in future elections. Moreover, significant demographic change should lead to seats being reallocated. This is guaranteed if the distribution is governed by rules, but not necessarily if it is determined by political discretion.

Small minorities will sometimes need special protection. One should not categorically rule out the possibility of achieving this by giving members of such a minority some special rights related to parliamentary elections. This even holds for elections to the principal (or only) chamber. However, only quite limited deviations from equality can be accepted on this account. Preferably, the minority representation should have as little effect as possible on the composition of parliament along regular political dimensions. The issue is discussed further in Chapter 9.

In some federal states, certain regional units have a special status, different from that of the majority of the units. In the USA, the federal capital Washington, officially known as the District of Columbia, is not a state and does not belong to a state. The same is true for the Australian Capital Territory. There may be valid reasons for establishing such special units and granting them less internal autonomy than the regional units in general. It is more problematic to treat the population of these units differently when it comes to electing the national legislature. Such unequal treatment exists in the USA. The voters in the District of Columbia have no ordinary representation in Congress; they are not represented at all in the Senate and only elect a non-voting delegate to the House of Representatives. This is hardly compatible with international standards, such as the International Covenant on Civil and Political Rights, Article 25(b), and the American Convention on Human Rights, Article 23.1(b). They both secure for every citizen the right "to vote and to be elected", see quotations in Section 6.2. In any case, it is not a system to be recommended.

Deviations from equality – bicameralism

Under bicameralism, if there is a principal chamber satisfying the conditions discussed above and having at least as much power as the other chamber, significant deviations from equality may be acceptable for that other chamber. This is certainly true for federal states, where these deviations typically will reflect the federal structure. However, a unitary state can also be divided into regional units each of which has its own separate
identity, and there may be good reasons for taking this into account when designing the electoral system for one of the chambers of a bicameral legislature, even if the regional units do not have the degree of autonomy which would make the state a federal one.

In many post-conflict situations, such deviations from equality are not only acceptable; they are necessary in order to protect the interests of minorities and thereby contribute to reconciliation. They may also have been necessary to reach an agreement ending the conflict.

If the principal chamber has essentially all legislative power while the other chamber mainly is a consultative body (weak bicameralism, see Section 5.2), flexibility is particularly great. In this case, one could even accept a body that does not derive its power from the people, like the House of Lords in the United Kingdom.

The situation is different if both chambers have real power (strong bicameralism), which seems necessary if bicameralism shall contribute significantly to restoring peace and cooperation in a post-conflict situation. Then each chamber must derive its power from the people through a democratic process.

How far can one go in tailoring the composition of the other chamber and its electoral system to the federal structure? More generally, which deviations from equality are acceptable? The question has already been considered in Sections 3.3 and 5.2. In Section 5.2, where strong bicameralism was discussed, the conclusion was that it is not easy to draw a sharp line between that which is and that which is not acceptable, but the rules actually in effect in established democracies with strong bicameralism can give some guidance.

In Chapter 8, the question of balancing the interests of large groups is discussed. In that connection, parliamentary representation, particularly in bicameral legislatures, is a central issue.

6.6 Overview of electoral systems

The major electoral systems can be classified as follows:13

Plurality and majority elections in single-member constituencies:
– Plurality elections, "first-past-the-post"
– Majority elections in two rounds
– Majority elections by the alternative vote, AV

Plurality elections in multi-member constituencies:
– Elections based on individual candidates, the "block vote"

– Elections based on closed lists, the "party block vote"

Proportional representation:
– List-based proportional systems
  – One nation-wide constituency
  – Multi-member constituencies
  – Multi-member constituencies with compensation
– Mixed member proportional systems (MMP) or list-based proportional systems combined with elections in single-member constituencies
– The single transferable vote, STV

Semi-proportional systems:
– The single non-transferable vote, SNTV
– Parallel systems

7 Group representation – general issues

Ideally, an elected assembly should be representative of the people along all dimensions considered relevant by those concerned. Potentially, the number of such dimensions is quite large, and in practice only a few of them can be taken into account. Therefore, it is important to identify the most important dimensions. This cannot be done generally and in the abstract, but depends on the specific circumstances.

The purely political dimension, which will always be important, is supposedly taken care of by the party system. The geographical dimension is usually built into the electoral system by the country being divided into constituencies.

In public debate, one sometimes hears demands that the legislative must be representative according to sex, age and profession. Gender quotas exist or have been proposed in some cases, but are not discussed further. Neither shall more be said about the other dimensions just mentioned.

In post-conflict situations, attention is often concentrated on the groups that were the major parties to the conflict. These will often be ethnic, religious, linguistic or sectarian groups, but other possibilities also exist; see the discussion of the concept "group" in Section 1.2.

Some conflicts have erupted exactly because certain groups have felt that they have had no chance of winning influence through elections or other legal means. For them, taking up arms has been perceived as the only way to protect their interests. In such cases, a lasting peace requires that these groups are given, and understand that they are given, a real chance of gaining influence through another channel than the military one, namely through elections. For large groups, "gaining influence" could mean winning the elections outright and be able to form a government, but it can also means being sufficiently represented in elected assemblies to be able to protect one's interests.
Regardless of the electoral system or the system of representation more generally, it is important that the groups now discussed are represented in the legislature. Within a pure plurality or majority system, a minority will have little chance of winning representation unless it is geographically concentrated, so that it makes up the largest group in some constituencies. Within proportional systems, parties of a certain size will be represented even if they are a minority.

Parties are generally established to represent the political dimension of the electorate. In divided societies, however, parties may also be based on ethnicity or some other of the previously mentioned divisions. If the voters vote along group lines, such parties may, if their support is sufficient, win seats by pure electoral strength. In a post-conflict situation, these dimensions will often overshadow the traditional political one.

When building democratic institutions, it should be a long-term objective to strengthen the political dimension, but still maintain the various conflicting groups’ legitimate demand for representation. One might try to build bridges across the conflicting lines by offering voters the possibility of electing representatives independently of group affiliation, but at the same time secure the genuine interests of each group.

Minority representation could mean two different things:
– Representation of the smaller parties
– Representation of groups of the types mentioned, for example, ethnic or religious groups

The former type of minority representation must be taken care of by the electoral system. Concerning the latter type, the needs may be different for small and large minorities; see definitions and examples in Section 1.2. The major parties to conflicts of the type discussed in this paper are normally the majority and one or more large minorities, or several large minorities in cases where no majority exists.

The conflict between Albanians and Serbs in Kosovo is an example of a conflict between a majority and a minority. Even though the Serbs in Kosovo only made up around ten percent of the population, they were (and are) a principal party to the conflict and play the role of a large minority.

Balance among large minorities is discussed in Chapter 8. Protection of small minorities is the topic of Chapter 9. In both chapters, attention is concentrated on representation in legislative assemblies.

Minority rights should be offered on a collective basis, but they should be exercised individually. In an international convention, this is expressed as follows:14

«1. Every person belonging to a national minority shall have the right freely to choose to

14 The Council of Europe Framework Convention for the Protection of National Minorities, Article 3. Only European countries can be parties to this convention, but it expresses principles of general application.
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.

2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.»

When applied to elections, this mean that a voter should not be forced to vote along ethnic or other minority lines. The choice whether or not to exercise minority rights should be an individual one, preferably made in the secrecy of the voting booth.

8  Balancing the interests of large groups

This chapter is a combination of examples and discussion of general criteria. In Section 8.1, two examples are given of representation of large groups. In Section 8.2, an attempt is made to formulate criteria for balancing the interests of large groups by means of the state structure and the electoral system. Further illustrations and discussion can be found in Section 8.3.

8.1  Some examples

The first example is concerned with the balance among groups in a situation where they are all fairly large, but there is no majority. The second example illustrates the balance between a majority and a large minority.

*The House of Peoples in the Federation of Bosnia and Herzegovina*

The state structure of Bosnia and Herzegovina is described in Section 4.2.

The Federation of Bosnia and Herzegovina, one of the two entities that make up the state, also has a bicameral legislature. One of the chamber is the Federation House of Peoples. As mentioned in Section 4.2, ten of the fifteen members of the House of Peoples at state level are elected by the Bosniac and Croat caucuses of the Federation House of Peoples. The Federation House of Peoples is indirectly elected by the ten Canton Assemblies.

In 2000 the total membership of the Federation House of Peoples was 80. The number of members per canton varied from three to fifteen. There were quotas for Bosniacs, Croats and "Others", which would be Serbs and all other groups. Of the 80 members, there should be 30 Bosniacs, 30 Croats and 20 Others. The quotas were distributed among the cantons, so that there was a given number for each of the three groups from each canton.

Before 2000 the election had been performed within the respective caucuses in the Canton Assemblies by plurality vote. The result was that most of the delegates from the Bosniacs, and to an even greater extent from the Croats, represented ethically based parties, since they were the biggest group within each caucus.
In 2000 there was general consensus that proportional representation should be introduced for the elections to the Federation House of Peoples. The Croats insisted, however, that the elections should be carried out within the caucuses. This would provide for a continued bias in favor of the ethnically based parties, as can be illustrated by the following example: In a canton five Bosniacs and five Croats are to be elected, and all parties except one are ethnically based. The only multi-ethnic party has seventeen percent of the members of the Canton Assembly. On a proportional basis, this strength should give the party one or two of the canton's ten seats in the Federation House of Peoples. When the election is divided between the two caucuses, however, it could end up without any seat.

In new rules adopted in 2000, a system was introduced where the election was not divided into caucuses, but was held as one single list-based proportional election with ethnic quotas. A list could contain candidates from all the three groups. While distributing seats to the parties, one also fills up the quotas. The party next to win a seat will lose that seat unless it has a candidate from a group whose quota is not yet filled. If necessary, one goes down the party's list to find an appropriate candidate. This removes the disadvantage of multi-ethnic parties and gives an incentive for proposing lists with candidates from different groups.

The rule just described was also included in a draft election law published in October 1999. However, in the law adopted in 2001 this was changed back to elections in separate caucuses. The elections are proportional, but multi-ethnic parties may have their voting powers split among as much as four different elections.

The House of Republics of Yugoslavia

This example is only of historical interest, but it may nevertheless be illustrating.

After the dissolution of the former Yugoslavia in the early 1990s, Serbia and Montenegro were the two entities making up the Federal Republic of Yugoslavia. At times, they were controlled by competing political forces. In the conflict between the two, the federation was important, not least since the military was controlled by the federal level.

The Federal Assembly consisted of two chambers, the House of Citizens and the House of Republics. The House of Citizens was directly elected across the two republics, while the House of Republics consisted of 20 delegates from each republic, elected by the respective parliaments. Until 1998 the Montenegrin parliament had elected their delegates by proportional representation. In Serbia the law prescribed plurality vote, but the dominant party had decided to give a few seats to the opposition. Then Montenegro changed its electoral system to plurality vote, which meant that all the delegates would come from the ruling coalition. This would in turn give them veto power over changes to the Yugoslav constitution; changes which the Montenegrin government felt would violate the basic interests of Montenegro.

15 The state was later renamed Serbia and Montenegro, and thereafter the federation has been dissolved.
8.2 Criteria for balanced representation of large groups

In deeply divided societies, the conflicting groups may have to be given protection against majority decisions that change the balance of power, in particular, if this balance is the result of a delicate compromise designed to end a conflict. On the other hand, a country needs a well-functioning government which is able to make decisions, that is, stalemate must be avoided in parliament and elsewhere in the political system. The structure of the state and the electoral systems are interconnected. It is the combined structure which must strike a balance between on the one hand protection of minorities, and on the other hand other considerations, such as effective government and efforts to normalize the country and promote reconciliation and dialogue.

The example of Bosnia and Herzegovina illustrates that the balance created in order to stop a war does not necessarily promote effective government and the creation of multi-ethnic parties, see the discussion in Sections 4.3.

The main objective is to protect each group from being deprived of fundamental rights by majority decisions. Fundamental rights often include the right to use a language, decide on a school system and control other cultural issues, but could also extend to control of police, budgets, etc. A peace agreement will often include elements of self-determination for groups or areas. In such cases, there will usually be adopted measures securing that these principles cannot be changed by one of the conflicting parties alone.

A common instrument for preserving a power-sharing agreement is the introduction of a second chamber of parliament. In this chamber each conflicting group may have the same strength regardless of size, or at least smaller groups may be overrepresented; see the discussion of bicameralism in Section 5.2.

There are large variations between the bodies to be elected, and therefore it is difficult to define general criteria for how the electoral systems shall take account of the need for maintaining balance between groups. An attempt is nevertheless made to formulate some criteria. In principle, they apply both to unicameral and bicameral legislatures, but are probably most relevant for the latter.

(a) While maintaining the prescribed ethnic balance, the system should have as little effect as possible on the composition of the elected assembly along regular political dimensions.

(b) If there are elections to the same body from various groups or areas, the electoral system should – as far as possible – be the same for all groups and areas.

(c) When creating protection for each of the groups that were the main parties to a conflict, the citizens at large should not be deprived of the fundamental right to vote and to be elected.

(d) There shall be a parliamentary chamber directly elected by an electoral system
which gives each voter (approximately) equal weight (the principal chamber). Under bicameralism, the principal chamber shall have at least as much power as the other one.

(e) Representation of geographical areas generally has fewer undesirable side effects and therefore is preferable to representation explicitly based on group affiliation.

(f) If a second chamber of parliament is charged with securing checks and balances among conflicting groups, the interests of these groups should not overshadow the interests of the citizens at large.

8.3 Discussion and illustrations

As shown by the example from Serbia and Montenegro (Section 8.1), the political conflict lines may be similar in the various parts of a federation, even though the majority may be different. The overall political balance should therefore be taken care of by a directly elected parliamentary chamber. Since the role of the other chamber primarily is to preserve the constitutional arrangements and the balance of power, relative overrepresentation of small units – or even equal representation of all units regardless of size – may be called for.

Often the chamber designed to protect group rights is indirectly elected. (See also Section 2.6 and the more detailed discussion of bicameralism in Section 5.2.) A variety of electoral systems are in practice used for electing such chambers. We mention a few examples:

– Simultaneous election of several members by plurality vote: Serbia and Montenegro (when the federation existed)
– The single transferable vote: India and Pakistan
– List-based proportional elections: Bosnia and Herzegovina

Proportional systems are likely to make the fronts between the units softer. Nationwide political parties are likely to win representation from several regional units, and more generally differences in opinion between the delegations is likely to be smaller.

In the case of Bosnia and Herzegovina, the elections of Bosniac and Croat members of the House of Peoples and the three-member presidency are not based on geographical areas (see Sections 4.2 and 4.4). This raised a number of problems, in particular concerning the Croats, who make up the smallest of the major groups. It is also problematic in relation to criterion (e) above.

When the government structure of Bosnia and Herzegovina was designed, there was little willingness to divide the country into three entities, so that one would be dominated by the Croats. The country was already segmented enough and geographical representation would mean some kind of acceptance of ethnic cleansing. However, the Bosniac and Croat entity, the Federation of Bosnia and Herzegovina, was divided into ten cantons. Some of these are predominantly Croat. The nationalistic Croats wanted a Croat entity,
which was vigorously resisted by the Bosniacs and the international community.

In the long run it might have been better if the representation in the Bosnia and Herzegovina House of Peoples had been elected from the cantons rather than by a system based on the Federation House of Peoples. Then a few cantons could have been overrepresented in order to take account of the interests of the Croats, and there would be no problems related to limited voting right or restrictions on the right to be elected, see the discussion of possible human rights problems in Section 4.4.

If geographical representation is impossible, list-based proportional systems with quotas seem to be the solution which best strikes the balances between the political and the group dimensions. As explained in Section 8.1, such a system was used in 2000 when the Canton Assemblies elected the Federations House of Peoples. It was also used for the direct elections to the city council of Mostar. Even though it is fairly complicated technically, in the latter case it worked for some years, until the quotas could be abolished.

9 Protection of small minorities

In many countries, representation of small ethnic minorities is secured even if the voting power of a minority is not sufficient to give it representation in parliament. How this can be achieved, depends on the electoral system.

The discussion below applies both to unicameral and bicameral parliaments. If the population of a country consists of a majority and one or more small minorities, the special arguments for bicameralism related to the need for balancing the interests of large groups, do not apply. There may be other reasons for having a bicameral parliament, but that question is not discussed.

First, a few examples of how representation of small minorities is or could be secured are described and discussed (Section 9.1). Many other examples could have been chosen. In Section 9.2, an attempt is made to formulate criteria for representation of small minorities. Thereafter, the question is asked how these criteria can be realized, in proportional systems (Section 9.3) and when elections take place in single-member constituencies (Section 9.4).

9.1 Some examples of minority representation

*The Gagauz in Moldova*

Moldova elects its parliament by a list-based proportional system in one constituency. The large ethnic groups, the Romanians and the Slavs (Russians and Ukrainians), are well covered by the regular party system. There is a number of small minorities such as Bulgarians, Roma and the Gagauz. The Gagauz originates from Turkey, they are
Christians and most of them live within the Autonomous Territorial Unit of Gagauzia. After the Slavs the Gagauz is the largest minority group.

Many Gagauz participate in the activities of regular political parties, but they are also very conscious of their particular interests, which is the reason for having an autonomous unit. In 2002, the Gagauz made up just above four percent of the population, and almost 90 percent of them lived in the Autonomous Territory. With an electoral reform in 2005 the threshold for winning seats in parliament was lowered from six to four percent. With one single party representing the Gagauz and all members of the group voting for that party, it would have a fair chance of winning parliamentary seats. In some comments from international observation missions the need for lowering the threshold had been justified by making it easier for minorities, the Gagauz in particular, to be represented.

Forcing all Gagauz to vote for an ethnic list in order to win representation for the group in parliament, however, would mean depriving them of the right to express ordinary political differences. They would have to feel that the ethnic dimension is the dominant one. This could strengthen the importance of the ethnic factor, while it is probably desirable that it be reduced.

Some of the national parties nominate Gagauz candidates to positions on the list where they can expect to be elected. However, these candidates are selected at the grace of the parties. Since they run on national lists, their accountability to the Gagauz minority is weak. On the other hand, the parties will probably want to appear attractive to Gagauz voters in order to get their votes, and this may lead them to nominate candidates that genuinely represent the minority.

The obvious solution to the representation of geographically concentrated minorities of this order of magnitude is to introduce multi-member constituencies. In that way representation of the area, and thereby of the minority, is combined with regular political competition, and the local organizations of the national parties as well as local parties can represent minority issues, in addition to promoting their regular political views.

When the country is divided into constituencies, it is the voter’s individual choice whether to vote for regular parties or group-based parties. Group interests can be balanced without the political composition of parliament being affected, see criterion (a) of Sections 8.2 and 9.2.

*The Albanians in Montenegro*

In Montenegro, the large majority of the members of parliament are elected in a single constituency by a list-based proportional system. A few seats are set aside for an election held in a number of special polling stations. There have been four or five such seats. The special polling stations are established in areas with a concentration of Albanians, who in 1991 made up 6.5 percent of the population of Montenegro. It is up to each individual to register in these polling stations, and in 1998 approximately 30,000 voters did so. All parties, not only the Albanian ones, compete for the seats in this special constituency. In
2001 and 2002 an Albanian coalition won two seats, which they had not won had there not been a special constituency.

In order to avoid wasted votes, votes which are cast in the regular constituencies and which have not contributed to the election of seats there, are transferred to the special constituency, and vice versa.

This system has some advantages. It is up to the voter whether to vote in a special polling station, and parties and voters are not officially identified by ethnicity. However, the method has some unintended side-effects. The arrangement was introduced to protect the Albanian minority. Because of the transfer of votes, however, the system may give representation in the special constituency to small parties which do not pass the threshold at the national level.

*The Maori in New Zealand*

New Zealand's House of Representatives is elected by a mixed member proportional system. The assembly has 121 members, of which 69 are constituency seats and 52 list seats. That is, about 57 percent of the members are elected in single-member constituencies.

Out of the constituencies, 62 are general electorate constituencies and seven are Maori constituencies. Hence the country is divided into constituencies in two different ways. Geographically, each Maori constituency is of course bigger than the typical general constituency.

Persons belonging to the Maori people can choose to register as Maori voters and exercise their right to vote in the appropriate Maori constituency. They can also choose to remain on the general voters’ list, but they cannot do both. The choice is an individual one.

In the Maori constituencies, there may be candidates proposed by major national parties as well as candidates proposed by group-based parties (in addition to independents).

The party lists are nationwide; there are no special lists for the Maori electorate. Each voter can vote for a candidate in the constituency and a nationwide party list.

This system guarantees to the Maori community a minimum number of parliamentary seats. Because of the way the system works and since all voters have one vote for a party list, the political composition of parliament is not significantly affected by the special seats set aside for the Maori people.

In the 2005 elections, the Labour Party won three and the Maori Party four of the Maori constituencies. The former won most votes and seats in the elections as a whole and is

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16 This is the system used for electing the Federal Parliament of Germany. It is mentioned in Section 6.5 above and is described in detail in Blanc et al. (2006) Section 10.2.
the party of the Prime Minister, while the latter is group based. The Maori Party ended up was somewhat overrepresented, but otherwise the overall result was close to proportional.

9.2 Criteria for minority representation

In some cases, a minority is sufficiently protected if it is ensured representation in parliament according to its size. Even then, special rules may be needed. Under plurality vote and proportional systems with high thresholds, the minority may otherwise be underrepresented or not represented at all, as illustrated in Section 9.1 by the Gagauz in Moldova.

In other situations, one might find it necessary to guarantee overrepresentation of the minority.

Arrangements for minority representation should seek, to the best possible extent, to meet the following criteria:

(a) The minority representation should have as little effect as possible on the composition of the parliament along regular political dimensions.

(b) It should be the voters’ individual choice whether group affiliation should have priority over the national political dimension. The choice should preferably be made in secrecy when voting.

(c) If voters are given the choice to register in a minority register or a regular register, such registration must be done free from pressure or intimidation.

(d) If there are special seats set aside for the minority, all parties should have the right to compete for these seats.

(e) The system should not work in favor of segregation and group division.

(f) There should be room for making political choices even for voters deciding to vote on a group basis.

(g) The system should have little room for tactical behavior by parties or voters.

(h) The system should not be more prone to random effects than the system of representation in general.

It may be impossible to satisfy all these criteria, so a trade-off has to be made, but each of them should be fulfilled as far as possible.

Systems in which voters are required to reveal their group affiliation by registering as
belonging to a minority, run counter to criteria (b) and (c) and should ideally be avoided. Representation of geographical areas will in general have fewer undesirable side effects and is therefore preferable to representation explicitly based on group affiliation; compare criterion (e) in the discussion of balanced representation of large group (Section 8.2). It must be recognized, however, that registration of group affiliation in some cases may be unavoidable in order to give the minority adequate protection; see, for example, the discussion in Section 9.1 of the Maori in New Zealand.

In general, it is less problematic to require that candidates register by group affiliation than to impose this requirement on voters. Such registration of candidates may be necessary to implement systems with minority quotas.

In some situation, only parties registered for a special group are allowed to compete for seats set aside for that group. If possible, this should be avoided, see criterion (d).

9.3 Minority representation in list-based proportional systems

List-based proportional elections may be conducted in one nationwide constituency, in a number of multi-member constituencies or in a combination where a number of compensatory seats are distributed at the national level to make up for the deviations from proportionality that follow from adding up the results in the constituencies.

A small minority may need special protection because its voting strength, given the existing rules, does not even guarantee to it a representation comparable to its share of the population. This may happen if there is a high threshold for representation, and also if the elections are carried out in constituencies without compensatory seats, and the minority is spread out over the whole country.

There could also be reasons for securing that a group be overrepresented. For example, very small groups – such as groups with less than one percent of the population – may have a legitimate need for special protection and should therefore be secured at least one parliamentary seat. Such measures can also contribute to conflict resolution and conciliation.

There are a number of ways to secure representation of minorities within proportional systems.

Constituencies

With geographically concentrated minorities, introducing constituencies could be sufficient to secure minority representation, provided that constituency boundaries are drawn so that each of the relevant minorities is concentrated in one or a few constituencies. Such a solution would fulfill all the criteria of Section 9.2. See also the discussion in Section 9.1 of the Gagauz in Moldova.
Remove threshold

If the group is not geographically concentrated but has enough members to win seats based on its nationwide size, the only measure needed could be to remove the threshold for nationwide seats for group-based parties.

In Germany, the threshold for representation is not applicable to parties of national minorities. For elections to the Federal Parliament, this rule has no relevance, since parties of national minorities do not take part. In one of the Länder, Schleswig-Holstein, the party of the Danish minority wins seats in the regional parliament by virtue of this rule.

The system requires a procedure for registering certain parties as representing, for example, a national minority. The purpose is to give special protection to the group, but as an inevitable side-effect certain parties are given a privileged position. This is undesirable. Moreover, the political dimension of the electoral system is weakened for two reasons. First, the individual voters in the minority group are forced to choose between voting for the group-based party or supporting the national party whose political views they prefer. Second, representation from parties not reaching the threshold may change the political majority in parliament, in violation of criterion (a) of Section 9.2. In Schleswig-Holstein, the party of the Danish minority has several times been in the position to decide which of the major national parties shall be able to form the government. Presumably, the supporters of the Danish party have voted for it for ethnic and linguistic reasons and may support either of the major parities.

In spite of these objections, removing the threshold for group-based parties may be an acceptable – and possibly the best – way of guaranteeing representation in parliament for small minorities.

Separate constituencies for minorities

If a minority is not concentrated geographically, one possibility is to create one or more separate constituencies for the minority. Members of the minority can vote in such a constituency regardless of place of residence. Registering for voting in a special constituency should be up to the voter, who should also have the option of registering on the regular voters’ lists. There must be no pressure or intimidation related to this choice.

Documented group affiliation may be required for candidates running in such special constituencies. The special constituency for the Albanians in Montenegro (see Section 9.1) provides, however, an example of a system where no requirement of this kind is imposed.

As explained in Section 9.1, the Maori in New Zealand can choose between registering in a special Maori constituency or in a general constituency. Previously, when the New Zealand parliament in its entirety was elected by plurality vote in single-member constituencies, special constituencies were in practice necessary to secure Maori
representation in parliament; the chance of a Maori being elected in an ordinary constituency was essentially zero. After introduction of the mixed member proportional system in 1996, Maori candidates can be nominated on the national parties' lists and be elected that way. This has indeed happened.\(^{17}\) Therefore, it can be argued that the need for special Maori constituencies is weakened. On the other hand, the objection that the special seats influence the political composition of parliament is also weakened.

Major drawbacks of the system are:

- There may be a pressure from the majority to have all minority voters vote in the special constituencies, so that it is clear how many representatives the minority will get.
- Members of the minority may gain a tactical advantage by not registering in a special constituency, since these seats are secured for the group anyway. It may be preferable to vote in a regular constituency and thereby in a sense secure double influence.

**Seats set aside for a minority without a separate constituency**

In some countries, a minimum number of seats are guaranteed for certain minorities. One way of achieving this is to require parties to declare their group identity, or this must at least be required of parties representing a privileged minority. A voter may vote for any party regardless of group affiliation, but the parties identified with a minority are guaranteed a minimum number of seats.

Variants of this system have been used, for example, in Croatia and Kosovo.

The advantage of the system is that voters can decide on their group identity in secrecy at the polling station. (In the Croatian elections of 1996 and 1997, however, observers noted that Serbs were intimidated in polling stations and were pressured to choose the Serb lists.)

A disadvantage may be that voters belonging to the majority can also cast votes for minority lists and therefore partly decide who shall represent the minorities. On the other hand, minority voters may cast their vote for majority lists since the set-aside seats are secured anyway. These factors may, however, also be seen as advantages, since they imply that the segregation of voters is less prominent.

**Lists-based systems with quotas**

Instead of registering parties or lists with group identity, individual candidates can instead be thus identified. A minority is guaranteed a minimum number of seats, but the seats may be filled from any list running.

For example, if there is a requirement that at least two out of ten seats in a constituency is to be filled from a minority, there cannot be more than eight majority candidates elected.

\(^{17}\) See International IDEA (2005) page 139.
The seats are distributed one by one. If the first eight seats are filled by candidates from the majority, which is likely if the parties tend to nominate majority candidates on top of their lists, the ninth mandate must be awarded to a minority candidate. Therefore, the party next in line to win a seat will have to fill it by a minority candidate. If the party does not have a minority candidate on its list, it will lose the seat. (This assumes that the seats are distributed among the parties one by one, which is the case for some, but not all, methods of proportional representation.)

A variant of this system has been used for elections to the city councils in Mostar in Bosnia and Herzegovina, and also in 2000 for electing the House of Peoples in the Federation of Bosnia and Herzegovina (see Section 8.1). In these cases, the purpose was to maintain the balance between large groups rather than protecting small minorities, but the system can be used in both cases.

The main advantage of the system is that parties have a strong incentive to nominate candidates from several groups. If a party does not have a minority candidate left on its list when a seat has to be filled by a member of that minority, it loses the mandate.

In some contexts, the system has been criticized for promoting proxy or "fake" group representatives. For example, in Bosnia and Herzegovina it has been argued that a Croat running on an otherwise Serb list could not properly represent Croat interests. On the other hand, it can never be guaranteed that an elected member of parliament will represent the interests of the party or list for which the person has been elected. This holds even for political views. Moreover, any other system will probably sharpen group division by only allowing the election of minority representatives from "pure" minority lists.

9.4 Minority representation and single-member constituencies

The possibilities for securing minority protection are much more limited in plurality and majority systems than in proportional ones. (Plurality or majority vote in multi-member constituencies will not be discussed.)

*Drawing up constituencies in order to protect minorities*

If a minority is geographically concentrated, one can draw constituency boundaries in such a way that the minority is the largest group in some of the constituencies. In such cases the regular political balance will not be influenced.

*Separate constituencies for minorities*

Group-based constituencies can be introduced in the same way as explained in Section 9.3. The voters can voluntarily register for the separate elections in these constituencies. (This was the way the Maori people in New Zealand was represented before the mixed member proportional system was adopted in 1996.)
The number of minority constituencies, which in this case equals the number of seats set aside for the minority, can be based on the number of persons registered as belonging to the minority, thus securing that the minority – defined as the group of people who have registered this way – gets its proportional share of the elected assembly. Alternatively, the number of minority constituencies can be based on a conscious choice to secure overrepresentation of the group.

The disadvantages are the same as within proportional systems.

Separate ballot without separate constituencies

It is possible to elect representatives of the minority on one or more separate ballots, without separating out the electorate in special constituencies. A voter may, at the polling station and in secrecy, choose to vote for a minority list.

This solution has the same advantages and disadvantages as under proportional systems.
References


