

The International Mediation of Power-Sharing Settlements

Allison McCulloch (Brandon University) and Joanne McEvoy (University of Aberdeen)

Forthcoming in: *Cooperation and Conflict*

Introduction

As the difficult and complex peace negotiations for Syria demonstrate, international mediators struggle with how to secure a lasting ceasefire, shore up groups' commitment to forging a settlement and establish institutional options that will consolidate peace and an inclusive democratic state. More than twenty years of international practice suggests that power sharing is becoming the dominant approach favoured by third-party mediators for building state capacity and legitimacy in deeply divided societies. Power sharing facilitates co-decision-making opportunities between ethnic or national majorities and minorities in government; in cases of violent conflict, it is also used to facilitate joint decision-making between former combatants.

Despite its burgeoning popularity, power sharing can be an unstable approach to conflict transformation. While it has proven effective in the short and medium term (McCulloch, 2014; McEvoy, 2015), over time it is prone to political crises arising from the legacy of the conflict. The resolution of such crises often entail either the prolonged engagement of external actors in order to restabilise the agreement, as with the extended international mission in Bosnia and Herzegovina, or the re-engagement of external actors in order to defuse crisis moments, as with high level talks in Northern Ireland jointly sponsored by the British and Irish governments. Nonetheless, external actors continue to promote power-sharing arrangements to manage self-determination disputes and ethnic conflicts.¹ This presents a puzzle. External actors are generally motivated to find resolutions with clear exit strategies; that they continue to recommend arrangements that only prolong their involvement in conflict transformation is thus curious.

This article investigates the reasons why third-party mediators turn to power-sharing strategies during peace negotiations. The article draws on in-depth semi-structured interviews with officials from the United Nations and the European Union working for the organizations' respective mediation units as well as documentary analysis of official mediation documents, such as the *UN Guidance on Effective Mediation* and the EU's *Concept on Mediation and Dialogue Capacities*. We interviewed approximately 20 officials working for the respective mediation units and our questions sought to uncover their views on why power-sharing is often recommended as a feasible and potentially fruitful set of institutional arrangements to help secure peace and democracy in conflict-affected, deeply divided places. Drawing on these interviews and relevant documents, we argue that international mediators recommend power

¹ External actors include states, international organizations, regional organizations, non-governmental organizations and private individuals. The US has been a leading democracy-promoter for some time, often promoting political institutions based on group rights including power sharing, what Lise Howard terms 'ethnocratic solutions' (see Howard, 2015).

sharing for both pragmatic and normative reasons. Specifically, we outline four possible explanations for their support of such arrangements, drawing on international law, regional and internal security considerations, support for democracy and minority rights, and what we might call an agnostic approach whereby mediators focus on the mechanics of power-sharing designs at the request of domestic actors. In highlighting these different approaches, we find that each third party mediator often brings their own existing preferences to the table, which has the potential to render each new negotiation *sui generis*. In the conclusion we consider the implications of our findings for on-going and future international mediation processes.

Power-Sharing Problems: Adoption and Implementation

Scholarship on post-conflict institutional design highlights ‘the new wave of power-sharing democracy’ whereby such arrangements are established through international engagement and oversight (Taylor, 2009: 7). External actors have facilitated power-sharing adoption and implementation in Bosnia and Herzegovina, Iraq, Lebanon, Northern Ireland, Sudan and Macedonia and they have recommended such arrangements for Cyprus, the Democratic Republic of Congo, Liberia, Libya, Nepal and Syria. Third parties have been shown to play a crucial role in incentivising contending groups to adopt, maintain and reform power-sharing institutions (McEvoy, 2014, 2015). That is, external actors can facilitate both the adoption and the implementation of power-sharing settlements.

The input of external actors in post-conflict institutional design sheds light on what Horowitz (2014) terms the ‘adoption problem’ whereby little is known about the conditions under which power sharing can be adopted. Horowitz argues that the adoption problem is ‘surpassingly important’ constituting ‘a congeries of bargaining problems’, including the presence of asymmetric preferences between majorities and minorities; a reluctance to adopt novel institutions; negotiators’ bias which restricts the range of options under consideration; and perceptions on the part of the parties as to which institutions meet their preferences as a ‘perceived visibility of interests’ (Horowitz, 2014: 8-9). McGarry (2017) suggests that adoptability goes beyond just finding a set of institutions that parties find acceptable; ‘agreement on additional matters not directly related to power-sharing’ may also be required before a settlement can be put in place (i.e., security arrangements, property matters, refugee return and resettlements). To this end, ‘motivational elements’ may also be required to overcome the adoption problem, including ‘external pressures, demographic changes, economic opportunities, and hurting stalemates’ (McGarry 2017: 17). Certainly, Richard Holbrooke’s depiction of the Dayton negotiations for Bosnia-Herzegovina – ‘For twenty-one days, we cajoled, harassed and pressured the participants’ (2011: 220) – suggests that external actors are prepared to exert such pressures.

In terms of power-sharing implementation, scholars have long debated whether such institutions facilitate political stability. Critics outline two central concerns. First, they worry that power sharing incentivises political extremism and ethnic outbidding (Jarstad, 2008; Roeder and Rothchild, 2005). Such outbidding is liable to lead to collapse, unless one party is prepared to back down. According to Sisk and Stefes (2005: 297), ‘when power-sharing

arrangements lead to such political immobilism (i.e., the inability to make or implement policy due to protracted disagreement), frustrations emerge, and one or more parties defect from the accord.’ Concession, however, can be dangerous: concede too much and the party risks being labeled as sell-outs, losing voter support as well as their credibility as coalition partners (McCulloch 2016). Defection meanwhile can lead to the resumption of violence. Horowitz (2014) labels this the ‘immobilism problem.’ Power sharing often entails prolonged periods of coalition-building as well as protracted legislative decision-making. Voluntary interethnic coalitions are difficult to form and vetoes and other delaying tactics have the potential to encumber legislative decision-making (McEvoy, 2013; McCulloch, 2017). External actors respond to the implementation problem with a variety of carrots and sticks, from helping to clarify, streamline or renegotiate aspects of the original deal (i.e., Northern Ireland) to offering new terms of engagement (i.e., EU accession incentives in Macedonia), the re-deployment or strengthening of peacebuilding missions (i.e., Burundi), to directly overruling local actors and imposing new policies (i.e., Bosnia).

Despite this twofold problem of adoption and implementation, power sharing still holds considerable appeal. Both academic proponents and policy practitioners argue that power sharing is critical to ending war and rebuilding state capacity, that state legitimacy turns on its inclusiveness and representativeness, and that power sharing is a democratic means for accommodating identity differences and incentivising cooperation, which contributes to both capacity and legitimacy (Walter, 2002; McGarry and O’Leary, 2009; Wolff, 2011; McCulloch, 2014; McEvoy, 2015). Political elites, Lijphart (2008, 269) claims, also see the appeal of sharing power: ‘the logic is so compelling that time and again political leaders of deeply divided societies have spontaneously turned to consociationalism as the most obvious way to solve their conflicts’. In the following section, we consider whether external actors share this predilection for power sharing.

Before proceeding, it is worth noting that the pursuit of power-sharing agreements favors a conflict management approach, the objective of which is to channel ‘the violent manifestation of an incompatibility of goals’ between parties ‘into a political process where their disputes can be addressed by non-violent means’ (Yakinthou and Wolff, 2013, p. 1). In this way it seeks to regulate conflict, not resolve it, and consequently falls short of a foundational critique of, and emancipation from, the sources of conflict (Pugh 2013). To this end, power-sharing has been criticized as a status-quo strategy that works within the extant structure of the international state-system to resolve ethnic conflicts. In seeking to uphold Westphalian notions of territorial sovereignty and the liberal peace, it fails to see that “such conflicts may, in part, be brought about by that system itself” (Richmond, 1999, p. 192). And as a practical, instrumental and somewhat technocratic solution for managing violent conflict, power-sharing may be viewed as a ‘problem-solving’ approach.² Our interviewees recognized the constraints within which their mediation efforts could operate and the range of recommendations to which they must remain committed.

² There is a large literature that critiques problem-solving approaches as reinforcing the social structures that cause conflict in the first place (Bellamy, 2004; Richmond, 2006; Pugh 2013).

Mediation Efforts at the International and Regional Level

International mediators seeking to resolve self-determination disputes and ethnic conflicts face a series of complex and confusing political and legal questions. Broadly defined, mediation constitutes ‘assisted negotiation’ whereby ‘conflicting parties gather to seek solutions to their problems, accompanied by a mediator who facilitates discussion and the flow of information, aiding in the process of reaching agreement’ (Bercovitch, 2006: 290). In a research field that has grown considerably in recent years, questions regarding the conditions for successful or effective mediation remain unresolved (Bercovitch 2006; Wallensteen and Svensson, 2014).

Mediation has become ‘increasingly embedded’ within the structures and programs of both international organizations and states (Lanz, 2011: 278). Different mediators come to the table with different skills, resources, and preferences. The United Nations has a different set of strengths (i.e., moral authority, global scope) and limitations (i.e., lack of overarching authority, coordination problems among its component parts) than regional and non-governmental organisations (Kittikhoun and Weiss, 2012). Regional organisations, such as the European Union, have become more engaged in mediating intra-state conflict within their neighbourhood and further afield (Pevehouse, 2002). As demonstrated in the creation of the 2009 *Concept on Mediation and Dialogue Capacities*, the EU has sought to provide increasingly formalized mediation support to the UN’s lead, thereby developing its own status as a global player in conflict resolution. The development of the EU’s mediation role fits squarely with its overarching strategic vision (Tocci, 2016). NGOs have also taken on a more salient role in conflict mediation than was previously possible (Lanz 2011). The further institutionalization of mediation expertise in international organizations, regional organizations and NGOs adds to the ‘bureaucratization of positive peace’ that is critiqued for limiting local ownership in peace processes (Goetschel and Hagmann, 2009). Acknowledging the influence of a ‘bureaucratized peace’, we do not yet know how mediators approach the range of potential institutional options and under which conditions they do or do not recommend power sharing.

The United Nations Mediation Support Unit and Standby Team of Mediation Experts

The UN is one of the most visible actors engaged in mediation and peace-making efforts. As an intergovernmental organization, the UN is often seen a composite actor subject to the whims of great power politics, but there is also reason to treat it as a unitary actor (Iji, 2017; Lanz, 2011; Convergne, 2015). While previously its mediation activities were ad hoc, much of the UN’s mediation work is now streamlined through the Department of Political Affairs and its Mediation Support Unit (MSU). Created in 2006, MSU oversees four layers of mediation support: in-house experience, a rapid-response Standby Team of Mediation Experts (SBT), a roster of over 200 mediation experts and partnerships with think-tanks and NGOs. We are particularly interested in the SBT, given that it has included a Senior Expert on Power-Sharing since its inception in 2008.

The SBT is tasked with providing ‘technical advice to United Nation’s officials and others leading mediation and conflict prevention efforts’ (MSU n.d.). Members of the team, often recruited from academia, are expected to deploy within 72 hours (though the turnaround time can be shorter). The team structure has been compared to a ‘Swiss Army Knife’ model of mediation in that it has ‘multiple but separately deployable elements within one mechanism’ (Herrberg et al, 2015). Indeed, it is rare for members to deploy as a whole team: ‘You often don’t need a natural resource, constitution, power sharing, gender and process design expert all at the same time so I think the way they set it up actually is much more efficient but it does mean that we hardly ever see each other’ (personal interview, SBT member, 2016). They are not deployed as UN staff but as independent experts; the arrangement has been described as a ‘unique semi-autonomous model [that] blends independence from and ownership by the UN’ (Herrberg et al, 2015). Their role is to offer thematic expertise on a variety of issues, including security arrangements, natural resources, constitutions, process design, transitional justice, gender and social inclusion, and power sharing. Members deploy at the request of current UN Envoys, other UN departments and agencies, UN field missions, regional or sub-regional organizations, NGOs, and (less often) member states (personal interview, DPA, 2016).

Team members can take on various roles in a mediation effort including ‘providing technical expertise in a specific area; giving advice on procedural and agenda-setting issues; providing analysis of the positions of parties in negotiations, including the identification of potential points of convergence as well as possible gaps; drafting the text of agreements; leading workshops for parties on substantive or process issues; and providing specialised mediation training and coaching’ (DPA, 2014). According to Herrberg et al (2015: 34), the team deploys in four different kinds of scenarios: ad hoc (quick fix deployments); gap filling (fact-finding missions); stop-gapping (discrete technical expertise and/or facilitation); and playing a role/becoming part of the fixture, with stop-gapping and gap-filling increasingly more common. Between 2008 and 2015, team members deployed more than 330 times across the eight thematic areas, including in Cyprus, Yemen, Libya, Syria, Malawi, Sudan, and Somalia. Given their quick deployment to global hotspots, one SBT member has rightly described the team as ‘mediation firefighters’ (Zahar, 2016).

From the outset, power sharing has been a key component of the SBT; indeed, it has been “the only specific constitutional model for which they have sought a specialist” (Yakinthou and Wolff, 2012, p. 2). While some of the other areas have shifted over the years (e.g., gender was not a thematic area in the first iteration but included thereafter), the position of Senior Expert on Power Sharing has remained relatively consistent. Some of the past senior experts include well-known scholars of institutional design and conflict management, who between them bring differing assessments of the benefits of power sharing. John McGarry and Brendan O’Leary (2009) are well-known proponents of consociationalism whereas George Anderson’s (2007) expertise is on federal arrangements; Christina Murray and Scott Smith focus on transitional executive power sharing arrangements (Smith, 2016; Murray and Cheeseman, 2017); and Marie-Joëlle Zahar has taken a generally more sceptical view of power sharing in the past (Sriram and Zahar, 2011). MSU and SBT take a deliberately broad approach: ‘obviously power sharing means a lot of different things to different people and there’s various subsets to power

sharing...including federalism, autonomy arrangements, asymmetric autonomy arrangements...and governments of national unity' (personal interview, MSU, 2016). Indeed, at least one former SBT member cautioned us against assuming that there is a single 'UN voice' on power sharing.

This open-ended approach is consistent with the UN's mediation guidelines, which require a combination of generalized and case-specific knowledge. *A Manual for UN Mediators* (2010) and the *Mediation Start-Up Guidelines* (2011) speak to the importance of the technical aspects of power sharing in mediation. Both documents emphasize the need for mediators and experts to draw from experiences in other countries but to tailor technical power-sharing recommendations to the case at hand: mediation experts can 'advise on options for resolution using comparative experiences from other countries' on deployment (DPA, 2011) and can also offer their expertise through advisory papers. While the technical details of implementation may vary from case to case, there is also a predisposition to generally support power sharing implicit within the mediation documents.

How does the UN see the problems of adoption and implementation? The mediation documents make only passing reference to the adoption problem, and do so in broad terms about the nature of peace agreements, rather than anything specific to power sharing. Likewise, implementation is only discussed in broad terms. As the *Manual* (2010: 46) makes clear: 'peace agreements must satisfy certain criteria to withstand the stress of implementation'. Yet it is also clear that SBT members do consider such challenges. Writing about the Cypriot negotiations, McGarry (2017: 32) calls for a greater focus on the issue of adoptability – after all 'what is adoptable is not necessarily what is optimally functional'. According to another senior expert, 'a common feature of these power-sharing arrangements is they need constant maintenance' (personal interview, 2016). Nonetheless, when asked about the initial recommendation of power sharing, they suggested it comes from 'a lack of alternatives', and from a 'tactical' motivation': 'unless there is an outright victory... in these post-conflict situations I think the convergence, the dynamics, the power analysis' lead toward power sharing (personal interview, SBT member, 2016). Each team member, it appears, confronts these challenges in their own way.

The European Union and the Mediation Support Team

Mediation has always been at the heart of the European integration project given the organisation's own experience as a post-war peace project. The development of the EU's formal capacities in international mediation can be traced to the European Security Strategy (ESS) of 2003 and the Secretary General/High Representative's 2008 Report on the Implementation of the ESS, which recommended the expansion of the EU's mediation capacities (SG/HR, 2008). In November 2009 the Council of the European Union adopted the *Concept on Mediation and Dialogue Capacities*, which aimed to establish a more coordinated and focused approach to EU mediation and thus enhance the EU's status as a global actor in conflict resolution (Council of the European Union, 2009). The *Concept's* goals include strengthening EU mediation support capacity, providing training for EU officials, supporting local mediation efforts and cooperating effectively with other mediation actors, principally the

UN and other regional organisations such as the African Union and the Association of Southeast Asian Nations. Stating that ‘The EU is a global actor and its political, developmental and security interests go well beyond its neighbourhood’, the *Concept* positioned the EU as a potential lead in mediation efforts while highlighting the importance of coordination with others (Council of the European Union, 2009: 9). The *Concept* identified various ways in which the EU could pursue its mediation activities: promotion of mediation as a means to resolve conflict; leveraging mediation; supporting mediation efforts of others through training and providing expertise; and funding mediation efforts. Notably, mediation was to be part and parcel of the EU’s ‘comprehensive toolbox in the area of conflict prevention and crisis management’. A range of EU actors have since been involved in mediation activities: the Secretary General/High Representative, the EU Presidency, European Commission, EU Special Representatives, ESDP/CSDP missions and European Commission delegations.

The Lisbon Treaty (in force from late 2009) established new structures in EU external relations including the High Representative for Foreign and Security Policy and Vice President of the Commission, responsible for the operation and coordination of the European External Action Service (EEAS). The EEAS’s ‘Conflict Prevention, Peacebuilding and Mediation’ division supports various EU units in their conflict resolution efforts. Within the division, the Mediation Support Team (MST) is the principal unit responsible for promoting mediation and dialogue and is ‘tasked with supporting EU institutions and partners with advice, technical expertise and real-time support before, during and in the aftermath of armed conflicts’ (EEAS Factsheet, n.d.). The MST offers operational support and expert deployments (from the in-house team as well as a roster of more than 70 specialised experts), support and training, and is responsible for developing mediation partnerships with other organisations (UN, AU, ASEAN and NGOs). The team’s remit has focused on helping the EU ‘assume a more active role internationally in support of peace’ (EEAS Factsheet, nd).

Although the 2009 *Concept* set out an ambitious plan for the EU as a global actor with potential to act as lead or co-mediator in peace negotiations, MST officials acknowledge that the EU’s role cannot compare to the UN’s global reach and ultimately seeks to support UN efforts (personal interview, 2017). EU mediation, and the MST’s work, is positioned in a broad manner encapsulating political, financial and technical support to the UN. Apart from the case of Kosovo/Serbia, cases of the EU acting as the lead mediator are rare. Notably, the MST was named Mediation Support Team to reflect its nature ‘as a smaller entity’ than the UN’s MSU (personal interview, 2017). Despite the differences in size and remit, the MST has adopted a similar framework to the MSU by pitching itself ‘as a horizontal service provider’, offering a service to interested parties. In performing a ‘niche-fulfilling role’, EU mediation capacity benefits substantially from the organisation’s financial leverage in funding mediation efforts (personal interview, 2017). This financial leverage has allowed the EU to perform key roles in several peace processes, as in Mali where the EU has had a key role in supporting the implementation of the 2015 peace agreement owing to its financial contribution (EEAS, 2016).

In relation to constitutional design, MST officials have had a series of coaching workshops to better understand the merits and limitations of power sharing in conflict-affected states. Unlike

the UN, the MST does not have a formal institutional structure as per the SBT including experts on power sharing. Highlighting the different mandates and structures of the two mediation units, EU mediation is more often about supporting the framework set up by the UN, ‘so our possibility to influence and change the fundamental parameters of the mediation are often quite limited’ (personal interview, MST, 2017). In performing this supportive role to UN-driven mediation efforts, the MST and other units within EEAS have spent time considering the conditions under which the EU should support power sharing. There have been efforts to assess the EU’s experience in supporting power sharing and how such experience can help inform on-going mediation efforts in relation to cases including Libya and Syria.

Why External Actors Recommend Power Sharing: Four Perspectives

A central finding from our research is that there is, in fact, no single approach to power sharing or its recommendation in cases of deep ethnic division and violent intra-state conflict. Nonetheless, it is possible to articulate a range of reasons why external actors support power-sharing settlements. Here we offer four possible perspectives, which we derived from our interviews, recognizing that each mediation actor may have their own preferences or may bring a mix of perspectives to the table.

Perspective I: International Law

External actors operate in a complex international legal environment and need to adhere to general principles of international law as well as to their own organization’s rules. As the UN *Manual* stresses: ‘UN mediators are expected to be impartial but not neutral, i.e., they should be constant advocates for the principles of the United Nations, as embodied in the Charter’ (2010: 23). This includes the proscription on amnesties in UN-mediated processes and how to deal with those indicted by the International Criminal Court, as well as broader principles of international law, such as the right to self-determination and territorial integrity. Likewise, EU mediators are expected to be impartial in facilitating agreement between the conflict parties, also upholding democratic values and human rights norms (personal interview, 2017).

Often the nature of the conflict in deeply divided societies concerns the contending groups’ divergent self-determination claims. Since 1945, more than seventy armed conflicts over self-determination have broken out (Gallagher Cunningham, 2014: 3). External mediators must adopt a careful stance, facilitating group constitutional preferences so as to help prevent recurrence of conflict but within the parameters of the right to self-determination. The principle of self-determination has been defined broadly as ‘the notion that ethnic groups have the right to determine their own fate’ with territory being central to such claims (Duffy Toft, 2012: 584). This can either mean the pursuit of greater autonomy within the existing state or ‘the group may come to feel entitled to a state of its own, either out of fear for its survival or out of a sense of positive destiny’ (Duffy Toft, 2012: 584). Yet the meaning and content of self-determination remain contested; there is a clear tension between self-determination and territorial integrity and state sovereignty. In practice, the application of the right to self-determination has tended to be limited to colonial situations. Fabry (2015: 500) discusses the ‘conscious and deliberate

subordination of all non-colonial notions of self-determination to the principle of territorial integrity'. For example, UN General Assembly Resolution 1514 contains the statement that 'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations'. The reasons for this international commitment to territorial integrity over self-determination claims are explained by several factors including concerns of a potential 'domino effect of never-ending secessionist bids' and fear of violent conflict (Fabry, 2015).³

Constrained by the need to provide options that can reconcile self-determination and territorial integrity, mediators are likely to turn to complex power-sharing arrangements, which is seen as a middle way between these norms. By combining traditional rules on power sharing with strong forms of territorial self-governance, complex power sharing is thought to provide incentives for resolving self-determination claims in a peaceful manner (Wolff, 2009). The rationale is pragmatic: the parties do not have to choose between two compelling legal norms but can settle for a satisficing solution. Conflict parties, too, have sometimes presented power sharing as an approach that supports state sovereignty but which also recognizes the profound mistrust between minority groups and the state (personal interview, SBT member, 2017). EU mediators have assessed the 'trade-off' between Kosovo's 'territoriality' and proposed power sharing and decentralised structures for the Serbian community in northern Kosovo (personal interview, 2017). EU mediation efforts in this case were focused on 'devising a middle ground' between the conflict parties with elements of power sharing part of the solution (personal interview, 2017). Yet there are consequences to this pragmatic rationale. While such pragmatism confronts the problem of adoption, it leaves open the implementation problem. International courts are beginning to challenge the democratic credentials of consociational pacts, arguing that they infringe the right not to be treated on the basis of particular prohibited characteristics, such as race or ethnicity (McCrudden and O'Leary, 2013). How mediators take these legal developments into account in their conflict resolution efforts still remains to be seen.

Perspective II: Regional and Internal Security

Conflict resolution efforts on the part of the UN and the EU ultimately aim to enhance international peace and security. In the context of mediation activities to resolve intra-state conflict, cross-communal power sharing has been viewed pragmatically as a means to stop violence and facilitate security both within the conflict-affected state and beyond its borders (O'Leary 2005).

³ There has, however, been some inconsistency as the unilateral secession of Bangladesh in 1972 and recognition of an independent Kosovo illustrate. The International Court of Justice's 2010 Advisory Opinion on Kosovo facilitated the acceptance of Kosovo's independence but resisted any move to develop international law in a direction that would provide a right to secede. In respect to Kosovo, the international community, and in particular the European Union, has remained divided on the issue of Kosovo's secession from Serbia and its associated recognition (see Oeter, 2014; Walter, 2014).

Power sharing, for example, has been a central component of the post-conflict transitions in several Western Balkans states. For external actors involved in these transitions, power sharing is regarded as a means to enhance both internal and regional security. Former EU Special Envoy and High Representative to Bosnia Carl Bildt suggests that power sharing had to work because ‘Secession by one community is as unacceptable as dominance by one’ (OHR, 1996). Even though the EU supports power sharing in Bosnia, it has long called for constitutional reforms to help improve functionality (Sebastian, 2009) and has continued to push for specific reforms to address the 2009 judgment of the European Court of Human Rights.⁴ Efforts to resolve the conflict in Macedonia in 2001 were also shaped by security concerns both within the state and in relation to the crisis in neighbouring Kosovo (McEvoy, 2015: 164-65). US representative James Pardew (2011) who worked with EU representative Francois Leotard to broker the Ohrid Framework Agreement has written about how their mediation efforts must be seen in the regional context of conflict related to the break-up of the former Yugoslavia.

In the more recent case of EU-led mediation on Kosovo/Serbia, a deal brokered by EU High Representative Catherine Ashton in April 2013 aimed to implement power sharing between the Serb majority areas of northern Kosovo and the ethnic Albanian-led Kosovo central government (RFE/RL, 2013). The ‘high level dialogue’ between the prime ministers of Kosovo and Serbia, facilitated by Ashton, addressed the situation of the Serbian minority community in Kosovo ‘which would meet the security and justice needs of the local population in a way that ensures the functionality of a single and institutional and administrative set up in Kosovo’ (European Commission, 2013: 6; personal interview, 2017). The discussions on northern Kosovo concluded with the ‘First agreement of principles governing the normalisation of relations’ providing for an Association/Community of Serb municipalities in Kosovo (European Commission, 2013: 7). The administrative reforms to address the needs of the Serbian minority have been part of Kosovo’s preparations for its Stabilisation and Association Agreement (SAA) with the EU, which came into force in April 2016. The SAA is positioned as helping to facilitate ‘the establishment and consolidation of a stable European order.’ The SAA’s aim is to contribute to the ‘political, economic and institutional stability in Kosovo, as well as to the stabilisation of the region’ (Art.1, SAA, 2016).

Power sharing has also been recommended in constitutional design processes in the Middle East to help stabilize individual states as well as the wider region. In the case of Iraq, there was an acknowledgement by various external actors that a significant governance problem related to the concentration of power at the state level and its dominance by one community. To help transition the country towards inclusive representative democracy and prevent the recurrence of violent conflict, constitutional reform proposals focused on power sharing at the centre and the creation of a pluri-national federation involving decentralization of authority to

⁴ The European Commission continues to remind the Bosnian authorities that the constitution remains in breach of the European Convention on Human Rights (ECHR) as per the ruling in the Sejdić-Finci case (as well as in two subsequent cases) and needs to be amended (European Commission, 2016). In the ruling of December 2009, the Court found that the applicants’ inability to stand for election to the House of Peoples and the Presidency violated the ECHR regarding ethnic discrimination for representation in institutions for persons not belonging to the three constituent peoples.

governorates and municipalities (O’Leary, 2009). In the context of the subsequent violence carried out by ISIS/Da’esh, the UN has sought to shore up cross-communal cooperation at the state level, wider societal reconciliation and the support of the Kurdistan Regional Government to improve internal stability (UN News, 2016). In Afghanistan, following allegations of election fraud at the June 2014 presidential election, the UN supervised an audit of votes and helped deliver a deal whereby Ashraf Ghani became president and Abdullah Abdullah was appointed to a new chief executive position. For the UN team engaged in resolving the issue, the threat of violence on the part of the losing side directed the talks toward power sharing (personal interview, 2016). Moreover, the power-sharing deal was considered a solution to a weakness of the constitution, which invested considerable power in the presidency. Speaking of the on-going security challenges facing the country, head of the UN Assistance Mission Nicholas Haysom called for greater effort on the part of the power sharing administration towards enhanced peace and stability and called for direct talks between the Taliban and the Afghan government (UN News, 2016).

These considerations of power sharing as a means to address security issues point to one of the most challenging aspects of international mediation, namely the issue of whether and how to integrate former armed groups into the political process and power-sharing structures. Both the MSU and MST are sensitive to this challenge. For example, EU guidance on integrating former armed groups into mediation processes notes that power sharing can help incentivize groups away from violence and toward a political process. The guidance suggests that incentivising the leaders of such movements into power-sharing arrangements relies ‘on the assumption that if leaders are “transformed”, their members will follow’ (EEAS, 2012). This straightforward relationship between leaders and followers is qualified, however, by suggesting that ‘the choices made by leadership do not necessarily reflect the general preferences among the different groups’ and members of armed groups may choose not to follow. Power sharing is considered a ‘tactical’ solution to delivering a negotiated settlement and overcoming the adoption problem (personal interview, 2016). The focus remains on overcoming the adoption problem, even while anticipating problems in implementation.

Perspective III: Democracy and Minority Rights

In their respective conflict resolution efforts both the UN and the EU are committed to promoting liberal values on political participation, human rights and the protection of minorities. Although there is some variation between the two organisations on how to approach national minority rights (Kymlicka, 2008), their recommendations for power sharing are often framed as a way to help enhance the prospects of stable and inclusive democracy.

The promotion of democracy and minority rights has been an important element of EU mediation activities, particularly in the Western Balkans as part of the Stabilisation and

Association Process (SAP).⁵ Candidate countries must comply with the EU's political criteria set out at the 1993 European Council meeting in Copenhagen by achieving 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.⁶ Many of the policies recommended by the EU, OSCE and Council of Europe on minority rights 'are recognizably consociational' (Wilkinson, 2005: 243-44). In Macedonia, the negotiations leading to the 2001 Ohrid Framework Agreement focused on the inclusion of the ethnic Albanian community into the political institutions. At subsequent times of political crisis, the EU has helped stabilise the power-sharing arrangements by emphasising the need for minority inclusion in decision-making (McEvoy, 2015). In Bosnia, in supporting power sharing between the main ethnic groups, the EU has also sought to link the country's progress towards accession with constitutional reforms to end discrimination against small minority groups beyond the three 'constituent peoples'. The EU-led mediation on Kosovo/Serbia also seeks to address minority rights issues on the part of the Serb-majority community in northern Kosovo, leading to the 2013 agreement on power-sharing structures.

The *UN Guidance on Effective Mediation* states that mediation must adhere to normative legal frameworks relating to 'justice, truth and reconciliation, the inclusion of civil society, and the empowerment and participation of women in the process' (UN, 2011: 16). Mediation takes place in cognisance of the UN 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities which sets standards for states adopting legislation on minority rights. These commitments to democracy and minority rights have informed UN mediation efforts. In Burundi, in cooperation with the African Union, the UN helped broker the Arusha Peace and Reconciliation Agreement of 2001 and the 2005 constitution, which provided for power sharing between the Hutu and Tutsi communities and an explicit recognition of minority rights (Gilbert, 2013). In Iraq, the 2005 constitution provides for a pluri-national federation with power sharing at the centre and a commitment to minority rights with the Kurdish language recognised as an official language and a guarantee for all Iraqis to educate their children in their mother tongue (Art.4, Constitution of Iraq, 2005). Our interviewees spoke of the need to ensure inclusion in government of the various groups in order to help prevent the peace agreement from falling apart. The transition of armed groups to political movements/parties in the political process is also acknowledged as a challenging but potentially important way to secure peace, stability and democracy (EEAS, 2012).

Perspective IV: The Agnostic Approach

The final strategy is to frame mediation interventions in technical rather than political terms. Neither explicitly pragmatic nor normative, this strategy defaults to playing a supportive role, deferring to the preferences of the conflict parties. This suggests that mediators do not necessarily recommend power sharing based on their own interests or preferences, but only do

⁵ The EU's SAP establishes bilateral agreements between the EU and the states of the Western Balkans to establish a free trade area between the EU and these countries, to identify political and economic objectives and help prepare the countries on the path to EU accession.

⁶ The monitoring of states' compliance with developing international standards on minority rights has largely been undertaken by the OSCE High Commissioner on National Minorities (Galbreath and McEvoy, 2012).

so at a technical level once the parties have already conceded that some kind of power sharing should form the basis of their agreement. Mediators, then, would be just as willing to facilitate some alternate arrangement, if this is what the parties prefer (personal interview, SBT member, 2017). The role of such an agnostic mediator is to approach power sharing only in terms of its specific institutional configuration, and only then to lay out different institutional choices. This requires comparative expertise: ‘even if the last thing you want to do is get caught in a template, it is useful to see examples from other processes; you at least see things that you need to have thought about’ (personal interview, SBT member, 2016). Another former SBT member adds that the parties often seek out this comparative expertise, wanting to be reassured not only that what is proposed to them has been effective elsewhere but that such comparisons also reinforce their own existing preferences (personal interview, SBT member, 2017).

This approach reflects wider attempts at the ‘depoliticization’ of mediation. That is, sensitive to any perception of external interference and needing the consent of parties for their involvement, the MSU has sought to frame its interventions as non-threatening, ‘emphasizing the technical nature of the issues at hand, rendering them seemingly apolitical’ (Convergne, 2015: 191; see also UN, 2011: 25). Even names and titles are depoliticized. The MSU is specifically framed as a support unit rather than a mediation unit and in 2016 the titles of SBT members changed from ‘experts’ to ‘advisors.’ This reinforces the idea that the ‘advice provided by the unit’s experts may be disregarded by the requester’ (Convergne 2015: 192). The technical nature of the SBT was highlighted in our interviews:

What the Standby Team does in a way is expand the imaginations of the parties; we try not to be too prescriptive and say “what we think you really need is this.” What we would say is “look, we notice the sort of problems you’re having, what they did in this country was that and this, these were the lessons that they learned,” just to draw down a little bit of structure and to demonstrate the benefits and the drawbacks. But we try to not really be too prescriptive (personal interview, MSU, 2016).

Yet as one SBT team member noted, having the position of a power sharing expert/advisor may help to predetermine the contours of the agreement; rather than seeing power sharing as one of several governance strategies, it instead becomes the default option (personal interview, 2017). To the extent that external actors prioritise thematic expertise on power sharing, this reflects current practice. The trend in peace settlements is to adopt some kind of power-sharing configuration; Hartzell and Hoddie (2003), for example, found that of the 38 peace agreements negotiated between 1945 and 1998, 37 contained power-sharing provisions while a search of the UN Peacemaker database returns 176 different agreements that contain provisions on political power sharing since 1989. Consequently, MSU could have reasonably anticipated requests for power sharing knowledge from the SBT. Indeed, such requests have been forthcoming: between 2008 and 2015, SBT power-sharing experts deployed 60 times.⁷ The risk, however, is that power sharing becomes a ‘catch-all’ solution (personal interview, 2017).

⁷ By comparison, there were 52 deployments on security arrangements, 54 on constitutions, 26 on gender and social inclusion, and, by the far the most popular, 85 for process design (Herrberg et al, 2015). Indeed, process design has been so in demand that MSU now ensures that all SBT members have some expertise in this area (personal interview, MSU, 2016).

An agnostic approach requires mediators to come to the table with no pre-determined preference for any one institutional design. The reason why they recommend power sharing, then, is connected to the parties' desire for such arrangements and for the provision of expert knowledge. We suggest, however, that even though mediators may present such expertise as technical and driven by the parties' preferences, any recommendation that reconfigures political institutions will have important political consequences.⁸ As Michael Kerr (2005, 38) suggests, the adoption of power sharing often align with the foreign policy interests of external actors in that 'it allows powerful states to maintain a dominant role within regions where they have an interest, as any new consociation is almost entirely reliant on those who brought it into being'. Nonetheless, presenting power sharing as a compromise 'technical' solution addresses one of the biggest hurdles to successful conflict management – parties often have divergent, even irreconcilable, interests. If the parties have already committed to some form of power sharing, this agreement may form the basis for a longer-lasting settlement that persists in the implementation period. It is less clear, however, on how parties come to accept power sharing in the first place.

Conclusion

This article considers why external actors support the adoption of power-sharing arrangements, drawing from a series of semi-structured interviews with mediation actors at the UN and EU. In comparing the mediation support strategies of both organisations, we focused on how each approaches support for power sharing and how they factor the problems of adoption and implementation into their decision-making processes. Three themes are apparent.

First, there is no single approach to power sharing either within or between the UN and EU; that is, there is 'no single voice' on power sharing as a mediation strategy. Both organisations adopt a broad understanding of what power sharing entails and those we interviewed gave different answers to why, how, and when power sharing gets recommended. Moreover, appeals to power sharing offer different rationales at different stages of the conflict; as one UN SBT member noted, at one stage, the appeal may be about minority rights and at another it can be framed in terms of security considerations (personal interview, 2017). Second, both organisations are keen to present their mediation work as technical, rather than about forcing particular approaches on actors. That is, they represent their work as being about 'expanding the imagination' of parties. Nonetheless, it is also clear that political factors influence negotiations, whether it is a pragmatic approach to achieve internal and regional security or normative support for international legal norms on self-determination and minority rights. Finally, in terms of how external actors approach the problems of adoption and implementation, our findings suggest a greater focus on the adoption problem. This contrasts with academic perspectives, which tend to focus on the functionality of power-sharing implementation (McGarry, 2017). This is not to say that external actors do not consider

⁸ It is also interesting that some mediators who see value in power-sharing structures to help resolve conflict nevertheless see power sharing as a 'quick-fix' or institutional 'sticking plaster' to manage political disputes over power (personal interview, 2017). This reservation was expressed in relation to power sharing following contested elections and not as a means to manage self-determination disputes.

the challenges of implementation, but the priority of mediation support actors, after all, is to overcome the hurdle of adoption. Consequently, the analysis presented in this article demonstrates that over twenty years of international mediation efforts have established broad support for power sharing settlements and that this support derives from a mixture of pragmatic, technical and normative preferences.

References

- Anderson G (2007) *Federalism: An Introduction*. Oxford: Oxford University Press.
- Bellamy, AJ (2004) The “next stage” in peace operations theory? *International Peacekeeping*. 11(1): 17-38
- Bercovitch J (2006) Mediation Success or Failure: A Search for the Elusive Criteria. *Cardozo Journal of Conflict Resolution* 7(2): 289-302.
- Convergne E (2015) Learning to Mediate? The Mediation Support Unit and the Production of Expertise by the UN. *Journal of Intervention and Statebuilding* 10(2): 181-199.
- Council of the European Union (2009) *Concept on Strengthening EU Mediation and Dialogue Capacities*. Brussels: General Secretariat of the Council, 15779/09.
- Duffy Toft M (2012) Self-Determination, Secession, and Civil War. *Terrorism and Political Violence* 24: 581-600.
- European Commission (2013) *Joint Report to the European Parliament and the Council, Brussels: High Representative of the European Union for Foreign Affairs and Security Policy, 22.4.2013, JOIN 8 final*.
- European External Action Service (no date) *EU Mediation Support Team*, available at: http://www.eeas.europa.eu/archives/docs/factsheets/docs/factsheet_eu-mediation-support-team_en.pdf
- European External Action Service (2012) *Mediation and Dialogue in transitional processes from non-state armed groups to political movements/political parties*, EEAS Factsheet, November 2012
- Fabry M (2015) The Right to Self-determination as a Claim to Independence in International Practice. *Ethnopolitics* 14(5): 498-504
- Horowitz DL (2014) Ethnic Power Sharing: Three Big Problems. *Journal of Democracy*. 25(2): 5-20.
- Galbreath DJ and McEvoy J (2012) *The European Minority Rights Regime: Towards a Theory of Regime Effectiveness*. Basingstoke: Palgrave Macmillan.
- Gallagher Cunningham K (2014) *Inside the Politics of Self-Determination*. Oxford: Oxford University Press.
- Gilbert J (2013) Constitutionalism, Ethnicity and Minority Rights in Africa: A Legal Appraisal from the Great Lakes Region. *International Journal of Constitutional Law* 11(2): 414-437.
- Goetschel L and Hagmann T (2009) Civilian Peacebuilding: Peace by Bureaucratic Means? Analysis. *Conflict, Security and Development* 9(1): 55-73.
- Hartzell C and Hoddie M (2003) Institutionalizing Peace: Power-Sharing and Post-Civil War Conflict Management. *American Journal of Political Science* 47(2): 318-332.

- Herrberg A, Packer J and Varlea M (2015) *The Evolution of the United Nations Standby Team of Mediation Experts in Context: Key Trends, Issues and Recommendations*. Brussels: Peace My Way.
- Holbrooke R (2011) Why Are We in Bosnia? In Chollet D and Power S (eds.) *The Unquiet American: Richard Holbrooke in the World*. New York: Public Affairs.
- Howards, L (2015) US Foreign Policy Habits in Ethnic Conflict. *International Studies Quarterly* 59(4): 721-734.
- Iji T (2017) The UN as an International Mediator: From the Post-Cold War Era to the Twenty-First Century. *Global Governance* 23: 83-100.
- Jarstad A (2008) Power Sharing: Former Enemies in Joint Government. In Jarstad A and Sisk T (eds.), *From War to Democracy: Dilemmas of Peacebuilding*. Cambridge: Cambridge University Press.
- Kerr M (2005) *Imposing Power-Sharing: Conflict and Coexistence in Northern Ireland and Lebanon*. Dublin: Irish Academic Press.
- Kittikhoun A and Weiss T (2011) Imperfect but Indispensable: the United Nations and Global Conflict Management. In Wolff S and Yakinthou C (eds), *Conflict Management in Divided Societies: Theory and Practice*. London: Routledge.
- Kymlicka W (2008) The Internationalization of Minority Rights. *International Journal of Constitutional Law* 6(1): 1-32
- Lanz D (2011) Who Gets a Seat at the Table? A Framework for Understanding the Dynamics of Inclusion and Exclusion in Peace Negotiations. *International Negotiation* 16: 275-295.
- Lijphart A (2008) *Thinking about Democracy: Power-Sharing and Majority Rule in Theory and Practice*. London: Routledge.
- McCulloch A (2014) *Power-Sharing and Political Stability in Deeply Divided Societies*. London: Routledge.
- McCulloch A (2017) The Use and Abuse of Veto Rights in Power-Sharing Systems: Northern Ireland's Petition of Concern in Comparative Perspective. *Government and Opposition* DOI: <https://doi.org/10.1017/gov.2017.6>
- McEvoy J (2013) We Forbid! The Mutual Veto and Power-Sharing Democracy. In McEvoy J and O'Leary B (eds.), *Power Sharing in Deeply Divided Places*. Philadelphia: University of Pennsylvania Press.
- McEvoy J (2014) The Role of External Actors in Incentivizing Post-Conflict Power-Sharing. *Government and Opposition* 49(1): 47-69.
- McEvoy J (2015) *Power-Sharing Executives: Governing in Bosnia, Macedonia and Northern Ireland*. Philadelphia: University of Pennsylvania Press.
- McGarry J (2017) Centripetalism, Consociationalism and Cyprus: The 'Adoptability' Question. In McCulloch A and McGarry J (eds.), *Power-Sharing: Empirical and Normative Challenges*. London: Routledge.
- McGarry J and O'Leary B (2009) Power Shared after the Death of Thousands. In Taylor R (ed.), *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict*. London: Routledge.

- Murray C and Cheeseman N (2017) Power-Sharing in Kenya: Between the Devil and the Deep Blue Sea. In McCulloch A and McGarry J (eds.), *Power-Sharing: Empirical and Normative Challenges*. London: Routledge.
- Oeter S (2014) The Role of Recognition and Non-Recognition With Regard to Secession. In Walter C, von Ungern-Sternberg A and Abushov K (eds.) *Self-Determination and Secession in International Law*. Oxford: Oxford University Press.
- Office of the High Representative (1996) Article by the High Representative, Carl Bildt: "Bosnia Can't Do It Alone." 4 November 1996.
- O'Leary B (2005) Debating Consociational Politics: Normative and Explanatory Arguments. In Noel S (ed.), *From Power-Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*. Montreal: McGill-Queen's University Press.
- O'Leary B (2009) *How to Get Out of Iraq with Integrity*. Philadelphia: University of Pennsylvania Press.
- Pardew J (2011) Diplomatic History of the Ohrid Framework Agreement. In Blerim K (ed) *Ten Years from the Ohrid Framework Agreement: Is Macedonia Functioning as a Multi-Ethnic State?* Tetovo: South East European University.
- Pevehouse JC (2002) With a Little Help from my Friends? Regional Organizations and the Consolidation of Democracy. *American Journal of Political Science* 46(3): 611-626.
- Pugh, M (2013) The Problem-Solving and Critical Paradigms. In Mac Ginty, R (ed), *Routledge Handbook of Peacebuilding*. London: Routledge.
- RadioFreeEurope/RadioLiberty (2013) Ashton Cites "Concrete Progress" In Kosovo-Serbia Talks. 21 June 2013.
- Richmond, OP (1999) Mediating Ethnic Conflict: A Task for Sisyphus? *Global Society* 13(2): 181-205.
- Richmond, OP (2006) The Problem of Peace: Understanding the "Liberal Peace" *Conflict, Security and Development* 6(3): 291-314
- Roeder P and Rothchild D (2005) Power-Sharing as Impediment to Peace and Democracy. In Rothchild D and Roeder P (eds.), *Sustainable Peace: Power and Democracy after Civil Wars*. Ithaca: Cornell University Press.
- Sebastian S (2009) The Role of the EU in the Reform of Dayton in Bosnia-Herzegovina. *Ethnopolitics* 8(3-4): 341-354.
- Sisk T and Stefes C (2005) Power Sharing as an Interim Step in Peace Building: Lessons from South Africa. In Rothchild D and Roeder P (eds.), *Sustainable Peace: Power and Democracy after Civil Wars*, Ithaca: Cornell University Press.
- Smith SS (2016) Dracula or Frankenstein? The Role of the International Community in the 2014 Afghan Presidential Elections. *Conflict, Security and Development* 16(6): 501-520.
- Sriram CL and Zahar MJ (2011) The Perils of Power-Sharing: Africa and Beyond. *African Spectrum* 44(3): 11-39.
- Taylor R (2009) The Promise of Consociational Theory. In Taylor R (ed.) *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict*. London: Routledge.
- Tocci, N (2016) The Making of the EU Global Strategy. *Contemporary Security Policy*. 37(3): 461-472
- United Nations (2010) *A Manual for UN Mediators*. Mediation Support Unit, Department of Political Affairs.

- United Nations (2011) *UN Guidance for Effective Mediation*. Mediation Support Unit, Department of Political Affairs.
- United Nations (2017) Standby Team. Mediation Support Unit. Available at: <http://peacemaker.un.org/mediation-support/stand-by-team>
- UN News Centre (2016a) In Baghdad, UN Chief Underlines Extreme Concern about “Enormous” Challenges Iraq Faces. 26 March 2016.
- UN News Centre (2016b) “Survival will be an Achievement” for new Afghan Government, says UN Envoy. 15 March 2016.
- Wallensteen P and Svensson I (2014) ‘Talking Peace: International Mediation in Armed Conflicts.’ *Journal of Peace Research* 51(2): 315-327.
- Walter B (2002) *Committing to Peace: The Successful Settlement of Civil Wars*. Princeton: Princeton University Press.
- Walter C (2014) The Kosovo Advisory Opinion: What It Says and What It Does Not Say. In Walter C, von Ungern-Sternberg A and Abushov K (eds.) *Self-Determination and Secession in International Law*. Oxford: Oxford University Press.
- Wilkinson SI. (2005) Conditionality, Consociationalism and the European Union. In Noel, S (ed.) *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies*. Montreal: McGill-Queen’s University Press.
- Wils O and Herrberg A (2011) *Evaluation of the Mediation Support Unit Standby Team of Mediation Expert*. Oslo: Norwegian Refugee Council.
- Wolff S (2009) Complex Power-Sharing and the Centrality of Territorial Self-Governance in Contemporary Conflict Settlements. *Ethnopolitics* 8(1): 27-45.
- Wolff S (2011) Post-Conflict Statebuilding: The Debate on Institutional Choice. *Third World Quarterly* 32(10): 1777-1802.
- Yakinthou, C and S Wolff (2012) Introduction. In Yakinthou, C and S Wolff (eds.) *Conflict Management in Divided Societies: Theories and Practice*. London: Routledge.
- Zahar MJ (2016) Presentation at Peace Mediation: The Work of the UN Standby Team of Mediation Experts. McGill Centre for Human Rights and Legal Pluralism. Available at: <http://www.mcgill.ca/humanrights/mcgill-centre-human-rights-legal-pluralism>.