Examining Power-Sharing in Persistent Conflicts: De facto Pseudo-statehood vs. de jure Quasi-federalism

Eiki Berg, University of Tartu

Abstract. The reasons that explain the failures in power-sharing lie in the notions of sovereignty and territoriality and their applications in the (post-)modern world. Whereas territory is largely perceived as an indivisible issue and sovereignty as a shared property then power-sharing schemes tend to fail because of the incompatibility of the core demands. Although enduring compromises between facts and norms allow talks about diffused power and fuzzy identities as an asset, they do not offer a recipe of how to end zero-sum game and provide communal security. The aim of this paper is to comparatively examine recent attempts to resolve persistent conflicts through power-sharing. It draws on the parallel developments in partition processes, which gave birth to the Turkish Republic of North Cyprus and Transnistria and which is still ongoing trend in Bosnia and Herzegovina. Then it analyses federalization attempts in Cyprus and Moldova, with the focus on recent legitimizing of the constitutional provisions proposed in the Annan Plan and the Kozak Memorandum, for Cyprus and Moldova, respectively. Finally, it examines the impact of Dayton Peace Agreement in consolidating the nation and statehood in Bosnia and Herzegovina. This paper concludes that although power-sharing coincides with the normative categories stipulated in the international law, it fails to accommodate modern conflicts without changing the concepts over which these conflicts are taking place.

Introduction

Power-sharing deserves a more critical examination in contemporary discussions of conflict resolution than has been the case so far. Indeed, sovereignty may become increasingly fictive and states may diffuse governance but even today territory continues to play an important role in part because it provides a locus for the exercise of political authority over a range of interests and initiatives. The so-called re-territorialization approaches postulate that the nation-state is not an anachronism of the past but instead compromising with the international environment in the globalized world (Krasner 1995, Murphy 1996, Newman 1998). The desire for self-government and independence is equally visible in parallel to the territorial demarcation of national homelands with sovereignty aspirations through some form of de facto control as contrasted with de jure international recognition.

However, the mainstream of conflict resolution approaches rely on power-sharing according to which federations develop from unitary states as a response to threats of secession or rebuilding of nations, granting subunits shared sovereignty (Bindebir, et. al. 2003, Roper 2004). A federal solution has been justified in some cases (e.g. Belgium or Spain) and questioned in others (e.g. Bosnia and Herzegovina) while in the absence of territorial compromises, de facto states - unconventional entities on the world’s political map - may come into being. Moreover, the externally imposed federal constitution seems not to do more for formal reintegration than granting the status de jure that unrecognized entities already enjoy de facto. As territorial dominance configures the order of the day in partitioned states, power-
sharing helps to maintain the pseudo-statehood or to establish quasi-federation where the initial goal in terms of state territorial integrity remains unattainable. The above reasoning is further elaborated in the following indicative points and consequent chapters.

First, territoriality always causes disputes between ethnic groups claiming exclusive sovereignty over a certain territory. As a spatial strategy (see Sack 1986), territoriality comes about as a result of states’ sovereign interaction involving territorial practices that change over time. Instead of taking sovereignty and territoriality for granted one should perceive these key notions as concepts in flux (Biersteker and Weber 1996, Jacobson 1997, Murphy 2002). One may argue that the less important territoriality nowadays is the more complex and multifaceted the issue of sovereignty becomes. However, the facts on the ground tell us that all polities carry the idea of a single governmental jurisdiction over a particular territory and look jealously on joint administration with others.

Second, once partition has occurred, the host states seek to gain territorial control over the part that seceded. One potentially successful way of dealing with these types of conflicts is power-sharing with the attempt to share sovereignty and disperse territoriality. In ideal terms power-sharing arrangements should withdraw the grounds on which politicians perform securitizations (Diez 2000) and make conflicting parties believe in win-win games (Keane 2002). But similarly to partition, power-sharing accepts at face value the primacy and permanency of ethnic divisions and promotes segregation instead of social contact and cooperation (Toft 2003, Campbell 1999). One may easily agree with Charles King (2001) that every conflicting party is actually interested in status quo because any proposed solution could be easily translated into the language of a zero-sum game and capitalized on by domestic political forces according to their own interests.

Third, whereas power-sharing arrangements can be difficult to achieve and even more difficult to put into practice, the idea of partition attracts fresh attention as the inevitable solution to persistent ethnic conflicts (Kaufmann 1996). Indeed, most de facto states are the end products of partition (Waterman 1987, Pegg 1998, Bahcheli et. al. 2004). On the one hand, one can claim that territorial division may be an efficient and equitable means of resolving disputes between competing groups – good borders make good neighbours. On the other hand, the risks remain that territoriality re-new conditions for conflict or simply imposes boundaries that generate mutual hostility.

Fourth, international recognition seems to be the decisive criteria when all the other managerial instruments have been exhausted in the conflict resolution. In the past, the recognition of sovereignty depended upon the state having a territorial basis and was usually granted to states that exercised authority over state affairs. Yet, the game rules have changed considerably, giving less attention to factual sovereignty in the period of de-colonization. It is not only facts that take the lead in formal recognition of the statehood but rather the norms that create facts (Aalberts 2004). In this way, sovereignty becomes a limited property with rights that come from sovereign status rather than possession of this status as such (Grant 1999, Kurtulus 2005). If that is the case then there is a danger of erupting sovereignty claims, which only seemingly present the framework for power-sharing while at the same time perpetuating partition.

In this paper, the first three chapters discuss the contemporary issues of undivided territory in a new sovereignty game, partition and power-sharing dilemmas and illegal states in the post-modern setting. The final chapter will combine
theoretical incursions with the hard data on the partitioned ground. Apparently, the Turkish Republic of Northern Cyprus (TRNC) and Transnistria (TMR) are two examples of political entities, which are difficult to fit into the international legal framework. At the same time, internationally recognized Bosnia and Herzegovina represents an example of quasi-federation, while consisting of two political entities (Federation of Bosnia and Herzegovina, and Republika Srpska) which are only loosely connected with each other, carrying separate identities and different raisons d’être. As power-sharing continues to be at the core of conflict resolution schemes, the purpose of this final chapter is to demonstrate how difficult it is for contemporary polities to accept post-modern notions of sovereignty and territoriality and to find compromise between the norms and facts. To be more specific, why do externally imposed power-sharing schemes tend to produce legally approved quasi-federations, which unexpectedly perpetuate de facto partition?

**Indivisible territory in a new sovereignty game**

Control over territory seems to be a key political motivating force thus equalizing territoriality with the spatial expression of power (Storey 2001). Ethnic engineering or national construction works that attempt to control portions of space, always receive violent reaction from those who have counter claims to that piece of land. To be sovereign means to have absolute authority within a territorial base and to suffer no interference by parties outside of that space (Delany 2005). It is not surprising when ethnic groups consider control over disputed territory an indivisible issue and demand sovereignty, given that they have both capability and legitimacy to do that (Toft 2003). Concomitantly, also states view control over a territory as an indivisible issue whenever precedent-setting effects come into play. What follows is a conflict because both parties feel insecurity and threat to their ethnic or state survival.

In many cases, the function of territory is to create conflict or to exacerbate power asymmetries more or less for their own sake. But clearly defined territory may be also a pre-emptive solution to a problem if successfully managed. It may have a function of reifying forms of identity and difference. As compared with other means of asserting control, ‘territory may promote clarity and simplicity, and therefore certainty and predictability, and therefore peace, security and order, and therefore efficiency and progress’ (Delany 2005). Territories are human creations, produced under particular circumstances and designed to serve specific ends. Once these territories have been produced, they become the spatial containers within which people are socialized (Sack 1986). In this conception, territory remains a valuable commodity in international relations.

If sovereignty is a legal condition of statehood it is nothing other than the act of recognition that brings about the existence of this legal condition (Kurtulus 2005). In the past, the recognition of sovereignty depended upon the state having a territorial basis and was usually granted to states that exercised authority over state affairs. These criteria for statehood were laid down in article 1 of the Montevideo Convention on the Rights and Duties of States, 1933. Recognition became subsequent and consequential to the entity’s possessing criteria for statehood (Necatigil 1993). Accordingly, entities behaved as sovereign states because other states allowed them to do so, provided that they filled territoriality criteria. By accepting them as equals they made recognition a pivotal element in the institution of sovereign statehood. Yet, the game rules change over time, giving less attention to factual sovereignty in the period
of de-colonization. Today the right of self-determination, recognized in international law, applies only to colonies, which are separated from their metropoles by salt water. Current legal doctrine forbids de jure recognition of the territorial units whose political establishment has been resisted by ‘undivided’ central authorities. According to normative approach, it is widely believed that while discouraging small peoples to seek statehood the international law guarantees stability (Bahcheli et.al. 2004). In this reading, it is not only facts that take the lead in formal recognition of the statehood but rather norms that create the facts (Aalberts 2004).

Still, one has to admit that the rules of sovereignty are not fixed in stone, but rather are subject to changing interpretations. Pegg (1998) argues that the international community has alternated between the conceptions of state sovereignty and national sovereignty, defending today the rights of established states against nationalist claims of domestic ethnic groups. The shift from empirical statehood to juridical statehood mirrors the fact that recognition is a political decision, and not based on facts on ground (Pegg 1998). Kurtulus (2005) is also convinced that ‘the breakdown of a state, its political control by another state, its involvement in integration-processes, its status as a subject under international law, its constitutional design, and restrictions that may be imposed upon its foreign policy are either inherently political phenomena or phenomena with clear political implications’. If that is the case then the international law does not have a logically consistent legal doctrine which would treat sovereignty claims in universal manner.

As a matter of political facts and due to their inconsistent interpretation, the world political map is fragmented into juridical sovereigns that do not have the suggested empirical attributes and into territorial entities that acquire qualities of statehood after years of warfare, and sometimes at a cost of intolerable human devastation, while possession of sovereign rights remains an attainable status for them. This “new sovereignty game” (Jackson 1990) embodies rules that apply to many political entities, which have not met traditional tests of empirical statehood and probably would not exist as sovereign states otherwise. Jackson (1990) maintains that this new sovereignty game involves normative innovations, which close the eyes in front of the empirical facts. In this way sovereignty becomes a limited property with rights that emanate from sovereign status rather than possession of this status as such (Kurtulus 2005).

A new sovereignty game fixes the borders and bans territorial change, which is legally sanctioned and politically correct interstate practice. While approving that states’ territory is an indivisible issue this legal doctrine constantly ignores the fact that ethnic homelands within an internationally recognized state can be indivisible as well. Ethnic groups may be desperate to control their territory and reluctant to recognize the legitimacy of the central authorities especially when communal security issues are at stake. No matter how effective or internally legitimate these groups are the normative regime of fixed borders operates to ensure that the indivisible territory remains just the order of the day. While Pegg (1998) sees strong institutional and practical reasons not to expect its imminent demise, however, sovereignty remains an artificially created political arrangement that can be reformed or radically uprooted. One way to challenge it is to examine the power-sharing schemes in the partitioned states.

Partition vs. power-sharing?
Probably Toft (2003) is right when she refers to scholars who too eagerly want to abandon the notion of territory in the globalized world, as premature: ‘If this were the case, ethnic groups would not be so desperate to control their homelands, nor would states and the international community hesitate to allow them to do so’. Although explicitly supporting territorial imperatives, Tocci (2004) argues that the drive for secession is not an end in itself for the underlying basic needs are those of communal security and self-determination. No matter the degree of federalization it always gives rise to the conflict with the host state because the larger community seeks to retain its territorial integrity in order to satisfy its own security and identity needs (Tocci 2004). If the basis of dissatisfaction with a status quo has a material basis then federalism would serve as a useful institution to deflect calls for autonomy. When the issue is homeland territory or national identity, then federalism will only enhance the resources of actors determined to obtain independence, even at the risk of violence and civil war (Toft 2003). Hence, the major problem to reach a comprehensive agreement is explained by parties’ positions, which focus on absolute notions of sovereignty and statehood, making the reconciliation of subject positions almost impossible (Tocci 2004). What follows is a conclusion that some forms of integration may be disastrous, while other forms of disintegration may lead to lasting benefits (Pegg 1998).

Studying partitions means that we are approaching a sensitive frontier between the truth of nation and the political knowledge that critiques it in theory and practice (Samaddar 2005a). Its most fervent critiques say that partitions don’t solve the problems, but produce and multiply them in time and space (Ivekovic 2005), that as a nationalist resolution, the state empties itself of objects, beings and spaces making dialogue no longer possible (Samaddar 2005a), and that partition enables the state to validate the process of ethnic cleansing thus forcing minorities either to assimilate or to move (Keane 2002). Bose (2002) goes even as far as claiming partitioning answers to persistent conflicts as ‘breathtaking not only for its abject poverty but its sheer, senseless absurdity, thus equating it with dementia’. Perhaps conventional policy response to partition can never assuredly answer the question, is partition a solution to conflict, or by itself a conflict? Is it a classic separation of forces agreement to be followed by peace, or a lengthy process of face-to-face positioning of forces (see Samaddar 2005b)?

Chaim Kaufmann (1996) is well known as a proponent for partition as the solution to persistent conflicts. He claims that separation and partition can be justified only if they save the lives of people who would otherwise be killed in ethnic violence. There is a need to identify the threshold of intergroup violence and mutual security threats beyond which separation and partition may take place (Kaufmann 1996). In Kaufmann’s frame of analysis, this kind of security dilemma is not solvable, and therefore separation of the hostile groups and the establishment of homogeneous political units for each of them become inevitable. Otherwise the process of war will separate the populations anyway, at a much higher human cost. In the view of Bose (2002), Kaufmann simply ignores the practical difficulties and dilemmas of drawing partition lines. Good borders do not necessarily make good neighbours to evolve unless the mutual acknowledgement of partition is present.

Despite of the moral deficit that partition may endorse one can’t deny that violence is so relevant in the process of state reconfiguration and make the groups of population believe that a common political experience cannot be shared any more by dividing people and putting them under a different context (Bianchini 2005). Surprisingly enough, even Bose (2002) feels difficult to determine whether shared
sovereignty is a durable political alternative to partition. At the same time, he is convinced that a layered-sovereignty model may provide the basis of bridging the gap between the reality of fragmentation and the imperative of those divided: ‘The final element of the challenge is to make a virtue out of porous borders and intertwined economies and cultures, to transform the cultural, economic and other ties that spill across the borders of states from a problem into an asset’ (Bose 2002). Sounds good and morally justified but as Pegg (1998) has noted: ‘Theoretically, the prospects for federal solutions are wide open, practically, the chances of success may not be that great’.

Despite of the vast literature on different constitutional designs and power-sharing schemes, most of the world, however, remains land claimed as a homeland by one or another distinct and exclusionary group in such a way that it becomes a zero-sum game (Bahcheli, et. al. 2004). Solutions that aim to avoid partition and population transfers through power-sharing or state re-building will not work because they do nothing to minimize the security dilemma created by the existence of intermingled populations (Kaufmann 1996). Successful federation of deeply divided societies requires sincere political will and a determination, which have been manifestly lacking in partitioned states. Even Arend Lijphart (1977) has conceded that in cases where consociationalism has been tried and failed, dividing the state into two or more separate units is the only viable alternative.

The problem with consociationalism is that it recognizes the collective identities to the exclusion of the others while institutionally entrenching those cleavages. This carries genuine risks of freezing what are multiple and shifting identities and validating an exclusive and fragmented politics that leaves little space for the development of a wider solidarity (Bose 2002). What Scott Pegg (1998) offers is the de facto state solution, which does not preclude other future settlement possibilities. Although he argues that the existence of de facto state can’t become an obstacle to any kind of power-sharing in the future I still consider this option most unlikely to occur given the partition logic and reification of borders and distinct identities. In many cases, partition, however, do not open the room for new forms of dialogue.

Illegal states in post-modern setting

According to Bianchini (2005), partition embodies the political will of distinguishing a group from another territorially, by meeting group identities, group loyalties and power needs for the elites. Whenever the power of a state collapses, there is always a new, factually sovereign entity ready to occupy power vacuum that emerges in the aftermath of that collapse. But the problem here is that the discipline of international law has not been able to establish a legal procedure by means of which newly emerging entities may be granted or denied juridical sovereignty (Kurtulus 2005). Self-determination remains an essentially contested concept because consensus has never been reached on such key points as who is the self?; is self-determination a political principle or a legal right?; and if self-determination is a legal right, does it include secession (see Buchanan 1991, Pegg 1998).

De facto states result from the strong secessionist bid and the unwillingness of the international system to condone secession (see e.g. Pegg 1998, Bahcheli et. al. 2004). They carry out the normal functions of the state on their territory but they are not sanctioned by the international order. Instead, other states and inter-state
organisations continue to refer them as illegal entities. ‘They have a legal status that is uncertain, an international standing that is indefinite, a legal existence that is often relative, and a security situation that is at times precarious’, is how Kurtulus (2005) define them. It is well surprising that where *de facto states* were to ask what they have to do in order to be able to establish a subject status under international law, the lawyers and scholars have nothing to say but to refer them to the brutal contingencies of international relations or the unpredictable caprices of great power politics (Kurtulus 2005). On the other hand, John MacGarry (2005) argues that the best option for granting them legitimacy in the eyes of international community is a negotiated re-entry resulting in a decentralised federal system combined with consociational power-sharing. If we were to forget that many constitutional designs appeared dysfunctional and only little matched with the facts on the ground.

Due to the enduring compromises between facts and norms we are facing with ‘an absurd combination of states and would-be states in a legal fog while the conservatism of international norms on the genesis and prerequisite conditions of statehood remain powerfully formidable and consequently contradictory’ (Bartmann 2004). Given the precarious situation, Pegg (1998) questions whether not governments in the post-Cold War era should adopt a broader and less alarmist view of all self-determination? Are there alternatives to a traditional political order, which sticks to modern categories of borders and statehood while openly promoting post-modern solutions to modern conflicts (see Diez 2002).

Vaclav Havel (1999) has stated once that human freedoms represent a higher value that state sovereignty and that international law protecting the human being must be ranked higher than international law protecting the state. The NATO intervention in Yugoslavia showed disrespect for the alleged rights of recognized states and governments, thus emphasizing the alleged rights of people to challenge their governments in certain circumstances and to secede from their jurisdiction (Pavlakovic and Ramet 2004). This has made Bahcheli et. al. (2004) to cynically state that the international community recognizes humanitarian principles selectively as well as supports the existence of states only on paper and under the watchful eyes of international troops. NATO intervention in Yugoslavia violated the same legal principles that do not allow self-determination of peoples. These are fixed borders and territorial integrity. Again, the core of today’s conflict is about sovereignty and its modern interpretation.

Diez (2002) argues that post-modernisation would allow for a sustainable solution to the territorial conflicts over sovereignty and identity. He draws the example from the European Union where minorities are protected and regions recognized as political subjects within the *acquis*, where territory is supposedly losing the significance and borders becoming equally less important while being subverted by increasing cross-border flows (Diez 2002). As the final outcome would be transformation of sovereignty then one can hardly perceive domestic monopoly of power and international non-interference. But in vain. Although, the resources offered by a non-nation state framework created the potential for a win-win agreement in Cyprus, it did not materialize because EU actors overlooked the reasons motivating the Greek Cypriot drive for membership, reasons that were inherently linked to their position in the (modern) conflict and in the (modern) conflict settlement efforts (see Tocci 2004).

Keane (2002) presents an equally challenging approach to modern conflict resolution assuming that the nation state is the anachronism of the past, which has to be deconstructed for the sake of peace and human dignity. He sees the solution in
disaggregation of power from the centre and in simultaneous emancipation of peoples
(Keane 2002). His theoretical escape route attempts to challenge the modern
definitions of sovereignty and territoriality thus eroding the exclusionary dichotomy
of identity versus difference. He is also concerned about human security and believes
that only dispersal of sovereignty can replace the power configurations created under
the Westphalian model and enable a society to challenge the conflicts of the past and
the present (Keane 2002). Unfortunately, this escape route does not have an exit from
the vicious circle since emancipation of peoples means anything else than
replacement of state identity, sovereignty and loyalty with the one that is shared by a
distinct group in undivided territory.

Although de facto state may have a messy solution to a messy problem, it
stands strongly with two feet on the ground. While few would argue that de facto state
represents always a just, fair, legal, and optimal settlement to the secessionist conflict,
its effectiveness in terms of stabilization and communal security is a more valuable
asset than post-modern dream. Unacknowledged yet “legal” de facto statehood of
Republika Srpska coexists within the framework of preserving existing sovereign
states and maintaining fixed territorial boundaries. This compromising nature of facts
and norms may have quite some attractions for international society in that norms are
preserved and legal secession is not allowed, serving thus a kind of template for a
independent country’ as an acceptable substitute for independence.

Legitimating modern solutions

While the international community and the UN have not showed up willingness to
accept the independence of new states formed by the break-up of the old ones there
have been calls to create a new system which has elements of federalism but at the
same time goes far beyond it with independent home rule and self-defence privileges
(see Dent 2004). It most likely fits to the current sovereignty regime but there is still a
valid concern whether this kind of power-sharing becomes a remedy, thus equally
satisfying both conflicting parties. I have selected three partitioned states, Cyprus,
Moldova and Bosnia and Herzegovina to comparatively examine recent attempts to
resolve persistent conflicts through power-sharing. Both Cyprus and Moldova face the
complex realities of de facto states and not so appealing power-sharing schemes.
Bosnia and Herzegovina, on the other hand, has shared power among the constituting
political entities without ending partition.

Why exactly these states and not others? Cyprus and Moldova are comparable
because the ongoing conflicts in these states demonstrate similar patterns. First, both
conflicts evolved from the same ground: Turkish Cypriots being dissatisfied with
Greek Cypriots irredenta with Greece, seceded. Similarly, the formation of
Transnistria was a reaction to the Moldovan language law and to the lack of self-
determination guarantees in case Chisinau decides to rejoin Romania. Second, both
conflicts involve influential external players: TRNC relies on Turkey and Transnistria
is supported by Russia. Third, both conflicts have been frozen for decades and various
federalization plans have contributed very little to peace making. For comparative
purposes, it is important to include Bosnia and Herzegovina where, in the absence of a
federal solution, territorial claims would have been made by neighbouring Croatia and
Serbia. In order to stop fighting and ethnic cleansing, international observers
advocated a power-sharing scheme, which separated conflicting parties by
establishing political entities, one for Bosniaks and Croats, the other for Serbs. Although the Federation of Bosnia and Herzegovina and Republika Srpska do not enjoy international recognition, these peace-making products are de jure federal subjects, even though the problem of partition has not been solved. The Dayton agreement has frozen de facto partition, transforming it into a durable administrative separation (Ivekovic 2005).

State in a limbo

Bosnia is a divided society on the most basic issues – the question of legitimacy of the state, its common institutions and its borders (Bose 2002). The eventual settlement of the Bosnia dispute between the Serbs, Croats and Bosniaks came through force, because no other settlement could be found to make even temporary peace (Dent 2004). Today, most of the Bosnian Serbs and Croats oppose a united Bosnian state while most of the Bosniaks refuse to acknowledge the “equal treatment of aggressors and victims” and therefore demand for the new constitution to replace the Dayton agreement. The post-war state is a legal fiction and the internationally validated sovereignty holds to the point where neither Croats nor Serbs can accede officially to their mother states (Bose 2002). Several civilian aspects of the agreement remain ink on paper, refugee returns are insignificant and the common institutions are frail (Zahar 2004). The architects of Dayton have largely failed in creating a single multi-ethnic country with functioning state structures and implementing its sovereign practices in Bosnia.

The Dayton agreement maintained the 51:49 per cent division between the Federation of Bosnia and Herzegovina and the Republika Srpska. It attempted to create a central government and the two semi-independent regional entities. The constitutional model in Bosnia is clearly based on a conception of diffuse, layered sovereignty and citizenship (Bose 2002). Multiple forms and levels of citizenship are expressly allowed. The entities are the repository of all residual powers and functions, and they are empowered to establish and develop special parallel relationships with neighbouring states, which can be Croatia and Serbia-Montenegro. On the one hand, the governmental structures imposed by Dayton dilute the power and responsibilities of the central authorities. On the other hand, the common institutions become ineffective due to the obstructionist policies of ethnonationalist parties (Keane 2002). Post-Dayton Bosnia enshrines an undivided territory, which is mutually exclusive despite of the shared sovereignty. There is a fear that such disaggregation of power away from the centre may encourage Republika Srpska to strive for self-determination and independent nation state thereby alienating the Bosniaks and Croats living in, or wishing to return, to the entity.

Bosnia and Herzegovina became state in a limbo right after the declaration of independence in 1991. It was unable to procure empirical properties of statehood without having an effective government and a clearly defined territory. The final settlement of the conflict (1992-95) entailed a de facto partition of the territory and left the nature of the relations between these subunits and the neighbouring foreign states of Croatia and Yugoslavia undefined. Finally, Bosnia and Herzegovina did not have a permanent population, partly due to the fact that it lacked a defined territory and partly due to ethnic cleansing (Kurtulus 2005). At the same time, Republika Srpska became the epitome of aborted statehood (Zahar 2004). It exhibits extensive autonomy in the conduct of its internal affairs and a large margin of independence in the conduct of foreign relations while entering into agreements with foreign states and
international organizations with the consent of the state assembly and consistent with the state territorial integrity. Although there is a unified citizenship, there is also an entity citizenship. All governmental functions and powers not expressly assigned in the Constitution to the common institutions of Bosnia and Herzegovina fall immediately within the preserve of the entities (Zahar 2004). Bose (2002) argues that the main goal of the framers of the RS constitution was to convey that the RS closely approximates a sovereign state declaring that the RS shall be the State of Serb people and of all its citizen, and that the territory of the Republic shall be unique, indivisible and unalienable. As the Dayton agreement has virtually made the RS a state within a state, a status the majority Bosnian Serbs are determined to preserve, one may question whether the formal partition is necessary at all, as long as de facto statehood coincides with quasi-federation structures in overtly normative legal framework.

Given that the Dayton settlement is a consociational formula, which tend to work only in moderately divided societies and that the views of the three Bosnian communities are all more or less equally legitimate, there are disadvantages in imposing power-sharing schemes from outside. Zahar (2004) has observed that entity leaders can choose intransigence and delay when a decision would be unpopular with constituents or colleagues. Also that the parties have capitalized on the benefits of cooperation without incurring the domestic cost of compromise. She concludes that Bosnia’s joint institutions have failed to function because every issue has been viewed in zero-sum terms while all the breakthroughs have required a lot of time, effort and concessions on the part of the international community (Zahar 2004).

The current weakness of federal institutions in BiH and the existence of pending problems cast doubt on the solidity of the arrangement. Concrete developments have usually come about because of external pressure rather than domestic will. Is the preservation of a multinational state feasible in a situation where the vast majority of citizens belonging to two of the three constituent communities of that state only reluctantly acknowledge its legitimacy? While acknowledging that any revision of Dayton will reopen issues lying dormant since the war, and these issues bear the zero-sum nature, it is not possible to make the conflicting parties equally happy and accept the partition in real terms. At the same time, as long as formal partition has not been taken place and the power-sharing leads to the dead end, instability and international presence continue to be the rule of the day. Moreover, time is not on the side of status quo since relatively bad solutions may be still better than pending of no-solutions.

There are three lessons one should consider before applying the Dayton model of power-sharing to other persistent conflicts in the partitioned states of Cyprus and Moldova. First, the constitution needs to be complex in order to justify otherwise exclusionary identities, but it must be simple enough to work (Diez 2002). Second, the settlement cannot be imposed from outside, while using the normative discourse which promotes unity and separation at the same time. Notions such as territorial integrity, communal security, fixed borders are used in contemporary reasoning no matter the presumed goals – power-sharing or partition. And finally, inconsistent legal framing of secessionist problems tend to produce sates in a limbo, quasi-federations which lack factual sovereignty and ‘configure a separation of two or more political subjects despite the preservation of a common ‘roof’, which is more a formality than reality’ (Bianchini 2005).

*Why partition in Cyprus and Moldova?*
In many ways, partition may be a ‘last resort’ indeed, a combination of the needs for self-determination and territorial expression as Waterman (1987) has put it. Rapprochement seems to be the least likely stage in the development of the relations between partitioned states (see e.g Henderson, Lebow & Stoessinger 1974), for the separation acts as a factor providing peace and stability, at least for the party, which chose for partition. What Greek Cypriots consider as a “problem of the divided island”, Turkish Cypriots see as a “solution for ethnic co-existence” (Constantinou and Papadakis 2001). With a reference to zero-sum game, neither side will satisfy with the final outcome: taksim (partition) is a counter claim to enosis (union) in Cyprus and the Soviet-type of multiculturalism resists to Romanization in Moldova.

The problem of recognition is strikingly demonstrated by the example of statehood symbols where each community uses the anthem and displays the flags of their respective “motherland” in Cyprus. Moldova’s attempts to emancipate from the Soviet center in 1989 gave Romanian the status of official language, adopted the Romanian tricolor with a Moldovan coat of arms together with the Romanian national anthem. Both Cyprus and Moldova denied the political equality between the major ethnic communities and the titular nations in the state-formation. Although bi-communality was stipulated in the 1960 Constitution of Cyprus, and the minority rights were fully respected in the late 1980s Moldovan constitutional acts, both states became dysfunctional.

After the Greek support of a coup in 1974 to overthrow Archbishop Makarios’ regime and to set the course to unification with Greece, Turkey intervened with the aim to re-establish the state of affairs guaranteed by the basic articles of the 1960 Constitution. Whereas Greek Cypriots represented internationally the Republic of Cyprus and denied any international role for the Turkish Cypriots, they continued to think of inter-communal relations in terms of majority-minority relationship and moved the Turkish Cypriots to a position of separation (Groom 1993). The military conflict of 1990-1992 resulted from the Moldova’s attempt to achieve territorial control over the breakaway region, and subsequently provoked the Russian 14th Army to intervene “for the sake of Russophones rights in self-determination”. Following the war of 1992, Moldovan representatives aimed at restoring national unity with a special constitutional and legal status being granted to Transnistria. While categorically declining offers of territorial autonomy within Moldova as well as a federalization of the country, Transnistrian leadership insisted on the model of a confederation consisting of two equal and independent states (Troebst 2003).

Although TRNC and TMR have not obtained international recognition during the last decades, they both have most of the attributes of an independent state. For security reasons, Turkey has kept its troops on the territory of TRNC (30,000) and Russia has secured its involvement in the peace-keeping forces in TMR (2,500). A large immigrant community from mainland Turkey clearly contributes to the preservation of the ‘Turkish dimension’ of the Northern Cyprus (Morvaridi 1993). The same tendency appears in TMR where its residents emphasize the multiethnic character shaped by Russian influences (O’Loughlin, Kolossov and Tchepalyga 1998). Transnistria has strived for becoming a sovereign CIS republic, a third partner in the Belarusian-Russian Federation, or even for obtaining the status of “second Kalingradskaya oblast’”, i.e. to become part of the Russian Federation (Troebst 2003). In the view of TRNC leadership, it could be incorporated into Turkey, strive for independence, or fit into some sort of confederation or federation scheme with Cyprus (Groom 1993). But the prolongation of the status quo, as a de facto state, might be an appealing perspective for both the TRNC, as for the TMR.
Both communities in Cyprus recognize the necessity of federal solution but these perspectives differ significantly from each other (Bindebir, et. al. 2003). The Greek Cypriots are supportive of a federal state whereas the Turkish Cypriots are in favour of confederation. This is mainly because Turkish Cypriots are concerned for becoming an impoverished minority while the Greek Cypriots fear that the TRNC becomes a sovereign state. Since 1975, when inter-communal talks began in Cyprus, both parties have continuously declared that they seek an independent, non-aligned, bi-communal federal republic where the independence and territorial integrity should be adequately guaranteed against union in whole or in part with any other country and against any form of partition or secession (Groom 1993). But when it came to making a peace deal, the difficulty lay in the sensitivity of the Greek Cypriots to anything which might be held to constitute a recognition of the state of North Cyprus and the sensitivity of the Turkish Cypriots to anything which might seem to recognize the right of the Greek Cypriot authorities to call themselves the Government of Cyprus (Kyle 1997).

Although the specifics of the various peace proposals, memorandums and draft agreements have changed, the nature of the debate between the parties in Moldova, such as whether the plan should be conceived as a federal or confederal solution, has remained the same (Roper 2004a). While in the beginning Moldova leaders insisted on territorial integrity, the break-away republic spoke out in favour of a contractual federation consisting of two equal-right states (Neukirch 2003). But when a special legal statute of autonomy with considerable rights for self-government was presupposed for the TMR in 1995, the TMR leadership had moved a step further by this time, while “devoting to methods and ways of constructing sovereign states within a unified space”. Roper (2004b) enlists three basic reasons why there has been little movement in power-sharing. First, there is the issue of the equality of constituent parts, resisted by Chisinau. Second, Transnistria wants its final status ratified as a state-to-state treaty and not stipulated by law. Finally, many Moldovans oppose the federalization of the country, while Transnistria still maintains that any solution must involve the creation of a confederal state.

**Search for a new “Dayton plan” for Cyprus and Moldova**

Since independence, both Cyprus and Moldova have been divided far longer than they have been united. The internationally recognized governments that play host to these unrecognized entities in Cyprus (TRNC), and in Moldova (TMR) have continually called for outside help in settling disputes. Intermittent partial agreements on specific issues have been reached but only some have been partially implemented. The UN General Assembly has adopted countless resolutions, so have the European Parliament and the OSCE (see e.g. the European Stand on the Cyprus Problem 2001). Principles have been laid down, sometimes agreed upon. Moments of peace have come and gone. All of this has led to nothing. Despite the committed efforts of negotiators in the field, none of these disputes is really any closer to being resolved.

When the EU officially opened membership negotiations with the Republic of Cyprus in March 1998, a widespread assumption in both EU and academic circles was that these negotiations would have a catalytic effect on the Cyprus conflict and a federation would finally materialize because the EU structures would provide the right framework for solving the Cyprus problem (Diez 2000, Tocci 2004). At the same time, following the election of Moldovan President Voronin, in 2001, there was
a great deal of optimism that a conclusive status could be negotiated for Transnistria. During the parliamentary election campaign, the Moldovan Communist Party had proposed the elevation of Russian to a second state language, and Moldovan membership of the Russia-Belarus Union (Roper 2004b).

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

In the end of 2003, the Deputy Head of the Russian Presidential Administration Dmitry Kozak introduced a new draft memorandum on the basic principles of the state structure of a United State of Moldova (Russian Draft Memorandum 2003). According to this proposal, the territory of the federation was composed of the territory of “federal subjects” (Transnistria and Gagauzia) and federal territory (the rest of Moldova). The federation was considered as a subject of international law but “federal subjects” could also be members of international organizations, in which de jure recognition was not a mandatory condition, maintain international relations, conclude international treaties on their own and establish representation in other states that did not have the status of diplomatic representations or consular establishments. The status of the TMR was upgraded compared to earlier proposals. It was supposed to become a state entity within the federation (just like in Bosnia and Herzegovina), which formed its own state structures, had its own constitution, state property, independent budget and tax system, and also its own state symbols and other attributes of statehood.

The Annan Plan sought to ensure that the identity of Cyprus and its constituent states is maintained. But this did not convince the Greek Cypriots who decided to reject the Annan Plan in the referendum with 80% of voters saying “no” to the federal solution. The very rejection of the UN plan by Greek Cypriots in the referendum weakens the Turkish Cypriot backing for any future power-sharing arrangement in a simple calculus: we agreed with Annan Plan, hence we don’t need new negotiations. While being factually outside the EU and acquis communitaire but at the same time enjoying the gradual lifts of economic isolation, the existence of TRNC is guaranteed thanks to these sticks and carrots.

Moscow’s draft Memorandum allowed some political analysts to make rather pessimistic remarks, pointing out that the federal structures would not have any

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1 Gagauzia or Gagauz Yeri is an ethnic homeland of Turkish-speaking Orthodox population in the Republic of Moldova. Since 1995 it enjoys considerable autonomy over internal affairs and therefore has been considered a close ally to Transnistrian separatist regime.
control mechanism over the federal subject, since the law enforcement powers would coincide with the separate units (see ADEPT Political Commentaries 2003). As a consequence, Chisinau would be in a position to ask the Memorandum authors in Moscow to interfere and compel federal subjects to comply with the Memorandum provisions. Bearing this in mind, large protest actions began to rally across the country with considerable support from the OSCE and the EU to reject the Kremlin’s unilateral peace deal, after which the Moldavian president Voronin declined to sign. Again, de facto state found itself in a position where conditions to reach the final settlement were satisfactory but the host state refused to accept the power-sharing along the lines that had a precedent to offer from Bosnia and Herzegovina. Dayton has provided a sample, which encourages de facto states in legitimizing their existence and discourages the partitioned states in losing their monopoly over sovereignty claims.

Conclusions

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

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

This can’t be a normative legal framework either, which is implemented inconsistently. On the one hand, it relies on the very notion of territorial integrity and fixed borders (on the state level), on the other hand, it promotes the erosion of internal divisions and group boundaries (on the national level). Sometimes humanitarian interventions outweigh Westphalian principles of independent statehood (like in Yugoslavia), but most often do anything to stop the human suffering and provide communal security in partitioned states where there are legitimate claims to secede. Conditions for recognized statehood have radically changed during the last decades with the abandonment of viability criteria.

There isn’t much emphasis paid on states’ surviving and functioning. International community seems to be not interested in credibility issues (is a state effective and functioning?) and denies state’s durability and authentic nature (is there
a popular support offered by distinct group?). If declaration of group/state independence is seen as illegitimate act given the unsupportive international law then how can externally imposed peace plans be legitimate given the reluctance of the conflicting parties to accept the provisions. In this sense, the concept of legitimacy conveys more than the acceptance derived from legal recognition, giving a new breathing to related topics such as factual sovereignty in legal framework and de facto state in international relations. Due to the incompatibility of facts and law, power-sharing results with partition states.

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

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

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

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