

# STATE STRUCTURE AND ELECTORAL SYSTEMS IN POST-CONFLICT SITUATIONS



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## PREFACE

In contemporary peace processes, almost without exception, the arrangements that bring about transition from conflict to stability include requirements related to elections. These requirements range in level of detail from general calendars to specific, almost legislative requirement for the nature and conduct of the elections. In either case, the electoral requirements are only very rarely subjected to a thorough process of expert review and public consultation. Unintended consequences often result, such as unrealistic timetables (and consequent postponements) in Afghanistan or guarantees for minority representation in Kosovo which, if implemented literally, could have deepened rather than moderated ethnic divisions. In Bosnia and Herzegovina, the Dayton accord introduced strong protection of the three major parties to the conflict, but at the same time created a government at state level which has had difficulty passing laws and making decisions in a reasonably efficient way. In addition, the protection of other groups has been weak. Post-conflict elections often bring conflicting groups back to the positions that created the conflict in the first place.

If well designed and managed, elections can create legitimate political structures which promote conciliation and lead to controversial issues being solved through negotiations. If poorly designed and managed, they can simply restart passionate disputes and undermine the peace process.

Careful consideration of the closely related issues of state structure and electoral systems is therefore essential at an early stage of any peace process. Identifying the requirements of state structure and electoral system design – such as protection of minority groups with separate identity at a national or sub-national level – can help to achieve robust political solutions. This report aims at presenting an overview of the most common issues and most commonly discussed potential solutions in state structure and electoral system design, including federal and unitary states, protection of group and minority rights, protection against changes to constitutionally protected rights, and requirements for efficient government. It should provide a useful handbook for negotiators, mediators and others involved in peace processes.

The division of labor has been as follows: After initial discussions of the scope and structure of the report, Hylland and Vollan wrote the first draft of most of Parts I and II, while Blanc drafted the case studies (Part III). The drafts have been modified after discussions among the authors. All three authors are responsible for the entire report.

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## SUMMARY

### **The report consists of three parts:**

- I: Preliminaries
- II: General issues
- III: Case studies

In Part I, the scope and structure of the report is outlined, we explain and define concepts used, and we comment on the selection of the case studies.

The basic question is: How can peace and democracy be brought to a country that has recently been torn by conflict? We do not discuss this in all its aspects and details, but concentrate on issues relating to the structure of the state, the composition and powers of its decision-making bodies, and the electoral process through which these bodies are constituted and get their legitimacy. In this respect, the international community is often called upon to give assistance and advice. What kind of advice should be given? There is no simple and general answer to this; it must depend on the circumstances of the case. Nevertheless, we believe that certain general principles can be established, and in the report we attempt to do so. A more detailed description of the purpose of the report is given in Section I.1.1, and in Section I.1.2 we list issues not separately discussed.

A number of terms and concepts are used repeatedly in the subsequent discussion; some of them are defined and explained in Chapter I.2. Since we discuss societies that have been torn by conflict, the groups that have been parties to the conflict play an important role. Political identity may be tied to groups of many different types; the divisions may be between ethnic, linguistic, religious or sectarian groups, or simply between people living in different geographical areas or having different political views. We use the general term "group", which can refer to any of the divisions mentioned, or more generally to any division that seems politically relevant for those involved. In a divided society, there may exist a dominant group (which may or may not be majority, that is, consist of more than half the population), as well as one or more minority groups. We distinguish between small and large minorities. There is no sharp line between the two concepts, but we nevertheless consider them useful.

Part II mainly contains theoretical discussion, but it is illustrated by a number of examples. A short overview is given in Chapter II.1, and a somewhat more detailed summary follows here.

In Chapter II.2, we briefly describe the dynamics of post-conflict situations. The discussion starts after peace has been restored, but during the process that led to peace, deals may have been struck that have consequences for the future organization of the state. These deals are typically intended to promote the legitimate aim of balancing the interests of the various groups or providing protection for vulnerable groups, but this can go too far. Deals struck and commitments made can have undesirable consequences for the future organization of the state.

Unless pre-existing institutions can be revitalized, one must go through a process of establishing state institution, typically by adopting a new constitution. Ideally, the process should go through the following three phases:

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

This raises a number of questions, discussed in Sections II.2.3 – II.2.6: How soon should the first elections be held? Should a constituent assembly also serve as an interim parliament? Should the constituent assembly have the right to adopt a constitution, or should it just prepare a draft, to be ratified by referendum? To what extent can it be accepted that a country is governed by bodies without democratic legitimacy?

Internal conflict in a country is often caused by groups of the population feeling that their interests are not adequately protected. A possible solution is to give the country a federal structure, where regional units have far-reaching autonomy, protected by the constitution. This is the topic of Chapter II.3. The concept of a federal state is defined and contrasted with its counterpart a unitary state (Section II.3.2). The structure and composition of the national parliament will typically be influenced by the fact that the state has a federal structure, see Section II.3.3. While federalism may be a solution to group conflicts, it also has its problems. In particular, the autonomous regional units will not correspond exactly to the groups, unless the population structure is, or is made, fully segregated. In Section II.3.4, we ask whether this problem can be solved by what might be called "non-geographic federalism". Our general answer is in the negative, but aspects of such a system may be worth considering in some situations. In Section II.3.5, further aspects of federalism are discussed with reference to two important federal states, the United States of America and the Federal Republic of Germany.

Chapter II.4 contains a more detailed description of three federal systems, namely those of Switzerland, Belgium and Canada. The examples are chosen because these are countries where the population consists of two or more groups with a strong identity based on language, a fact reflected in the government structure.

Bosnia and Herzegovina has been through a bloody civil war, and the international community has been deeply involved in the attempts to end the conflict and build stable institutions. Therefore, in Chapter II.5, we give a relatively detailed account of the country's government structure. The war was ended by the so-called Dayton accord, which created a very complicated government structure. In fact, it has turned out that the institutions established have been almost unable to make decisions. It has also been claimed that they entail human rights problems. Bosnia and Herzegovina provides a pointed example of the conflict between on the one hand adopting provisions that are intended to promote understanding between groups in conflict and thereby bringing the conflict to an end, and on the other hand providing for effective government and general rights for all citizens regardless of ethnic affiliation.

In a federal structure, power is divided between national and regional units of government. This is not the only way power can be divided. In Chapter II.6, we discuss general aspects of division of power and, more specifically, the choice between a unicameral and a bicameral parliament (Section II.6.2) and the choice between a parliamentary and a presidential system of government (Section II.6.3).

It is generally required that in a democracy at least one legislative chamber shall be directly elected by universal suffrage and by an electoral system which gives all votes (approximately) equal weight. Under bicameralism, this chamber shall have at least as much power as the other one. We refer to it as the principal chamber. Bicameral systems vary a lot, both concerning the power and status of the chambers and their composition. In some cases, the principal chamber has essentially all legislative power, while the other one is not much more than a consultative body (weak bicameralism). Alternatively, the other chamber has real power, in the sense that it not only has the right to review legislation and raise objections, but must approve the final law, generally or within large and important areas of public policy (strong bicameralism). The latter system is common in federal states. Typically, one chamber of the national legislature is not directly elected, or not elected by a system giving all votes (approximately) equal weight. The composition of that chamber is intrinsically tied to the country's federal structure, and the arguments in favor of federalism also justify some deviation from the standards of elections applied to the principal chamber. This does not mean that any deviation is acceptable, but it is not easy to draw a sharp line. The rules actually in effect in established democracies with strong bicameralism can give some guidance for what should be considered consistent with democratic principles.

In a parliamentary system, the government is responsible to parliament or to its principal chamber. There is a division of functions between parliament and government, but no real division of power. In a presidential system, the president, whose authority is derived from the people through elections and does not depend on parliament, is head of the executive branch of government. There is a real division of power. (In addition to the pure parliamentary and presidential systems, combinations of the two are possible.) We discuss whether a presidential system, through its division of power between parliament and president, can contribute to solving conflicts of the type discussed. We are inclined to answer this question in the negative, since an elected president in all likelihood will represent that dominant group in society, as will the majority in the principal chamber of parliament.

The topic of Chapters II.7 – II.11 is electoral systems. These chapters make up a significant part of the report. The discussion is mainly concerned with elections to legislative assemblies.

General issues are discussed in Chapter II.7. For historical reasons, outlined in Section II.7.1, there exist two different traditions for how to conduct elections. Elections often predate political parties. When political parties do not exist, elections must necessarily be based on individual candidates. Then plurality or majority systems might appear to be the only options. When parties do exist, these systems are not well suited for giving representative results. In an attempt to secure more representative results, the idea of proportional elections emerged in the last decades of the 1800s. Among the first countries to introduce proportional parliamentary elections were Belgium, Germany and the Scandinavian countries. Such systems have become more widespread over the last decades. In the United Kingdom, however, parliament is still elected by plurality vote, and the same is true in most (but not all) countries whose legal and political system is based on the British model.

International standards for elections are quoted in Section II.7.2. These standards are quite general and do not single out one electoral system as the "best" or "most democratic".

Criteria for good electoral systems are discussed in Sections II.7.3 and II.7.4. Two important criteria are the following:

- Create representative assemblies. This means that a party shall get a number of seats corresponding approximately to its proportional share of the vote. This is often regarded as the overriding criterion for a fair electoral system, and it is the most important justification for proportional elections.
- Support accountability of the elected members. Another important aspect of elections is the

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

Equality is an almost universally acclaimed value in modern, democratic states, endorsed by all the international standards previously mentioned. It is, however, not always clear what equality means. The precise definition of equal voting rights could even be different for different electoral systems. In Section II.7.5, we discuss what equality means and to what extent deviations from equality can be accepted. The latter question is answered differently for the principal chamber of parliament and for the other chamber in a bicameral system.

The principal types of electoral systems are presented in Chapters II.8 – II.11. We consider the following systems:

Plurality and majority elections in single-member constituencies (*described and discussed in Chapters II.8*):

- Plurality elections, "first-past-the-post" (*Section II.8.1*)
- Majority elections in two rounds (*Section II.8.2*)
- Majority elections by the alternative vote, AV (*Section II.8.3*)

Plurality elections in multi-member constituencies (*Chapter II.9*):

- Elections based on individual candidates, the "block vote" (*Section II.9.1*)
- Elections based on closed lists, the "party block vote" (*Section II.9.2*)

Proportional representation (*Chapters II.10*):

- List-based proportional systems (*Section II.10.1*)
- Mixed member proportional systems (MMP) or list-based proportional systems combined with elections in single-member constituencies (*Section II.10.2*)
- The single transferable vote, STV (*Section II.10.3*)

Semi-proportional systems (*Chapter II.11*):

- The single non-transferable vote, SNTV (*Section II.11.1*)
- Parallel systems (*Section II.11.2*)

Under plurality elections in single-member constituencies (Section II.8.1), the nationwide result tends to be far from proportional. Typically, but not always, large parties get more and small parties less than their proportional share of the seats. In particular, the largest party will normally get a share of the seats much higher than its share of the votes. The systems discussed in Sections II.8.2 and II.8.3 are similar to plurality elections, but also have their special features. In all cases, the election results are sensitive to how the country is divided into constituencies (Section II.8.4).

Plurality vote in multi-member constituencies, discussed in Chapter II.9, is not to be recommended for parliamentary elections. Neither of the two principal criteria mentioned above, creating representative assemblies or supporting accountability of the elected members, is best served by plurality vote in multi-member constituencies. Since such systems are in actual use, we have nevertheless chosen to discuss them.

Systems of proportional representation are discussed in Chapter II.10. This is a class of systems which will give representative results, in the sense that the elected assembly will mirror the voters more or less perfectly. The predominant dimension which should be reflected in the assembly is that of political views. However, there are reasons to believe that other dimensions are also important in order that the assembly's decisions be representative of and accepted by the people. There are two major types of proportional systems, the list-based or party systems and the preferential voting systems. The former are described and discussed in Section II.10.1. In Section II.10.2, we consider the possibility of combining what is essentially a list-based proportional system with systems of the type described in Chapter II.8. Preferential voting is the topic of Section II.10.3, where one such system, the single transferable vote, is presented.

The topic of Chapter II.11 is semi-proportional systems. Among these are the parallel systems, discussed in Section II.11.2, in which some members are elected by plurality or majority vote and some by a proportional system. This must not be confused with the mixed member proportional systems of Section II.10.3, which are truly proportional.

Ideally, an elected assembly should be representative of the people along all dimensions considered relevant by those concerned. In practice, only a few dimensions can be taken into account, and it is important to identify the most important ones. General issues related to group representation are discussed in Chapter II.12. Balancing the interests of large groups, including the majority if one exists, is the topic of Chapter II.13, while protection of small minorities is considered in Chapter II.14. In each of the latter chapters, we attempt to formulate criteria for representation (Sections II.13.2 and II.14.2, respectively). The two sets of criteria are not identical, but in both cases we require that the system – be it for balancing the interests of large groups or for the protection of small minorities – should have as little effect as possible on the composition of the elected assembly along regular political dimensions. This important criterion is often violated, as several of our examples in Chapters II.13 and II.14 illustrate.

After a bitter conflict, special group representation as discussed in Chapters II.12 – II.14 is legitimate and may indeed be needed to secure peace and stability. The long term goal, however, is to build down the group divisions and to promote the normalization of politics. Chapter II.15 contains some remarks on how the electoral system can promote dialogue and reconciliation.

In Chapter II.16, we comment on some aspects of what might in general be called "good governance", namely accountability, transparency and effectiveness.

In the case studies of Part III, the concepts introduced in the report are applied to three current conflicts, namely those in the Philippines, Sudan and Sri Lanka.

In the Philippines, discussed in Chapter III.1, there are really two conflicts. One is ethno-religious and regionally contained, requiring devolution of power (perhaps as part of a federal structure) along with protections of the interests of local minorities. The second is a more wide-ranging communist insurgency, which like the Maoist insurgencies in Nepal and India has gained strength in the years since the end of the cold war. Its solution is probably linked to the solution of the Philippines' broader political problems, which regularly lead to elected assemblies and governments which do not adequately represent the concerns of marginal (but quite populous) communities.

Sudan (Chapter III.2) suffers from innumerable many civil wars, insurrections and local tensions. The longest running civil war in Africa, between the north and south of the country, was formally ended in 2005 by an internationally mediated peace accord. The agreement calls for an interim federal structure for Sudan along with elections and an eventual referendum on independence for the south of the country. The details of interim state structure design, and especially the viability of the

federal arrangements, may decide if the agreement holds or dissolves. The electoral system and electoral administration used in the elections required under the interim arrangement may have a strong influence on the direction of Sudan's other conflicts.

Sri Lanka's conflict (Chapter III.3) represents the very common dynamics of violent conflict between a dominant majority and a medium sized minority, but the violence of the conflict, which has cost more than 60,000 lives since 1983, is anything but common. The violence of the conflict has also affected the political culture of the majority – again, a common dynamic – making the country's democracy fragile. Both the structure of the state and the system of representation can be improved so as to reduce the concentration of power and thereby encourage greater minority participation in government. This may require a range of reforms, including the devolution of power to regional units and restructuring of the state executive.

## **PART I: PRELIMINARIES**

### **I Scope and structure of the report**

#### **I.1 The purpose of the report**

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

It is not the purpose of the report to discuss this fundamental and wide-ranging question in all its aspects and details. We concentrate on issues relating to the structure of the state, the composition and powers of its decision-making bodies, and the electoral process through which these bodies are constituted and get their legitimacy.

We have in mind situations where a country has been plagued by bitter internal conflict. Perhaps there has even been a civil war. (There are regrettably many actual examples of this from recent years, some of which are discussed or mentioned in Parts II and III.) When peace is restored or the level of conflict sufficiently reduced, time has come to start building stable institutions for the future.

At this point, the international community is often called upon to give assistance and advice. What kind of advice should be given? There is obviously no simple and general answer to this; it must depend on the circumstances of the case. Nevertheless, we believe that certain general principles can be established, and we attempt to do so.

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

We take it for granted that the institutions shall be democratic, at least in the minimal sense that a minority shall not be allowed to dominate at the expense of the majority. A more difficult question is whether and to what extent minorities shall have their rights and interests protected. Any such protection is "undemocratic" in the sense that it removes certain decisions from the power of the majority. Nevertheless, in a post-conflict society special protection of minorities is definitely called for, be it achieved through the structure of the state, the composition of the decision-making bodies or the electoral system. The principal task is to weigh the need for such protection off against the interests of other groups, including the majority (if one exists), and to find ways to achieve the desired protection at minimal harm to other valid considerations, such as the effectiveness of government. Most of the report is devoted to these issues.

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

## 1.2 Issues not separately discussed

Immediately after the end of a bitter conflict such as a civil war, many tasks may seem more important, or at least more urgent, than building democracy by establishing state institution and designing electoral systems. Holding elections too soon could even be detrimental to peace and stability. There exists conclusive evidence that mature democracies rarely go to war against each other. On the other hand, there are reasons to believe that in emerging or immature democracies the danger of conflict, including war, is particularly high; see, for example, Mansfield and Snyder (2005). Therefore, the order in which things are done in a post-conflict situation is important, with the building of democratic institutions not necessarily coming first in time.

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

The conflict itself, especially if it has reached the level of a civil war, may have caused demographical changes in the country or parts of it. This may have been brought about deliberately by parties to the conflict ("ethnic cleansing"), or it may be the incidental effect of people fleeing hostilities. In any case, people who have had to leave their homes must be taken care of, and ideally they should be allowed to return to their pre-war place of residence as soon as possible.

These issues, although important in post-conflict situations, fall outside the scope of this report and are not discussed separately. They are, however, touched upon on a number of occasions, when relevant for the main topic of the report.

During civil wars and similar conflicts, atrocities are often committed. Afterwards, it must be decided whether and to what extent to bring those responsible to account. That is, issues of *retribution* must be addressed. In the conflict, innocent people may have been injured or had their property destroyed, or they may have had to leave their homes. This raises issues of *compensation* or *restitution*. Similar questions can arise in other circumstances, for example, during the (re)establishing of democracy when a country has been freed from foreign occupation or an authoritarian regime has been deposed. There is an extensive literature on retribution and restitution, discussing theoretical issues and describing actual cases (from the restoration of democracy in Athens after a short oligarchic reign in the year 411 BC till modern times). These issues are certainly relevant for the type of post-conflict situations we consider, but they fall outside the scope of this report. An insightful treatment of the subject is found in Elster (2004).

## 1.3 The structure of the report

In addition to the preliminaries in Part I, the report consists of a discussion of general issues (Part II) and three case studies (Part III).

The discussion in Part II follows the general outline mentioned in the Summary, above. That is, we discuss the structure of the state, the composition and powers of its decision-making bodies, and the electoral process. The discussion of elections and electoral systems takes up most of the space. A more detailed overview of Part II is given in Chapter II.1.

Along the way, the general issues are illustrated by examples. They are usually placed in separate

chapter or sections, to which we refer from the chapters and sections where general issues are discussed. The examples show the great variety of circumstances that exist in post-conflict situations and the many different solutions that actually have been chosen. Not all of these can be recommended. Hence the examples illustrate good as well as bad practices.

The case studies in Part III concern the Philippines, Sudan and Sri Lanka.

## **2 Explanation of terms and concepts**

Below, we define and explain some of the terms that are used throughout the report. Other terms are introduced as needed.

### **Group**

Political identity may be tied to groups of many different types. The divisions dealt with in this report may be between ethnic, linguistic, religious or sectarian groups, or simply between people living in different geographical areas or having different political views. We will not define each of these terms, since such definitions are in themselves often controversial. Moreover, precise definitions are not needed for our purpose. We simply use the vague and general term "group". It can refer to any of the divisions mentioned, or even more generally to any division that seems politically relevant for those involved.

### **Minority**

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

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

### **Small minorities**

There is sometimes a need for distinguishing between small and large minorities. We will not, however, attempt to draw a sharp line between the two concepts.

A small minority will typically have a strength of a few percent of the population (for example, less than ten), but their characteristics are such that they may need special protection in such areas as the use of language, the promotion of culture etc. A group which in the country as a whole is a large minority or a majority may in some areas constitute a small minority and may need corresponding protection.

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

### **Large minorities**

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

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

To use Bosnia and Herzegovina as an example, the main groups involved in the civil war – Bosniacs, Croats and Serbs – are large minorities in the country as a whole, and each of them may be a majority in certain regions. On the other hand, Romas, Slovenians, Montenegrans etc. are small minorities. (More details about Bosnia and Herzegovina can be found in Chapter II.5.)

### **Federal state**

If the state structure is federal, the country is divided into regional units, and a measure of autonomy is constitutionally guaranteed to these units. Sovereignty is divided and rests partially with the nation as a whole and partially with the regional units.

The concept is discussed further in Section II.3.2.

### **Unitary state**

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

### **Parliamentary system**

In a parliamentary system, the government is responsible to parliament. If a motion of no confidence is passed, the government cannot continue in office. It must resign, unless the constitution gives it the power to dissolve parliament and call new elections.

The concept is discussed further in Section II.6.3.

### **Presidential system**

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

### **The principal chamber**

In general, one legislative chamber is directly elected by all voters on equal terms. This we call the principal chamber. Note that this is a technical definition introduced for convenience; it does not follow that the principal chamber is "principal" in a more fundamental sense.

The principal chamber can be the only one (unicameralism) or one of two chambers (bicameralism). In theory, a parliament can have more than two chambers. There are historical examples of this (see the beginning of Section II.6.2), but we know of no modern instance and ignore the possibility.

In the latter case, the composition of the other chamber could, in various ways, deviate from direct election on equal terms. For example, the representation of geographical units could be based on equal treatment of these units rather than equal treatment of voters; see Section II.3.3. Moreover,

the chamber can be indirectly elected, or in some cases even appointed.

Bicameralism is discussed in Section II.6.2. Examples of bicameral systems are given in Section II.3.5 and Chapter II.4, and also elsewhere in Part II.

### **3 Selection of case studies**

The concepts introduced in this report are applied to three current conflicts in the case studies in Part III. The Philippines, Sudan and Sri Lanka were selected because they are pressing conflicts which have each claimed many lives over many years. Each of the three conflicts is the subject of ongoing peace processes, making analysis of state structure and electoral system design timely. The three cases also present an interesting range of conflict dynamics. The Norwegian Ministry of Foreign Affairs has played important roles in peace processes seeking to resolve each of the three conflicts studied.

In the Philippines, there are really two conflicts. One is ethno-religious and regionally contained, requiring devolution of power (perhaps as part of a federal structure) along with protections of the interests of local minorities. The second is a more wide-ranging communist insurgency, which like the Maoist insurgencies in Nepal and India has gained strength in the years since the end of the cold war. Its solution is probably linked to the solution of the Philippines' broader political problems, which regularly lead to elected assemblies and governments which do not adequately represent the concerns of marginal (but quite populous) communities.

If the Philippines is the subject of two conflicts, Sudan suffers from innumerable many civil wars, insurrections and local tensions. The longest running civil war in Africa, between the north and south of the country, was formally ended in 2005 by an internationally mediated peace accord. The agreement calls for an interim federal structure for Sudan along with elections and an eventual referendum on independence for the south of the country. The details of interim state structure design, and especially the viability of the federal arrangements, may decide if the agreement holds or dissolves. The electoral system and electoral administration used in the elections required under the interim arrangement may have a strong influence on the direction of Sudan's other conflicts.

Sri Lanka's conflict represents the very common dynamics of violent conflict between a dominant majority and a medium sized minority, but the violence of the conflict, which has cost more than 60,000 lives since 1983, is anything but common. The violence of the conflict has also affected the political culture of the majority – again, a common dynamic – making the country's democracy fragile. Both the structure of the state and the system of representation can be improved so as to reduce the concentration of power and thereby encourage greater minority participation in government. This may require a range of reforms, including the devolution of power to regional units and restructuring of the state executive.

The case studies are not based on field visits or expert local knowledge. This limits them, but it also serves to demonstrate the general applicability of the theoretical analysis in this report.



## **PART II: GENERAL ISSUES**

### **I Overview of Part II**

In Chapter 2, we briefly describe the dynamics of post-conflict situations. Unless pre-existing institutions can be revitalized, a new constitution must be adopted, whereby state institutions are established. Interim and transitional issues are also discussed.

Internal conflict in a country is often caused by groups of the population feeling that their interests are not adequately protected. A possible solution is to give the country a federal structure, where regional units have far-reaching autonomy, protected by the constitution. This is the topic of Chapter 3. The concept of a federal state is defined and contrasted with its counterpart a unitary state. Various aspects of federalism are discussed, in the abstract and with reference to two important federal states, the United States of America and the Federal Republic of Germany.

Chapter 4 contains a more detailed description of three federal systems, namely those of Switzerland, Belgium and Canada. The examples are chosen because these are countries where the population consists of two or more groups with a strong identity based on language, a fact reflected in the government structure.

Bosnia and Herzegovina has been through a civil war, and the international community has been deeply involved in the attempts to end the conflict and build stable institutions. Therefore, in Chapter 5, we give a relatively detailed account of the country's government structure, and we use it as a point of departure for the discussion of general issues.

In a federal structure, power is divided between national and regional units of government. This is not the only way power can be divided. In Chapter 6, we discuss the choice between a unicameral and a bicameral parliament, and the choice between a parliamentary and a presidential system of government.

The topic of Chapters 7 – 11 is electoral systems. These chapters make up a significant part of the report. The discussion is mainly concerned with elections to legislative assemblies. General issues are discussed in Chapter 7. This includes international standards for elections (Section 7.2), criteria for good electoral systems (Sections 7.3 and 7.4), as well as an extensive discussion of the concept of equality (Section 7.5).

The principal types of electoral systems are presented in Chapters 8 – 11. We consider plurality and majority elections in single-member constituencies (Chapter 8), plurality elections in multi-member constituencies (Chapter 9), proportional representation (Chapters 10) and semi-proportional systems (Chapter 11).

Ideally, an elected assembly should be representative of the people along all dimensions considered relevant by those concerned. In practice, only a few dimensions can be taken into account, and it is important to identify the most important ones. General issues related to group representation are

discussed in Chapter 12. Balancing the interests of large groups, including the majority if one exists, is the topic of Chapter 13, while protection of small minorities is considered in Chapter 14.

After a bitter conflict, special group representation as discussed in Chapters 12 – 14 is legitimate and may indeed be needed to secure peace and stability. The long term goal, however, is to build down the group divisions and to promote the normalization of politics. Chapter 15 contains some remarks on how the electoral system can promote dialogue and reconciliation.

In Chapter 16, we comment on some aspects of what might in general be called "good governance", namely accountability, transparency and effectiveness.

## 2 Post-conflict situations

As mentioned in Section I.1.1, we envision a situation where a country recently has been plagued by bitter internal conflict, perhaps even at the level of a civil war. Then peace has been restored or the level of conflict has been significantly reduced, and time has come to start building stable institutions for the future.

For one thing, we have in mind cases in which there has actually been armed struggle. This holds for the three case studies in Part III and several of the examples used in Part II. Moreover, deep tension and bitter conflict can exist within a country without this (yet) having escalated into warfare. Then it would of course be desirable that the conflict be solved, so that stable and viable institutions can be established without shots being fired. Even in such a case, effective institution building might require prior reduction in the level of conflict, achieved by something comparable to a "peace agreement" after an actual war.

When we below use phrases like "peace is restored", "peace process", "peace agreement" etc., we have in mind both the possibilities mentioned. Therefore, the use of the word "peace" should not be taken to imply that there has necessarily been armed conflict.

### 2.1 The peace process and its repercussions

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

These deals are often intended to balance the interests of the groups involved in the conflict or provide protection for vulnerable groups. These are legitimate objectives; indeed, a central theme of the report is the need for such arrangements in post-conflict situations. (This is the specific topic of Chapters 12 – 14, but it underlies the discussion in most of the report.)

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

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

A case in point is Bosnia and Herzegovina. A bloody civil war raged from 1992 until it was ended by the so-called Dayton accord of 1995. The agreement stopped the war, but it contains a complicated system of ethnic quotas and veto powers which has turned out to be a strong impediment to effective government. It has also been claimed that some of the rules contradict international human rights conventions. Since we repeatedly use Bosnia and Herzegovina as an example, a comprehensive description and evaluation of its government system is given in Chapter 5.

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

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

## **2.2 Recourse to pre-existing institutions**

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

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

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

Without ignoring the possibility of circumstances being different, we base most of our discussion on the assumption that after a conflict of the type considered, one should more or less start from scratch, establishing new institutions. There is nothing wrong in maintaining aspects of a pre-existing system, but in any case the main emphasis should be put on the post-conflict situation and the interests and concerns of the various groups that make up the population of the country.

### 2.3 Priorities and timing

As pointed out in Section I.1.2, immediately after the end of a bitter conflict, there are tasks that may seem more important – or at least more urgent – than establishing state institution and designing electoral systems. Holding elections too soon might even be detrimental to peace and stability. A lasting solution requires, however, that democratic institutions be established within reasonable time. The process should start immediately, and if possible even be prepared before the conflict has ended. As pointed out in Section 2.1, it may even be necessary – but not always desirable – that decisions concerning the future structure of government be taken as a part of the peace agreement.

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

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

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

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

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

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

More importantly, there are arguments of a principal nature for not holding elections too soon. Peace and stability may be best served by taking other steps before elections are held and democratic institutions established. These important considerations are mentioned in Section I.1.2, but they fall outside the scope of the report and are not discussed further. When attention is restricted to the political system, it should be noted that in many post-conflict situations (though not all), no party system has yet developed and there exists no democratic culture or tradition. In such cases, immediate elections may aggravate the conflict rather than solve it.

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

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

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

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

## **2.4 The constituent assembly**

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

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

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

These measures will prevent members of the constituent assembly from taking account of their

*personal* interests, as present or future legislators, when drafting the constitution. In all likelihood, they will represent *groups* of various kinds, such as political parties, participants in the previous conflict, or any other type of groups as the concept is defined and explained in Chapter I.2. Nothing prevents them for attempting to tailor the constitution to the (perceived) interests of these groups. The desire to have the constitution written behind a veil of ignorance is a laudable one, but it is not achieved by the measures discussed here. It could be achieved by letting the constitution not come into force until a very long time after it has been adopted, for example a generation, but the disadvantages of this solution are strong and obvious.

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

There are arguments in both directions, but all things considered we believe that the best solution will usually consist in letting the constituent assembly also serve as an interim parliament.

## **2.5 The draft constitution**

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

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

On the other hand, the legitimacy of the constitution could be enhanced by it having been adopted by the people in a referendum. Moreover, there may be disagreement on specific and important issues that are well suited for debate among the general public and decision by referendum, such as whether the state shall have a unitary or a federal structure. (These concepts are defined and discussed in Chapter 3; see, in particular, Section 3.2.)

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

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

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

## **2.6 "All public power originates with the people"**

This slogan is a basic principle of modern democratic rule, and it is explicitly stated in the constitutions in many countries, of which Germany and Sweden can be mentioned as examples.

In a transitional period after the end of a conflict, the principle cannot always be respected. The country must be governed, and often there exists no institutions with democratic legitimacy. Then rule by non-elected bodies must be accepted, but only for a limited period, which must not be unnecessarily prolonged; see Section 2.3.

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

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

Historically, it has been the rule rather than the exception that public decision makers, even at the top level of society, have not been elected and have derived their power from other sources than the people. In some unquestionably democratic countries, this would appear still to be the case. The most obvious examples are the constitutional monarchies of Western Europe. In most of these, Sweden being an exception, a literal reading of the law would lead to the conclusion that the monarch has considerable public power, derived not from the people, but from inheritance. In practice, however, these monarchs do not exert personal power. They function as a symbol of the nation and of national unity, and to the extent they formally make decisions, they automatically approve what has been decided by their ministers, who (albeit indirectly) derive their power from the people. These systems are therefore acceptable from a democratic point of view.

Legislative bodies with real power should always derive this power from the people. It is often stated that in a democracy at least one legislative chamber should be *directly elected by universal and equal suffrage*; see, for example, CSCE (1990), items (7.2) and (7.3), quoted below in Section 7.2. The requirement of equal suffrage must be taken to imply that the electoral system for this chamber should give all votes (approximately) equal weight. We call it the principal chamber, see definition in Chapter 1.2. It is further discussed in the beginning of Section 6.2.

An additional chamber may be indirectly elected or appointed. In a federal system, in particular, there may be good reasons for having legislative bodies that represent the regional units of the federation, or at least are based on these units. Such bodies need not be directly elected. (See Section 3.3 with further references.) Even a non-elected (appointed) legislative chamber can be acceptable, provided that its powers are limited; see the discussion of "weak bicameralism" in Section 6.2. An example of a non-elected chamber with limited powers is the House of Lords in the United Kingdom, which can only delay a bill but not stop it. Another example is the Canadian Senate, see Section 4.3.

The question remains whether it could, on a permanent basis, be acceptable that decisive public

power is vested in bodies or persons who are not elected at all, and who cannot claim that their power is legitimized through a chain of authority originating with the people.

There are examples of post-conflict situations in which a group of people have seized power, and arguably could justify this by reference to the necessities of the situation. They have then tried to perpetuate their influence by establishing a non-elected permanent body with (at least) veto power over legislative and/or executive decision, and whose task should be to "defend the ideals of the revolution" or the like. Below we give two examples of this. One of them has been abolished, but the other one still exists.

From a democratic point of view, permanent arrangements of this kind are not acceptable.

#### *The "Council of the Revolution" in Portugal*

After the revolution in Portugal in 1974, the officers and the communists formed a revolutionary council with a veto powers over both legislative and executive decisions. The revolutionary council appointed its own members. After a long debate, and as part of a constitutional reform in 1982, the council was replaced by a Council of State, which is an advisory body to the president. The new council has *ex officio* members from regional governments and the judiciary, as well as some members appointed by the president and the parliament. It is only rarely called into session.

The revolutionary council was supposed to protect the values of the revolution, but it was in the end abolished in favor of purely democratic bodies.

#### *The "Guardian Council" in Iran*

After the 1979 revolution in Iran, a semi-democratic system was introduced. The President is elected, as is the Parliament, officially called the Islamic Consultative Assembly. In addition, decision-making power is vested in the Guardian Council, the Council of Experts and the Supreme Leader.

The Guardian Council has the authority to oversee all fundamental issues relating to the state, including its relationship to Islam. It interprets the constitution and determines if laws passed by parliament are constitutional. It also has the authority to approve all candidates running for President, for Parliament and for the Council of Experts.

The Supreme Leader is elected by the Council of Experts, which consists of clerics only. The Council of Experts is directly elected after a screening of the candidates by the Guardian Council, not only on their religious capabilities but also on their political inclination. The Guardian Council has twelve members, six appointed by the Supreme Leader and six elected by Parliament after nomination by the head of the judicial branch, who in turn is selected by the Supreme Leader.

The process for appointing the Guardian Council, the Council of Experts and the Supreme Leader contains elements of election, by the people or by Parliament. It is, however, impossible to claim that the Guardian Council derives its power from the people. Since this body has the power to make important decisions affecting public policy, we have a clear violation of the principle that all public power originates with the people.

## 3 State structure – unitary or federal

### 3.1 Federalism as an instrument to reduce conflict

Internal conflict in a country is often caused by a group feeling that its interests are not adequately protected by the existing government structure. (The group can be of any of the types mentioned when the concept was defined and explained in Chapter I.2.) There may even be more than one group having similar grievances.

Post-conflict solutions must take account of this. A central task is to design institutions that respect the interests of the various groups, including the majority, if one exists.

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

There is also another objection to the arrangement just mentioned. It may perpetuate a situation in which group division is the main conflict dimension. As things develop and the situation is normalized, it may be that the ordinary political dimension comes to dominate in people's minds, but borders once drawn, cannot easily be abolished or redrawn. (Dividing up the country could even *create* group conflicts where none existed before, but we assume that the point of departure is the existence of groups which feel that their interests are not adequately protected by the existing government structure.)

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

### 3.2 Federalism – definition and basic characteristics

In a *unitary* state, sovereignty is undivided, it rests with the people as a whole, and it is exercised by the institutions of the national government. Democratically elected bodies can exist on regional and local level, but they have no other power than that which is delegated to them by national decision makers. Legally, nothing prevents the national legislature from restricting or even abolishing regional and local autonomy, although this may politically be difficult.

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

Just as a federal state must be distinguished from a unitary one, it must – in the opposite direction – be distinguished from a confederation or union of independent states. In the latter case, sovereignty rests with each member state. The union is a system of treaties or agreements between these states, involving delegation of authority from the members to the union. We shall not have much to say about this type of organizations.

When discussing federalism generally and in the abstract, we refer to the two levels of government as the *national* and the *regional* one. The actual terminology varies. The regional units can, for example, be called *states* (Australia, India and the USA), *provinces* (Canada), *cantons* (Switzerland), *federation subjects* (Russia) or *entities* (Bosnia and Herzegovina). When describing and discussing a specific case, we use the country's own terminology or a translation thereof.

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

The establishment of a federal state need not be motivated by the concerns of Section 3.1. Even if the population is homogenous and there are no particular group conflicts, a general preference for decentralization of power can justify federalism. Giving power to regional units decreases the distance between those who govern and those who are governed, but this can also be achieved through delegation in a unitary state. More fundamentally, division of power reduces the danger that it be abused. Within a specific level of government, power is typically divided among the legislative, the executive and the judicial branches, and possibly also between several chambers of parliament. (This is discussed further in Chapter 6.) Similarly, a case can be made for constitutionally protected distribution of power between the national and the regional level, thus preventing the national government from unilaterally recentralizing power.

Typically, the national constitution of a federal state is the supreme law of the land. It is binding on governmental authorities on all levels and takes precedence over any other law, including the constitutions of the regional units (if such documents exist). This must be seen as a defining characteristic of a federal state; had the regional constitutions been superior to the national one, the whole arrangement would be more like a confederation or union of independent states.

The procedure for amending the national constitution will usually involve the regional units. If the constitution, which presumably shall protect the autonomy of the regional units, could be amended by a decision taken solely by national political bodies, the protection would in reality be quite weak. This does not mean that one regional unit on its own can veto a constitutional amendment. Typically, what is required is not unanimity but a qualified majority. (In a confederation or union of independent states, by contrast, a change in the basic rules will require a new treaty which must be approved by all member states.)

Traditional federalism is *symmetric*, in the sense that all regional units have the same degree of

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

The number of regional units in a federation varies a lot. In some cases it is quite high, for example, it is 50 in the United States of America and 16 in the Federal Republic of Germany, to take the two cases discussed in Section 3.5. However, there also exist federations with a smaller number of members, all the way down to two. Potentially, there are special problems related to a federation of two units. The smaller one may feel that it is a permanent minority, but if power is equally divided, the larger unit may feel that the system is unfair. With three or more units, alliances can change, so that nobody is permanently in the minority. In the recent past, we have seen that Czechoslovakia did not manage to stick together, and it is uncertain how the federation between Serbia and Montenegro will develop. Belgium can be seen as a union of two parts, since the language divide is important and there are two large linguistic groups (Dutch and French). As described in Section 4.2, Belgium has a more complicated structure, and there is a third, albeit quite small, linguistic group (German). The Belgian state still exists, but many functions have over the last decades been transferred to units below state level.

### **3.3 The national parliament in a federal state**

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

A unitary state consists of its inhabitants or citizens. To the extent equal treatment is an ideal, it must necessarily be *individuals* (inhabitants, citizens, voters) who are treated equally. (It is not likely to make a big difference whether inhabitants, citizens or voters are considered. We do not discuss the question, except for a few remarks in Section 7.5 where we ask how equality should be defined.) Whether some limited deviations from equality are acceptable, is a different question. It is not discussed here, but is considered in Section 7.5. It is also a central issue in the discussion of balancing the interests of large groups and protection of small minorities, see Chapters 13 and 14.

A federal state has, in a sense, two types of members, the citizens and the regional units. Therefore, "equal treatment" can be given two different interpretations:

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

Corresponding to these two notions of equality, there are two relevant but competing considerations that are relevant when designing the system for representation in the national parliament. On the one hand, it can be argued that individuals shall have equal influence, in which case representation of the regional units should be proportional to their numbers. (Alternatively, the electoral system could

pay no attention to the division into regional units, but that seems unnatural in a federal state.) On the other hand, the federation can be seen as a cooperative arrangement between the regional units, in which case these units are to be treated equally and given equal representation on the national level. By analogy, in international organizations it is not uncommon that each member state has one vote regardless of size (although actual power may vary even in such organizations).

It is hardly conceivable, and it would be problematic from a democratic point of view, if the composition of the national parliament was based solely on B, so that each regional unit – large or small – had equal representation. In Section 2.6 we referred to CSCE (1990) and drew attention to the oft-stated requirement that in a democracy at least one legislative chamber shall be directly elected by universal and equal suffrage (see quotation in Section 7.2). We interpret "equal suffrage" as requiring that the electoral system for this chamber shall give all votes (approximately) equal weight, which means that representation must be based on A. Hence the regional units cannot be equally represented. In federal states there will typically be a chamber that satisfies these requirements, but in addition there may be a chamber whose composition in whole or in part is based on B. The members of such a chamber may be directly elected, but other modes of election or appointment are also conceivable. In Section 3.5 we present two examples to illustrate this. Other examples can be found in Chapters 4 and 5. See also Section 6.2.

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

### **3.4 "Non-geographic federalism"**

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

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

In order to implement such a solution, it must somehow be registered who belong to which of the lower-level government units, which requires compulsory revelation of, for example, ethnic affiliation. We have objections to imposing such a requirement on all citizens and consider this a serious objection to non-geographic federalism. A similar issue is discussed in Section 14.2 in connection with group quotas in parliamentary elections.

There are other objections as well. Significant parts of the legal system and many government

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

To our knowledge, no country has attempted to implement non-geographic federalism in a genuine sense. Given the objections discussed above, there seem to be good reasons for this.

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

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

The Belgian system, described in Section 4.2, contains elements of the kind discussed here. According to the constitution, Belgium is a federal state made up of communities and regions. The regions are geographically defined, but the communities are not. They are the French Community, the Flemish Community, and the German-speaking Community. For each community, there is a Community Parliament with authority within specific fields. The whole system is quite complicated and is not described in detail here. Complexity is in itself a disadvantage. Arrangements of the Belgian type might nevertheless be worthy of consideration in post-conflict situations.

### **3.5 Examples and discussion**

In Chapter 4, three federal systems (Switzerland, Belgium and Canada) are described in relatively great detail. They are chosen because they seem particularly relevant to the discussion of federalism in post-conflict situations.

In order to illustrate more general aspects of federalism, we here discuss two other examples, namely the United States of America and the Federal Republic of Germany (*Bundesrepublik Deutschland*). Other examples could have been used instead, but we have chosen these two because they are important and well-known countries with long, stable and well-developed traditions for democratic federalism. The US Constitution took effect in 1789 and the Federal Republic of Germany was established in 1949.

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

In both countries, the national constitution is the supreme law of the land, not only in the sense of being the superior source of federal law, but also by being superior to the regional legal systems. (As pointed out in Section 3.2, this is typically the situation in federal states.) The consequence is not that regional law must always yield to national legislation. The national constitution divides the legislative power between the two levels of government, and a statute adopted by the national legislature may be invalid if it intrudes into the sphere of regional legislative power.

Legislative power is regional unless the national constitution explicitly provides otherwise. That is, national laws must have explicit constitutional authorization. The constitution may rule out certain types of legislation altogether, for example, in order to protect individual rights. Apart from this, the regional level has the residual legislative competence, that is, the right to legislate in areas not constitutionally assigned to the national level. This is the situation in the USA and in Germany and in many other federal states, but it is not a necessary feature of federalism. There can be federal states in which it is the other way round, that is, the legislative powers of the regional units are explicitly enumerated and the national legislature has the residual competence.

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

The national legislature of the USA, the *Congress*, consists of two chambers, the *Senate* and the *House of Representatives*. Each of the two principles A and B, equality among individuals and equality among states, is applied in pure form to one of the chambers. The seats in the House of Representatives are apportioned among the states in proportion to population. (Hence this is the principal chamber, as that concept is defined in Chapter I.2.) In the Senate, the states are equally represented. The most populous state has about 68.5 times as many inhabitants as the least populous one (according to the 2000 census, see Huckabee (2001) Table 3). All members of Congress are directly elected by plurality vote. It should be noted that the Senators do not represent their states in the sense of being appointed by or responsible to any body of state government. It is often said that the Senate is the states' chamber. This is only true in the sense that its composition is based on equality among the states.

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

In Germany, national legislative power is shared between the Federal Parliament (*Bundestag*) and the Federal Council (*Bundesrat*). The Federal Parliament is directly elected by a so-called mixed member proportional system, explained in Section 10.2. It guarantees proportional representation of political views and leads to the *Länder* being represented in (approximate) proportion to their population. The Federal Council consists of delegates from the *Länder* governments. Each *Land* has between three and six votes depending on population. The ratio between the populations of the most and least populous *Land* is more than 25. That is, representation is not equal, but compared to their population the smaller units are strongly overrepresented. Hence a compromise has been struck between principles A and B, with emphasis on B. Voting rights in the Federal Council belong to the *Länder* governments as such. The delegates can be instructed to vote in a specific way and can therefore not be regarded as representatives with an independent mandate. With reference to the discussion in Section 2.6, we can say that the power of the Federal Council originates with the people, but through a fairly complicated chain. In each *Land* there is a parliament directly elected by

the people, the government is elected by and responsible to this parliament, and the government decides how the votes in the Federal Council shall be cast.

The two bodies do not have equal power. For some types of laws, both must agree, and hence the Federal Council has veto power. In other cases, the Federal Council only has the right to object and delay, but it does not in the end have veto power. On the other hand, the Federal Council has some functions of an executive nature. We do not discuss this in detail. All in all, there is no doubt that the directly elected Federal Parliament is the more powerful body.

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

The US Constitution is old and relatively short. It has been amended only 27 times over a period of more than 200 years. The German constitution (*Grundgesetz*, literally "Basic Law") is long and detailed, and it is frequently amended. Since 1949 more than 50 laws to amend the constitution have been adopted, some of them affecting a large number of provisions.

In both countries, there is a strong tradition for judicial review of legislation. That is, the courts can be called upon to judge whether a law is consistent with the constitution. If this is answered in the negative, the court has the right and duty to declare the law null and void or refuse to apply it. This makes constitutional protection of individual rights more effective, since the individual need not rely on the legislature voluntarily respecting the constitution when adopting laws, but can have the question of constitutionality determined by an independent body. In addition, in a federal state judicial review provides a mechanism for solving conflicts of authority between national and regional units of government. Such conflicts can hardly be avoided, even if the relevant constitutional rules are precise and detailed.

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

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

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

## 4 Further examples of federal systems

When federalism is proposed as a solution to internal conflict, as outlined in Section 3.1, reference is often made to the federal systems of Switzerland, Belgium and Canada. These are all countries where the population consists of two or more groups with a strong identity based on language, a fact reflected in the government structure.

We will in the following describe the federal models of these countries. One should bear in mind that the models have developed over time and work by tradition as much as by law or pure logic. There are unwritten rules which make the systems work, and the models cannot be transferred directly to other countries with different traditions.

### 4.1 Switzerland

The regional units of government are called *cantons*. The country has four official languages. As a consequence, different words are used to designate the national government. For example, Switzerland is an *Eidgenossenschaft* in German and a *Confédération* in French. As a compromise of sorts, the Swiss sometimes use Latin and refer to their country as *Confoederatio Helvetica*. The country is, however, a federal state, not a confederation as that word is used in Section 3.2. We refer to the national level as the *federation*. In some cases, we use the German names of state bodies and institutions, German being the language spoken by a majority of the Swiss population.

#### *Relationship between the cantons and the federation*

Switzerland consists of 23 cantons, three of which are each divided into two "half cantons". The latter have the same autonomy as the "full" cantons, the difference being related to representation on the federal level. Therefore, one should perhaps say that there are 26 cantons.

The cantons have far-reaching powers. The constitution gives a detailed account of what is to be decided by the cantons and what is the power of the federation. Schools and culture, including the choice of language to be used in the canton administration, is decided at canton level. In addition, there is a long list of other tasks that are carried out by the cantons.

#### *Organization at the federal level*

The parliament (*Bunderversammlung*) has two chambers. The *Nationalrat* has 200 members, elected in the cantons for a term of four years by a list system of proportional representation. The number of seats per canton is proportional to population, with a minimum of one. The *Ständerat* has 46 representatives, two from each "full" and one from each "half" cantons. The cantons decide how they are elected. The two chambers are equal in the legislative process.

The seven members of the government, the *Bundesrat*, are elected in a joint session of parliament, one by one by majority vote. (That is, the electoral system is similar to the one discussed in Section 8.2.) All areas and languages are supposed to be properly represented. Even though the electoral system could give all seats to the majority group or to a large group in the middle of the political landscape, there is a tradition for electing members from all major parties represented in parliament. The term of office is the same as that of the *Nationalrat*.

The president of the government (*Bundespräsident/in*) is elected by a joint session of parliament for

one year among the seven members. The president is both head of state and head of government (prime minister). The president cannot be immediately re-elected. There is tradition for rotating the position among the cantons and languages.

### *Referenda*

Referenda are often used. For some types of legislation, including constitutional amendments, referenda are mandatory.

Constitutional amendments (and certain other measures) require a "double majority" to be approved by referendum. That is, a majority of those participating in the referendum must vote yes, and there must be a majority for the proposal in a majority of the cantons. When deciding what is the "majority of the cantons", each "full" canton has one vote while each "half canton" has half a vote.

## **4.2 Belgium**

### *The federal structure*

Belgium can be called a "double-layered" federal state, since there are two types of entities below the national level, communities and regions. Regions and communities both have their own elected assemblies and governments.

The communities are the French Community, the Flemish Community and the German-speaking Community. The regions are the Walloon Region, the Flemish Region and the Brussels Region. In addition there are four linguistic regions, the French-speaking region, the Dutch-speaking region, the bilingual region of Brussels Capital and the German-speaking region, but these do not have their own decision-making bodies.

The Walloon Region is made up of the provinces Walloon Brabant, Hainaut, Liege, Luxemburg and Namur. The Flemish Region is made up of the provinces Antwerp, Flemish Brabant, West Flanders, East Flanders and Limburg.

Below these levels there are "communes", which are subdivisions of the linguistic regions.

### *The national parliament*

The Parliament has two chambers, the Chamber of Representatives and the Senate.

Each chamber is divided into a French linguistic group and a Dutch linguistic group. This division is important, since certain so-called special majority laws require a majority within each linguistic group, in addition to two-thirds overall majority.

There exists an "alarm procedure", which does not give anybody veto power, but provides for particularly thorough consideration and debate when there is a danger that a measure might "gravely damage the relations between the communities". If at least three-quarters of the members of one of the linguistic groups sign a motivated statement declaring that a proposal is of such a nature, parliamentary procedure is suspended and the matter is referred to the Council of Ministers. Within thirty days, the Council of Ministers gives its recommendations and invites the chamber involved to express its opinion on these recommendations or on the original proposal, possibly in revised form. This procedure can only be applied once by the members of a linguistic group to the same issue. It

does not apply at all to the budget or to laws requiring a special majority.

The Chamber of Representatives consists of 150 members, who are directly elected in 20 constituencies by a proportional electoral system. The number of seats assigned to each constituency is based on its population.

The Senate's composition is more heterogeneous and reflects the objective to ensure, at least in part, representation reflecting the country's federal structure. The Senate has 71 members, divided into three categories.

- 40 senators are directly elected in three constituencies, the Flanders constituency, the Walloon constituency and the bilingual Brussels-Halle-Vilvoorde constituency. The Dutch-speaking voters elect 25 and the French-speaking voters 15 senators. The residents of the Brussels-Halle-Vilvoorde constituency can choose whether they want to vote in the election of Dutch-speaking or French-speaking senators.
- 21 senators are appointed by and from the assemblies of the three Communities, ten by the Parliament of the Flemish Community, ten by the Parliament of the French Community and one by the Parliament of the German-speaking Community.
- Ten senators are chosen by the two above-mentioned categories of senators. Six of them are appointed by the other Dutch-speaking senators, and four by the other French-speaking senators.

In addition, certain members of the royal family are senators by right.

For regular legislation the Senate has reviewing powers only and the Chamber of Representatives has the decisive powers. For a number of specified types of legislation, including the Constitution, election laws and laws involving vital interests of the communities or regions, approval by both chambers is required. In some cases, there is even a requirement of two-thirds majority in each chamber and majority within each linguistic group of each chamber.

### *Executive power*

According to the constitution, the federal executive power belongs to the King, but the political responsibility lies with the Council of Ministers. With the possible exception of the Prime Minister, the Council of Ministers shall include an equal number of French-speaking and Dutch-speaking members.

Ministers are responsible to the Chamber of Representatives. A motion of no confidence must be "constructive", that is, the Chamber of Representatives can only force the resignation of the present government by electing a new Prime Minister. (Respecting the formalities of constitutional monarchy, the Chamber of Representatives does not formally elect the Prime Minister, but proposes to the King a candidate for that office. In reality, an election takes place.)

### *Organs of communities and regions*

Although the Constitution seems to suggest that communities and regions have identical institutions and operate in the same way, they each have their own legal status, tailor-made to their needs. On the Flemish side, there is a Flemish Parliament which serves both as the parliament of the Flemish Community and the Flemish Region. In addition, there is a Parliament of the French Community and a Parliament of the German-speaking Community, as well as Parliaments of the Walloon Region and the Brussels region.

These parliaments are composed of elected representatives. Each Community Parliament is composed of members elected directly as members of the concerned Community Parliament or as members of a Regional Parliament, and vice versa.

Corresponding to each of the parliaments mentioned, there is a government elected by that parliament.

We do not go in detail concerning the powers of the community and regional bodies, but it should be noted, in particular, that the Parliaments of the French Community and the Flemish Community have wide-ranging competencies in the areas of culture and education. The Parliament of the German-speaking Community has more limited competencies in the same areas.

### **4.3 Canada**

Canada consists of provinces and territories. The provinces enjoy extensive self-determination. The division of powers between the national level and the provinces is described in detail in the constitution. The territories have more limited autonomy than the provinces.

The country has two official languages, English and French. Whenever economically possible, parents of the minority language shall be offered primary and secondary education for their children in their own language.

The British Queen is Head of State of Canada and appoints a Governor General who has a constitutional role, but who does not actually exert power. The role is comparable to that of the constitutional monarchs of Western Europe, see Section 2.6. For each province, the Governor General appoints a Lieutenant Governor with similar functions at provincial levels.

Canada has a bicameral parliament with a Senate and a House of Commons.

The Senate is appointed by the Governor General, previously for life, now until a retirement age of 75. The Senate has 105 members, but the number can be increased to 109 or 113. The distribution between provinces and territories is set in the constitution.

The House of Commons consists of 308 members distributed among the provinces in proportion to their population. The territories are represented by explicit constitutional provision. The members are elected by plurality vote in single-member constituencies.

The provinces have similar structures, but the directly elected chamber of the legislature may be elected by another electoral systems than the one used for the House of Commons.

Amendments to the Constitution must be approved by both chambers of the federal parliament and by the assemblies of at least two-third of the provinces representing at least fifty per cent of the population of all the provinces.

Bills may have their first reading in the House of Commons or the Senate. Amendments from the Senate may be accepted or rejected, and the House of Commons has the final say, but both chambers must in the end have had the same version for its final reading.

## 5 Bosnia and Herzegovina

Bosnia and Herzegovina provides an example of the type of situations discussed in this report. The country has been through a civil war, and the international community has been deeply involved in the attempts to end the conflict and build stable institutions. Therefore, we give a relatively detailed account of the country's government structure. We also use it as a point of departure for the discussion of general issues, both in this chapter and elsewhere.

More is said about Bosnia and Herzegovina, or the country is used to illustrate electoral systems and aspects of the government structure, in Sections 13.1 and 13.3, and also in Chapters 14 and 15.

### 5.1 Background

The population of Bosnia and Herzegovina consists of three large minorities, Bosniacs, Croats and Serbs, and a number of small minorities.

After a bloody civil war, the so-called Dayton accord, officially called the "General Framework Agreement for Peace in Bosnia and Herzegovina", was signed in 1995. The Constitution of Bosnia and Herzegovina is a part of the Dayton accord.

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

The international community appoints a High Representative to Bosnia and Herzegovina, who has been given wide-ranging power. In the period since 1995, most important decisions have been taken by the High Representative, not by the elected parliament.

### 5.2 State organization on the national level

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

The terminology is a little confusing. We will consider the country as a whole as a federal state, consisting of the two regional units just mentioned. In spite of its name, therefore, the Federation of Bosnia and Herzegovina is a part of the federal state Bosnia and Herzegovina. (The Federation of Bosnia and Herzegovina is divided into ten cantons and can itself be said to have a federal internal structure. We do not discuss this here, but see Sections 13.1 and 13.3.)

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

Legislation has to pass both chambers. A majority must contain at least one third of the votes from

each of the two entities. If that condition is not met, legislation may still pass, provided that the dissenting votes do not include two thirds or more of the representatives from an entity. In the House of Peoples this means that seven Croats and Bosniacs, or four Serbs, can stop any proposal.

In addition to these conditions, legislation may be vetoed by an ethnic caucus of the House of Peoples if it is declared to be "destructive of a vital interest" of that ethnic group. Since each caucus has five members, three votes suffice for a veto. This veto power can be said to make the House of Peoples more powerful than the directly elected House of Representatives, since the members of the House of Representatives do not have this special veto power. As far as we know, there is no other country in which an indirectly elected chamber is more powerful than the directly elected one. The construction is problematic from a democratic point of view (see Sections 2.6 and 3.3, and the discussion of the "principal chamber" in the beginning of Section 6.2).

Basically, the government system of Bosnia and Herzegovina is a parliamentary one. (The concept is discussed in Section 6.3.) The role as head of state is, however, vested in a multi-member Presidency. This follows a tradition from the former Yugoslavia. The presidency of Bosnia and Herzegovina has three members, one Bosniac and one Croat, each directly elected from the territory of the Federation of Bosnia and Herzegovina, and one Serb directly elected from the territory of Republika Srpska. The members rotate in chairing the presidency.

### **5.3 Ineffective decision making**

During the Dayton talks, representatives of the international community promoted a unicameral national parliament. This was not supported by Serbs and Croats, who feared that their vital interests would be violated by majority decisions in a parliament dominated by Bosniacs. Then the solution described in Section 5.2 was chosen. As pointed out in Section 5.1, the Parliamentary Assembly of Bosnia and Herzegovina has been almost unable to make decisions.

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

### **5.4 Possible human rights problems**

In addition to the voting rules which easily lead to a stalemate, the composition of the House of Peoples has been challenged for violating international human rights. The relevant provisions are found in the European Convention for Human Rights and the International Covenant on Civil and Political Rights, quoted in Section 7.2. The ethnic provisions written into the constitution mean that only members of the so-called constituent peoples – Bosniacs, Croats and Serbs – can be elected to the House of Peoples. Moreover, they must be voters in the right entity. Serbs residing in the Federation of Bosnia and Herzegovina cannot be elected to the House of Peoples. The same holds for Bosniacs and Croats in the Republika Srpska. All adult citizens can (indirectly) influence the composition of the House of Peoples, but the right to be elected is severely restricted.

Similar restrictions apply to the Presidency. Serbs living in the Federation and Bosniacs and Croats living in the Republika Srpska cannot be elected.

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

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

The House of Peoples is not just a reviewing body, but a chamber of parliament with definitive powers. In the terminology of Section 6.2, the system is one of strong bicameralism. It can be argued that the restrictions of voting rights and the right to be elected violate the conventions mentioned, see the discussion in Nystuen (2005). On the other hand, if such provisions had not been introduced, there was a real danger that the Dayton accord would never have been signed and the war would not have ended.

The Constitution includes a provision (Article II, second paragraph) to the effect that the rights and freedoms of the European Convention for Human Rights shall apply directly in Bosnia and Herzegovina. Moreover, it is provided that these rights and freedoms "shall have priority over all other law". Nystuen argues that the contradiction between the incorporation of European human rights standards and the specific ethnic provisions of the same Constitution shall have to be resolved in favor of the human rights standards. This argument may seem weak, but after the country has become a member of the Council of Europe and has ratified the European Convention, a decision by the European Court of Human Rights may force Bosnia and Herzegovina to change the ethnic structure of the House of Peoples.

Concerning the presidency, things may be a little different, since the relevant provision in the European Convention explicitly refers to the choice of the legislature. The International Covenant, on the other hand, talks more generally about the right to vote and to be elected.

### **5.5 Dilemmas and alternative**

To sum up, we point to the possible contradictions between on the one hand adopting provisions that are intended to promote understanding between groups in conflict, and on the other hand providing for effective government and general rights for all citizens regardless of ethnic affiliation.

Even in the difficult situation in Dayton it might have been possible to design a system which would have made the Serbs and Croats trust that their rights would be protected, without denying a large number of citizens the right to vote and to be elected. The difficulties were partly caused by the international community not allowing the establishment of a third entity dominated by Croats, since this would be regarded as an even stronger acceptance of ethnic cleansing than dividing the country into the two entities that were actually created. On the other hand, it may seem to be a paradox that by giving special rights to ethnic groups instead of geographical areas, it became more difficult to give protection to Croats and at the same time not deprive others of their democratic rights.

A model based on a large number of cantons instead of two (or three) entities, might have worked in Bosnia and Herzegovina. The cantons might then have been given veto power on certain issues. The human rights issues could have been solved, but the problem of ineffective government would have had to be addressed separately.

## 6 Division of power

### 6.1 General considerations

In a federal structure, as described and discussed in Chapter 3 and illustrated by examples in Chapter 4, power is divided between national and regional units of government. This is not, however, the only way power can be divided. In this chapter, we concentrate attention on the national level of government, be it in a federal or a unitary state. We shall discuss two issues, namely the choice between a unicameral and a bicameral parliament, and the choice between a parliamentary and a presidential system of government. (In addition to these institutional mechanisms for dividing power, parties or other political forces often agree on various arrangements for power sharing, for example, when an elected assembly appoints an executive authority. This is not the topic of the present chapter.)

The existence of an independent judiciary, which is an essential element of liberal democracy, also represents division of power. The courts are not, however, supposed to be political actors. They shall ascertain the facts of the cases before them, interpret the law, and apply the law to the facts. Interpreting the law is no mechanical exercise, and there is no sharp line between interpreting the law and developing it. Hence the courts will necessarily play a political role by *de facto* exerting some limited legislative power. (This cannot be avoided, but even if it could, it is not clear that it ought to be avoided.) Nevertheless, it must be kept clear that the courts are bound by laws adopted by the democratically legitimized legislative bodies, and court-made law can always be amended by these bodies. This might appear not to be the case when the courts, be it the ordinary ones or some specialized tribunal, can be called upon to review the constitutionality of laws; see the discussion of judicial review in Section 3.5. Even in this case, however, the courts do not have the last word, since the constitution can be amended, albeit usually by a more complicated and demanding procedure than that required for ordinary legislation. We do not further discuss the courts and their role in the structure of government.

Certain executive agencies can also have some degree of independence from the supreme, political bodies of state, but they must operate within their mandates as determined by law. Examples of such bodies can be the central bank and independent election commissions.

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

Division of power has its costs. In the best of cases, when everybody is interested in reaching compromises that take account of the various group interests, the chances of achieving this may be improved by power being divided. When conflicts are sharper, however, the result can be a complete stalemate. The various bodies, among which power is divided, will often be unable to reach a common decision, and the machinery of government is brought to a halt. This will have immediate detrimental effects, and it could also in the longer term create popular dissatisfaction with the government structure and spur (renewed) conflict.

Moreover, in spite of our repeated emphasis on the need for taking all group interests into account, we do not deny that in a democracy there are situations in which the majority legitimately can force its will through, even if the minority disagrees. It is not easy to say exactly when this is true, but such cases certainly exist. Division of power can prevent the majority from getting its way even in clear-

cut cases of this type.

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

## **6.2 Unicameral or bicameral parliament**

In theory, a parliament can have more than two chambers. There are historical examples of this. When the French Constituent Assembly met in 1789, it consisted of separate chambers for the nobility, the clergy and the "third estate". Until 1866, Sweden had a four-chamber legislature, the chambers representing the nobility, the clergy, the bourgeoisie and the peasantry. We know of no modern instance of there being three or more chamber. Therefore, we shall discuss the choice between a unicameral and a bicameral parliament, ignoring the possibility of more chambers.

As pointed out in Sections 2.6, in a democracy at least one legislative chamber should be directly elected by universal suffrage and by an electoral system which gives all votes (approximately) equal weight. We refer to it as the *principal* chamber. As emphasized in Chapter I.2, this is a technical definition introduced for convenience; it does not follow that the principal chamber is "principal" in a more fundamental sense.

In the subsequent discussion, we generally assume that there exists a principal chamber in this sense. An exception is Zimbabwe, where both chambers of parliament are partly elected and partly appointed; see Section 7.6.

The principal chamber may be the only chamber or one of two. In the latter case, democratic principles require that the principal chamber has at least as much power as the other one. It need not have *more* power than the other chamber, but it should not have less. For example, in the USA (see Section 3.5) and Switzerland (Section 4.1) there are two chambers with essentially equal power, but one of them – the House of Representatives and the *Nationalrat*, respectively – is the principal chamber by our definition.

A possible case of the principal chamber being the least powerful one is Bosnia and Herzegovina (see Section 5.2). The House of Representatives is directly elected by a system giving all voters close to equal weight. It can, however, be claimed that the House of Peoples has more power. The latter is indirectly elected by a system based on the "peoples", that is, the three major ethnic groups.

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

### *Weak bicameralism*

Examples of chambers that in practice have no more than a consultative role, are the House of Lords in the United Kingdom (see Section 2.6) and the Canadian Senate (Section 4.3). The same is by and

large true for the Belgian Senate (Section 4.2), although it has veto power in some cases. Therefore, Belgium can be regarded as a borderline case between weak and strong bicameralism.

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

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

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

### *Strong bicameralism*

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

The arguments for and against strong bicameralism basically correspond to the general advantages and disadvantages of power being divided. These are discussed in Section 6.1, and we do not repeat the discussion here.

In a federal state, one chamber of the national parliament will typically not be directly elected, or not elected by a system giving all votes (approximately) equal weight. Two examples are given in Section 3.5, the US Senate (directly elected, but with inhabitants of the most populous states being drastically underrepresented), and the Federal Council in Germany (no elected members, voting rights belong to the Länder governments). Other examples are the Ständerat in Switzerland (Section 4.1) and the House of Peoples in Bosnia and Herzegovina (Section 5.2). Perhaps the Belgian Senate (Section 4.2) should also be included, in spite of its limited powers.

For each of these chambers, its composition is intrinsically tied to the country's federal structure, and the arguments that can be put forward in favor of federalism, also justify some deviation from the standards of elections applied to the principal chamber. This does not mean that no standards should exist for the composition of the other chamber. If a chamber has real power, this power must be derived from the people through a democratic process. For example, if a body whose membership is based on inheritance or appointment not limited to a term of years, like the House of Lords in the United Kingdom or the Canadian Senate, was given veto power over all or important parts of the legislation, a serious democratic problem would arise. The same is true if a substantial part of the members are appointed in a way which cannot be democratically legitimized. (The House of Assembly in Zimbabwe provides an example of a partly elected and partly appointed

parliamentary chamber, see Section 7.6. There we discuss whether rules for electing or appointing a legislative assembly should always be uniform.)

What is and what is not acceptable in this connection? It is not easy to draw a sharp line. However, the rules actually in effect in established democracies with strong bicameralism – like the USA, Germany and Switzerland – could give some guidelines for what should be considered consistent with democratic principles. (Concerning the House of Peoples of Bosnia and Herzegovina, we have reservations both to the electoral system and the rules of procedure, see Sections 5.3 and 5.4. We do not, however, object to the fact that the body is indirectly elected or to the distribution of seats between the two entities.)

#### *Different or similar chambers*

In a bicameral system, there ought to be some difference between the chambers in the method for electing or appointing them. Given the existence of political parties, two chambers elected by similar rules will in all likelihood replicate each other's decision and will not, in reality, represent division of power, but only an unnecessary complication.

It could be argued that the issues will be more thoroughly discussed when two chambers, although essentially equal, are involved. The need for thorough discussion can, in our opinion, be equally well taken care of by the procedural rules in a unicameral legislature, for example, by requiring that there be more than one "reading" of a bill. (In a situation without political parties, having two chambers elected by similar rules can perhaps serve a meaningful purpose, but this is not relevant for the present discussion.)

### **6.3 Parliamentary or presidential system of government**

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

When parliament has adopted a motion of no confidence, the government can choose to resign. In many parliamentary systems, however, it can instead "appeal to the people", that is, dissolve parliament and call new elections. The results of these elections will then determine the new government. The government's right to call new elections may be subject to restrictions and procedural requirements, or may not exist at all. (To our knowledge, Norway is the only country with a parliamentary system where there is no provision for holding early elections.)

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

In some parliamentary systems, the government or the prime minister is *elected* by parliament. In other cases, the head of state, after formal or informal consultations, chooses a candidate for prime minister. Approval by parliament is needed in some countries, but in other countries the candidate simply takes office unless parliament passes a motion of no confidence.

The German Constitution of 1949 introduced the *constructive* motion of no confidence. This means that parliament can only force the government to resign by simultaneously electing a new head of government. The purpose is to contribute to stability by preventing factions that cannot cooperate among themselves, from joining forces to remove the incumbent government. Several countries

have followed the German example; see, for example, the discussion in Section 4.2 of the executive power in Belgium. In most parliamentary systems, however, a simple motion of no confidence is sufficient to force the government out of office.

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

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

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

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

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

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

When executive power is shared between an elected president and a government responsible to an elected legislature, the possibility exists that the president comes from one party and the government from another party or coalition. This situation is not inherently undesirable, as it may reflect the voters' desire to balance competing interests and agendas. (Similarly, voters in the United States often elect a president from one party and a congressional majority from another.) Without strong institutions for managing the conflict between the parliament and the president, however, this situation can lead to governmental crises. In the Palestinian Authority, for example, this system has developed as the result of a historical accident, triggered by the desire to contain the power of the former president. As a result, the constitutional framework for dividing executive power is ambiguous. In Sri Lanka, the division of power is clearer, but the politics of the country have become largely structured around conflicts between the government and the president, and especially around the ambitions of Prime Ministers and opposition leaders to win the presidency. As described in the case study on Sri Lanka (see Chapter III.3), this has made compromise in peace negotiations very difficult.

While combinations of a pure parliamentary and a presidential system may be an attractive compromise in some instances, it can only be implemented within a sufficiently robust legal

framework and after careful consideration of its political dynamics.

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

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

The presidential system represents division of power between parliament and president. In a parliamentary system, there is a division of functions between parliament and government, but no real division of power. The power rests undivided with parliament. Therefore, the general arguments for and against division of power, as outlined in Section 6.1, are relevant when a choice shall be made between a parliamentary and a presidential system.

Could a presidential system, through its division of power between parliament and president, contribute to solving conflicts of the type we discuss? We are inclined to answer no. For our purpose, division of power is a means to protect the interests of groups other than the majority or dominant group. An elected president will, in all likelihood, primarily represent that group. The same holds for the majority in the principal chamber of parliament. In the cases considered, therefore, little is gained by dividing power between parliament and president. This contrasts with dividing power between the chambers of a bicameral parliament, which can serve an especially meaningful purpose in post-conflict situations, as explained in Section 6.2.

In the best of cases, the elected president will be willing and able to take account of all relevant group interests when carrying out the presidential duties. There is, however, no institutional guarantee that this will happen. When *one* president is to be elected, the winner will most likely be a candidate from the dominant group, nor would it be preferable from a democratic point of view if the president systematically came from another group than the biggest one. One could try to build the protection of various group interests into the executive branch by electing a multi-member presidency, like the one in Bosnia and Herzegovina; see Section 5.2. This has been proposed in other places as well, but it would be alien to the traditions of most countries and is not discussed further.

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

## 7 Electoral systems – general issues

The discussion in this chapter, and also in Chapters 8–11, is mainly concerned with elections to legislative assemblies. Many of the considerations are also relevant for presidential elections etc., but the main focus is on parliamentary elections.

We start by saying a few words about the historical background, since this can explain why the

various electoral systems have emerged and why there today is such a diversity of systems (Section 7.1). Thereafter, we quote international standards for elections (Section 7.2) and discuss criteria for good electoral systems, first in general terms (Section 7.3) and then by listing and discussing specific criteria (Section 7.4). Equality or equal suffrage is a criterion of particular importance, but at the same time a difficult one; it is discussed thoroughly in Section 7.5. We also ask whether it is acceptable to elect or appoint different members of the same assembly by different rules, or if a principle of uniformity should be imposed (Section 7.6).

The chapter ends with an overview of electoral systems (Section 7.7), as an introduction to the more detail description and discussion of specific systems in Chapters 8 – 11.

## **7.1 Historical background**

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

When political parties do not exist, elections must necessarily be based on individual candidates. Then plurality or majority systems might appear to be the only options. This is actually not true; preferential systems like the single transferable vote (see Section 10.3) can also be used, but it is a fact that pre-party elections almost invariably were based on plurality or majority principles. (The difference between plurality and majority is explained in Chapter 8.)

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

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

Things change when political parties are formed and come to dominate political life. (The "political parties" need not be known by that name or exactly correspond to modern parties. Other organizational forms can have the same effects.) Then most voters will not primarily ask which candidates are best qualified. Instead they ask whose positions best correspond to their own views. This change in voters' behavior also changes the character and effects of plurality and majority electoral systems. As described in Chapters 8 and 9, these systems are not well suited for giving representative results, in the sense that the elected assembly mirrors the voters along various relevant dimensions.

In an attempt to secure more representative results, the idea of proportional elections emerged in the last decades of the 1800s. Over the years, a number of different proportional systems have been designed; see further discussion in Chapter 10. Among the first countries to introduce proportional parliamentary elections were Belgium, Germany and the Scandinavian countries. Such systems have become more widespread over the last decades. In the United Kingdom, however, parliament is still

elected by plurality vote, and the same is true in most (but not all) countries whose legal and political system is based on the British model.

These two traditions have shaped the two principal types of electoral systems, which are discussed in detail later.

## **7.2 International standards**

There exist some international standards for the conduct of elections.

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

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

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

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

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

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

Article 23 of the American Convention on Human Rights, adopted in 1969, regulates the right to participate in government. The relevant provisions read as follows:

- «1. Every citizen shall enjoy the following rights and opportunities:
- a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; ...»

Article 3 of Protocol No. 1 (adopted 1952) to the European Convention for the Protection of

Human Rights and Fundamental Freedoms is entitled "Right to free elections" and reads:

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

Concerning Europe, more detailed standards are laid down in the Copenhagen Document, CSCE (1990), paragraph 7. (The Conference on Security and Cooperation in Europe, CSCE, was the forerunner of the Organization for Security and Cooperation in Europe, OSCE.) We quote the provisions most relevant for our purpose:

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

As pointed out earlier, we interpret items (7.2) and (7.3) to imply that at least one legislative chamber, which we call the principal chamber, should be directly elected by universal suffrage, the electoral system giving all votes (approximately) equal weight, see Sections 2.6, 3.3 and 6.2.

### **7.3 Criteria for good electoral systems – overview**

In established democracies, the constitution may contain more or less detailed provisions on the electoral system. If details are not given, the constitution will usually lay down general principles for elections, much like the ones quoted from international texts in Section 7.2. For example, the German constitution provides that the members of the Federal Parliament be elected by universal, direct, free, equal and secret elections.

We shall, however, discuss criteria for good electoral systems in greater detail, in general terms in this section and by listing and discussing specific criteria in Section 7.4.

The requirement that elections be periodic or held at reasonable intervals is certainly an important one. Democracy is undermined if election periods are very long. We do not discuss this issue further; in particular, we make no attempt to stipulate an upper bound for acceptable intervals between elections. (In Section 2.3 we discuss arguments for electing the first ordinary parliament after the (re)establishment of democracy for a shorter period than that stipulated by the permanent rules.)

Secrecy of the ballot is needed to guarantee that the voters freely and independently can express their will. The issue falls outside the scope of the report and will not be discussed further.

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

- What should be the voting-right age?
- Should only citizens have the right to vote, or should other residents also be allowed to take

- part in (certain types of) elections?
- Should some minimum length of residence be required for being registered as a voter?
- To what extent should criminal convictions lead to the loss of voting rights?

Another question is how a person's right to vote shall be documented. In established democracies, there usually exists a voters' list. Being on that list is a condition for exercising one's voting rights. In some countries a potential voter is required to take active steps to get onto the voters' list, but more commonly it is the responsibility of the authorities to produce complete and correct lists. Without choosing between these two alternatives, we express reservations against a system in which a potential voter must go through an extensive and complicated registration procedure in order to get on the voters' list. Such rules restrict effective voting rights in an unreasonable manner. In particular, this is the case if those active steps must be taken a considerable time ahead of the elections.

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

Reliable voter registration is essential to prevent fraud and the perception of fraud, be it through multiple voting, by manipulation of the eligibility criteria, or in other ways. Especially where there is disagreement about the sizes of the various groups, which frequently is the case in post-conflict situations, voter registration allows people to come to terms with the size of the voting populations some time before the election results are announced. Registration is also an important tool for election administration, since information about the number of voters is an essential basis for planning the logistics.

The question of direct or indirect elections has been discussed on several occasions earlier; see, for example, Section 3.3 (on federalism) and Section 6.2 (on bicameralism).

Among the criteria mentioned in the international standards quoted in Section 7.2, equality or equal suffrage has not yet been mentioned. Although it might seem obvious that voters should be treated equally, the criterion also raises difficult questions; see Section 7.5.

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

The range of systems being used in multi-party democracies is wide, and there is no general consensus on what kind of electoral system is the best or the most "democratic". There is certainly no generally accepted international standard which singles out one system as the "correct" one; see the discussion above of international standards. As indicated in Section 7.1, the historical and political context has been decisive for the system chosen in different countries.

Electoral systems have a large range of features and characteristics, which makes each of them work differently in different contexts. The choice of system is often highly controversial, and political contenders will tend to protect their immediate interest when decisions about the electoral system are made. When discussing the issue, decision makers often have an affinity for the system historically used in the country or systems commonly used in the region. However, sometimes new and experimental systems are put forward, be they homemade by the politicians themselves or picked up

from academic sources or the like.

In Chapters 8 – 11, we describe and discuss a number of electoral systems, including the ones most commonly used.

It is common to distinguish between on the one hand the plurality or majority systems, which usually give the largest party a significant advantage, and on the other hand the proportional systems, which give each party a share of the seats close to its share of the votes. The two types of electoral systems have grown out of different traditions, as explained at the end of Section 7.1. They are described in detail in Chapters 8 and 10, respectively. Within each of the major types there are many different electoral systems, varying along a number of dimensions. The two types can also be combined; see Sections 10.2 and 11.2, which describe two quite different ways of combining them.

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

This does not mean that everything should be accepted. In particular, the system described in Chapter 9, plurality elections in multi-member constituencies or "block vote", come close to being a "winner-takes-all" system and will probably not be seen as meeting internationally accepted standards, if applied in pure form in parliamentary elections.

Some systems that are being used in practice have been constructed to solve special problems in a particular situation, but have many undesirable side-effects and hardly qualify as satisfactory. A better system could have been found if a more systematic approach had been adopted. We shall give several examples of this; see Section 9.3, 13.4 and 14.5. Section 15.3 also gives examples of unsatisfactory systems.

#### **7.4 Criteria for good electoral systems – specific criteria**

Even though a large variety of systems are being used in established democracies, some general criteria for good electoral systems can be defined. The weight put on each of them, however, would vary, among experts as well as among political decision makers.

We list some criteria that electoral systems may meet, and discuss briefly some aspects of each. Most of the criteria apply to elections generally, not just to elections in post-conflict situations, but some of them are particularly important in such situations.

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

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

member.

*Support stable governments.* It has been argued that a fully proportional electoral system may result in an assembly split into a large number of parties, which in turn will lead to unstable coalition governments. The empirical data does not necessarily support this claim, at least not in countries with some kind of threshold for representation; see the discussion of thresholds in Section 10.1.

*Give equal weight to each voter.* This requirement can be interpreted in various ways when applied to different electoral systems. The most general formulation is that voters shall not be discriminated against on account of ethnicity, geography, gender and so on, except for what may follow from valid affirmative actions. The criterion is discussed further in Section 7.5. In that section, a formal and technical version of the criterion, called "anonymity", is also introduced.

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

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

*Be simple for the election administration.* Systems can be very complicated for those implementing them. However, what may seem difficult to implement, need not be complicated from a voter's point of view. A possible example is the single transferable vote (see Section 10.3).

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

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

*Promote cross-community parties.* This is related to the previous item, but is not exactly identical as a criterion for electoral systems. Community may refer to ethnic, linguistic, religious or sectarian groups as well as geographical areas; see the definition of "group" in Chapter I.2.

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

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

its support is distributed when boundaries are drawn, so-called "gerrymandering". (The issue is discussed in Section 8.4.)

*Respond logically to changing support.* Increased support for a party should normally lead to increased representation, with as few unforeseen and illogical side effects as possible.

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

## 7.5 Equality

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

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

When a conflict is brought to an end through negotiations and agreement, elements of the electoral system may be part of the settlement, implying deviations from equality over and above what would ideally be justified by the considerations above. The outcome will be determined, at least partially, by the negotiation strength of the parties. Deviations from equality in the interest of ending a war, is probably quite common and should not be considered unacceptable. There must, however, be a limit to what can be characterized as "democratic". See the discussion of the repercussions of the peace process in Section 2.1 and the description of the situation in Bosnia and Herzegovina and the Dayton accord in Section 5.1.

### *What is equal suffrage?*

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

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

On the formal and technical level, political equality can be identified with the condition of *anonymity*, which is defined as follows: Suppose, initially, that voter *K* has voted for party *X*, while voter *L* has voted for party *Y*. Then *K* and *L* change their votes, so that *K* votes for *Y* and *L* for *X*, while all other votes are unchanged. This shall not lead to any change in the number of seats won by the parties. Note that the condition should ideally be satisfied for any two voters *K* and *L*, whether they cast their votes in the same or different constituencies. We return to the condition in Sections 8.1 and 10.1, in connection with plurality vote and proportional elections, respectively.

What does equality imply for the geographic distribution of seats? In particular, should the distribution be based on the total *population* of the geographic units, the number of *citizens* residing there, or the number of *voters*? The choice between these alternatives is not likely to make a big difference, but they are not identical. (Differences can be caused by variations in the fraction of the residents who are not citizens, or by the age structure varying across the country.) We express no view as to what is the appropriate basis for geographic distribution of seats, and we do not discuss the issue further. It should be noted, however, that in established democracies, the question is answered differently.

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

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

Most countries with proportional electoral systems are divided into (multi-member) constituencies. (Israel, Moldova, the Netherlands, Slovakia and Ukraine are counterexamples.) Equality requires that the constituencies be represented in proportion to their population (or number of inhabitants or voters). This criterion can only be applied to seats that are distributed among the constituencies prior to the election. If some seats are not thus distributed, which may be the case if there are "compensatory seats" (see Section 10.1), the requirements of geographical equality must be appropriately modified.

#### *Deviations from equality – the principal chamber*

As pointed out in Section 2.6 and several other places, at least one legislative chamber should be directly elected by universal suffrage. We call this the principal chamber; see definition in Chapter I.2. It can be the only chamber or one of the chambers under bicameralism; see Section 6.2.

To this chamber, strict standards of equality should be applied. Even here, however, some deviations must be accepted.

In plurality and majority systems based on single-member constituencies, these should be of equal size. There are, however, arguments for letting constituency boundaries follow administrative borders. This can justify some differences in constituency size. For example, the seats in the House of Representatives of the USA (see Section 3.5) are apportioned among the states according to population, by a proportional system which guarantees at least one seat to every state. In each state, constituencies of close to equal size are created. The least populous states get one seat each, although these states are by no means equal in population. This creates significant differences in constituency size. Presently, the smallest constituency has a population some 23 percent below the national average, while the largest is 40 percent above that average (according to the 2000 census, see Huckabee (2001) Table 3). Hence the largest constituency is more than 80 percent bigger than the smallest. These differences can only be avoided by letting constituencies cross state borders, which

would run counter to the country's federal structure and also cause practical difficulties.

The Federal Parliament in Germany can also be used as an example. One half of the members are elected in single-member constituencies, which must not cross *Länder* borders. When boundaries are drawn, no constituency shall have a population deviating more than 15 percent (up or down) from the national average. Demographic changes do not immediately lead to revision of the boundaries, but if some constituency deviate more than 25 percent from the average, a new map must be drawn. The Federal Parliament is elected by a so-called mixed member proportional system, explained in Section 10.2, which gives the parties an overall representation in parliament proportional to their national voting strength. Hence the constituency boundaries do not have a significant impact on the political composition of the assembly. This makes it less important to insist on constituencies of equal size than in pure plurality and majority systems, where the results in the single-member constituencies alone determine the parties' parliamentary strength.

Turning to proportional systems, it might appear that the very idea of proportional distribution of seats guarantees equal political weight to every vote. There are, however, different methods of proportional representation, which vary somewhat in the way they treat large parties as compared to small ones. It is also considered acceptable to introduce a threshold for representation, so that a party not reaching this threshold will not be represented although by strict proportionality it may be entitled to a few seats, provided that each vote has an equal influence on whether the party reaches the threshold. Technically, if  $K$  and  $L$  change their votes as described in the definition of anonymity earlier in this section, no change shall occur in which parties pass the threshold. More is said about these issues in Section 10.1.

In systems based on single-member constituencies, geographical equality can only be guaranteed by appropriate drawing of constituency boundaries. In proportional systems with multi-member constituencies, there is an additional instrument available, namely the number of seats allocated to each constituency. Therefore, administrative borders can more easily be respected, that is, constituencies can be based on municipalities, provinces or similar units. Moreover, instead of redrawing boundaries to maintain geographic equality in response to demographical changes, seats can be redistributed. To minimize the danger of manipulation, the redistribution should not be determined discretionary by political bodies but be based on a predetermined formula.

Most countries with proportional elections in multi-member constituencies base the constituencies on administrative units and allow the number of seats in each constituency to vary. An exception is the Republic of Macedonia, where a 120-member parliament is elected from six constituencies each having 20 seats. The number of voters in each constituency is only allowed to vary three percent from the average. This has the advantage of avoiding constituencies electing very few members, but in our opinion the disadvantages related to the drawing of constituency boundaries are more important. Therefore, in proportional systems this rather unusual arrangement cannot be recommended.

The political consequences of unequal geographical distribution depend on the specific rules and vary among proportional systems. If all seats are allocated to multi-member constituencies and the seats in each constituency are distributed among the parties based on their local votes, inequalities in the geographical distribution necessarily imply that votes differ in their political weight. If, on the other hand, there are mechanisms that guarantee nationwide proportionality in the distribution of seats among parties, geographical inequalities will have no or very limited effect on the political weight of the votes. Such mechanisms are discussed in Section 10.1. In particular, the introduction of "compensatory seats" can serve this purpose. Therefore, deviations from equality in the geographical distribution can more easily be accepted in the latter case than in the former. (This is analogous to the difference pointed out above between the US House of Representatives and the German Federal

Parliament. In the former, differences in constituency size imply similar differences in political influence, while this is not the case in the latter.)

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

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

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

Small minorities will sometimes need special protection. We do not categorically rule out the possibility of achieving this by giving members of such a minority some special rights related to parliamentary elections, not even elections to the principal (or only) chamber. However, only quite limited deviations from equality can be accepted on this account. Preferably, the minority representation should have as little effect as possible on the composition of parliament along regular political dimensions. The issue is discussed further in Chapter 14.

In some federal states, certain regional units have a special status, different from that of the majority of the units. For example, Canada consists of provinces and territories (see Section 4.3). In the USA, the federal capital Washington, officially known as the District of Columbia, is not a state and does not belong to a state. The same is true for the Australian Capital Territory. There may be valid reasons for establishing such special units and granting them less internal autonomy than the regional units in general. It is more problematic to treat the population of these units differently when it comes to electing the national legislature. In this respect, the USA is an extreme case. The

inhabitants of the District of Columbia have no ordinary representation in Congress; they are not represented at all in the Senate and only elect a non-voting delegate to the House of Representatives. This is hardly compatible with international standards, such as the International Covenant on Civil and Political Rights, Article 25(b), and the American Convention on Human Rights, Article 23.1(b). They both secure for every citizen the right "to vote and to be elected", see quotations in Section 7.2. In any case, it is not a system to be recommended.

### *Deviations from equality – bicameralism*

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

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

If the principal chamber has essentially all legislative power while the other chamber mainly is a consultative body (weak bicameralism, see Section 6.2), flexibility is particularly great. In this case, one could even accept a body that does not derive its power from the people, like the House of Lords in the United Kingdom.

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

How far can one go in tailoring the composition of the other chamber and its electoral system to the federal structure? More generally, which deviations from equality are acceptable? The question has already been considered in Sections 3.3 and 6.2. In Section 6.2, where strong bicameralism was discussed, we concluded that it is not easy to draw a sharp line between that which is and that which is not acceptable, but the rules actually in effect in established democracies with strong bicameralism can give some guidance.

Here we have nothing more to say about this topic, but in Chapter 13 we discuss the question of balancing the interests of large groups. In that connection, parliamentary representation, particularly in bicameral legislatures, is a central issue.

## **7.6 Uniform rules for election or appointment**

Although deviations can be made from the principle that all individuals shall be treated equally, it can be argued that the rules governing the composition of a legislative chamber should be *uniform*. That is, there should not be different categories of members, elected or appointed by different rules.

Such a principle could not and should not be imposed without exemptions. In certain perfectly

legitimate electoral systems, like the mixed member proportional systems (Section 10.2) and the parallel systems (Section 11.2), there are two categories of members elected by different rules. (Once elected, all members have equal rights.) In these cases, however, every voter participates in the election of members from both categories. Although there are two categories of elected members, therefore, the voters are treated equally.

Among the examples discussed in previous chapters, the Federal Parliament of Germany is elected by a mixed member proportional system. In addition, the Belgian Senate is elected by a non-uniform and fairly complicated system, see Section 4.2. This may be acceptable because of the doubled-layered federal structure of Belgium. In Switzerland, the cantons decide how their members of the *Ständerat* are elected (see Section 4.1); hence the electoral system may vary.

A clear-cut case of non-uniform rules would consist in members of a parliamentary chamber being elected by a plurality or majority system in one part of the country and by proportional representation in another part. Such were the electoral rules for the House of Republics of Yugoslavia (Serbia and Montenegro) prior to 1998. The chamber was indirectly elected and had an equal number of members from each of the two republics, those from Serbia being elected by a plurality system and those from Montenegro by a proportional one (see further discussion in Section 13.1). For a period in the 1950s, during the Fourth Republic, France had a system of roughly the same kind; see Lakeman (1974) page 223. The country was divided into multi-member constituencies. In some of these, a proportional system favorable to small parties was used. In the rest of the country, a party or coalitions which got an overall majority in a constituency took all the seats; otherwise the seats were distributed by a proportional formula favorable to large parties.

Such hybrid systems are unbalanced and treat voters unequally. If the electoral rules are adopted by the elected assembly, they are also open for manipulation. The present majority can strengthen its overall electoral prospects by introducing proportional elections in areas where it is weak and plurality or majority elections where it is strong, or by differentiating the proportional formula similarly. In the French case, there is strong evidence that the system was adopted for the purpose of depriving the Communists of their fair share of the seats.

It will not be acceptable today to adopt a system of this type for elections to the principal chamber of a national parliament.

Can hybrid systems be accepted for the other chamber under bicameralism? As we have seen, the electoral rules are, could be or have been non-uniform for the Belgian Senate, the Swiss *Ständerat* and the Yugoslav House of Republics. In these cases, the non-uniformity is tied to the federal structure of the country. In Switzerland, the power to adopt electoral rules for the *Ständerat* is decentralized; hence a majority in the assembly cannot manipulate the rules as described above. The same was true in Yugoslavia.

Nevertheless, for one and the same chamber of a national legislature, uniform electoral rules are generally to be recommended.

The members of the European Parliament are elected by different electoral systems in different countries. The national parliaments determine the electoral rules, so there is no danger that a majority in the European parliament can use the system for manipulation. Moreover, the European Union is a not state, not even a federal one, and the European Parliament cannot be directly compared to national parliaments; see the discussion in Section 3.2 of the distinction between a federal state and a confederation or union of independent states.

Zimbabwe provides a further example of non-uniform rules, which even apply to the most powerful

chamber of parliament. The Constitution has been amended several times since independence in 1980. The present version was adopted in 2005, when a Senate was reintroduced, the system having been unicameral since 1987. Today the parliament has two chambers, the House of Assembly and the Senate. The House of Assembly has 150 members, of whom 120 are directly elected in single-member constituencies. The other 30 are ten governors and eight chiefs appointed by the president, and twelve additional members also appointed by the president. (The Senate has a similar composition, but it has less power and is not discussed separately.) In order to get a majority in the House of Assembly, parties in opposition to the president must win 76 of the 120 elected seats, or more than 63 percent. An official justification for the president's right of appointment is that it provides for a stronger representation of underprivileged groups such as women, ethnic minorities, handicapped etc. It is unlikely, however, that non-elected members of parliament will be regarded as representing such groups. Even if the official arguments are accepted, the composition of the Zimbabwean House of Assembly blatantly contradicts established democratic principles.

More generally, it seems difficult to justify a system where an assembly with substantial powers is partly elected and partly appointed, whatever might be the arguments for appointing some of the members. There are other and better ways of strengthening the representation for underprivileged groups. We refer to Chapter 14, where protection of minorities is discussed. That discussion is mainly concerned with ethnic, linguistic, religious and sectarian groups and the like; see the definition of "group" in Chapter I.2. The methods considered can, however, also be used if it is deemed necessary to secure representation of other groups that are considered underprivileged.

## **7.7 Overview of electoral systems**

The following overview presents the classification used in the subsequent discussion. It follows to a large extent the terminology of the International IDEA Electoral System Design Handbook, International IDEA (2005).

Plurality and majority elections in single-member constituencies (described and discussed in Chapters 8):

- Plurality elections, "first-past-the-post" (Section 8.1)
- Majority elections in two rounds (Section 8.2)
- Majority elections by the alternative vote, AV (Section 8.3)

Plurality elections in multi-member constituencies (Chapter 9):

- Elections based on individual candidates, the "block vote" (Section 9.1)
- Elections based on closed lists, the "party block vote" (Section 9.2)

Proportional representation (Chapter 10):

- List-based proportional systems (Section 10.1)
  - One nation-wide constituency
  - Multi-member constituencies
  - Multi-member constituencies with compensation
- Mixed member proportional systems (MMP) or list-based proportional systems combined with elections in single-member constituencies (Section 10.2)
- The single transferable vote, STV (Section 10.3)

Semi-proportional systems (Chapter 11):

- The single non-transferable vote, SNTV (Section 11.1)
- Parallel systems (Section 11.2)

## 8 Plurality and majority elections in single-member constituencies

As pointed out in the beginning of Chapter 7, the discussion is mainly concerned with elections to legislative assemblies. However, the methods discussed in Sections 8.1 – 8.3 can also be used for electing one person to an office, such as the presidency.

### 8.1 Plurality elections

The country is divided into constituencies, each electing one member of the assembly. In each constituency, the candidate with the highest number of votes is elected. A seat can be won with less than fifty percent of the votes. The system is sometimes referred to as majority vote, but we will only use that term when more than fifty percent of the votes is required for being elected. It is often thought of as the British system. In the United Kingdom, parliament is elected this way, and the same is true in most countries whose legal and political system is based on the British tradition.

The historical background is described in Section 7.1. Here we take it for granted that political parties exist and dominate the electoral process, although independent candidates may be allowed. We discuss the system on that basis.

The nationwide result may be far from proportional. Typically, large parties get more and small parties less than their proportional share of the seats. In particular, the largest party will normally get a share of the seats much higher than its share of the votes.

The system establishes a strong and direct link between the voters and the elected members (see the second criterion in Section 7.4). Moreover, it will often give clear majorities in parliament, thereby facilitating the forming of strong governments with majority support (the third criterion in Section 7.4). Under parliamentarism, majority governments are generally regarded as an advantage, see Section 6.3. However, strong governments are not always the result of plurality elections in single-member constituencies, as illustrated by India in the 1990s.

The party system will tend to get polarized, so that the number of parties is low. Often there are only two parties of any importance.

If the support of the parties is (almost) evenly distributed across constituencies, the largest party will benefit strongly from the system. In most countries where plurality systems are used, the social and political composition of constituencies varies. Then the opposition will also get significant representation, since it is likely to be the largest party in parts of the country.

Small or medium-sized parties with support evenly spread over the country, will have difficulties in being represented. Therefore, it can be hard for new parties to enter the political scene. On the other hand, parties with strong regional support have a fair chance of being represented, even if they are small nationwide.

The system is vulnerable to tactical voting. If, ahead of the elections, two candidates are commonly regarded as the strongest contenders, voters who primarily support a third candidate may choose to vote for one of the frontrunners instead of showing their true first preferences. It is even possible

that a candidate really has strong support, but if the support is perceived to be weak, many of the supporters may cast a tactical vote for some other candidate, thereby depriving their favorite of a possible victory.

As already noted, large parties will usually get more than their proportional share of the seats, while small parties get less. There is, however, no direct connection between a party's share of the vote and its share of the seats. In other words, a party's representation does not only depend on its total number of votes but also on how these votes are distributed among the constituencies. It is even possible that a small party gets more and a large party less than its proportional share of the seats. In Section 8.4, we give an example of this; there are two parties, one of them gets a majority of the votes but a minority of the seats, while it is the other way round for the other party. Similarly, a party can increase its share of the votes from one election to the next, but nevertheless lose seats, or vice versa.

In technical terms, the condition of anonymity, defined in Section 7.5, is not satisfied by plurality elections in single-member constituencies. If two voters change their votes as described in the definition of anonymity, nothing changes if they belong to the same constituency. If they cast their votes in different constituencies, however, the result may change in one of these and not in the other one, leading to an overall change in the parties' parliamentary representation.

## **8.2 Majority elections in two rounds**

In some countries with single-member constituencies, a candidate must get at least fifty percent of the valid votes in order to be elected. If no candidate is elected in the first round of voting, there is a run-off. Usually, only the two candidates with the highest number of votes in the first round can participate in the run-off. The candidate with the most votes in the second round wins the seat.

A variant of this, which is strictly speaking not a majority system, is used for parliamentary elections in France. In the first round, more than fifty percent of the votes is needed to be elected. If there is a second round, it is possible that more than two candidates take part, and the plurality winner is elected, whether or not an absolute majority is achieved. (In most of the French constituencies where there is a second round, it involves only two candidates.)

The legitimacy of the elected members may be strengthened when they have obtained absolute majorities in their respective constituencies. Another argument for requiring a majority is to ensure that subsidiary preferences are taken into account. When a voter's first choice has been defeated, at least the second-ranked candidate can be elected.

An extreme candidate, whose support is strong but falls short of fifty percent, will have less chance of being elected under a majority than under a plurality system. When there are strong group divisions within a constituency, therefore, the majority system gives candidates an incentive to appeal to voters beyond their own group, which seems advantageous in post-conflict situations.

The method is vulnerable to tactical voting, but probably less so than plurality vote, since a voter's second preference can be expressed in a possible second round. We do not go in detail concerning the tactical possibilities under majority vote.

Otherwise, the remarks made at the end of Section 8.1 apply here as well. In particular, the largest party will normally get more than its proportional share of the seats. Small parties will have difficulties in winning seats unless they have strong regional support.

### **8.3 Majority elections by the alternative vote**

A variant of majority election is the preferential system in single-member constituencies, often called the alternative vote or AV. It works as a majority system with multiple run-offs, until one candidate wins more than fifty percent of the valid votes.

On the ballot, the names of the candidates are listed, possibly with party affiliation. The voter shall rank candidates by indicating preferences from 1 (most preferred candidate) and upwards. In the standard version of AV, the voter decides how many candidates to rank; a ballot is valid if only one preference is indicated, if all candidates are ranked, or if the number of preferences is between these extremes. However, if only a few candidates are ranked, the voter risks losing influence. The rules could also require that all or a certain minimal number of candidates be ranked in order for the ballot to be valid, or conversely restrict the number of preferences to two or some other limit lower than the number of candidates.

During the counting, the ballots are sorted by first preferences. If a candidate receives more than fifty percent of the first preferences, this candidate is elected. If nobody gets an absolute majority, the votes for the candidate who received the lowest number of first preferences are distributed according to the next preference on each ballot. If a voter has not indicated a second preference, this ballot is taken out of the count and has no influence on the final outcome. A candidate who now has more than fifty percent of the votes is elected. If nobody is elected at this stage either, the procedure of distributing votes from the bottom candidate is continued until either a candidate has received more than fifty percent of the votes or only one candidate is left.

In fact, AV is the single transferable vote (STV, see Section 10.3) applied to the single-member case. As opposed to STV, AV is a majority system, not a proportional one.

### **8.4 Constituency structure**

How the country is divided into constituencies can have a considerable impact on the election results. This is true for all pure plurality and majority systems based on single-member constituencies.

If all constituencies are equal so far as party support is concerned, a party which wins one constituency will win them all. This is, of course, an extreme and unrealistic case, but if the country politically is fairly homogenous, one party is likely to win a large majority in parliament and be represented way above its share of the votes. This was pointed out in Section 8.1 for the system discussed there, but it also holds for the systems of Sections 8.2 and 8.3.

If there are regional variations in the parties' support, the election result will depend on how the country is divided into constituencies. It is perfectly possible that one party gets a majority of the votes, but another party wins a majority in the legislature. This is possible even if all constituencies are of equal size, as required by the principle of equal suffrage (at least for the principal chamber); see the discussion in Section 7.5 of what is meant by equal suffrage. We illustrate this possibility by an example in which there are only two parties. This is again unrealistic; even in countries perceived to have a two-party system there are usually some minor parties as well. A more realistic example can easily be constructed, but it will necessarily be quite complicated, and the main point will tend to drown in the details.

Suppose a country has a 100-member legislature, elected by plurality or majority vote in single-member constituencies. (The details of the electoral system do not matter when there are only two parties.) In each constituency, there are 10,000 voters. In each of 60 constituencies, party *X* gets 6,000 votes while party *Y* gets 4,000 votes. In each of the remaining 40 constituencies, party *X* gets 3,000 votes while party *Y* gets 7,000 votes. Party *X* wins the former 60 constituencies and gets a majority in parliament. The total vote, however, is 480,000 for party *X* and 520,000 for party *Y*, that is, a majority of the voters support *Y*.

In the example, party *X* gets more than its proportional share of the seats because there are a large number of constituencies in which *X* has a relatively small majority, while *Y* has a large majority in a smaller number of constituencies.

If constituency boundaries are determined by a political process, the current majority can try to draw the boundaries so as to get an advantage similar to that enjoyed by party *X* in the example. Thereby it can perpetuate its parliamentary majority, even if it should lose the popular majority in the next election. There are limits to how far one can go in this direction. Formal or informal norms may restrict the majority's freedom when drawing boundaries. Moreover, nobody is able perfectly to foresee the distribution of votes in upcoming elections. Nevertheless, those who determine the constituency boundaries have considerable influence on future election results. This is true even if it is required that constituencies be of (close to) equal size.

In the USA, politically motivated constituency design has been a common practice, or it has at least been perceived to be common. The phenomenon has even been given a name, "gerrymandering".

It clearly violates democratic principles if the current majority uses its position to strengthen its future electoral prospects as described above. Accusations of "gerrymandering", whether or not they are well founded, can sharpen conflicts and make reconciliation more difficult. This consideration is particularly relevant in post-conflict situations, where mutual trust is likely to be weak or absent.

If the electoral system is based on single-member constituencies, one should, if at all possible, remove the power to draw constituency boundaries from the political process and leave it to some neutral and universally trusted authority, like an independent commission or the courts.

## **9 Plurality elections in multi-member constituencies**

### **9.1 Plurality elections based on individual candidates, the "block vote"**

The country is divided into constituencies, each electing a specified number of members. Alternatively, the whole country can be one constituency, from which the whole parliament is elected.

The historical background is described in Section 7.1. Here we discuss the system on the assumption that political parties exist and dominate the electoral process.

Candidates are nominated by political parties. Independent candidates will normally also be allowed.

Each voter has as many votes as the number of seats to be filled. The voter is not bound by party lines. That is, it is possible to support candidates from more than one party, or vote for a combination of party candidates and independents. A voter may be allowed to cast fewer votes than the maximum number permitted, but it is not possible to give more than one vote to the same candidate.

The candidates with the most votes are elected. A majority of the valid votes is neither necessary nor sufficient for being elected. (The number of candidates supported by more than half the voters can both fall short of and exceed the number of seats.)

Even in the case of multi-member constituencies, it is possible to require absolute majorities and arrange run-offs if not enough candidates achieve this in the first round of voting, in analogy with the system discussed in Section 8.2. This amounts to majority elections in multi-member constituencies. We do not discuss this system in detail, but give an example. The system is used for electing the Haitian Senate, which has 30 members, elected from the ten provinces, three from each. The term of office is six years with staggered periods; ten members – one from each province – are elected every two years. For the first election in 2006, all 30 members are elected. The voters can vote for up to three candidates, and the top candidates are elected in the first round, provided that they have gotten more than 50 percent of the votes. If fewer than three candidates get more than 50 percent, there is a new round of election. The number of candidates participating in the second round is twice the number of seats to be filled in that round. The candidate(s) with the highest number of votes in the second round are elected.

Normally, a party will nominate as many candidates as there are seats. Most voters will support a specific party and vote for exactly the candidates nominated by that party. To the extent the voters behave this way, the system functions as a "block vote" and will effectively be a 'winner-takes-all' system, at least within each constituency. That is, when the parties and the voters maintain a high degree of discipline, the largest party – which need not be very big – will take all the seats.

Assume, for example, that five members are to be elected in a constituency where 100,000 votes are cast. If there are five parties, the largest of these may very well have as little as 30 percent of the votes. Then the candidates nominated by this party each get 30,000 votes, while no other candidate gets as much as that. The result is five seats for the party with 30 percent of the votes, and no seats for the rest.

If this system is applied with the whole country as one constituency, we have a true "winner-takes-all" system. Parliament will in its entirety consist of representatives of the largest party. If the country is divided into several constituencies, there is at least a possibility that the election in different constituencies is won by different parties, so that more than one party will be represented in parliament.

The assumption of strong discipline is not always satisfied, as illustrated by the 1996 Palestinian elections, where this system was used. Many voters divided their votes between parties, or gave most of their votes to party candidates but also supported an independent. Thus some highly respected independent candidates were elected even without affiliation to the dominant party. On the other hand, if votes for independent candidates are divided, the chance is reduced for any of them being elected.

Moreover, the dominant party can choose to run fewer candidates in a constituency than the number of seats, thereby consciously giving up seats to other parties or to independents.

In spite of this, smaller parties will have no guarantee of being represented, even if they are well

organized and fairly large. In this connection, all parties but the largest one are "smaller parties". In the example above, support from 25 percent of the voters, which certainly must be regarded as a large minority, is not enough to secure representation.

Whether a smaller party wins any seats, depends on many other factors than its strength among the voters. If the party hopes to attract some support from voters who do not fully support it, the personalities of the candidates can be important. In addition, it might be advantageous to propose fewer candidates than the number of seats, so that the outside support is not diluted by being spread among many candidates. In such a case, the party may tell its supporters to vote only for the party candidates and not fill the ballot with votes for competing parties' candidates. (If a party relies only on core supporters, who vote a straight party line, there is no reason to nominate fewer candidates than the number of votes each supporter can cast.) Under this system, therefore, parties can gain an advantage by tactical behavior, and the outcome may sometimes seem quite random.

The most likely result of plurality elections in multi-member constituencies is an even stronger advantage for the largest party than that produced by plurality elections in single-member constituencies, and a larger deviation from proportional distribution of the seats. In addition, one of the advantages of elections in single-member constituencies is absent, namely the strong accountability made possible by a close and direct link between the elected member and a comparatively small electorate (see the second criterion in Section 7.4). The link between those who elect and those elected will not be closer than under a proportional system with constituencies of similar size.

For these reasons, the system discussed here is not common in elections to parliaments. As already mentioned, it was used in Palestine in 1996, but has later been only partially maintained within a parallel system; see Section 11.2. Jordan used the system before 2001, when it was replaced by the single non-transferable vote (see Section 11.1).

Plurality vote in multi-member constituencies is not to be recommended for parliamentary elections.

### **9.2 Plurality elections based on closed lists, the "party block vote"**

Only parties can nominate candidates. A party shall run a list of candidates, containing as many names as there are seats in the constituency. A voter votes for one of the party lists. The list that receives the highest number of votes, even if it is not a majority, wins the election and has all its candidates elected.

In practice, this system is not very different from the one described in Section 9.1. If, in the latter system, each party nominates as many candidates as there are seats to be filled and party discipline is perfect, there is no difference at all. Under "party block vote", some of the possibilities for deviations discussed in Section 9.1 – some voters not consistently voting according to a party line, strong independent candidates being able to attract support from various quarters, the dominant party giving up seats by nominating fewer candidates than the number of seats in the constituency – are ruled out by law.

The objections raised in Section 9.1 against the system discussed there, apply here as well, with even greater strength. The modifying effects of voters splitting their votes or otherwise deviating from party discipline cannot occur here.

### 9.3 Local elections in Haiti

For illustration, we shall present a quite peculiar electoral system, which is used for certain local elections in Haiti. It has some resemblance with "party block vote", described in Section 9.2, but it is a system *sui generis*.

Haiti has a number of elected local bodies at several levels, elected by this system or similar ones, or by a pure "party block vote" system, but we do not describe the various bodies in detail.

The local councils to be discussed have seven, nine or eleven members, depending on the population of the community, as shown by the first two columns in the table below.

A party nominates a list of candidates. A voter votes for one of the party lists. The three parties with the most votes, and only these, will be represented on the council. The largest, second largest and third largest parties are awarded the number of seats given in the last three columns in the table below.

Population	Total number of seats	Seats for largest party	Seats for second party	Seats for third party
Less than 5,000	7	4	2	1
Between 5,000 and 15,000	9	5	3	1
More than 15,000	11	6	3	2

Under this system, the largest party wins a majority on the council, but just barely more than half the seats. This contrasts with the systems discussed in Sections 9.1 and 9.2, where the largest party probably (Section 9.1) or with certainty (Section 9.2) will win all the seats (provided that the whole council is elected in one constituency).

The distribution of seats only depends on which parties come first, second and third; the actual numbers of votes do not matter. In particular, the largest party gets the same number of seats both if it gets, for example, 30 percent of the total vote and if it gets 70 percent. It is certainly not unrealistic that the largest party gets as little as 30 percent. In truly democratic elections, a party will rarely get as much as 70 percent of the votes, but the possibility should not be ruled out, at least not in local elections. The largest party will usually get more seats than its proportional share, but not invariably so. For a party with 70 percent of the votes, six out of eleven seats is certainly less than its proportional share.

It is hard to conceive of a set of criteria and values according to which this electoral system would be a good one, let alone optimal. In all likelihood, it was constructed *ad hoc*, without thorough discussion of its effects and of possible alternatives. A better system could certainly have been found if a more systematic approach had been adopted.

## 10 Systems of proportional representation

This is a class of systems which will give representative results, in the sense that the elected assembly will mirror the voters more or less perfectly. An elected assembly makes political decisions; the predominant dimension which should be reflected in the assembly, therefore, is that of political views. However, there are also reasons to believe that other dimensions, such as geography,

ethnicity, religion or gender (see the definition of "group" in Chapter I.2), are important in order that the assembly's decisions be representative of and accepted by the people.

There are two major types of proportional systems, the list-based or party systems and the preferential voting systems. The former are described and discussed in Section 10.1. In Section 10.2, we consider the possibility of combining what is essentially a list-based proportional system with systems of the type described in Chapter 8. Preferential voting is the topic of Section 10.3, where one such system, the single transferable vote, is presented.

### **10.1 List-based systems**

Under list-based systems, the elections are based on groups of candidates who run together on lists, most often as parties or coalitions. For simplicity, we usually refer to such a group as a "party", without implying anything about its internal organization. The voters will know who the individual candidates are and can be allowed to express preferences for certain candidates, but their primary choice is that of a party.

#### *Methods of proportional distribution*

The seats are distributed among the lists, in proportion to their share of the votes. This cannot be done exactly, since the number of seats awarded to a party must be a whole number. There exist several distribution methods which, in somewhat different ways, approximate the proportional distribution. Those most commonly used are the method of the largest remainder and various divisor methods. Among the division methods the most common are those of d'Hondt (divisors 1, 2, 3 and so on) and of Sainte-Laguë (divisors 1, 3, 5 and so on). The methods are also known by other names. The d'Hondt method is somewhat more favorable to large parties than are the Sainte-Laguë method and the method of the largest remainder. The latter two methods usually give quite similar results.

The choice of one of these methods rather than another is not of overriding importance; essentially the methods are just different procedures for rounding the exact proportional representation of the parties to whole numbers. The arguments for or against the various methods are of a fairly technical nature. We do not discuss this issue in detail; neither do we describe the methods precisely. It should be noted, however, that the method of the largest remainder has some peculiar properties. In particular, if the total number of seats to be distributed is increased but the parties' votes are unchanged, a party may lose a seat under this method. As a consequence, counterintuitive results may occur if the method is combined with quota systems of various kinds. Also, the legal texts tend to be quite complicated. Divisor methods are more straightforward and avoid these problems.

The methods and their properties are discussed in detail in Hylland (1990), which also contains references to the extensive literature on the subject.

#### *Nationwide proportionality and compensatory seats*

If political proportionality is the only relevant concern, the whole assembly should be elected in one nationwide constituency. Only a few countries use such a system, among them Israel, Moldova, the Netherlands, Slovakia and Ukraine (the latter since 2005). Usually, it is considered important that the assembly reflects the population not only politically, but also geographically. This is achieved by dividing the country into multi-member constituencies, in each of which the proportional formula is applied to distribute the seats among the parties on the basis of their votes in the constituency.





















































































































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