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**Federalism and Conflict Management in Multi-
Ethnic Societies: The Case of Cyprus in Comparative
Perspective**

ABSTRACT

This thesis examines the federal elements of the the latest UN model-the Annan Plan- using theories of federalism and carefully selected comparative case studies to generate “benchmarks” for an evaluation. The purpose of that study is to explore the conditions under which federalism is likely to achieve peaceful outcomes in Cyprus.

The study poses three questions related to the accommodation of ethnic diversity in Cyprus. These questions arise from the need to make a contribution to the political discussion about the future of a multi-ethnic, unified Cyprus and from the theoretical discussions about the capacity of federal systems to promote conflict management in multi-ethnic societies. The first focuses on federalism as a way of dealing with conflict in multi-ethnic societies. The second asks whether federalism envisioned in the Annan Plan is an adequate framework to hold Cyprus together. The third question studies the conditions under which federalism is expected to play a positive role for sustainable conflict resolution in Cyprus. The literature on federalism has a tendency to make insufficiently precise claims regarding the conditions under which institutional arrangements are likely to achieve peaceful outcomes. These three questions are developed in three separate sections. The first puts forward various conflict management institutions and techniques in order to evaluate to what extent they are likely to contribute to the legitimacy of a multi-ethnic polity. In the second section, carefully selected case studies have been used to demonstrate how - and with what effect - federal and consociational institutions have been used under similar conditions. Finally, interviews with the main political actors in Cyprus have been conducted to assess whether the Annan Plan is likely to contribute to the accommodation of ethnic diversity. The argument is that creating and maintaining a multi-ethnic federal system depends on context, on the motivations of the parties involved, and in the details of the autonomy arrangements. The conditions under which federalism diminishes ethnic conflict depend on the interaction between federal institutions, regional inequality, and ethnic diversity in a society. The analysis shows that the federal model envisaged in the Plan is less likely to be suitable for Cyprus, not merely because of the lack of preconditions but also because the designed institutions in the Plan that do not address the social, economic, political and demographic characteristics of the society.

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I dedicate this work to my children, Dogu and Dilem.

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CHAPTER 1

INTRODUCTION

The purpose of this thesis is to study the solution proposed by the United Nations in 2004 for Cyprus - the so-called "Annan Plan". The main question is whether the federal system envisaged in the Plan is likely to be capable of bringing and holding both communities in Cyprus together. The main aim is to find out the conditions for successful conflict management in federal Cyprus.

Attempts in constitutional engineering such as the Annan Plan are frequently based on a superficial reception of the complex and sometimes inconclusive academic literature on conflict resolution and the impact of institutional arrangements on conflicts. Scholars of conflict are not necessarily experts in the study of federal systems, and scholars in federal studies are often not experts in conflict studies. Based on a detailed review of existing conceptual and empirical literature on the highly contingent effects of federal systems and a number of "comparative case studies" selected to demonstrate the conditions for, and the chances and problems of, successful federal systems, this thesis investigates whether the federal model envisaged in the Plan is likely to be suitable for Cyprus. Anchoring the work in the established literature on comparative federalism, the thesis seeks to assess whether the federal system envisioned in the Plan meets the conditions for the successful federal systems established in this body of scholarship and whether institutions proposed in the Plan reflect sufficiently the social, economic and political characteristics of the island. This thesis aims to find out whether the federal institutions envisaged in the Annan Plan are likely to respond appropriately to the regional inequality and the ethnic diversity. The conclusion of this work is that the chances for a successful federal solution to the Cyprus problem are slim, both in terms of conflict management and efficiency of the federation as a decision-making system. Rather, the Annan Plan has a potential to perpetuate separateness of both communities by setting up structures and institutions to represent Greek and Turkish Cypriot interests instead of a unified Cypriot interest.

The Cyprus conflict remains one of the most intractable issues the international community is faced with. Since 1968 the leaderships of the Turkish and Greek Cypriot communities have continued to negotiate on and off under UN auspices in order to find a comprehensive solution to the Cyprus problem. The idea that Greek and Turkish Cypriots can be peacefully reunited under a system of power-sharing is one that has never been abandoned. Their one brief attempt to live under a power-sharing constitution (1960-

1963) resulted in violent ethnic conflict, prompting a Greek inspired coup d'état, Turkish military intervention, forced population transfers and the de facto partition of Cyprus into hostile ethnic zones. In spite of the failed power-sharing experience every attempt to formulate a basis for resolving the conflict has been based on consociational power-sharing, but with the addition of federal and confederal elements.¹

The theoretical attractiveness of federalism stems from its combination of shared rule and self-rule: federalism offers the potential to retain the territorial integrity of the state while providing some form of self-governance for diverse groups. A growing body of literature has emphasised the merits of federalism as "peace preserving".² Thus, federalism has emerged as a major issue on the political agenda of post-cold war governments, not least due to the revival of nationalist and ethnic tensions as well as that of regionalist and nationalist movements in a number of countries.³ Inter-ethnic and inter-communal tensions bring federalism to centre stage as a political device for conflict management. Today, the questions that confront many states are how best to bring together and maintain multi-ethnic societies. Federalism has been viewed as one solution to the organization of power to ensure good governance and to the question of what can be done to bring or to hold multi-ethnic societies together. Some scholars⁴ believe that multi-ethnic federations can be an answer to these problems because in that type of federation the boundaries of the internal units are drawn in a way where some of them are controlled by national/ethnic minorities. It enables minorities to become majorities in sub-national units thus answering the question "who should govern whom". This is why multi-ethnic federations have been proposed for Cyprus but without making a systematic analysis of the conditions likely to make federalism to survive. It is really difficult – given the history of the conflict – to create the conditions for successful federal institutions in the specific context of the conflict in Cyprus. These difficulties include experience of violent conflict, foreign intervention, mutual distrust at elite and popular level and outside intervention

¹ Tozun Bahceli and Sid Noel, "Power-sharing for Cyprus (again)? EU accession and the prospects for reunification under a Belgian model of multi-level governance," in Sid Noel, (ed.), *From Power-sharing to Democracy: Post-conflict Institutions in Ethnically Divided Societies* (Montreal and Kingston: McGill-Queens University Press, 2005).

² Krisitin M. Bakke and Erik Wibbels, "Diversity, Disparity, and Civil Conflict in Federal States," *World Politics*, Vol.59, October 2006, p. 2.

³ See, for example, the contributions to Alain-G. Gagnon and James Tully, *Multinational Democracies* (Cambridge: Cambridge University Press 2001).

⁴ Thomas Fleiner, Walter Kalin, Wolf Linder, and Cheryl Saunders, "Federalism, Decentralisation and Conflict Management in Multi-cultural Societies," in Raoul Blinderbacher and Arnold Koller, *Federalism in a Changing World-Learning from each other* (London: nMcGill-Queen University Press, 2003), p. 197.

through international organisations. The issues of military insecurity, territorial adjustments, the issue of sovereignty, defacto division of island, bicomunal character of the society, large degree of asymmetry, deep psychological distance between Turkish Cypriots and Greek Cypriots, the existence of socio-cultural and economic differences between both communities would have a political significance for federation, so, they have become main obstacles in the negotiation process. The federal idea has been perceived and developed as an approach to these problems and accepted by both communities without being ready for the implications of its philosophy. This is clearly seen in all negotiations since 1970s.

Neither federalism nor consociationalism is a solution for Cyprus, unless the underlying conditions are fulfilled to support a political process of accommodation and compromise. These are both structural and social: elite skills and motivation; cross-ethnic cooperation and coordination; the existence of cross-cutting pressures; a sufficient number of federating units; asymmetrical arrangements; the absence of large socio-economic inequalities among the ethnic groups; common interests; and stable and institutionalized bargaining. At present, their existence is too weak or even absent in Cyprus. For the maintenance of the federal system in Cyprus, institutions should reflect and provide opportunities to develop a co-operating spirit at these levels between both communities. Any federal formula for a reunification of Cyprus should address the certain characteristic features of both societies. It is essential to take into account particular features and characteristics that constitute the main problems of Cyprus as a state before designing any federal model. For example, it should be realized that historically there has been a low level of interaction between both communities since division has taken over. This has been a result of a lack of tendency to achieve Cypriot national identity. Lack of cross-cutting ethnic, social, and political ties have also prevented the development of a common Cypriot political culture and overarching loyalties among the two communities. This should be comprehended and certain arrangements should be implemented before any proposals are brought forward. As James Ker-Lindsay points out "despite fears that an attempt to build trust between the communities could detract from efforts to reunify the island, in the continuing absence of a peace process most observers would now agree that there is a real and urgent need for Confidence Building Measures (CBMs) in Cyprus".⁵

⁵ James Ker-Lindsay, "Cyprus: The Way Forward," European Policy Centre and the ARI Movement, 27 June 2005.

The creation and effective implementation of CBMs would bring sincerity and commitment of the two sides to reach a settlement. "This is perhaps a more important reason than many might realise".⁶ The creation of social capital would help both communities to get rid of their psychological distance that has emerged as a result of their antagonistic aspirations. Any institutional arrangement should prevent institutionalisation of this division.

Institutions alone cannot manufacture a willingness to cooperate where none exists in Cyprus. The Greek and Turkish leaders in Cyprus have different perceptions of and disagreements about the proposed solution (see Chapter 3 of this thesis). Although in the end they both agree on the necessity for the establishment of power-sharing agreements and a form of federation, they do not have a common understanding of what these concepts really mean. Each side interprets these concepts according to how they match with their own interests. The Greek and Turkish Cypriots leaders agree that negotiations should be based on the establishment of a federation. One key problem is that they do not agree on a common model of federalism due to lack of common interests. Although the leaders agree upon basic federal values and principles, they have conflicting perceptions of the federal idea in terms of its structural and institutional implications. The Greek Cypriot leadership's perception of a reunited Cyprus arises from a conception of federation that suggests a strong federal government whereas for the Turkish Cypriots it should be one founded on a loose federal system or confederation where much greater autonomy would be ascribed to the constituent units. The preferred outcome for Greek Cypriot leadership would have been for Cyprus to enter the EU as a united state with a single sovereignty. Although they would prefer a unitary state with a majoritarian democracy they have reluctantly accepted the principle that Cyprus be reconstituted as a bizonal federation to prevent the island's permanent partition. In negotiations with Turkish Cypriots, however, Greek Cypriot leaders have favored a strong central government in the expectation that, as the majority community, they would have the larger say in its government. Although they accept the need for sharing power with Turkish Cypriots in any new constitutional arrangements, Greek Cypriots have displayed great ambivalence to Turkish Cypriot demands for political equality. However, because of the resistance of the Turkish Cypriot side to any form of settlement based on a centralized

⁶ Ibid.

federation, Greek Cypriots leaders have been ready to consider power-sharing in a decentralized multi-tier federation within the EU.

The best option for the previous Turkish Cypriot leadership of Rauf Denktas was the recognition of a separate state in Northern Cyprus. Since this is not likely in the foreseeable future, Turkish Cypriot leaders had supported a two state confederation on the island. They insisted that the envisaged common Cypriot state be created through the sovereign will of both Greek and Turkish Cypriot states. This was rejected by the Greek side leaders due to the belief that this would legitimize the partition of the island and recognize the legality of the Turkish Republic of Northern Cyprus (TRNC).

The Annan Plan tried to bridge the gap between Turkish and Greek Cypriot proposals. However, there is still a clash between these conflicting conceptions of polity. The important thing now is how to break this zero-sum situation. Attempts to solve the Cyprus problem since the island was divided in 1974 have failed. The unification proposal that the Annan Plan envisaged has been rejected by a majority of Greek Cypriots in a referendum in 2004.

The hope of those who favour reunification in both the Turkish Cypriot and Greek Cypriot camps is based on the belief that the international context of the Cyprus stalemate has been fundamentally changed by the prospect of accession to the European Union (See chapter 3 of the thesis). It is true that membership of the EU would make Cyprus subject to a dominant supranational tier of decision making which would greatly influence the operation of its political system. The EU could also provide material incentives to the communities to cooperate with one another and constrain their tendency towards conflict by putting many potentially divisive issues effectively out of their reach.⁷ In this way the Cyprus problem could be redefined by a European perspective. Instead of the urgency of solving the problem, a transformation of the problem through the creation and construction of new identities and interests might help it. However, the opportunity to reunify the island will not present itself either easily or soon. The ethno-nationalist lines that divide Cyprus seem to have been reinforced rather than mitigated by the ongoing negotiation process and the many efforts at mediation from the outside. This is partly due to the nature of the society. However, not only being a bi-national society but also one composed of only two constituent units as proposed in the UN model constitutes a

⁷ Thomas Diez, *The European Union and the Cyprus Conflict: Modern Conflict, Postmodern Union* (Manchester and New York: Manchester University Press, 2002).

particular problem (See Chapter 3). Experience has shown that difficulties arise in federations organized along bi-ethnic lines.⁸ Cyprus has proved to be a difficult case in trying to establish such a bi-ethnic federation. The problem here is that two unit federations generally have seen an inevitable tendency to demand parity between the two units in all matters which usually results in deadlocks because of the lack of opportunity for shifting alliances and coalitions among the constituent units or their representatives diverging radically on different issues, processes which are common in the resolution of problematic issues in multi-unit federations.⁹ In a two-unit federation every policy issue becomes a zero-sum game in which one of the units is seen as the winner and the other as the loser. In addition, when the units are highly different in size, the less populous unit insists upon equality of influence in policy making, while the larger unit develops a sense of grievance over the undemocratic constraints imposed upon it to accommodate the smaller one.¹⁰ The case of Cyprus provides empirical support for this claim: The bipolarity of the conflict structure has led to intractable negotiations between Greek and Turkish leaders (See Chapter 3). Therefore, special attention should be paid to constructing a sophisticated arrangement in order to deal with the bipolar nature of the conflict. This might be an asymmetric federalism which should be taken into consideration for a sustainable federal system in Cyprus since Cyprus is so asymmetric in nature in so many respects including the degree of wealth (See Chapter 3).

The negotiation processes since the 1960s and the evaluation of the ideas of the main political actors have informed me to conclude that there are several significant issues/variables which should be taken into account in order to achieve successful federal systems. All are likely to allow us understand how to deal with ethnic problems in Cyprus. These are: the stable negotiation/bargaining process; the number of constituent units; the composition of asymmetric arrangements and the economy. Experience shows that multi-ethnic federations have been among the most difficult to sustain and may not be an answer for those seeking to reconcile conflicting nations/ethnic groups in a single polity under their peculiar conditions. Studies of federalism have not systematically taken into account how the institutions may produce different effects in different societies. For any institutional design to work, there is the need for a knowledge of the societies the

⁸Ronald L. Watts, "Multinational federations in comparative perspective," in Michael Burgess and John Pinder, (eds.), *Multinational Federations* (London: Routledge, 2007), p.233.

⁹ Ibid

¹⁰ Ibid.

institutions are meant to govern. As Bakke and Wibbels state “if institutions and societies interact in complex ways, institutional engineering becomes a very tricky endeavor indeed”.¹¹ Thus, the merits of federalism in managing diversity depend not only on the design of the institutions but also on how these institutions respond to the characteristics of the societies they govern. The conditions under which the complexion of federalism proposed in the Annan Plan is likely to diminish possible ethnic conflict are a function of the interaction between federal institutions, regional inequality, and ethnic diversity in Cyprus society.

Constitutional and institutional structures are of course important in evaluating the effectiveness of multi-ethnic federation in Cyprus but they are not enough. Federalism not only refers to institutional designs aimed at combining constituent units and federal government, it is also a normative and philosophical concept. A political will that incorporates a spirit of mutuality and reciprocity, a broad acceptance of the political culture and values of federalism, the need to cherish diversity and development of mutual respect, a sense of shared rule and community, respect for constitutional norms, and tolerance and compromise¹² as preconditions are important.

Federation is a compact or a contract between otherwise sovereign governments (or groups within a government) towards the achievement of a common purpose which requires explicit negotiation and design. Thus a theory of federal formation and survival requires a theory of bargaining among political elites. It is not enough to expect political elites to have an incentive to fashion a federal bargain, but to have incentives to keep it after the original motives for negotiation and compromise are long past. It is the operation of the political institutions that maintains the bargain and eventually facilitates political stability.¹³ For federalism to work in practice, political elites must be willing and able to bargain with one another in good faith. They will be able to do so only, if they bargain with reasonable assurance that their respective communities will support their efforts over time.¹⁴

¹¹ Ibid., 38.

¹² Ibid

¹³ Michael Fillipov, Peter C. Ordeshook and Olga Shvetsova, *Designing Federalism. A Theory of Self-Sustainable Federal Institutions* (Cambridge: Cambridge University Press, 2004), p. 24.

¹⁴ This is a fundamental problem in any bargaining situation, which has been described as the risk of ‘involuntary defection’ by Robert D. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” *International Organization*, Vol. 42, No.3, Summer 1988, pp. 427-460.

1. Research Questions and Propositions

This thesis analyses whether the federal system envisaged in the Annan Plan is likely to deal with ethnic problems in Cyprus: What are the effects of the federalism designed in the Plan on conflict, inequality and participation? The primary aim of the thesis is to explore the conditions under which we might expect federalism to play a positive role for sustainable conflict resolution in Cyprus. This analysis follows a three-step inquiry: Firstly, the thesis studies multi-ethnic federalism and its different models. The research questions for that purpose here are: Is the federal system an effective model for the accommodation of ethno-political conflict in multi-ethnic societies and under what conditions it is likely to be sustainable? To what extent do ethnic issues cause conflict in a given multi-national society? And to what extent can federal political organisations deal with ethnic problems and ethnic conflict?

Secondly, this thesis addresses the constitutional debate about (and in) Cyprus as the central empirical focus. These questions arise from the need to make a contribution to the political discussion about the future of a multi-ethnic, unified Cyprus. The Annan Plan is evaluated and assessed by the main actors of the Greek and Turkish Cypriots. Interviews with Turkish Cypriot and Greek Cypriot elites and experts provide a rich source for the researcher in understanding their arguments, prejudices and comments weighed and assessed against each other and in relation to the Cyprus problem. They are likely to help to determine the conditions that prevented the successful management of ethnic diversity in Cyprus under the Annan Plan. The issues addressed here are: the basis of representation among sub-units; the power of new federal centre relative to those sub-units; the balance of powers within the federal centre; the authority of the states in electing or selecting their representatives; and the authority of the centre to tax. These interviews are expected to give us a great deal of information about both conflict resolution and efficiency and the performance issues of federation envisaged in the Plan. The research questions are: to what extent the nature of the problem of Cyprus is likely to influence the chance for successful management of ethnic diversity in Cyprus? To what extent the Annan Plan is likely to address the peculiar features of the society?

Thirdly, I examine carefully selected comparative case studies which help to identify opportunities for, and risks to, the management of ethnic conflicts inherent in federal systems and in the Annan Plan. Any model should be developed taking account of the unique circumstances of a particular country as well. The aim of this study is to develop a

way to assess federal institutions and understand the reasons why these institutions work in different ways in different countries. Case studies offer specific aspects of the data with the aim of informing the discussions of constitutional proposals for Cyprus. This outlines the strengths and weaknesses of the respected countries in terms of influencing the management of ethnic diversity and the efficacy of decision-making. Multi-ethnic federalism and the role of ethnic groups within this structure are analysed. I examine in what way multi-ethnic federal states respond to the demands of ethnic groups and the importance of the ethnicity factor in their policies. The Annan Plan is analysed in the light of comparative case studies. Here, the variables are the extent of autonomy, (i.e. how power is managed at different levels), the separation of powers (i.e. how the decision-making process is organised at both national and sub-national level), the form of "joint decision-making and fiscal federalism in selected cases. To measure these variables I consider the effect of constitutional arrangements like federalism or consociationalism on the severity of the conflict which can be associated with the characteristics of ethnic states (dispersal, affluence), the degree of homogeneity, the general growth-rate of the economy, and the general history. The question is whether the constitution addresses the particular characteristics of a given society. The primary focuses and questions are: Is it the constitution that makes the difference if other factors are the same? Why federation works in one case and not in another? What conditions help these countries to address their problems?

Finally, I concentrate on the efficiency aspect and performance of the federal system. This thesis analyses federations as a way of dealing with ethnic conflict without neglecting issues of regime performance (decisional efficiency). I believe these two elements are crucial to the focus of this thesis, Cyprus, and to explain how best to maintain the stability of federalist systems. The capability of the Annan Plan to accommodate ethnic pluralism through a federal system and the effectiveness and efficiency of its decision making mechanisms are studied. The research questions are: What is the federal effect on efficiency and performance? How do the efficiency of the system and the performance of the federal system contribute to the management of ethnic conflict? How does ethnic accommodation envisioned in the Annan Plan affect the efficiency and performance of the federal system? The efficiency and performance of the federal system also rest upon the context in which the state operates, such as the degree of heterogeneity of society, the level of economic development and the historical origin of the state.

2. Literature Review

This thesis discusses the literature on federalism as an ethnic conflict management strategy with clear reference to the case study at hand, Cyprus. It focuses on the conditions under which federalism is likely to accommodate ethnic pluralism and likely to produce efficient and effective decision making. There is an argument that federal institutions can create and sustain political stability in multi-ethnic societies. However, existing studies of federalism have not systematically taken into account how federal institutions may produce different effects in different societies. This means that the endogeneity of institutions and their dynamic interaction with other features of specific societies should be taken into consideration.

It can be argued that the literature on federalism mainly pays attention to the institutional structure of dealing with conflicts in multi-ethnic societies. It has a tendency to make insufficiently precise claims regarding the conditions under which institutional arrangements are likely to achieve peaceful outcomes. It has instead been preoccupied with prescribing a set of design principles to achieve various aims. The operation of these principles will depend on the social, demographic, economic, and political characteristics of a given society. Many argue that federalism cannot deal with ethnic problems due to the ethno-federal structure that may lead to secession.¹⁵ This is not that simple. The reason that federalism exacerbates ethnic differences is because the underlying features of the society are not addressed by the institutions. It is my intention here to undertake this task. This study addresses some of these shortcomings. It aims to develop necessary conditions – economic and social conditions or in the broader political structure of which federalism is a part – for the establishment and successful functioning of federation in Cyprus. The problem concerning the necessary conditions is that all scholars who studied them have developed many factors where their relative importance is poorly understood and theorised. Whether these factors are identified in the literature specific to ethnic federalism or whether they are more general conditions for the establishment of any stable federal system is not clear.

Today, what constitutes federalist success is highly contested. This issue led the researcher to investigate the context and conditions needed to make federalism work in Cyprus. The key variables/concepts/set of tools I chose include the degrees of

¹⁵John Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: Norton, 2000).

decentralisation, division of power, distribution of financial resources and financial self-sufficiency for each of the co-ordinate authorities, the degree of asymmetric relations, the number of constituent units, elite skills and motivation, stable, institutionalized bargaining and social capital. These are all used to inform the political and theoretical discussions about a reunited Cyprus.

2.1 Comparative Federalism and Conflict in General

This thesis is a comparative analysis of the federal Cyprus under the Annan Plan. Comparative analysis has been chosen because it is likely to help us to understand more clearly the consequences of particular arrangements. Since many problems are common to virtually all federations, through identifying similarities and differences, comparisons may draw attention to certain features the significance of which might otherwise be overlooked or underestimated. Comparisons also suggest both positive and negative lessons through identifying successes and failures of different arrangements and the mechanisms employed to deal with similar problems. More importantly for this thesis is the idea that comparison is likely to figure out the conditions federalism is expected to play positive and negative role in dealing with ethnic conflicts in multi-ethnic societies. This is the main gap in the research that I am trying to fill in this thesis.

Political events in various parts of the world have attracted increasing attention to comparative federal studies. The comparative scholarly literature attempts to assess the nature of federalism and to understand the theory and practice of federalism, the strengths and weaknesses of federal political solutions, the design and operation of various federal systems and the processes of political integration and disintegration. The basic federal notion of combining 'shared rule' for some purposes with regional 'self-rule' for others within a single political system so that both are a genuine reality has been applied in many different ways to fit different circumstances. Even where similar institutions are adopted, different circumstances have often made them operate differently. Nevertheless, as long as these limitations are kept in mind, there is a genuine value in undertaking comparative analysis.

A number of studies have focused upon the multi-ethnic cleavages and challenges with which many federations have attempted to deal, however, without systematically discussing possible conditions, under which federalism is likely or unlikely to accommodate ethnic difference. Here, there are two broad competing views about the

utility of federalism as an instrument for managing ethnic conflict. Many scholars such as Osaghae¹⁶, Watts¹⁷, Crawford Young¹⁸, Kimenyi¹⁹ and Horowitz²⁰ advocate the use of federalism as an option for multi-ethnic states which have been troubled by inter-communal conflicts and tensions. Other advocates of multi-ethnic federation like Keating²¹, Kymlicka²², Stephan, and McGarry and O'Leary²³ believe that federalism unites people who seek the advantages of membership of a common political unit, but differ in descent, language and culture. They seek to express, institutionalize and protect at least two national or ethnic cultures, often on a permanent basis. For Osaghae, among the most popular perceptions of the utility of federalism is its usefulness as a solution to the problem of governing multi-ethnic countries, especially those that are deeply divided.²⁴ Similarly, Watts notes how the federal option was popularized when forces of integration and separation were in conflict with each other in many of the post-colonial multi-ethnic states at the time of independence. Watts also states that under certain conditions federations based on distinct ethnic or national units can be sustained and a federal structure may help reduce tensions, as in Switzerland and Canada.²⁵ Crawford Young says, "The most fundamental argument for the federal system is that, for large and culturally complex countries, no other formula could work".²⁶ Donald Horowitz proposes the efficiency of using a federal arrangement to weaken competing ethno-nationalism. In contrast, Mwangi S. Kimenyi suggests ethnic based federalism as a means of harmonizing ethnic claims. He says that a federalism based on ethnicity is the only system of organizing collective activities that protects groups from oppression by others and

¹⁶ Eghosa Osaghae, "The Federal Solution in Comparative Perspective," *Politeia*, Vol.16, No.1, 1996.

¹⁷ Ronald Watts, "Models of Federal Power-Sharing," *International Social Science Journal*, Vol.53, Issue 167, March 2001.

¹⁸ Crawford Young, "Ethnic Diversity and Public Policy: An Overview," UN research institute for social development, occasional paper No. 8, World summit for social development, Geneva, November, 1994.

¹⁹ Mwangi S. Kimenyi, *Ethnic Diversity, Liberty and the State: The African Dilemma* (Northampton, Mass: Edward Elgar Publishers, 1998).

²⁰ Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley and Los Angeles: University of California Press, 1985).

²¹ Michael Keating, "Asymmetrical Government: Multinational States in an Integrating Europe," *Publius*, Vol.29, No.1, Winter 1999.

²² Will Kymlicka, *Multicultural Citizenship and Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995).

²³ John McGarry and Brendan O'Leary, *The Politics of Ethnic Conflict Regulation* (London and New York: Routledge, 1993).

²⁴ See for more information Osaghae, op.cit.

²⁵ Ronald Watts, "Contemporary Views on Federalism," in Bertus de Villiers, (ed.), *Evaluating Federal Systems* (London: Martinus Nijhoff Publishers, 1994), p.10.

²⁶ Young, op.cit., p.13.

accommodates diversity.²⁷ States must take cultural diversity seriously in order to bring or hold multi-ethnic societies together. They cannot ignore and deny culture as part of their political order. As Fleiner-Gerster, Kalin, Linder and Saunders write, “to take cultural diversity seriously means that constitution makers must seek values that are good for their communities and citizens to which all human beings are entitled”.²⁸ They state that federalism offers a constitutional mechanism that tolerates and promotes diversity, limits state power, and enables diverse communities to participate in government. Only a balance between self-rule and shared rule provided by a federal model can give communities the opportunity to promote their cultures within their territories. Cheryl Saunders points out that federalism can be an attractive solution because “the combination of unity and diversity that federalism offers potentially enables a multi-cultural society to have its cake and eat it too”.²⁹ Poverty, inequality, injustice, oppression and deprivation are important causes of ethnic conflict. Minorities thus dispossessed often find themselves left out of the division of the national pie. As Nafis Sadik points out, “federal arrangements can address these disadvantages by addressing common concerns at a federal level, speaking to and for the needs and interests of minorities, and setting up separate administrative units with a greater or lesser degree of autonomy, and by introducing social solidarity or equalization to support the poorer ones”.³⁰

Traditional concepts of human rights protection, because of their individualist orientation, sometimes fail to respond to the specific needs of minority groups. Traditionally, democracy is defined as a principle that the majority rules. Linder says that the majoritarian model is unfavorable and even harmful to the interests of ethnic, religious, and linguistic minorities because there is little chance that a change of preferences will occur in their favor.³¹ Federalism and federation aim at responding to societal demands for group liberty. However, ethnic federalism which is based on the recognition of existing ethno-regional diversities as legitimate, as well as the desirability of maintaining these diversities, goes against the modern democratic principle of political liberty as an absolute political equality.

²⁷ Kimenyi, op.cit., p.59.

²⁸ Fleiner, Kalin, Linder and Saunders, op.cit., p.206.

²⁹ Ibid., p.34

³⁰ Nafis Sadik, “Federalism, Decentralisation and Conflict Management in Multicultural Societies,” in Raol Blindenbacher and Arnold Koller, *Federalism in a Changing World Learning from Each Other* (Montreal and Kingston: McGill-Queen’s University Press), p. 345.

³¹ Wolf Linder, *Swiss Democracy, Possible Solutions to Conflict in Multi-cultural Societies* (New York: St. Martin’s Press, 1994), p.170

According to Graham Smith, due in part to the constitutive nature of multi-ethnic federations where provincial and ethnic boundaries coincide, the politics of nationalism is rarely far removed from the arena of federal politics, feeding into a set of grievances which have the potential to mobilize individuals behind calls for the territorial redistribution of power, including independence.³² For Smith, such threats to the cultural community can increase separatist tendencies, but the ability to mobilize support behind any secessionist cause will depend upon whether a sense of common identity is either strong enough to overcome identities that cut across ethno-regional divisions, or whether local identity is so diluted by stratification and segmentation as to undermine a shared interest in cultural survival. Individuals and basic class groups are unlikely to mobilize behind a separatist cause, irrespective of the fear of the erosion of national culture, unless it is in their self-interest to do so.

Federalism is generally argued to be a primary institutional arrangement for the successful management of ethnic conflict where the divisions are territorially concentrated. All the UN proposals for Cyprus since late 1970s have been embracing a form of federalism, autonomy, or decentralisation. Lessons drawn from the successful accommodation of difference through federalism in Western countries like Belgium, and Switzerland have been applied in the latest UN proposal in 2002-2004 for the unification of Cyprus. Although power-sharing arrangements (i.e. consociational federalism) has been an attractive model to sustain the peace in Cyprus as well as in other deeply divided societies in recent years, they have been often assumed rather than demonstrated as an effective power-sharing in providing stability. There have been almost no theoretical investigations of the limits of the power-sharing panacea.

There are arguments against those who view federalism as an effective mechanism offering appropriate solutions for ethnic conflicts, but they have also failed systematically to identify the conditions how federal systems are likely to fail. This is the gap that this thesis is intended to fill. These negative arguments are based on the idea that giving autonomy to lower levels of the state may endanger the unity of the state. Centrifugal forces, as an integral part of federalism, are faced by every federal state, pushing towards the dissolution of the state. Basta Fleiner and Ibrahim Jibrin argue that federalism in many African countries is seen as a dangerous instrument that can be used to destroy national

³² Graham Smith, "Mapping the Federal Condition: Ideology, Political Practice and Social Justice," in Graham Smith, (ed.), *Federalism. The Multiethnic Challenge* (London: Longman, 1995), p. 10.

unity.³³ The fear comes from the idea that federal and decentralized forms of governance weaken the control of the central government over all parts of the country and also grant ethnic groups and other minorities a platform and the means to organize themselves politically.³⁴ Kalin argues that if federalism is based on the idea that ethnic groups should have their own subnational governments allowed to exercise administrative and political power as well over the population in their territory, ethnicity becomes the main factor legitimating those governments and this creates some problems.³⁵ Kalin points out that "where the source of legitimacy is ethnicity, the introduction of regional or local governments for minority groups may cause new problems: They never fully belong to the state, as it is based on the territory of the majority".³⁶ Ethnicity-based subnational governments worsen minority problems whenever they are unable to integrate or even tolerate persons on their territory who are of a different ethnic origin.³⁷ Basta Fleiner argues that although federalism emerged as a possible conflict-management device of interethnic conflicts precisely due to its illiberal underpinnings, in many cases until now, it radicalized the problem to which it was supposed to be a solution. This is because the major challenge of ethnic federalism could be summed up as how to de-ethnicise ethnic conflicts and the answer is by taking demands seriously, and by not providing ethnic solutions. Ethnic demands should instead be translated into political principles.³⁸ Empirical evidence suggests in some cases that a coincidence between intra-federal and ethnic boundaries in a territorial system contributes to stability and internal harmony, while in other cases it may become an additional source of tension.³⁹ There are other arguments against making ethnic and intrafederal boundaries coincide. To lessen the fear of tyranny by an ethnic majority, subdividing a numerically predominant group into various autonomous areas⁴⁰, or maintaining/creating ethnically mixed areas in a system

³³ Lidija R. Basta and Ibrahim Jibrin, *Federalism and Decentralisation in Africa-The Multi-cultural Challenge* (Fribourg: Institut du Federalisme, 2000), p.7.

³⁴ Walter Kalin, "Decentralised Governance in Fragmented Societies: Solution or Cause of New Evil?" in *Facing Ethnic Conflicts*, 14-16 December 2000, ZEF Bonn: Centre for Development Research.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Basta Fleiner, "Can Ethnic Federalism Work," Paper for Conference "Facing Ethnic Conflicts," Bonn, Germany 14-16 December 2000.

³⁹ Ivo D. Duchacek, "Comparative Federalism: An Agenda for Additional Research," in Daniel J. Elazar, (ed.), *Constitutional Design and Power-sharing in the Post-Modern Epoch* (New York: University Press of America, 1991), p.30.

⁴⁰ For example, the subdivision of Serbs in Yugoslavia and of Germans in Switzerland.

which makes other ethnic and intrafederal boundaries coincide, might be advantageous for some countries.

The critics argue that federalism can institutionalise, perpetuate, freeze, entrench and exacerbate the very conflicts designed to alleviate. For them, federalism may be part of the problem. The negative assessments of federalism must be taken seriously. Watts's belief in the potential benefit of federalism as a dispute resolution was evident in his book *New Federations: Experiments in the Commonwealth*.⁴¹ However, he often agrees with some of federalism's critics. He acknowledges that concessions to diversity may reinforce and harden divisions. So, Watts points out that many federalist attempts to solve ethnic conflicts have failed.⁴² Daniel Treisman also argues incapacity of making predictions about federalism's impact on ethnic conflict.⁴³ As Watts observes, while the socialist federations, which were established following ethno-linguistic diversity, have fragmented, there are secessionist tendencies that could undermine the federal systems. He says that multi-ethnic federations are among the most difficult to sustain as experiences, and this has led some commentators, like Daniel Elazar, to question whether federations composed of different ethnic units simply run the risk of eventual civil war.⁴⁴ Mansfield and Synder also argue that federalism, in democratizing countries, might foster ethnic and regional divisions.⁴⁵ Some scholars argue that federalism, when modelled on the basis of ethno-linguistic diversity, will tend to be anti-liberal and anti-majoritarian; will cause the probability of conflicts and fragmentation; and will frustrate the country-wide free mobility of citizens.⁴⁶ Designing federal arrangements on ethno-linguistic basis is also viewed as a factor that could encourage secession.⁴⁷

The reason for these different views on federalism as a mechanism for conflict resolution is largely due to different conceptions of this institution rather than the outcome of a comprehensive and systematic study of the conditions necessary for the success or failure of federalism. While Elazar argues that federalism is based on a covenant or a contract,

⁴¹ Ronald Watts, *New Federations: Experiment in the Commonwealth* (Oxford: Clarendon Press, 1966).

⁴² Watts, "Contemporary Views", op. cit., p.10

⁴³ Daniel Treisman, *The Architecture of Government: Rethinking Political Decentralisation* (New York: Cambridge University Press, 2007).

⁴⁴ Ibid.

⁴⁵ Edward D. Mansfield and Jack Synder, "Democratic Transitions, Institutional Strengths, and War," *International Organisation*, Vol.56, No.2, 2002, pp.297-337.

⁴⁶ Asnake Kefale, "Federalism: Some Trends of Ethnic Conflict and their Management in Ethiopia," Available at: www.ossrea.net/announcements/asnake.pdf.

⁴⁷ Ibid.

others have a much less sanguine view of federal arrangements.⁴⁸ Riker sees federal arrangements surviving only if exposed to external military threat. Bednar proposes that the fragility of federal arrangements rests on the uneasy balance between federal and state interests. The positive effects of federalism on the rule of law are stressed by Weingast who envisions institutions allowing for credible commitments which might help the solving of problems.⁴⁹ Probably more than any other institution, federalism requires a healthy dose of commitment, a degree of trust, mutual interests which appear as preconditions of successful multi-ethnic federalism.

As mentioned above, much of the literature on federalism is about whether the federal systems accommodate ethnic conflict rather than under what conditions they exacerbate or ameliorate regional and ethnic divisions. Many observations in the literature on federalism about necessary conditions have been made without a unifying framework. Several actors have listed factors for the successful federal systems including economic factors, nature and number of constituent groups, historical legacies, democratic values, trust, constitutionalism and rule of law, party system, power-sharing, independent judiciary, division of power, institutions for intergovernmental relations and the international context. For example, Riker suggested hypothesis about the conditions for ongoing success of federations: "Whatever the general social conditions, if any, that sustain the federal bargain, there is one institutional condition that controls the nature of the bargain...This is the structure of party system..."⁵⁰ Wheare⁵¹, Maddox⁵², Riker and Dikshit⁵³ argue the existence of a continued external threat as the main condition. For Deutsch⁵⁴, Wheare and Dikshit, it is the existence of a hope for continued economic advantage with federation. For Riker and Dikshit, it is also the presence of two-party or multi-party systems that contribute to the maintenance of federation. The presence of cross-cutting cleavages is also important for Watts and Dikshit. Watts focuses on his discussions of Kenneth Wheare's three prerequisites: desire to live under a single

⁴⁸Thomas Christin and Simon Hug, "Federalism and Conflict Resolution Considering Selection Biases," Typescript, Department of Political Science, University of St. Gallen, 2004.

⁴⁹ Barry Weingast, "Constructing Trust: The Political and Economic Roots of Regional and Ethnic Conflict," in Karol Soltan, Eric M. Uslaner and Virginia Haufler, (eds.), *Institutions and Social Order* (Ann Arbor: University of Michigan Press, 1998).

⁵⁰ William Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964), p.3

⁵¹Kenneth C.Wheare, *Federal Government* (London: Oxford University Press, 1963).

⁵²Graham Maddox, "Federalism - or, government frustrated," *Australian Quarterly* vol. 45 no. 3, 1973

⁵³ Ramesh Dutta Dikshit, *Political Geography of Federalism: An Inquiry into Origins and Stability* (Delhi: MacMillan Co. of India, 1975).

⁵⁴ Morton Deutsch, *The Resolution of Conflict: Constructive and Destructive Processes* (New Haven, CT: Yale University Press, 1973).

government, under regional government and the capacity to work under this dual system. But what is necessary to bring these circumstances about has not been discussed sufficiently. Watts, later, focused on the need for the absence of political and economic domination by one group over the other and on the quality of political leadership as key prerequisites to successful federalism. However, if most of these factors discussed in the literature are taken together as absolute requirements, the prospect for success in deeply divided Cyprus would be impossible. Clear generalisations in this area in the literature are few and far between. It would be a virtually impossible task to transfer federalism successfully to Cyprus. There is no point in saying simply that federalism can not be done without them. The question is: how to make it likely to succeed? Many of them might be subject to change whether through developments in the larger society and economy or through determined effective leadership. Very few of these conditions are absolutes. For example some minimum level of trust is necessary to get discussions started efficiently. Broad range of trust building activities must take place prior to and simultaneously with discussion of federalism.

The number of unit, division of power, institutions for intergovernmental relations, asymmetric allocation of power, skilled and motivated leadership and social capital have been chosen as favourable factors for the functioning of federal system in Cyprus. These various analyses have contributed to our understanding of how the interactions of social, political, economic and ethnic factors have shaped institutional structures and political processes, producing trends toward centralization in some federations and decentralization in others. While the comparative study of federal systems and federations is no longer confined to a legalistic and institutional focus, nevertheless, federations are a form of a constitutional political system, and therefore, an analysis of the role that constitutions play in their establishment and operation is one particularly important aspect. These institutional arrangements are discussed as an important indicator for the peaceful federation in Cyprus. Although these concepts/variables have been discussed individually in the literature, none of them have been studied as a method of accommodating diversity. For example, as an institutional arrangement there has been a new emphasis on asymmetric federalism, in the literature although Tarlton⁵⁵ had studied the impact of asymmetry within federations in 1960s. It was only in the 1990s that this issue drew

⁵⁵ Charles D. Tarlton, "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation," *Journal of Politics*, No. 27, 1965, pp. 861-874.

substantial attention. As a result, in 1999 a volume of collected studies on this subject edited by Robert Agranoff⁵⁶ reviewing the effectiveness and limits of asymmetry in federations was produced. The issue of asymmetry among the constituent units within a federal system has attracted considerable attention from scholars in recent years. The debate in Canada about Quebec as a “distinct society” differing from other provinces, and the asymmetrical constitutional arrangements or practices within the Spanish, Belgian, Russian federations have started to be analysed in more detail. Asymmetry among the fully-fledged constituent units within a federation studied by de Villiers⁵⁷, Agranoff⁵⁸ and Burgess.⁵⁹ These studies suggest that asymmetry among constituent units within a federal system does introduce complexity and often severe problems, but that for some federations it has proved necessary in order to accommodate severely varied regional pressures for autonomy. Therefore, this issue is particularly important and should be taken into consideration carefully before constructing any federal system as this thesis implies. Asymmetric arrangement could be considered as one of the preconditions for a successful federal system in Cyprus which has never been studied for Cyprus prior to this.

The economic characteristics of a society and the fiscal arrangements like the allocation of financial resources to each order of government within a federation could also be considered as another important indicator of successful federations. Financial resources enable or constrain governments in the exercise of their constitutionally assigned legislative and executive responsibilities; and taxing powers and expenditures are themselves important instruments for affecting and regulating the economy. In practice it has proved impossible to design a federal constitution so that the allocation of autonomous revenue sources to each government will match precisely its expenditure responsibilities. Even if such a match can be roughly achieved, initially the relative value of different taxes and the costs of fields of expenditure inevitably shift over time, creating imbalances. This has meant that federations have had to resort to a variety of financial transfers to correct both vertical fiscal imbalances between orders of government and horizontal financial imbalances arising from differences in the revenue capacities and

⁵⁶Robert Agranoff, *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos Verlagsgesellschaft, 1999).

⁵⁷Bertus de Villiers, *Evaluating Federal Systems* (Cape Town, South Africa: Juta and Co.; Dordrecht, Holland: Martinus Nijhoff, 1994).

⁵⁸Agranoff, op. cit.

⁵⁹Michael Burgess, *Comparative Federalism: Theory and Practice* (London: Routledge, 2006),

expenditure needs of different constituent units. Consequently, there has developed a vast specialized comparative literature on the experience of different federations with revenue sharing, conditional and unconditional grants, equalization arrangements, and the intergovernmental institutions and processes for adjusting fiscal arrangements. Introduction of fiscal relations is very critical since it is likely to exacerbate the functioning of federalism in especially multi-ethnic societies. So it should be examined carefully.

Another important indicator of a successful federal system is the general effectiveness of federations in the decision making process. A series of studies comparing the different roles of second chambers and of veto players in different federations have been examined by Swenden and Tsebelis. From a more general point of view a number of comparative studies of democracies by Arend Lijphart have drawn attention to patterns of majoritarian and consensus democracy in non-federal and federal countries.⁶⁰ The efficiency and effectiveness of federal systems is explained by various theories. For example, according to economic theories of decision-making, federal systems have higher costs of consent than non-federal systems because the costs to reach a decision in terms of preparation, reaching agreement, and implementation are believed to rise with the number of actors involved.⁶¹ The empirical results are generally consistent with the predictions of the Veto Players theory that federal structures represent powerful veto points that set limits to the central government's scope of action⁶² due to generating more veto players, therefore causing policy stability to increase. The Veto Players approach emphasizes that in highly fragmented political systems whose lower government levels enjoy considerable autonomy, coordination may be difficult to achieve, because the preferences of players are partly harmonious and partly in conflict impediment decision-making in a federal state due to veto points at the lower levels within the polity. Federal systems tend to reduce 'external risks' for minorities – to use Buchanan and Tullock's or Sartori's⁶³ terminology – but they tend to have to pay for such a reduction of external risks by relatively high decision-making costs. Tsebelis and Money put emphasis on mechanisms of

⁶⁰ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty Six Countries* (New Heaven: Yale University Press, 1999).

⁶¹ James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962).

⁶² George Tsebelis, *Veto Players: How Political Institutions Work* (New York: Russell Sage Foundation and Princeton: Princeton University Press, 2002).

⁶³ Giovanni Sartori, *The Theory of Democracy Revisited. Part One: The Contemporary Debate* (Chatham, NJ: Chatham House, 1997), pp. 214-256.

reconciliation; that is, the impact of rules, procedures and time frames when the two chambers have to come to an agreement in order to resolve deadlocks.⁶⁴ German scholars such as Scharpf⁶⁵ and Schmidt⁶⁶ have pointed to the impediments of decision-making in a federal state due to veto points at the lower levels within the polity. According to Sartori, to minimise the external risks without clogging the decision-making process can partly be dealt with through representation and governing by committee rather than majority rule. The general models of Kollman, Miller and Page suggest that the federal system might lead to less discontent if combined with the appropriate decision rule, but such general results eschew the problem of stability which is so crucial for federal systems.⁶⁷

Federalism in its original conception was not designed for the accommodation of ethnic conflict. So, consociationalism could also be considered as another important condition that may help federal institutions to deal with ethnic problems. Consociational theorists put greater emphasis on political institutions and the role of politicians in attaining political stability or fostering instability. For them, political instability results from the unwillingness or the inability of political elites to negotiate and maintain political compromise, and they have specific theories to explain power-sharing failures and successes. Arend Lijphart examines how to ensure democratic governance in culturally-segmented societies and presents his theory as an alternative to the norm which says that cultural homogeneity is a prerequisite for cohesion. His theory is accepted as a solution to the question of how culturally segmented societies can become or remain integrated. He rejects the idea that cultural fragmentation necessarily results in conflict: "deep mutually reinforcing cleavages do not form an insuperable obstacle to viable democracy".⁶⁸

The central argument of consociationalism is that elite cooperation can successfully overcome the flaws of the traditional decision making by majority. All significant decisions require agreement and consensus among the leaders of the different subgroups for the purpose of preventing cleavages from leading to explosive conflicts, disintegration and splitting. For consociational settlement, political elites are required to seek

⁶⁴ George Tsebelis, G. and Jeannette Money, *Bicameralism* (New York: Cambridge University Press, 1997).

⁶⁵ Fritz W Scharpf, "The Joint-Decision Trap: Lessons from German Federalism and European Integration," *Public Administration* 66, 1988, pp. 239-278; Fritz W. Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford: Oxford University Press, 1999).

⁶⁶ Manfred G. Schmidt, "The Impact of Political Parties, Constitutional Structures and Veto Players on Public Policy," in Hans Keman, (ed.), *Comparative Democratic Politics* (London: SAGE, 2002), pp. 166-184.

⁶⁷ Christin and Hug, op. cit., p.5.

⁶⁸ Arend Lijphart, *The Politics of Accommodation. Pluralism and Democracy in the Netherlands* (Berkeley, CA: University of California Press, 1975), p.195.

neighbourly agreement and compromise willingly and freely, without alienating their followers, to accommodate political conflicts. Lijphart argues that idealist voluntarism, sufficient good will, and social learning on the part of a well-motivated elite, can do the trick and create consociational settlements even in very unfavourable conditions.⁶⁹ He favours "...power-sharing for multiethnic societies because it is the optimal-indeed, usually the only- solution, regardless of whether the background conditions are favourable or unfavourable".⁷⁰ So, another important aspect of the establishment of federal systems is the degree of elite accommodation and negotiations among political parties.

The thesis also argues that the feasibility of consociationalism is affected not just by the depth of division but also by demographic variables including heterogeneity and territoriality found in a given polity. This suggests a need to inquire not only whether power sharing is useful but also in which type of place it is more suitable. It is my intention here to undertake this task too.

Another important indicator for a successful federal system is being able to balance between the cooperative and competitive relations among the constituent states. It has become generally recognized that the inevitability of overlap and interdependence in the exercise by governments of their constitutional powers has generally required extensive intergovernmental consultation, cooperation and coordination. This has led to recognition of the importance of studying intergovernmental relations as a key element in the operation of federal systems and federations. Scharpf's analysis of co-decision making in Germany has attracted widespread attention by identifying "the joint-decision trap" reducing opportunities for flexibility and initiative. It should be noted that although many earlier studies of intergovernmental relations within federations concentrated upon "cooperative federalism" some more recent ones such as Cameron and Simeon⁷¹ have emphasized the importance of "competitive federalism" within federations and the degree to which intergovernmental "collusion" may undercut democratic accountability there is now a considerable body of scholarly literature examining cases of internal stress and the conditions and processes leading to breakdowns. Among these analyses have been

⁶⁹ John McGarry and Brendan O'Leary, *Explaining Northern Ireland* (Cambridge MA: Blackwell Publishers, 1995).

p.326.

⁷⁰ Arend Lijphart, "The power-sharing approach," in Joseph V. Montville, (ed.), *Conflict and peacemaking in multi-ethnic societies* (Lexington: Lexington Books, 1990), p.499.

⁷¹ David Cameron and Richard Simeon, "Intergovernmental Relations and Democratic Citizenship," in Guy Peters, and Donald J Savoie, (eds.), *Governance in the Twenty-first Century: Revitalizing the Public Service* (B. Montreal and Kingston: McGill-Queen's University Press, 2000).

Watts⁷², and Burgess.⁷³ They point to the danger of a cumulative reinforcement of political cleavages resulting in the development of increasingly polarizing processes that undermine support for tolerance and compromise. Furthermore, the particular difficulties of bicomunal societies and polities have proved noteworthy.⁷⁴ This is clearly seen in the Cyprus case.

It could be concluded that federal political systems combining shared rule and regional self-rule are likely to provide a practical way of combining the benefits of unity and diversity through representative institutions, but they are not a panacea for every ethnic conflict. The effectiveness of a federal political system depends in large measure on the degree of public acceptance of the need to respect constitutional norms and structures, and on a prevailing spirit of tolerance and compromise. It would appear that the extent to which a given federal system can accommodate political realities depends not merely on the adoption of a federal structure, but on whether the particular variant of federal system or federation that is adopted or evolved, and the processes it incorporates, give adequate expression to the circumstances and needs of that particular society. The challenge for scholars is to contribute through further critical and comparative analyses to a better understanding of what is required in the establishment of new federations and in making existing ones more effective and efficient. The main purpose of the thesis is to develop that issue that would inform the functionality of a federal system in deeply divided Cyprus.

2.2. Conflict Resolution in Cyprus

The existing literature on federalism and ethnic conflict in Cyprus and the latest proposal the Annan Plan- have not been systematically analyzed in depth by the main political and academic debate in, and about, federalism as part of a solution to the 'Cyprus problem'. The political discussions on the future of the federal system in Cyprus have been lacking in depth and breadth. The political discussion has not been sufficiently informed by theoretical and empirical research on the consequences of federal constitutions; nor has theoretical discussions in political science literature been applied to Cyprus in a

⁷² Ronald Watts, *Comparing Federal Systems* (Montreal and Kingston: McGill-Queen's University Press, 1999)

⁷³ Burgess, *Comparative Federalism* op. cit.

⁷⁴ Ivo Duchacek, "Bicomunal Societies and Polities," *Publius: The Journal of Federalism*, Special Issue, Vol.18, No.2, 1988.

systematic and comprehensive way. It can be argued that the two bodies of literature, namely federalism and ethnic conflict, do not communicate well with each other but they could speak to each other in interesting ways. The contribution will be on the theoretical discussion on the role of federalism in multi-ethnic societies in general and lessons from the Cyprus experience in particular.

Many studies in the literature on Cyprus have analyzed the Annan Plan in the discussion and have discussed the motives of the proponents of the model⁷⁵, yet, how likely these proposals are to contribute to a resolution and regime performance at the same time has not been systematically analyzed. This evaluation has not been informed by the theoretical literature on federalism and selected illustrative case studies about the application of federal systems in similar situations so far. Cases have been selected empirically, and case selection has been based on models mentioned in the real world political discussion about federal models for Cyprus and typical models of accommodation. The aim of doing this is to make a contribution to the literature about under which conditions we can expect federalism to play a positive role for sustainable conflict resolution in Cyprus.

There are various ideas about the solution to the Cyprus problem. Some studies concerning the Cyprus case mention different federal arrangements particular to countries like Canada⁷⁶, the USA⁷⁷, Switzerland or Belgium to hypothesize whether these arrangements could be applicable to Cyprus, but these have not been analyzed in depth and in any systematic way.

Much of the literature about the Cyprus case discusses the impact of its accession to the EU and the success of federal arrangements and relevant constitutional proposals negotiated by the leaders of the Greek and Turkish Cypriots under UN auspices.⁷⁸ Nikos Peristianis discusses how Cyprus and the EU are moving along the federalist path and how far down this path they should move. He notes how consociational/consensus features have in both cases been an integral element of federalist arrangements. He claims that the consensual elements seem to have worked quite well in the case of the EU but the same does not seem to apply in the case of Cyprus because of the absence of a suitable

⁷⁵ David Hannay, *Cyprus: The Search for a Solution* (London: I.B.Tauris, 2005).

⁷⁶ Alain-G. Gagnon and Jan Erk, "A Compact Theory of Federalism: Can the Canadian federal experience provide lessons for Cyprus," *The Cyprus Review*, Vol.10, No.1, Spring 1998,

⁷⁷ Eric Neisser, "A Federalism Process for Cyprus: An American Constitutional Perspective on the Cyprus Problem," *Cyprus Review*, Vol.8, No.2, Fall 1996.

⁷⁸ Michael Stephen, *The Cyprus Question* (London: The British-Northern Cyprus Parliamentary Group, 1997).

political culture. He finally considers how accession to the EU can strengthen civil society and citizenship in Cyprus, thereby improving the chances for the success of consensus politics and federalism.⁷⁹ Similar argument was made by Thomas Diez who states the role of the EU as constructing new identities and interests that likely to help both communities in Cyprus to deal with their problems have been discussed by some scholars.⁸⁰

Alternative institutional arrangements have not been discussed much in the literature. Dodd suggests that confederation rather than federation would be the least troublesome way to restore some unity to the island. He explains that some factors seem vital for the federal entity as a good in itself: mutual sympathy, some mutual need, the assurance that one unit will not dominate others, and the degree of consociationalism which prevent two communities to develop such relations.⁸¹

The nature of the ethnic strife in Cyprus, by identifying domestic and external factors that went into the making of the conflict, is discussed by many authors. Much of the literature about the Cyprus problem begins with an explanation about the establishment of the republic of Cyprus and its destruction in 1963 and then goes on to the inter-communal talks⁸² and new sets of ideas proposed by both Turkish and Greek Cypriots.⁸³ On the other hand, some literature emphasizes the history of the problem in greater detail, examining the early emergence of difficulties after the hand over of the island to Great Britain in 1878, the establishment of a permanent British presence on the island and the significant events that followed.⁸⁴

The relevant constitutional proposals that have been negotiated by the leaders of the Greek and Turkish Cypriot communities under UN auspices have been analysed by many.⁸⁵ Oliver Richmond argues that the Cyprus case illustrates some of the weaknesses

⁷⁹ Nicos Peristianis, "A Federal Cyprus in a Federal Europe," *The Cyprus Review*, Vol. 10, No. 1, Spring 1998.

⁸⁰ Diez, op.cit.

⁸¹ Clement H. Dodd, "Confederation, Federation, and Sovereignty," *Perceptions: Journal of International Affairs*, Vol. IV, No.3, September-November 1999.

⁸² Zaim M. Necatigil, *The Cyprus Question and the Turkish Position in International Law* (Oxford: Oxford University Press, 1993); Salahi R. Sonyel, *The Destruction of a Republic* (Cambridgeshire: The Eothen Press, 1997).

⁸³ Pierre Oberling, *Negotiating for survival: The Turkish Cypriot quest for a solution to the Cyprus problem* (New Jersey: The Aldington Press, 1991).

⁸⁴ Like Rifat Ucarol, *1878 Cyprus Dispute and the Ottoman-British Agreement* (Lefkosa: Rustem 2000).

⁸⁵ Andreas P. Kyriacou, "An ethnically based federal and bicameral system: The case of Cyprus," *International Review of Law and Economics* 20, 2000; Oliver P. Richmond, "Ethno-Nationalism, Sovereignty a Negotiating Positions in the Cyprus conflict: Obstacles to a Settlement," *Middle Eastern Studies*, Vol.35, No.3, July 1999; Oliver Richmond, "Negotiating out of fear and fearing to negotiate: Theoretical approaches to the ending of the Cyprus conflict," *The Cyprus Review*, Vol.8, No.2, Fall 1996.

of the international system, the difficulties of international mediation; the weaknesses of international law; the inability of the UN to find a compromise which Cypriots could accept, the still controversial dichotomy between secession and self-determination; and the inability of the international system to work on the basis of its own supposed norms rather than perpetually trying to solve ethnic problems with complex political and consociational structures, as in 1960. On the other hand, questions about why two parties in Cyprus have bothered to negotiate at all are explained. Richmond claims that in many cases the parties negotiated in order to receive indirect benefits rather than to arrive at a compromise solution. He believes that the division of the island would perpetuate perceptions of injustice and continue the current security dilemma.⁸⁶ Richmond also states that neither side in the dispute should lay the blame on the UN for failing to bring about a solution without first reassessing its own approach to the peacemaking operation and asking if it was truly committed to a compromise. Similarly, the parties should ask themselves whether they have viewed the UN peacemaking as a way of minimising compromise and avoiding making the costly concessions a solution would entail.⁸⁷ According to James Ker-Lindsay a process that started out as mediation in Cyprus was completed by arbitration during the Annan Plan negotiations. However, this approach failed to produce an agreement acceptable to all parties, because it lacks legitimacy and it is a result of the way in which it infringes state sovereignty.⁸⁸

Michael Attalides argues that the distance and conflict which developed between the Greek and The Turkish Cypriots communities was not intrinsically due to their cultural make-up but rather due to the development of nationalism, political organisation, including external intervention, and the economic structure of the two groups.⁸⁹

The management of the ethno-political conflict and regime performance (decisional efficiency) together has not been studied sufficiently in the context of Cyprus. Studying those aspects in detail would contribute to the prevailing thought on the Cyprus situation because they are accepted as indicators of the stability of a political system.

⁸⁶ Richmond, "Ethno-Nationalism, Sovereignty a Negotiating Positions," op. cit.

⁸⁷ Richmond, "Negotiating out of fear," op. cit.

⁸⁸ For more information see James Ker-Lindsay, "The Emergence of 'Meditation' in International Peacemaking," *Ethnopolitics* Vol. 8, No.2, June 2009.

⁸⁹ Michael Attalides, "The Turkish Cypriots: their relations to the Greek Cypriots in perspective," in Michael Attalides, (ed.), *Cyprus Reviewed* (Nicosia: the Jus Cypri Association, 1977).

The existing literature on Cyprus has not sufficiently examined theories of federalism, theories of consociationalism or the comparative case studies of a number of federal systems systematically. Such an analysis is necessary in order to analyse the discussion of any future constitution of Cyprus. How political institutions envisaged in the Annan Plan are likely to mediate federal/state conflicts in Cyprus is discussed in this study. The question of what holds a federation together is an issue that holds particular relevance today for those countries which try to build democratic self-sustaining federations. Primary sources like the interviews conducted with the main Cypriot actors, speeches made by the political elites, and reports are likely to contribute to the literature on the necessary conditions for federal systems to ameliorate ethnic division.

The fundamental question still waiting for a satisfactory answer in the literature is: "What could be the sources of democratic legitimacy and unity in a multi-ethnic Cyprus?" The concepts of multi-ethnicity, ethnic accommodation, efficiency, application, and the performance of federalism have been studied in depth. Federalism is often mentioned as an element for conflict resolution in multi-ethnic societies. The existing literature mainly focuses on whether or not federalism is a good element of governance in multiethnic societies. The question under which conditions we can expect federalism to play a positive role for sustainable conflict resolution in multi-ethnic societies have not been given enough attention. In this thesis this question is elaborated in a comparative study on Switzerland, Belgium, Canada and Germany, which in turn are used to inform constitutional proposals for a unified Cyprus.

3. Methodology

This research is based on comparative case studies, a number of original/primary documents and interviews with key political actors and experts. It also reanalyses some secondary data from the literature, but do so by using comparative case studies and interviews to assess the way the Annan Plan is designed to manage ethnic diversity in Cyprus. However, it always does so with a high level of sensitivity to contextual factors. Considerable effort has been invested in developing a framework for considering to what extent institutions manage the accommodation of conflict in Cyprus. The aim of this study is to develop a way of assessing federal institutions and understanding the reasons why these institutions work in different ways in different countries. Case studies offer specific aspects of the data with the aim of informing ethnic conflict management under the Annan

Plan. This outlines the weaknesses and strengths of the Plan in terms of influencing the management of ethnic diversity and the efficacy of decision-making.

Original documents reflect the factors that influence negotiations, decisions and arguments over the UN proposal, and give insight into conditions that affected the level of support/rejection by both communities in Cyprus. The original UN proposal –the Annan Plan- is examined and the associated article-by-article analysis that describes in detail the purpose and intent of each portion of the proposal are made. In-depth interviews with the main Cypriot actors and some experts involved in the negotiations provide further insights, filling in the information gaps not evident in the literature.

Finally, case studies of specific countries are conducted to try to identify the reasons for the successful and unsuccessful management of ethnic diversity. These case studies give insight into why some multi-ethnic federal systems work in some plural countries and some do not.

Reviewing the current literature, including comparative case studies, studying the federal elements of the Annan Plan and interviewing the main political actors and experts from both communities help to identify the necessary conditions under which a federation is likely to accommodate ethnic diversity in Cyprus.

3.1 Comparative Case Studies: Focus

Comparative case studies are used as a method because federalism is a structure and a process, a combination of both theory and practice. To understand federalism there is a need to look at how it operates. An abstract theory of federalism is not enough for an evaluation of the process.

Comparative case studies have been chosen in order to explore the options for a federal Cyprus in real-world settings. What can we learn about constitutional design in divided societies is the primary focus. Countries are selected as comparative case studies because of the application of federal systems in relevant situations. The focus is divided into three sections: Accommodation by federalism and accommodation by consociationalism on the one hand and effectiveness and efficiency of decision-making on the other.

Concerning accommodation by federalism, successful cases such as Belgium after 1993 and Switzerland, and Canada were selected. Switzerland and Belgium were selected firstly because they are obvious European examples that are often cited regarding bridging ethnic diversity and, secondly, their federalist structures have contributed to the model on

which the UN proposal for Cyprus is based. The Annan Plan has combined effective federal institutions representing constituent states modeled on Switzerland with the significant competencies of constituent states modeled on Belgium. Both Switzerland and Belgium have always been more likely to achieve their goals because in both countries not only institutions but also the necessary conditions for the workability of the federal as well as the consociational system are present. Thus, this shows that institutions or institutional designs to manage ethnic conflict are not enough. The underlying conditions must also be present. Belgium is important here because, as in Cyprus, given the high degree of antagonism between the two main linguistic communities, the small number of federated entities and the bipolar nature of many of the central institutions, actors are often engaged in a 'zero-sum game'.⁹⁰ The growing problems of preserving Belgium as a state also demonstrate that federalism as such may not be a panacea and directs our attention to the conditions of stable federal arrangements. Many further lessons can be learned from Belgium as regards the Cyprus case. Michael Keating has demonstrated how the EU has gradually constituted a stable meta-constitutional framework based on broadly shared values and norms as applied to ethno-nationally divided societies. According to Keating, European constitutionalism based on pluralist conceptions of sovereignty and multi-level governance has, in turn, facilitated the management of deep-seated ethno-nationalist conflict in Belgium.⁹¹ Canada has been selected because it has a relevance to the Cyprus problem in terms of issues of majority-minority and biethnic society. Canada's federalism, though not without its problems, has been characterized by a relatively efficient division of powers between the central state and the federal sub-units.

Consociationalism is studied as an institutional settlement for the accommodation of ethnic problems and is compared in two countries. An evaluation of these models is discussed in terms of the extent to which the aim of conflict management has been achieved. For accommodation by consociationalism, successful cases such as Belgium before 1993 and Switzerland are selected. Belgium is an instructive case study due to its recent transformation from consociationalism to federalism and due to it being a member of the EU. Non-majoritarian rule has been a constant feature of Belgian politics since its independence, a factor that has facilitated territorial conflict management. In response to

⁹⁰ Magali Verdonck and Kris Deschouwer, "Patterns and Principles of Fiscal Federalism in Belgium," *Regional and Federal Studies*, Vol.13, No.4, Winter 2003, p. 93.

⁹¹ Michael Keating, *Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era* (Oxford: Oxford University Press, 2001).

territorial conflict, Belgium changed from a one non-majoritarian regime with strong consociational characteristics into a federated state. Although Belgian political institutions have transformed since 1970, the fundamental features of conflict management remain.

Switzerland is a country with a strong consociational tradition and the corresponding experience of decision-making through bargaining and accommodation. Switzerland's predominant bargaining style of policy formation has its strong roots in the institutional framework and in the political socialization of the elites.

Both Belgium and Switzerland are considered to successfully apply consociational and federal elements for the management of ethnic conflict. The important thing here is to know what makes these multi-ethnic countries manage to integrate their differences. There are some factors, the ones embedded in the constitution as well as in the society, which explain the successful management of ethnic division and problems. If these requirements are not present, consociational experiments can easily break down.

Institutions that contribute to the management of ethnic conflict are not enough to determine the sources of legitimacy and unity in a multi-ethnic state. This will be also dependent on institutions that would contribute to good governance (effectiveness and efficiency of decision making). That is why the third section deals with this issue. Concerning the effectiveness and efficiency of decision-making, Canada as an example of few institutional veto players, and Germany with many institutional veto players, are chosen. Germany has been selected in terms of decisional inefficiency. Germany is characterised by cooperative federalism which involves joint decision making indicating the importance of co-operation and consensus. German federalism, however, has often been criticized for the existence of too many veto players in a federal system with a large number of interlocking decision-making processes, which make it difficult for Germany's federal system to function efficiently.⁹² Canada, as another illustrative case study, is chosen in order to evaluate to what extent few veto players matter in terms of decisional efficiency. The Canadian system is an example of a divided rather than a shared model of federalism, including watertight compartments for the division of powers, independent taxing authority for both orders of governments, and weak provincial representation at the centre. These factors reduce the number of veto players in the Canadian system who would be able challenge the central government.

⁹² See, for example, Charlie Jeffery, "Federalism: the New Territorialism," in Simon Green and William E. Paterson, (eds.), *Governance in contemporary Germany: the semisovereign state revisited* (Cambridge: Cambridge University Press, 2005), pp. 78-93.

3.2 Analysis of the Annan Plan

Firstly, the associated article-by-article analyses that describes in detail the purpose and intent of each portion of the UN proposal- Annan Plan are made. The Plan as an original document is analysed in the theoretical language of comparative federal studies. The question is to what extent the institutions designed in the Plan could contribute to the avoidance of ethnic conflict in Cyprus. I base my research on the extent of autonomy (i.e. how is power managed in different levels?) and the separation of power (i.e. how is decision-making process organised at both national and sub-national level?). The issues addressed here are: the basis of representation among sub-units; the power of a new federal centre relative to those sub-units; the definition of sovereignty; the balance of powers within the federal centre; the authority of the states in electing or selecting their representatives; the authority of the centre to tax and regulate commerce, and so on. These dimensions are expected to give us a great deal of information about both conflict resolution, and the efficiency and performance issues of federations. Moreover, the question is to what extent the institutions designed in the Plan could contribute to avoiding ethnic conflict in Cyprus from both a theoretical point of view and the main Cypriot political actors' point of view. So, this helps the researcher to find the key variables in dealing with ethnic conflict like, asymmetric relations, fiscal relations, bargaining process, the number of constituent units and the degree of decentralization.

Secondly, the plan is analysed in the light of comparative case studies. Here, the distribution of powers, responsibilities and resources in the selected cases as well as in the Annan Plan are discussed. Concerning the forms and scope of the distribution of powers and responsibilities, the issue of balancing unity and diversity; the relationship between distribution of legislative and executive authority; variations in the form of distribution of legislative authority (i.e. exclusive legislative powers, concurrent legislative powers or residual powers); the scope of legislative powers allocated; the distribution of administrative responsibilities are comparatively examined. Concerning the forms and scope of the distribution of resources, the importance of the allocation of financial resources; the distribution of revenue sources; the allocation of expenditure powers; the issue of vertical and horizontal imbalances; the role of financial transfers; conditional or unconditional transfers; equalization transfers; and the processes and institutions for adjusting financial arrangements are also comparatively studied.

Thirdly, the Plan is analysed by the main Cypriot actors. Interviews with Turkish Cypriot and Greek Cypriot elites and experts⁹³ provide a rich source for the researcher in understanding the weaknesses and the strengths of the plan, the reasons for their support or rejection of the federal system envisaged in the Plan, and helping to figure out the conditions that prevent successful managing of ethnic diversity in Cyprus. In-depth interviews with the main Cypriot actors and some experts involved in the negotiations provide further insights, filling in the information gaps not evident in the literature or the original documents. I suggest that “structure” (i.e., a particular institutional arrangement) is not enough for the resolution of ethnic conflict in Cyprus.⁹⁴ Account must also be taken of the preferences of important actors and veto players on both sides.⁹⁵ Their preferences play a significant role in the resolution of ethnic conflict. It is shown how elites perceive federalism and ethnic accommodation envisaged in the recent UN model.

Finally, original documents are reviewed. Although they are few in number, they lend a great deal to the analysis of the plan. They are mainly official documents provided by the Ministry of Foreign Affairs, the Presidency, scholars, politicians, and newspapers. I examine the speeches of political elites, writings, statements, policy papers, and documents that shed light on how these issues are being perceived.

The case of Cyprus and the Annan Plan present obvious problems: The Plan has never been implemented, although it is likely to be the basis for future attempts at resolving the Cyprus issue. Therefore, the model envisioned in the Plan cannot be evaluated against real-world performance indicators (such as success in conflict management, the creation of a national identity and political culture or economic performance). So research design explains how carefully selected case studies have been used to demonstrate how and with what effect federal institutions have been used under similar conditions. There is no systematic understanding of the conditions for successful federal system. One must bear in mind that political institutions and forms of governance should not be transferred without careful attention to the historical, social, economic and political contexts within which they will operate. It is factors like these that largely determine whether a transfer succeeds or fails.

⁹³ See the personal interviews in the appendix.

⁹⁴ Claire Palley, Personal Interview, 28 August 2007.

⁹⁵ Mustafa Akinci, Personal Interview, 5 December 2008.

4. The Structure of the Thesis

This thesis advances the argument that the federalism envisaged in the Annan Plan is unlikely to work in Cyprus due to the lack of conditions for the successful implementation of the federal system. In developing this argument, the thesis is organized into six chapters including this introduction (literature review and methodology).

Chapter Two explains the theoretical framework used in this thesis. The function of this chapter is to identify necessary conditions for the survival and stability of federal Cyprus through studying the various theories and operation of federalism. Several factors like asymmetric relations, fiscal balance, social capital, consociational system are chosen to determine the elements of successfulness and failure of federal system for reunited Cyprus.

The function of Chapter Three analyses the history of the Cyprus problem, the evolution of intercommunal relation over time and the talks in the run-up to the Annan Plan and analyses of the Annan Plan in the eyes of the main Cypriot political actors to demonstrate difficulties in creating the conditions for successful federal institutions in the specific context of the conflict.

The purpose of Chapter Four is to study carefully selected case studies in order to explore the options for a federal Cyprus in real-world settings. Several institutional variables including the federal institutions, cooperation and coordination and fiscal relations and their interaction with social, economic, political and demographic feature of these countries are analysed and discussed for that purpose.

Chapter Five studies Cyprus and the Annan Plan in comparative perspective. The main purpose of doing this is to see to what extent the Plan is likely to deal with the similar problems. They are important because many lessons could be learned from these countries when examining the Cyprus case. In order to assess the capacity of the Annan Plan to achieve unity in diversity at the federal level, this section focuses on the autonomy of the regions as well as on their political participation at the federal level.

The last chapter - Conclusion of the thesis - re-examines the research questions and closes the circle of the research by situating the findings in the larger picture. It explains what the empirical material tells us about the questions raised in the introduction. It can be argued that federalism envisaged in the Annan Plan cannot be applied to Cyprus under its current and peculiar conditions or under its institutional model envisaged. In a nutshell, the pessimistic conclusion of the thesis is based on the following arguments: First, when

interregional inequality is high, increased decentralization raises the likelihood of ethnic conflict. Second, when concurrent powers allocated to the levels of governments are few and clearly indicated, it is less likely to have blocked decision-making. Exclusive competencies and jurisdictional division of labour is likely to keep conflict low. One of the major problems in federal systems is the emergence of many veto points. This is clearly seen in cooperative-joint federal systems with a strong upper house. The way in which power is divided is likely to tell us the effectiveness and efficiency of the federal systems. The more policy fields that fall under exclusive state competence is expected to have effective federal decision making in deeply divided societies. Third, symmetrical allocation of authority in federal systems is likely to intensify ethnic conflict in deeply divided societies. In symmetrical federations with significant socioeconomic as well as cultural cleavages, the institutions are likely to turn to destabilizing character. Four, seriousness about the nature of the process of finding a solution (bargain) is half way to the solution. Finally, two-unit federal systems are less likely to contribute to ethnic accommodation.

CHAPTER 2

THEORETICAL FRAMEWORK

EMERGENCE OF FEDERAL INSTITUTIONS AND CONDITIONS FOR SUCCESS

Introduction

The review of literature in the field showed that most existing studies on federalism and Cyprus problem ignore the importance of factors for the continuation of multi-ethnic federations. While the independent effects of the factors and conflict management in multi-ethnic federations have been examined, the extant literature does not situate the necessary factors in the context of conflict management, or vice versa. This creates a critical gap in our understanding of conflict and federal systems. This chapter provides theoretical framework to understand and to develop the complementary roles of necessary conditions and conflict management in federations.

The chapter seeks to demonstrate that the integration and disintegration of federal systems depends on complex interplay among many variables including social, political and economic. The main purpose of this chapter is to identify necessary conditions for the survival and stability of multi-ethnic federal system through studying the theory and operation of federalism together with confederal and consociational elements that have found in some federal constitutions to accommodate ethnic differences. There are several factors that are considered important for the researcher for the successful federal systems. These factors like consociational techniques, asymmetric relations, economy (fiscal relations), stable bargaining process and political leadership, social capital, the number of constituent unit, and degree of decentralization have been taken individually rather than being used as conflict management tactics/devices. If these factors do not support the characteristic features of society, there is a high possibility that they will exacerbate ethnic differences in Cyprus. These conditions are taken as key variable/concepts that have been tested for Cyprus in order to analyse whether the Annan Plan is likely to exacerbate or ameliorate ethnic division. The mediation process under the UN should realise these factors otherwise it will be less likely to achieve any acceptable solution in Cyprus.

This Chapter is divided into three sections. In the first section, various conflict management theories including arbitration and mediation, confederalism, consociationalism and federalism have been analysed. Consociationalism clearly makes sense here, because it was in the 1960 Constitution in Cyprus; federalism together with

consociationalism is also important since the UN proposals including the Annan Plan envisaged it. 'Mediation', 'bargaining' and 'negotiation' are also important since they would include links with the UN in studying the Annan Report(s) and other UN proposals. This chapter rejects tendencies to construe 'federalism' purely as an instrument or technique of 'power sharing' as believed by the UN and the leadership in both communities in Cyprus and interpret it as a state (a federation) in its own right.

In the second section, federal theories concerning the necessary conditions for the creation are explored along with the weaknesses of these theories.

In section three, the operation of federations is analysed in terms of both structure and process to understand how the federal systems function in practice as well as in theory. They all will inform the researcher to develop the necessary conditions for successful federations.

In the last section, the necessary conditions for the survival and stability of federations are developed. It can be concluded that there are some factors that are likely to ameliorate and exacerbate regional and ethnic cleavages.

Conflict Management Theories

In nations that are multi-ethnic in character and deeply divided, the possibility of severe ethnic conflict is likely to be greatest, and even civil war is more likely to occur between competing ethnic groups.⁹⁶ Nils A. Butenschon points out that, "plural society is characterised by cultural fragmentation which tends to dominate political life and represent a continual challenge to national unity".⁹⁷ If this ethnic and regional diversity is not recognised in time, it could challenge the legitimacy of the state. It is argued, that in such pluralistic societies, conflicts over division of resources will inevitably be fought primarily along ethnic lines, and thus will be inherently irresolvable, especially if the ultimate question is, "who owns the state".⁹⁸

There are several methods for the management of ethnic differences, including arbitration/mediation, confederalism, consociationalism and federalism which have been,

⁹⁶ Bernard Grofman and Robert Stockwell, "Institutional Design in Plural Societies: Mitigating ethnic conflict and Fostering Stable Democracy", Available at : <http://hypatia.ss.uci.edu/ps/personnel/grofman/grofman.html>, 2000.

⁹⁷ Nils A. Butenschon, "Conflict Management in Plural Societies: The Consociational Democracy Formula," *Scandinavian Political Studies*, Vol. 8, No. 1-2, 1985, p.88.

⁹⁸ Grofman and Stockwell, op. cit.

in one way or another, used in the constitutional proposals of the UN to accommodate ethnic difference in Cyprus.

1- International Mediation, Arbitration and Negotiation

International mediation, arbitration and negotiation are alternative dispute resolution processes designed to resolve a conflict between parties unable to reach agreement. This is the case in Cyprus since 1960s.

Arbitration is a method used when more desirable solutions fail, hence it is out of the present interest.⁹⁹ Arbitration entails the intervention of a neutral, bipartisan or multipartisan authority.¹⁰⁰ It differs from other methods used to stabilise antagonistic societies because it involves conflict regulation by agents other than the directly contending parties. Arbitration is distinguishable from mediation because the arbiter makes the relevant decisions, whereas mediators merely facilitate them.

Traditionally, peacemaking has been divided into two broad categories: mediation and arbitration. Mediation by third parties has been based on impartial, non-coercive facilitation. This has often resulted in prolonged processes. Their role is to provide a facilitating role that allows the two sides to reach a mutually acceptable agreement. For Richmond 'success' in negotiation, defined as a compromise, is dependent upon the qualities and resources of the mediator, the nature of the dispute and environment and, most importantly, either on the will or the necessity for agreement, or the mediator's ability to act in a directive fashion.¹⁰¹ So the position of mediator is highly easily broken and is dependent on the balance of force, its resources and the nature of its interactions with the disputants. This being the case, the disputants' views and perceptions of the mediator and the processes of mediation may be significant in helping to formulate their reactions to peacemaking and therefore to building a more positive relationship between the two parties on the dispute in order to arrive at a compromise, but also in understanding why an extended mediation process has not brought about a compromise in the case of Cyprus, for example. In Cyprus UN mediation process has been an exercise in frustration and utility in which underlying concerns have rendered reasonable discourse and concession-making extremely difficult. The arguments and formulations the mediators

⁹⁹ Ibid.

¹⁰⁰ John McGarry and Brendan O'Leary, "The Political Regulation of National and Ethnic Conflict," *Parliamentary Affairs*, Vol.47, No.1, 1994, p. 108.

¹⁰¹ Oliver Richmond, *Mediating in Cyprus* (London: Frank Cass, 1998), p. 31.

offer do not adequately address the deep fears and basic needs of the parties.¹⁰² Richmond has articulated a theoretical framework that enables the examination of international mediation from the point of view of the disputants. Parties may have devious objectives, other than a compromise solution. The outcome is that mediation becomes protracted and the conflict intractable.¹⁰³ As James Ker-Lindsay and Oliver Richmond state the traditional diplomacy of the sort that the UN was designed for lacks the tools for resolving deep-rooted political and identity conflicts at a regional and local level in the contemporary international environment. Where the interests of sovereignty and territorial integrity are still paramount, but are finding themselves increasingly contested, the UN must become disentangled from the debate.¹⁰⁴ Oliver Richmond argues that there are problems within the UN operation as a whole. "There are clearly aspects of the dispute that are purely domestic. The ethnic differences and difficulties over the constitution would appear to fall into that bracket".¹⁰⁵

Another problematic issue in international mediation in recent years is that there has been a blurring of the lines between mediation and arbitration, with the added element of compulsion introduced. Whereas traditional mediation practice allows for mediators to play an active role in the process, putting forward ideas and even full proposals to the parties for their review and refinement, 'mediation' takes this one step forward by allowing mediators the right to present a finalized plan to the parties for endorsement either by their electorates or by the international community and then imposed on the sides. James Ker-Lindsay states that this approach served to undermine the peace process as a whole by de-legitimizing it in the eyes of one or both sides. For example in the case of Cyprus the UN took a far more robust and interventionist role than one would usually expect in such circumstances.¹⁰⁶ Time frames were put in place with the assumption that if the two sides were unable to reach an agreement, the UN would present the sides with a finalized plan. Thus, a process that started out as mediation would be completed by arbitration. However, in both cases this approach failed to produce an agreement

¹⁰² Ronald J. Fisher, "Cyprus: The Failure of Mediation and the Escalation of and Identity-Based Conflict to an Adversarial Impasse," *Journal of Peace Research*, Vol.38, No.3, 2001, p. 322.

¹⁰³ Oliver Richmond, "Devious Objectives and the Disputants' View of International Mediation: A Theoretical Framework," *Journal of Peace Research*, Vol.35, No.6, pp. 707-722.

¹⁰⁴ James Ker-Lindsay and Oliver Richmond, "Introduction: Testing the United Nations Organisation: The case of Cyprus," in Oliver Richmond and James Ker-Lindsay, (eds.), *The Work of the UN in Cyprus: Promoting Peace and Development* (New York: Palgrave, 2001), pp. xviii-xix.

¹⁰⁵ Richmond, *Mediating*, op. cit., p.xxiii.

¹⁰⁶ James Ker-Lindsay, "The Emergence of 'Mediation,' " op. cit., p.223.

acceptable to all parties, in part because it lacks legitimacy and partly as a result of the way in which it infringes state sovereignty.¹⁰⁷ It also ignored the interests of all concerned sides traditional mediation practices gave way to a new, more active form of arbitral peacemaking that we can perhaps best term 'meditation'. In both cases this approach failed to bring about the desired outcome.¹⁰⁸ Although the notion of 'meditation' may appear to present a method by which to break the deadlock in protracted peace negotiations where talks between the parties have failed to produce an agreement, "it appears to be designed to ease the frustrations of the international community rather serve as a realistic new method for conflict resolution."¹⁰⁹ The last version of the Annan Plan had not been negotiated between the parties concerned and it gave rise to rejection of the plan.

2- Confederation

The term confederation is widely used by political scientists and by writers generally to refer to a loose form of political association. Forsyth defined confederalism as "a union that falls short of a complete fusion or incorporation in which one or all the members lose their identity as states". Confederation is a union that is specifically federal in nature meaning that "it is based on a foedus or treaty between states and not on a purely one-sided assertion of will".¹¹⁰ Confederation also implies that "the union established by the foedus or treaty is represented not simply by a single person, but by some form of assembly, congress, diet or council of states that create the union".¹¹¹ Daniel J. Elazar shares Forsyth's view on confederations, stating that a confederation is "a common government" formed when "several pre-existing polities (have) joined together for strictly limited purposes, usually foreign affairs and defence, and more recently economics." Such a common government "remains dependent upon its constituent polities in critical ways and must work through them."¹¹² This definition of confederation is too general and Elazar places confederation as one sub-type of federal arrangements. Forsyth also uses the term 'federal union' interchangeably with 'confederation'. However, the term 'federalism'

¹⁰⁷ Ibid

¹⁰⁸ Ibid., 224.

¹⁰⁹ Ibid., 232.

¹¹⁰ Murray Forsyth, *Unions of States: the Theory and Practice of Confederation* (New York: Leicester University Press, 1981).

¹¹¹ Ibid

¹¹² Daniel Elazar, *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements* (Essex: Longman Group Ltd., 1994), p.xvi.

in contemporary political science is also used in a narrow sense. So, it is necessary to use federalism in its narrow sense in order to avoid unnecessary confusion.

From the perspective of international law, a confederation cannot be regarded as a unified sovereign state. Its individual member states have their own international personality and are recognized by the international community as sovereign states. A confederation does not have supreme legislative or executive branches, and does not necessarily have a single army, a single tax system or single citizenship. Cooperation between the member states is restricted to a few areas of competence, such as defence, foreign affairs and foreign trade. It is governed by a common consultative institution. The decision making organ in a confederation is the confederal assembly (congress or diet) composed of delegates from the member states. The decisions of the confederation need to be approved by all member states, often unanimously. Both majority rule and veto systems are used. The veto system is mostly exercised when the decision concerns the unity of the confederation; on defence and security matters, for example whereas a simple majority vote can be effective regarding some less important decisions.

In a confederation, every member state has equal status. A confederation is thus a union of states that consists of several sovereign states. The member states retain the right to withdraw from the confederate union. It is this feature that distinguishes confederalism from other forms of governance and which received many criticisms from the early federalists. The early federalists considered the confederation so weak and loose a form of governance that unity was difficult to obtain and the union was permanently in danger of break-up. So, confederation has acquired a negative reputation: that its loose structure of government can no longer offer a feasible solution to contemporary political demands, that it should be brushed aside and ignored by the tide of history. According to John Coakley although federalism may be defined relatively easily in principle, in practice it becomes an intermediate stage between federalism and decomposition into independent states.¹¹³ In other words, confederations appear to be half-way house between federation and independence.

The type of *foedus* on which its unity is based is an international treaty signed by its member states. Elazar argues that confederalism is “only a term for a certain kind of federal solution located on a federalist continuum based on its own characteristics of constitutionalized and noncentralized power-sharing,” and both confederalism and

¹¹³ John Coakley, *The Territorial Management of Ethnic Conflict* (London: Frank Cass, 2003), p. 300.

federalism emphasize “the combination of self-rule and shared rule through different arenas of governance,” which means that they cannot be precisely demarcated in practice.¹¹⁴ Following this logic, a confederation—the concrete embodiment of a complete set of confederal principles— shares many similarities with a federation. But to presuppose such a continuum does not mean that, in the classification on polities, a confederation may not constitute a class of its own. We can identify four main differences between federations and confederations. First, a federation is “concerned with nation-building” and tends to have single national identity, whereas a confederation is “most ambiguous on that subject” and each constituent unit of a confederation can preserve its own national identity.¹¹⁵ A federation is “either to create one nation out of many or to preserve a nation by a timely recognition of its inner diversity.”¹¹⁶ The formation of a confederation, on the contrary, responds to the basic needs of the member states, for example when they face a severe external threat or feel prompted to unite by a powerful common economic interest. It is designed to create not a single nation-state, but a union of states based on a treaty. The confederal treaty will not change the status of its member states or deprive them of their statehood. They will thus retain full sovereignty.¹¹⁷ Second, these two types of polity are founded on different types of arrangements that determine the distribution of functions between the federal level of governance and the constituent units.¹¹⁸ A federation is based on a constitution, and a confederation on an inter-state treaty. The scope and effect of the basic laws in a federation and a confederation thus differ greatly. In a federation, the basic law may start off as an agreement between the constituent units, but as a consequence of the integration of the constituent entities, this agreement will be included in a constitution, or will have the same status as a constitution.¹¹⁹ Though the basic law in a confederation also originates in an arrangement between the member states, the treaty between the latter will remain in force for the whole duration of the Union. The treaty thus qualifies as the basic law. In a federation, the written basic law—having the same status as a constitution—is enforceable throughout the federation. In a confederation, the treaty as a written basic law governs only some

¹¹⁴ Daniel Elazar, *Constitutionalising Globalisation: the Postmodern Revival of Confederal Arrangements* (Lanham: Rowman and Littlefield Publisher Inc., 1998).

¹¹⁵ Ibid.

¹¹⁶ Frederick K. Lister, *The European Union, the United Nations and the Revival of Confederal Governance* (Westport: Greenwood Press, 1996).

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

given fields such as defense, foreign affairs or particular economic matters, while the other policy areas are regarded as being the domestic affairs of the member states. The treaty as a basic law is directly enforceable only on the member states, and not on their populations, except only in special circumstances (such as in time of war).¹²⁰ Third, in these two forms of polity the relationship between the center and the constituent units, and that between the central government and the citizenry, differ greatly. In a federation, the two levels of government have distinct areas of competence, whose relationship is laid down in the constitution. Their hierarchical order favours the federal level of governance, as it controls "the most crucial sovereign functions." In a confederation, the hierarchical relationship between the Union and the member states favours the latter because a confederal treaty is thus designed to preserve the sovereignty of the constituent units. The authority of the Union remains subordinate to that of its member states. Where the political participation of citizens is concerned, the people in a federation are involved both in the affairs of the federated state in which they live and in those of the federation as a whole. Citizens thus have dual allegiances and loyalties: to the federation and to their own states or regions. In a confederation, however, the people are directly involved only in the affairs of the member states, and their loyalties remain focused on their home state. This affects the quality of their citizenship. Moreover, in a federation, both the federal and federated governments "must be in direct contact with the people and their legitimacy depends on the popular support of their voters and constituencies."¹²¹ A confederation's authority, on the other hand, "must reach the people only or predominantly through the governments of its member states. The success of a confederation depends more on the type of cooperation between the governments of the member states than on the popular support of the people."¹²² Fourth, the two forms of polity differ greatly in their decision-making bodies and systems. In a federation, the main decision-making organ is usually a bicameral system comprising two chambers, one of which represents the people as a whole while the other represents the component units of the federation. Federal legislation needs to be approved by a majority of the delegates of both chambers. Furthermore, the federated states may derive some income from direct or indirect taxes, but the federal government usually keeps control over the main sources of taxation. Due to its financial

¹²⁰ Jing Li, "Assessing the Relevance of Confederalism to Cross-Strait Integration and China's Reunification," *East Asia*, Vol.22, No.3, Fall 2005, pp. 63-80.

¹²¹ Bruno Coppeters, David Darchiashvili and Natella Akaba, (eds.), *Federal Practice: Exploring Alternatives for Georgia and Abkhazia* (Brussels: VUB University Press, 2000), p. 188.

¹²² Ibid.

independence, the federal government does not depend on the federated entities. In a confederation, joint decision-making takes place in a confederal assembly (congress, or diet) that consists of representatives of the constituent units. The assembly meets at regular intervals and operates under mutually agreed procedures. A mixture of “majority rule” and “veto” systems may be used in decision-making, but on crucial issues the constituent states retain a right of veto, since confederal decision-making must seek to avoid crises that may break up the union. The majority principle is then used for less important decisions.¹²³ As the union does not usually have its own sources of income, the confederal level of governance depends on its member states for financial support. Despite the equality of the confederated entities under the law, this may lead to the hegemony of a larger entity that uses its financial power to dominate confederal decision-making.

Some scholars tend to regard confederation as an obsolete form of governance. This does not mean, however, that scholarly and political debates on confederalism have ended. In recent decades, and especially since the early 1990s, the discussion on confederalism has gradually revived. Some political scientists and scholars have used confederal theories to explain the phenomenon of globalization and regional integration, expressing the hope that confederal principles could resolve the problems of ethnic conflict and separatism in the contemporary world.

For Lister, confederal governance could provide a model for “dealing with, or even forestalling, the ethnic confrontations that have been plaguing our post-Cold War world” and for “reconciling the widespread demand for ethnic separatism...”¹²⁴ He argued that multi-ethnic states threatened with break-up may employ confederal institutions in order to address the problem of separatism. In today’s world, we do find several cases of ethnic confrontation in which the application of the confederation model and of confederal principles is being discussed. It seems that confederations are mostly favoured by those who strive for secession, whereas confederal principles are also used by those who strive for the reunification of divided states and nations. Proposals for a confederation were made by the Turkish Cypriots in the UN-led negotiations concerning a peace settlement on Cyprus. In this case, it was the weaker side, striving for sovereign statehood that preferred the creation of a confederation. It is natural for the weaker parties to favour such

¹²³ Lister, *The European Union*, op. cit., pp. 35-42.

¹²⁴ Ibid.

an arrangement, because in a confederation the member states enjoy full sovereignty. Sovereign status would eliminate the risk that one ethnic group might be subordinated to another, and deprived of statehood. In the case of Cyprus, however, the international community -represented by the United Nations- rejected this option. The Turkish Cypriot authorities took a more moderate position, agreeing to hold negotiations on a federation according to the "Annan plan" put forward by the UN although in the years prior to the Annan Plan, the Turkish Cypriot leadership insisted on a confederal solution as the coming together of two independent states, which would have entailed separate sovereignty. While the Turkish Cypriot leadership proposals in February 1990 suggested a federation, there were strong elements of a confederal system. For example it is stated "the federation shall derive its powers from the two constituent republics". Moreover, the competencies of the federal organs were extremely limited and rather symbolic. They were not vested within the classical powers of the state.¹²⁵ Although the UN-mediator has proposed that reunification should lead to the creation of a single state in the international community, at the internal structure of this reunified state in the Annan Plan, it certainly displays some very distinctive confederal characteristics. These confederal characteristics include extensive veto rights in the decision-making process in policy areas that are considered crucial for the federated entities. They also include a very limited set of powers for the federal level, whose aim is to coordinate the policies of the federated entities.

The success of confederation depends more on the governments of the member states than on the popular support of the people. It is in this sense that Elazar considers the confederation to have more limited aims than the federation.¹²⁶ However, it can be argued that confederation itself is not likely to deal with fragile relationship between both communities in Cyprus.

3- Consociationalism

For managing and settling ethnic conflicts, power sharing arrangements often seem an appropriate solution. In Ulrich Schneckener's words on power sharing arrangements, 'the former antagonists are forced to work together and make decisions by consensus; the

¹²⁵ Yucel Vural and Nicos Peristianis, "Beyond Ethno-nationalism: Emerging trends in Cypriot politics after the Annan Plan," *Nations and Nationalism*, Vol. 14, No.1, 2008, p.58

¹²⁶ Ibid.

ultimate goal is to turn opponents into partners'.¹²⁷ Consociational or power-sharing theorists put greater emphasis on political institutions and the role of politicians in attaining political stability or instability. For them, political instability results from the unwillingness or the inability of political elites to negotiate and maintain political compromise and they have specific theories to explain power-sharing failures and successes. Consociational theorists justify the need for a consociational approach by citing the destabilising effect of social segmentation, generated either by overlapping cleavages and a lack of mobility among social segments or by strict group differentiation.

Consociationalism is believed to be best applied to societies in which few memberships cut across ethnic or religious cleavages and where cleavages are deep and unmediated by multiple memberships. While the model accepts that cross-cutting pressures can facilitate political accommodation, it maintains that divided, plural or segmented societies can attain democratic stability despite the absence of cross-cutting social cleavages.¹²⁸

Lijphart defines consociational democracy as "government by elite cartel designed to turn democracy with a fragmented political culture into stable democracy".¹²⁹ The role of political elites is crucial to consociational analysis, although it has been argued that political stability can also be safeguarded, if secondary cleavages cut across the social segments at the mass level. Lijphart argues that elites can achieve social peace and stability in a plural society, which is otherwise doomed to immobility and instability due to the lack of cross-cutting cleavages, once they acknowledge the dangers inherent in pluralism and act on this through deliberate collaboration along the lines of consociational democracy.

The Institutional Characteristics of Consociational Democracy

The central argument of consociationalism is that elite cooperation can successfully overcome the flaws of the traditional decision-making by majority. All significant decisions require agreement and consensus among the leaders of the different subgroups for the purpose of preventing cleavages from leading to explosive conflicts, disintegration and split. Decisions at the top are essentially made on the basis of unanimity by the leaders of distinct national sectors. This is a way of keeping together in a common system

¹²⁷ Ulrich Schneckener, "Making Power-sharing Work: Lessons from Success and Failures in ethnic Conflict Regulation," *Journal of Peace Research*, Vol.39, No. 2, 2002, p. 203.

¹²⁸ McGarry and O'Leary, *Explaining Northern Ireland*, op. cit., pp.320-321.

¹²⁹ Arend Lijphart, "Consociational Democracy," *World Politics*, 21, 1969, p.208.

of government a set of different sectors, different national entities, different states of unequal size, or, to avoid a situation in which one state could, because of perhaps a larger population, impose upon other states. For consociational settlement, political elites are required to seek neighbourly agreement and compromise, willingly and freely and without alienating their followers, to accommodate political conflicts. For consociationalists, this can be achieved through “depoliticisation” of the conflict; that is through defining the conflict as “technical” (economic and legal) rather than an ideological conflict or by tacitly agreeing to remove it from the political agenda altogether.

In *segmental autonomy*, or limited forms of self-government, each minority’s distinctive interests are ensured but at the same time the degree of distinctiveness is minimised for the purpose of coordinating, compromising and negotiating with other minorities. He describes this as ‘good fences make good neighbours’. Each group is given a great deal of autonomy, a degree of reciprocally recognised self-government in running its internal affairs, especially concerning education, culture, religion, language.

Lijphart claims that stable democracy in plural societies requires power-sharing arrangements. In power-sharing arrangements, practices and institutions result in *broad-based governing coalitions* that generally include all major ethnic groups in society. He also argues that “in a consociational democracy, the centrifugal tendencies inherent in plural society are counteracted by the cooperative attitudes and behaviour of the leaders of the different segments of the population.”¹³⁰ Here, political parties representing the main segments of the divided society share governmental power.

Proportionality is accepted as a principle of political representation. Each cultural community is proportionally represented in the legislature(s), in the executive, the judiciary, the civil service and the police.

Lastly, a *mutual veto* is another important device of consociationalism although its potential for promoting political stability has been constantly questioned, in terms of causing immobility in the decision-making process. The consociationalists’ response to this challenge is that even non-decisions are preferable to bad decisions. Mutual veto acts as the ‘ultimate weapon’ of the minority in order to protect its fundamental interests. Lijphart admits that the veto power contains the danger that the entire power-sharing system can be undermined if one or more minorities overuse or abuse their veto power.

¹³⁰ Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale University Press, 1977), p.1.

He says that "the veto power works best when it is not used too often and only with regard the issues of fundamental importance".¹³¹ Both mutual veto and proportionality are mechanisms that allow governments to be multinational. Both mutual veto and segmental autonomy coincide with features formally built into most federal arrangements through the distribution of powers or non-majoritarian representation in a second chamber.

Lijphart believes that elites can engage in cooperative and collaborative behaviour, in cases of violence, secession, and other potential costs of fragmentation, better than the mass. Segmental autonomy as a means of avoiding interaction at the level of mass culture is also important because the potential for hostile conflict and violence exists primarily at this level. At the mass level, the subcultures are isolated because segmental autonomy helps to build cohesion by allowing minorities to enjoy the cultural security that results from making their own decisions and because they do not experience the strains that may result from constant inter-group contact. "The mass public...tends to be rather passive and apolitical almost everywhere and therefore does not present a great danger to the possibilities of elite accommodation".¹³² Stable mass support and satisfaction with the policy outcome are necessary for this arrangement. The secrecy and non-public character of meetings is necessary for elites to act independently of their followers. At the elite level, they communicate, cooperate, rationally calculate the consequences of further conflict and voluntarily establish and maintain consociational patterns of cooperation. In this model, a reduction of tension is achieved through first, reducing interaction between social and political groups from the different societal segments and secondly through the collaboration of the elites.

Favourable Factors for Consociationalism

The functionality and thus survival of consociationalism depends on the existence of several factors mentioned below.

- (i) Relative equilibrium through a multiple balance of power among the segment of the divided society. No segment must have a majority and the segments must be of approximately equal size. "If all subcultures are minorities, their leaders will tend to be more willing to compromise and less tempted to dominate the other

¹³¹ Lijphart, "The Power-Sharing," op. cit., p. 495.

¹³² Arend Lijphart, "The Puzzle of Indian Democracy: A Consociational Interpretation," *American Political Science Review*, Vol. 90, No. 2, 1996, p. 52.

groups than when two subcultures are equally strong or when one subculture enjoys a clear hegemony".¹³³

- (ii) A relatively small population which means the decision-making process is less complex, which facilitates co-operation .
- (iii) External threats perceived as a common danger by the different communities that promote internal unity.¹³⁴
- (iv) Overarching loyalties that reduce the strength of particularistic ethnic loyalties: Some society-wide loyalties, such as a sense of common national identity, which serves to lessen ethnonational differences is needed. The affiliation of the majority of each side to the same symbols, institutions, ideals or values, shared national or regional identity, a common sense of belonging to one nation or one region are essential preconditions.
- (v) The absence of large socio-economic inequalities among the ethnic groups: Each of the groups has similar standards of living, average income, the number of employees, or the level of education.
- (vi) The relative spatial isolation of the communities.
- (vii) Pre-democratic traditions of compromise and political accommodation which predisposed the communities to power-sharing.
- (viii) Territorial Segmentation: The groups live territorially segregated which makes it possible to combine consociationalism with territorial arrangements to allow more regional self-rule for each group. However, according to Lijphart, segmentation need not necessarily coexist with territorial scale.
- (ix) The existence of some cross-cutting cleavages: Although this is not a necessary condition for Lijphart, it helps to mitigate ethnic conflict. The total population is characterised by political or other cleavages that cut across ethno-national or linguistic lines, leading to overlapping memberships that prevent the creation of a homogeneous group. Lijphart argues that "overarching cooperation at the elite level can be a substitute for cross-cutting cleavages at the mass level".¹³⁵

¹³³ Arend Lijphard, "Cultural Diversity and Theories of Political Integration," *Canadian Journal of Political Science*, IV, no.1, March 1971, p.12.

¹³⁴ Ibid.

¹³⁵ Lijphart, *The Politics of Accommodation*, op. cit., p. 184

- (x) Dominant Elites: The political leaders in each group are able to win internal support for compromises and agreements. The necessary condition is the structural predominance of elites vis a vis non-elites.
- (xi) Successive generations of political leaders must be motivated to engage in conflict regulation and sustain the consociational system. The leaders of the rival ethnic communities must fear the consequences of protracted ethnic war and must have a desire to preserve the economic and political stability of their regions.
- (xii) The political leaders of the relevant ethnic communities must enjoy political autonomy, so that they can make compromises without being accused of treachery; and they can only enjoy such autonomy where there is not extensive intra-ethnic competition as to who best represents the interests of the community.
- (xiii) The elite must have the ability to accommodate the divergent interests and demands of their subcultures; they must have the ability to transcend cleavages and to join in a common effort with the elites of rival sub-cultures.
- (xiv) Commitment to the maintenance of the system: All parties are interested in keeping the agreed status quo. The consociational solution is not questioned by any side and no coalition partner aims at a hegemonic position or wants to change territorial borders. Radical separatist forces are in a significant minority position.
- (xv) Traditions of accommodation: Revive positive traditions of mutual understanding from the past; in other words, historic compromises may help to ease tensions.
- (xvi) Comprehensive Participation: All relevant groups or their political parties are represented at the negotiation table and later in the institutionalised power-sharing system. Major para-military organisations have to be integrated into the peace process in some way otherwise they might be able to destroy any reconciliation efforts.¹³⁶
- (xvii) Internal compromises versus external pressure: The consociational solution was developed by the groups themselves rather than forced upon them by external powers. Consociationalism can never be imposed from the outside without an internal constituency.¹³⁷

If these demanding requirements are not present, then consociational experiments may break down. Besides, if elites do not act together, civil war can result or, in the case of

¹³⁶ Ibid., 216.

¹³⁷ Matthijs Bogaards, "The favourable factors for consociational democracy: A review," *European Journal of Political Research*, 33, 1998, p. 486.

federations, one or more of the component units may try to secede.¹³⁸ This is why some theorists believe consociationalism may only be practicable in moderately rather than deeply divided societies.

Elite efforts at accommodation are greatly facilitated if certain rules of the game, mentioned above as the characteristics of consociational democracy are applied. Idealist voluntarism, sufficient good will and social learning on the part of a well-motivated elite can be effective and create consociational settlements even in very unfavourable conditions.¹³⁹ Consociationalism is an act of will of the political elites rather than a product of the environment.¹⁴⁰ Lijphart favours "...power-sharing for multiethnic societies because it is the optimal -indeed, usually the only- solution, regardless of whether the background conditions are favourable or unfavourable".¹⁴¹ Lijphart believes that "these favourable factors are neither necessary nor sufficient conditions for the adoption or success of power-sharing. They are merely helpful factors."¹⁴² He claims that even if all or most of the conditions are favourable, the success of power-sharing is by no means guaranteed. The reason is its dependency on the unmeasurable factor of elite skills and motivation. And even when many conditions, or the most crucial ones, are unfavourable, success is still possible. "To aspiring power-sharers who find themselves in an unfavourable situation, it does not say: "Give up." Instead, it advises: "Be aware of the obstacles you face, and try extra hard".¹⁴³

The existence of favourable factors, except actor-oriented factors, is neither necessary nor sufficient for reaching a solution but, once an agreement has been concluded, it is essential that favourable conditions are increasingly accomplished to ensure the long-term stability of a consociational democracy.

There are different explanations for why elite cooperation arises in some fragmented societies but not in others. For example, Lehmbruch pointed to the specific political culture of the country concerned: "the fact that peculiar norms of conflict management

¹³⁸ Herman Bakvis, "Alternative Models of Governance: Federalism, Consociationalism, and Corporatism," in H. Bakvis and W.M. Chandler, *Federalism and the Role of the State* (London: University of Toronto Press, 1987), p.281.

¹³⁹ McGarry, and O'Leary *Explaining Northern Ireland*, op. cit., p. 326.

¹⁴⁰ Bogaards, "Favourable factors for consociational democracy," op. cit., p. 486.

¹⁴¹ Lijphart, "The power-sharing approach", op.cit., p. 499.

¹⁴² Ibid., 498.

¹⁴³ Ibid., 499.

develop under specific historical circumstances".¹⁴⁴ For both Gerhard Lehmbruch and Hans Daalder, the primary explanation lies in the development of accommodative elite behaviour. In other words, they emphasise the importance of the specific political culture. However, for Lijphart, it is in the capacity of the elites themselves to appreciate the dangers of social fragmentation, to transcend barriers of hostility, and to devise appropriate compromises on political issues. In addition to these political skills, Lijphart argues that elites must also be sufficiently positively motivated toward the political system.

Because the theory sees the behaviour of elites as the essential element in a stable democracy, and elite cooperation as necessary and sufficient for containing conflict and maintaining political stability, it assumes this actually clearly indicates the deference of the masses to their leaders. However, this is a problematic statement. What if they do not trust the elite? Trust and confidence are major problems, even in stable democracies. Within the arena of conflict management, the ability of its elites to control members of their ethno-region is often absent. Leaders may not always be in line with popular opinion and may be unable to control members of their own ethnic group. Moderately-minded leaders may face opposition from segments within their own groups that favour secession, undermining the legitimacy and authority of the leader to speak on behalf of the group.

The most serious criticism is related to the failure of consociational democracy in achieving and maintaining political stability. The slow-paced process of grand coalition government comes to mind; the risk of mutual veto endangering and complicating decision making; the achievement of proportionality often at the expense of administrative efficiency; and the high cost of segmental autonomy. In response to these challenges, Lijphart argues that the short-term efficiency of majority rule may lead to eventual breakdown in plural societies.

Another important difficulty in the applicability of consociational proposals is the requirement for a relatively high degree of pre-existing agreement between the conflicting sides. In a sense, it becomes applicable only when conflicts are already sufficiently settled, or when no other option seems to exist. Brian Barry also argues that the consociational model will have a reasonable chance of success only in plural societies with a low degree of conflict potentialities on the intersegmental level; and if relations

¹⁴⁴Gerald Lehmbruch, "A Non-Competitive Pattern of Conflict Management in Liberal Democracies: The Case of Switzerland, Austria, and Lebanon," in Kenneth D. McRae, (ed.) *Consociational Democracy* (Toronto: McClelland and Stewart, 1974), pp. 90-97.

between segments are strongly conflict-laden, the consociational model will promote conditions for civil war rather than political stability.¹⁴⁵ Another limitation of the model is related to its best applicability to the situation in which political elites have political culture that is accommodative rather than adversarial.¹⁴⁶ As McRae states, its only apparent limits lay in the capacity and the will of the leaders of the groups involved understanding the situation and devise appropriate solutions by negotiation. Since these limits can never be known in advance, the consociational approach can lay claim to a very broad mandate.¹⁴⁷

4- Federation, Federalism and Federal Systems

Federalism together with consociationalism refers to various modes of giving "voice" to minorities and thus it can be argued that consociational federalism with certain confederal elements are likely to deal with ethnic conflict in multi-ethnic societies and can be an answer for deeply divided societies like Cyprus.

The term 'federal' derives from the Latin 'foedus' which means a contract, treaty or alliance. It is a very special kind of agreement because the word *foedus* is akin to *fides* or faith, confidence. By its root, a federation is a bargain about government which is based on trust.¹⁴⁸ The covenantal character of federation makes it advantageous to all parties, as long as the benefits are realised by all.

Elazar argues that the federal idea has its roots in the bible and the term was first used for theological purposes to define the partnership between man and God, described in the Bible, which gave form to the idea of a covenantal or federal relationship. It was this theological usage which, applied to politics, gave rise to the transformation of the term 'federal' into an explicitly political concept.¹⁴⁹

This covenantal theory is most closely associated with Vincent Ostrom, Daniel Elazar and John Kincaid. The concept of covenantal federalism embodies a set of normative principles that bind partners together in a moral contract or agreement of trust. The act of

¹⁴⁵ Brian Barry, "The Consociational Model and Its Dangers," *European Journal of Political Research*, Vol. III, No. 4, 1975.

¹⁴⁶ Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale University Press, 1977).

¹⁴⁷ Kenneth D. McRae, "Theories of Power-Sharing and Conflict Management," in Joseph V. Montville, (ed.), *Conflict and Peacemaking in Multiethnic Societies* (Lexington: Lexington Books, 1990), p. 96.

¹⁴⁸ Joachim J Hesse and Vincent Wright, *Federalising Europe? The Costs, Benefits, and Preconditions of Federal Political Systems* (Oxford: Oxford University Press, 1996), p.10.

¹⁴⁹ Daniel Elazar, *Federalism and the Way to Peace* (Kingston, Ontario: Queen's University/Institute of Intergovernmental Relations, 1994), p.21

coming together remains a 'political bargain' in Riker's sense but it is much more than just this; including mutual recognition, tolerance, respect, obligation and responsibility.

Federation is a political system compounded by strong constituent entities and strong general government which possesses powers delegated to it by the people. Concerning its definition, the term federation is still ambiguous and controversial in spite of its frequent use. Besides, the flexibility and variety of federalism make it difficult to define with precision. Burgess suggests that one way of enhancing the comparative study of federalism is to emphasize all-inclusive definitions and classifications.¹⁵⁰

There are some common ideas accepted by scholars about the term. For example, most writers would agree that a federation is always a form of rule by constitution, at least in a formal sense. All federal commentators would also probably agree that a federal form of government must operate on two levels: as a polity and as a series of constituent units. There is also consensus among scholars about distinguishing the features of federation from other forms. According to M. J. C. Vile, federation is a decentralised political system which has a fully constitutional government. For King, federation is the accommodation of the constituent units of the union in the decision-making procedure of the central government on some constitutionally entrenched basis.¹⁵¹

A federation is something like an alliance that is consciously created with a set of structural rules. The aim of federation is to create and maintain a nation while preserving the identity and traditions of the constituent units.¹⁵² A common financial policy across the states and free movement of labour and capital from one state to another are needed in federal structures for building and maintaining a nation. In federations, neither federal nor constituent governments should exercise absolute sovereignty because this would violate some of the rights of the other level guaranteed in the constitution. Although residual powers for the constituent units should and do exist in many federations, the national government should act in the national interest all the time without being prejudiced toward any single unit.¹⁵³

William Riker has made one of the best overall definitions of a federal government: a political organisation in which the activities of government are divided between regional

¹⁵⁰ Michael Burgess, "Can comparative federalism really be comparative?" in Brown-John C.L., *Centralising and decentralising trends in federal states* (New York and London: University Press of America and Centre for the Study of Federalism, 1988).

¹⁵¹ Preston King, *Federalism and Federation* (London: Croom Helm, 1982), p.91.

¹⁵² Jonathan Lemco, *Political Stability in Federal Governments* (New York: Praeger, 1991), pp. 5, 6.

¹⁵³ *Ibid.*, 6.

governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.¹⁵⁴ This is constitutionally guaranteed through a division of power between central and regional governments. So, the federal constitution as a contractual arrangement provides for the division of power or the distribution of legislative authority between the central government and the constituent units. Certain fields like foreign affairs always come under the jurisdiction of the federal authority whereas other fields like education, social affairs and fiscal administration are often delegated to both levels of government. The division of power is quite specific as written but differs across different federal regimes.

According to William S. Livingston, federal government is a device by which the federal qualities of the society are articulated and protected. For Stein, the major cleavages defining societies of this type were a product of ethnic and linguistic differences that were territorially concentrated. Other forces such as religion, geography and economics merely reinforced these primary determining factors. He claimed that if ethnic and linguistic differences were present then political leaders representing these distinctive communities would bargain for sufficient autonomy for themselves and their followers. Once the bargain was struck, however, societal forces would act on and be shaped by the political structure of federation. He sought to combine the work of Livingston, Watts, Riker and Wildavsky: A federal system is a form of political system in which the institutions, values, attitudes and patterns of political action operate to give autonomous expression both to the national political system and political culture and to regional political subsystems and subcultures defined primarily by ethnic-linguistic factors. The autonomy of each of these systems and subsystems is counterbalanced by a mutual interdependence. This balance maintains the overall union.¹⁵⁵

Watts says that federalism is a way or process of bringing people together through practical arrangements aimed at meeting both the common and diverse preferences of people.¹⁵⁶ Burgess explains that 'the genus of federation lies in the infinite capacity to accommodate and reconcile the competing and sometimes conflicting array of diversities having political salience within the state'.¹⁵⁷ He argues that 'toleration, respect, compromise, bargaining and mutual recognition are its watchwords and union combined

¹⁵⁴ Ibid, 6.

¹⁵⁵ Michael Stein, "Federal Political System and Federal Societies," *World Politics*, 20, 1968, p. 731.

¹⁵⁶ Watts, "Contemporary View," op. cit., p. 7.

¹⁵⁷ Michael Burgess, "Federalism and Federation: A Reappraisal," in Michael Burgess and Alain-G. Gagnon., *Comparative Federation and Federalism*, (Toronto: University of Toronto Press, 1993), p.7.

simultaneously with autonomy is its hallmark'.¹⁵⁸ As Burgess points out, federalism deals with how human relations are best organised to accommodate, preserve and promote distinct identities. Gagnon argues that 'federalism may be explained as a political device for establishing viable institutions and flexible relationships capable of facilitating inter-state relations (e.g. division of powers between orders of government), intrastate linkages (states' or Lander' representation at the central level) and inter-community cooperation'.¹⁵⁹ Watts claims that federal harmony is also dependent on the size; number and internal homogeneity of provincial resources, the machinery of intergovernmental consultation and cooperation, the way regional groups are represented in the constitutions of the central government and the flexibility of the political institutions in adapting to changing needs.¹⁶⁰

On the other hand, Preston King has not only defined these terms but provided an important distinction between federalism and federation. He defines federation as "an institutional arrangement taking the form of a sovereign state and distinguished from other such states solely by the fact that its central government incorporates regional units in its decision-making procedure on some constitutionally entrenched bases"¹⁶¹. This definition stresses the importance of the institutionalisation of diversity in a state or the institutionalisation of relationships between diversity and unity in a state. Actually, this is the main feature of federation. Diversity is important because it has a capacity for political mobilisation and thus for the determination of stability and legitimacy of the state. He believes that for all of its institutional characteristics, a federation is still governed by a purpose reflecting values and commitments.¹⁶² He argues that the key to federation is its universal constitutional attribution of entrenched powers at the centre of constitutive and non-sovereign territorial units. He defines federalism as a political principle or philosophy or ideal, whereas federation is some type of political institution or, in other words, institutionalised set of facts. He points out that 'federalism is distinguished from federation by the fact that federalism is more limited institutional arrangement, a device which has not or cannot resolve whole range of problems'.¹⁶³ King claims that there may

¹⁵⁸ Ibid., 7.

¹⁵⁹ Alain-G. Gagnon, "The Political Uses of Federalism" in Michael Burgess, and Alain-G. Gagnon, *Comparative Federalism and Federation* (Toronto: University of Toronto Press, 1993).

¹⁶⁰ Lemco, *Political Stability*, op. cit., pp. 6-7.

¹⁶¹ King, *Federalism*, op. cit., p.77.

¹⁶² Ibid., 146.

¹⁶³ Ibid.

be federalism without federation but there cannot be federation without some matching variety of federalism. According to him, federalism was in reality only circumstantial: in some cases it would prove to be relevant and applicable while in others it would be inappropriate and inapplicable.

The term federalism is used among scholars to refer to the normative concept as advocated by King. The normative idea expressed by federalism is that political organisation should seek to achieve both political integration and political freedom by combining shared rule on some matters with self-rule on others and it is based on the notion that the greatest human fulfilment is found through participation in a wider community that at the same time protects and cherishes diversity and local or individual identity.¹⁶⁴

Federalism is a philosophy or ideology of political organisation which involves a combination of the principles of centralisation, non-centralisation and power-sharing. Federal government, as Elazar argues, involves an arrangement in which power is dispersed among several centres in a matrix rather than hierarchical manner and involves more than one tier of government, usually federal or national government and state (or provincial or regional) governments which have constitutionally guaranteed sharing of powers. The constitution itself is not enough for the federalism of federal government but all the federal principles in its constitution and operation federally are also needed. Political theories of federalism tend to focus on structure, actors, federal procedures and processes.

Although federalism originally has not appeared to deal with ethnic conflict, it provides an attractive solution to the question of what can be done to bring or to hold multi-ethnic societies together. In multi-ethnic federations the boundaries of the internal units are drawn in a way that at least some of them are controlled by ethnic minorities. Although sustainability of multi-ethnic federal systems is difficult, there are a number of success stories that survive because certain conditions prevailed. This study discusses the extent to which, and in which circumstances, federalism is an answer to the governance of multi-ethnic societies.

Ethnic demands as permanent inter-ethnic conflicts are essentially conflicts over territory. This linkage to the territory makes ethnic conflicts in most cases strongly motivational and that makes inter-ethnic conflicts in many cases categorical where no compromise is or

¹⁶⁴ Ibid., 8.

likely to seem to be possible.¹⁶⁵ Federalism principally appears to be an appropriate conflict management device because it gives diversity a territorial dimension.¹⁶⁶

The major challenge that any ethnic federalism has to face remains as to how to avoid that, (because of the constitutional foundations and established decision-making process at a federal level), every constitutional conflict turns into ethnic conflict. As Duchacek argues, there are some arguments that federalism could contribute to ethnic harmony or civility only if the ethnic groups in question were territorially concentrated and thus capable of escaping each other.¹⁶⁷ The success of federalism depends on whether a federation constructed to accommodate ethno-regional diversities which are otherwise recognized as legitimate conflicting interests, enhances dual identity and loyalty, or contrarily radicalizes inter-ethnic tensions by systematically excluding identity and legitimacy for a common state.¹⁶⁸

A single, zero-sum struggle for power at the centre leads to a kind of polarization, and federal regimes which disperse power territorially, and thus create and empower multiple arenas for representation and participation prevent this polarization. The diffusion of ethnic interaction in the political sphere over many arenas is among the essential features of the federal system. Where cultural segments are territorial, they can enjoy a large measure of internal self-rule, reducing the number of spheres in which they are in direct conflict or competition with others. Any kinds of political movements would find a ground to access to power at a regional level which would be impossible to obtain nationally. Federalism can be an attractive solution because it enables minorities to become majorities in subnational units. It provides a means for the recognition and acceptance of diversity.¹⁶⁹ In this way, it increases the legitimacy of the state in the eyes of its entire population as well as the dominant group. In societies in conflict or potential conflict, this has the further advantage of increasing the likelihood that a real peace will be made and will hold.

It is true that centrifugal forces as an integral part of federalism is faced by every federal state is likely to push toward the dissolution of the state due to the idea that federal and

¹⁶⁵ Fleiner, "Can Ethnic Federalism Work," *op. cit.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ Cheryl Saunders, "Federalism, Decentralisation and Conflict Management in Multicultural Societies," Raoul Blindenbacher, Arnold Koller (eds.), *Federalism in a Changing World – Learning from Each Other* (Montreal & Kingston: McGill-Queen's University Press, 2003), p.34

decentralized forms of governance weaken the control of the central government over all parts of the country and also grant ethnic groups and other minorities a platform and the means to organize themselves politically.¹⁷⁰ There is a fear that constitutional decentralization could be a step to secession. Multi-ethnic federalism makes it easier for groups to secede, if they want to, because federalism provides the minority group with political and bureaucratic resources that it can use as a bid for independence.¹⁷¹ A group is given its own unit which makes it possible for it to hold referendums on the secession, which can be useful for gaining recognition.¹⁷² However, if the benefits and common interests in a federation are realised by the minorities they will be less likely to secede. Empirical evidence suggests in some cases that a coincidence between intra federal and ethnic boundaries in a territorial system contributes to stability and internal harmony and in other cases it may become an additional source of tension.¹⁷³ According to Smith, due in part to the constitutive nature of multi-ethnic federations, where provincial and ethnic boundaries coincide, the politics of nationalism is rarely far removed from the arena of federal politics, feeding into a set of grievances which have the potential to mobilize individuals behind calls for the territorial redistribution of power, including independence.¹⁷⁴ To lessen the fear of tyranny by ethnic majority, subdividing a numerically predominant group into various autonomous areas or maintaining/creating ethnically mixed areas in a system which makes other ethnic and intrafederal boundaries coincide, might be advantageous for some countries.

Inter-ethnoregional tensions in most federal systems are also bound up with a politics of uneven development. The degree of commitment and effectiveness of redistributive techniques used by the centre to resolve regional imbalances becomes crucial, drawing issues of redistribution into the arena of nationalist politics. The aggrieved are invariably those ethno-regions-developed or less developed, which feel that they are not benefiting from association. The regions need a secure fiscal base. If their revenues come simply by federal attribution, their capacity for effective autonomy is inevitably circumscribed.

The federal institutional procedures and policies of conflict management adopted by the federal state also play an important role in managing inter-communal tensions and conflict. As Burgess and Gagnon state the success of the federal system is measured in its

¹⁷⁰ Kalin, "Decentralised Governance in Fragmented Societies," *op. cit.*

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ Duchacek, "Comparative Federalism: An Agenda," *op. cit.*, p.30.

¹⁷⁴ Smith "Mapping the Federal Condition," *op. cit.*, p. 10.

capacity to regulate and manage social conflicts.¹⁷⁵ According to Smith, two possible strategies can be adopted to prevent disintegration. One is to establish a strong central government to ensure the unity of the federation and to adopt comparable institutional procedures and practices appropriate to a form of centralized territorial control. The alternative strategy is to attempt to accommodate the pressures for diversity by instituting increased levels of ethnoregional autonomy. A number of federations including Canada practice a form of asymmetrical federalism in which certain ethnic regions have been granted more autonomy than other provinces. However, the special status for regions Quebec, partly contain separatist pressures which mean that such arrangements have tended to undermine a sense of common citizenship, giving rise to claims that some provinces and their citizens are more equal than others. In order to deal with such asymmetrical imbalances, Watts raises the legitimate question of whether representatives of more autonomous units should be denied a vote in policy-making on subjects where the jurisdiction of central institutions does not extend to some of the constituent units.¹⁷⁶ Ethnic minorities often argue that they should have powers beyond those enjoyed by federal units belonging to the national majority. They support asymmetrical federalism and they may seek to share in powers that are normally the prerogative of the centre: Some minorities seek a role in federal foreign policy, or to be directly represented in supranational organizations, thus pushing beyond traditional federations and in the direction of confederation.

It would be wrong to say that ethno-federalism is unworkable. Even when multi-ethnic federal systems work, they may be involved in numerous conflicts, such as conflict over whether the federation should be organized symmetrically or asymmetrically. A number of scholars have pointed out the need to formulate a specific variety of federalism to meet the needs of ethnic minorities: asymmetric federalism. Thus, unlike scholars such as Carl Friedrich, Daniel Elazar, Kenneth Wheare, who thought that traditional, symmetrical federal institutions could be used to manage nationalist claims thanks to their intrinsic capability of dealing with unity and diversity, many contemporary political scientists (e.g. Alain Gagnon, Ferran Requeio, Michael Burgess and others) have analysed the relationship between ethnicity and federalism through the concept of asymmetric

¹⁷⁵ Alain-G Gagnon, *op.cit.*, p.18.

¹⁷⁶ *Ibid.*, 14.

federalism. Conflicts over symmetry and asymmetry seem sure to continue, but nowhere in Western democracies have they led to violence, or even to state break-up.

Liberal states also use a variety of other strategies of conflict management designed to secure greater decentralization. Consociationalism as non-majoritarian rule often coexists with federation. Consociationalism involves accommodative behavior on the part of ethnic elites. Although it is accepted as essential decentralizing strategies, there are limits to the extent to which the model delimit power to the ethno-regions.

According to McGarry, the federation's national communities should not only have self-government but there should also be consociational governance which involves executive power-sharing, proportional representation of groups, ethnic autonomy in culture, and minority veto rights. Otherwise the center becomes a preserve of the dominant group, and there is little incentive for the minority to embrace the federation, even if it has considerable self-government.¹⁷⁷

In federal system an important problem appears due to the collective decision rules (consensus) that gives rise to decision-making deadlock. In majoritarian rule, the chances for the resolution of decisions increase and decisional costs are lessened but collectivity carries no weight and thus external risks increase.¹⁷⁸ In the consensual systems the important point is to minimise the external risks without clogging the decision-making process. Giovanni Sartori suggests the representative method. He claims that there is no one principle, rule, or decision-making system that can even begin to meet all these requirements. His major focus has been on the role of committees. Committees "avoid majority rule, seek unanimous agreement via internal deferred payments and adjust to the outer world or incorporate its demands, via side-payments".¹⁷⁹ "Committees can well claim to be the optimal decision-forming unit.....they not only account for the unequal intensity of preferences but put it to efficient use".¹⁸⁰ He believes that a committee of representatives would result in a drastic reduction of external risk at no, or minimal, increase in decisional-costs; that it would produce positive-sum outcomes for the collectivity at large; and that substantive minorities (ethnic, religious...), which are inexorably beaten when decisions come to a majority vote, would find in committees a setting in which their more intensely preferred claims stand a good chance of being

¹⁷⁷ Ibid., 16.

¹⁷⁸ Sartori, *The Theory of Democracy* op.cit., p. 214.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

consented to. However, he also argues that in case of lack of anything better, and when a turn of events requires that urgent decisions be made majority rules should be employed.¹⁸¹ So, as he argues, there is no single optimal system of choice-making.

A similar argument has already been discussed by Buchanan and Tullock in the *Calculus of Consent*. The *Calculus of Consent* assumes that the individual constitutional choice is performed under a collective rule, a collectivity of unanimity. Instead of using the situation in which no collective action is undertaken at all, they use that situation in which no external costs are imposed on the individual because of the actions of others.¹⁸² Positive costs refer to the situation characterized by the absence of collective action in many cases, and collective action is a possible means of reducing these costs. As collective action increases, positive costs decrease. If nobody is normatively entitled to act unless everybody is in agreement, the autonomy of decision-making must rest with the collectivity which authorizes individual action through collective consensus. It is in this circumstance that individuals can use their power of 'veto'. Such a veto tends to protect individuals against external costs. They say that unanimity rule is optimal in the absence of decision-making costs since it minimizes external costs. However, for operational purposes, they collectively and unanimously authorize individuals to make certain decisions on their behalf. They unanimously relinquish their veto or 'blocking power'.

They consider deviations from the pure majoritarian or pure consensus model to reach a particular tradeoff between two competing goals: the ability of governments to reach decisions and the avoidance of negative consequences of those decisions for some members of a society, especially in plural societies. From the Buchanan and Tullock perspective, it is natural to look for a mix of institutional mechanisms to deal with the problems confronted by plural societies, some of which will provide ways of strengthening the potential for collective action, and others which will emphasise the protection of (group) rights/interests.¹⁸³ The "optimal tradeoffs" perspective on constitutional political economy in the *Calculus of Consent* is directly relevant in considering some of the more specific issues in designing electoral institutions for plural societies.

¹⁸¹ Ibid.

¹⁸² Hartmut Kliemt, "The calculus of consent after thirty years," *Public Choice*, 79 (3-4), 1994, p.345.

¹⁸³ Martin Hering, "Consociational Democracy in Canada" Available at: <http://archiv.ub.uni-marburg.de/sum/84/sum84-6.html>

In the study of collective decision rules, other criteria should also be taken into consideration; namely, stability. According to Tsebelis, regime/government stability and policy stability are inversely related. He argues that policy stability, which means the impossibility of significant change to the status quo, causes government and regime instability. He bases his analysis on the concept of the "veto player" in different institutional settings. He defines a veto player as "an individual or collective actor whose agreement is required for a policy decision."¹⁸⁴ In other words "a veto player is any player, institutional or partisan, who can block the adoption of a policy."¹⁸⁵ The Veto Player theory points out that a significant policy change has to be approved by all veto players and it will be more difficult to achieve, the larger the number of veto players and the greater the ideological distance between them.

Tsebelis argues that a government with policy stability may become immobile, and if change is required by other political and social actors, it may be replaced through constitutional means (government instability in parliamentary systems), or where government change is impossible, except for fixed intervals, policy immobility may lead to replacement of the leadership through extra-constitutional means (regime instability in presidential systems). According to this account, the very factors that lead to policy stability would be associated with both government instability and regime instability. As a result, the government / regime instability or policy stability of a political system would be associated with multiple veto players, with lack of ideological congruence between them, and with ideological cohesion of each one of them. Policy stability leads to the inability of governments to change the status quo, even when such changes are necessary or desirable. As a result of policy stability, coalition governments with many veto players and wide ideological distances will be short lived. The Veto Players' theory predicts that policy stability will be the result of large coalition governments, particularly if the coalition governments have significant ideological differences among them. As a result of this policy stability, coalition governments will be short lived in parliamentary systems and the regime in presidential systems may fall.¹⁸⁶

The conclusion of this section is that although these three institutional arrangements together with third party involvement as mediator or arbitrator, are different they have

¹⁸⁴George Tsebelis, "Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarianism, Multicameralism, and Multipartism," *British Journal of Political Science*, 25, p. 293.

¹⁸⁵ *Ibid.*, 305.

¹⁸⁶ George Tsebelis, "Veto players and Law production in Parliamentary Democracies: An empirical analysis," *American Political Science Review*, Vol.93, No.3, September 1999, pp.591-592.

been combined to solve certain problems in Cyprus. The federal, confederal and consociational ideas and practices require sufficient clarification to understand the following chapters in terms of understanding constitutional discussions for a reunified Cyprus. This is the primary task here. This study also aims to contribute to an understanding of the extent to which they can be combined to deal with several ethnic-problems.

The Origins and Formation of Federal States

This section of the chapter discusses the necessary conditions for the creation of federalism. Analysing them is important because they would help to figure out what common interests should be available to make the federal bargain easy. They help the researcher to assess the negotiation process of the Annan Plan and the chance of the federal system being accepted by both leadership in both communities in Cyprus.

Federal theories can be gathered in two groups.¹⁸⁷ In the first group, there is a classical theory which explains the quality of federalism. It deals with the question of what federal government is. In the second group, they explained the root of federalism. These are sociological theory, political theory and multi-factor theory. They all deal with the questions of why and under which conditions federal government has emerged. These theories of federalism explain not only federation but the necessary conditions for federations too. They also give us a great deal of information about the conditions which may be conducive to federal stability. Although they all deal with various aspects of federalism, none of them has a useful understanding of federalism. For a proper understanding of federalism, these theories should be considered as complementary, as suggested by some scholars.

1- Classical Theory (Institutional and Constitutional Approach):

This theory, which is advocated by A. V. Dicey, H. Moore, J. Brown, R. Garron and J. Bryce, stresses that the state is composed of two governing units which retain separate and independent spheres of action. There is a 'separation of function' rather than interdependence between levels of government. This is also known as the principle of duality, articulated in a single constitutional system of two distinct governments, national

¹⁸⁷ Oktay Uygun, *Federal Devlet* (Istanbul: Cinar yayinleri, 1996), p.25.

and state, each acting in its own right, each acting directly on individuals and each a qualified 'master of a limited domain of action'.¹⁸⁸

For Dicey, the basic preconditions for the formation of federations were "a body of countries....so closely connected by locality, by history, by race or the like, as to be capable of bearing, in the eyes of their inhabitants, an impression of common nationality"; and the existence of "a very peculiar state of sentiment among the inhabitants of the countries which it is proposed to unite."¹⁸⁹ He stated three principal characteristics of federal state: the supremacy of the constitution; the distribution among the bodies with limited and coordinate authority of the different powers of government; and the authority of the courts to act as interpreters of the constitution.¹⁹⁰ And the constitution had to be supreme, written and rigid in the sense of requiring special procedures to amend it. For him, federal government meant weak government; it tended to produce conservatism, and the federal political system meant, in practice, legalism.¹⁹¹

Bryce claims that the aim of those that drafted the American constitution was to keep two mechanisms as distinct and independent of each other, as was compatible with the still higher need of subordinating, for national purposes, the state to the central government.¹⁹²

On the other hand Wheare combines coordinacy and independency. He argues that the federal principle requires that the general and regional governments shall be independent of each other within its sphere and shall not subordinate one to another but co-ordinate with each other.¹⁹³

This theory explains federalism in terms of constitutional and institutional structure designed in the constitutions only. This legal explanation is not enough because usually its practice is different. As Kenneth Wheare argues, to understand whether a state is federal is to investigate not only the constitution itself but its application too.¹⁹⁴ It should be thought of in terms of economic, social, political and cultural dimensions and not just legal dimension.

¹⁸⁸ King, *Federalism and federation*, p.86.

¹⁸⁹ Albert V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: Mcmillan & Co., 1950), p. 141

¹⁹⁰ Ibid., 144.

¹⁹¹ Burgess, *Comparative Federalism*, op.cit., p. 21.

¹⁹² Brian Galligan and Georgina Lynch, "Federalism and the Environment: With Australia as a Case Study," in Stephen Randall and Roger Gibbins, *Federalism and the New World Order* (University of Calgary Press, 1994), p.146.

¹⁹³ Ibid.

¹⁹⁴ Uygun, op.cit., p.25.

Wheare rejects the idea of concentrating on only the legal aspect of federalism but like other classical theorists, he favours the equality and independence of two units of government principle and concentrates on the relations between two levels of government.¹⁹⁵ He views federation as a bargain among territorial political units. He uses the US as a model and describes federalism as a system of government in which the federal and regional governments are both coordinate and independent. For him, federal government is the one where there is a sharp division of powers and functions of two coequal sovereign governments. For him, federalism is a form of arrangement which is the product of a minimal level of consensus and which is itself a valid indicator of the very lack of a community of interest encouraged by similarity of language, race, religion, or culture that is hypothesized to be productive of consensus.¹⁹⁶ He ignores the role that certain underlying societal conditions play in the development of federalism or, in other words, he rejects the idea of federalism as the inevitable product of some conflux of social forces. He places more emphasis on considerations of defence, expansion and economic security as the primary underlying forces encouraging a federal system of government and the acts of a federation to be the product of a decision-making mechanism involving real leaders and real objectives. He said that there are several conditions that contribute to federal stability, including a sense of military insecurity and a need for defence. Michael Burgess points to Wheare's weaknesses as being the narrowness of his own definition of the federal principle, his excessively legalistic approach and his undue reliance upon the American experience.¹⁹⁷

2-Sociological Theory

This theory explains how and why federal systems emerge. The theory claims that federalism is not the outcome of the rules of the constitution and political institution but rather a product of a society diversified by region, culture, language, religion, race and nationality. According to R. L. Watts, ethnic origin and linguistic unity and diversity produce more important consequences.

This approach is presented mainly in the work of William S. Livingston. He argues that 'the essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology' but in the forces -economic, social, political and cultural- that

¹⁹⁵ Ibid., 47.

¹⁹⁶ Jonathan Lemco, *Political Stability in Federal government* (Praeger: New York, 1991), p.10.

¹⁹⁷ Burgess, *Comparative Federalism*, op.cit., p.27

have made the outward forms of federalism necessary.¹⁹⁸ Thus he believes that the essence of federalism lies in the society rather than in the institutional or constitutional structure. The institutions themselves are not sufficient to understand the federal nature of the society. Institutions may not be suited to the actual needs of the society and dependence upon them alone can create serious error in assessing the nature of society itself.¹⁹⁹ The nature of the political society can be examined only by observing how the institutions work in the context of that society. It is the operation, not the form, that is important and it is the forces that determine the manner of operation that are most important. He believes that certain societies are essentially federal because they are pluralist and that federalism is simply a particular translation of the relations among the economic, social, political and cultural forces that exist in these societies.²⁰⁰

Livingston argues that 'the more diversified the society, the greater is the necessity of providing some means for articulating the diversities'.²⁰¹ If a society contains territorial groups that are so different from the rest of the society that they require some instrumentality to protect and articulate their peculiar qualities, then the society is likely to provide some means for the creation of such an instrumentality. But he also indicates that it cannot be said that when a society is just so diversified, it requires a federal constitution.²⁰² Some societies which would seem to be highly diversified are able to get along with a set of institutions that seem to be nearly unitary. A strong unifying tendency in a society such as a long historical tradition of unity will overcome diversities of economic interests, language, and the like which, in another society, with a weaker historical tradition, would necessitate federal institutions.

Federalism cannot make coherent a society in which the diversities are so great that there can be no basis for integration. There are many different kinds of diversities and similarities and, when taken together, they produce a total picture of the extent to which the society is integrated or diversified. The total pattern of these diversities produces a demand for some kind of federal recognition of the diversities. The federal system is an institutionalisation of the compromise between demands for autonomy and independence for the component units and for centralisation and the suppression of diversities.

¹⁹⁸William Livingston, "A Note on the Nature of Federalism," *Political Science Quarterly*, Vol. LXVII, 1952, pp.83-84.

¹⁹⁹ *Ibid.*, 84,87.

²⁰⁰ Lemco, *op.cit.*, p. 11.

²⁰¹ Livingston, "A note on the Nature," *op.cit.*, p. 88.

²⁰² *Ibid.*, 89.

Federalism is a matter of degree and not of kind. Varied patterns of diversity and demands for the protection and articulation of diversities in societies produce varying degrees of federalism. The federal quality of government is determined by the whole pattern of instrumentalities²⁰³ that are employed as a result of these demands that draws the lines of the compromise. He believes that the longevity of federations depends on the factors of social cleavages of an ethnic, linguistic, cultural and religious nature.

Livingston says that federalism becomes nothing if it is held to embrace diversities that are not territorially grouped, for there are then no territorial units that can serve components of the federal system. Territorial areas are territorially organised and they differ in opinions, in composition, in interests, and in function. There might be no need for federalism unless they were functional differences. The important thing is that these functional differences are territorially grouped and thus they provide a reason for and a demand for a federal system of government.

Livingston was one of the first scholars who brought up the issue of the role of federalism as a means of conflict mitigation. He underlined that the success of conflict mitigation depends on how the congruence of governmental structure and underlying conditions is achieved. The crucial factors in lessening the tension between the federal units and central government are social cleavages of an ethnic nature.

3- Political Theory

One of the most important advocates of this theory is William H. Riker who came to believe that the basic factor that makes various states and societies come together to form a federal unity is the existence of military and external threat.²⁰⁴

Riker characterises federalism as a rational bargain between prospective national leaders and officials of constituent governments who come together for the purpose of creating a larger territory so as better to facilitate the levying of taxes and the raising of armies. He claims that this bargain, when taking the form of a constitution, is federal if it involves the following criteria: two levels of government ruling over the same land and people; each level must have at least one area of action in which it is autonomous; there is some guarantee of the autonomy of each government in its own sphere. For Riker, the

²⁰³ What he means by instrumentalities is a clause in the constitution which includes not only constitutional forms, but the manner in which the forms are employed, the way in which the constitution and its institutions are operated and habits, acceptances, concepts and theories. Whether a country is federal or not may best be determined by examining the pattern of these instrumentalities.

²⁰⁴ Riker, *Federalism: Origin*, op.cit., pp.12.

expansion condition and military condition were common to the origins of every federal state. Anthony Birch revised and expanded these conditions to include the desire to deter internal threats and willingness to have them deterred.²⁰⁵ Riker stated that politicians behave rationally in making bargains that involve mutual benefits. This pursuit of self-interest could be applied to constitution-making which was participation in a rational political bargain.²⁰⁶

Since Riker focuses on political aspects of federation, he identifies two necessary circumstances which encourage a willingness to strike the bargain of federalism: These are a desire of the politicians who offer the bargain to expand their area of influence by peaceful means, usually either to meet an external military or diplomatic threat or to prepare for military or diplomatic aggression (expansion condition) and a willingness of politicians who accept the bargain to give up independence for the sake of union, either because they desire protection from a military or diplomatic threat or to participate in the political aggression of the federation (the military condition).²⁰⁷ However, Riker is no longer convinced that an external threat is present in the formation of every federation. Following Birch, he now recognises the importance of internal divisiveness at a federation's inception.²⁰⁸

Riker believes that although these two conditions, namely a willingness to compromise and a recognised need for military unity, are necessary predisposing conditions for the federal bargain, they cannot have much to do with its survival. Instead there are two features of survival. These are: centralisation, which allows the central government to exploit the advantages of a larger base for taxes and armies; and the maintenance of guarantees to the constituent units, which prevents the transformation of federalism into a unitary government.²⁰⁹ He argues that the structure of the system of political parties encourages or discourages the maintenance of the federal bargain as well.²¹⁰

Riker was reluctant to include economic improvement or the protection of cultural values as necessary conditions for federalism. David McKay states that "if instead of economic improvement or cultural solidarity the motives of the federalizers are expressed in terms

²⁰⁵Anthony H. Birch, "Approaches to the Study of Federalism," *Political Studies*, Vol. XIV, No. I, 1996, p.32.

²⁰⁶Riker, *Federalism: Origin*, op.cit., p.15.

²⁰⁷Ibid., pp. 12-13.

²⁰⁸Lemco, op.cit., p.14.

²⁰⁹Riker, *Federalism: Origin*, op.cit., p. 50.

²¹⁰Ibid., p. 51.

of a need to avert an economic or cultural threat that is perceived to challenge the viability of the existing political order, then the economic and cultural can be placed in the same analytical category as the military and diplomatic. Often some combination of two or perhaps all three of these threats will be present".²¹¹

However, Ramesh Dikshit argues that external military threat and internal divisiveness are not always present during the formation of successful federations.²¹² He concludes that federalism is influenced by economic, political and cultural factors. He places less stress than does Riker on the influence of political parties in maintaining the federal bargain and argues that parties must reflect the political, social, and economic interactions in their environment.²¹³

Riker's idea may be disputed in the sense that even when military concerns had historically been of supreme significance, they had often been shaped by other factors like rival economic interests.²¹⁴ In quite a number of cases it appears that economic competition and conflict might have replaced military ambition as the prime stimulus to federalisation.²¹⁵ The military motivation can hardly explain the type of government which emerged. Preston King criticises this theory by claiming that threat as a factor might be possible for all societies in search of a state. This does not distinguish federations from other forms of government. Component units need more common features and other factors such as economic interests and geographical proximity. For King, Riker's hypothesis has not been sufficiently improved to provide an answer to whether federations arise because of threats to local governments or because they themselves threaten expansion or because these factors merged at the appropriate time. It variably suggests that the absence of a threat of attack or promise of territorial expansion will explain failure.²¹⁶

In addition, military considerations might have played a powerful role in the creation of federations out of previously independent polities but they seem to have been far less important in those cases where federalisation meant the fragmentation of previously strongly centralised unitary political systems.²¹⁷

²¹¹David McKay, "William Riker on Federalism: Sometimes Wrong but More Right than Anyone Else?," *Regional and Federal Studies*, Vol.14, No.2, Summer 2004, p.171.

²¹² Lemco, op.cit p.14

²¹³ Ibid., p. 14.

²¹⁴ Hesse and Wright, *Federalising Europe?*, op.cit., pp. 375- 376.

²¹⁵ Ibid., 376.

²¹⁶ King, *Federalism and Federation*, p. 83.

²¹⁷ Hesse and Wright, op.cit., p. 376.

It can be concluded that, there is no universal single factor in the creation of federal states. As Dikshit shows, a variety of factors contribute to the formation of a federal structure.

4- Multi-factor Theory

This is the theory which is advocated by R. L. Watts and which provides for many factors that enable component units to form a federal government. Watts argues that there are certain conditions for federal states. These are the desire for political independence; the hope of economic advantage; the need for administrative efficiency; the enhancement of the conduct of external relations, both diplomatic and military; a community of outlook based on race, religion, language or culture; the presence of specific geographical factors; the influence of history; the presence of particular similarities and differences in colonial and indigenous political and social institutions; the character of political leadership; the existence of successful older models of federal union; and the influence of the British government in constitution making.²¹⁸ He points out that two factors are always present which are the existence of diversity within a federation and the desire of constituent units to form a union for whatever reasons.

Wheare has also supplied a number of conditions necessary for the formation of federal government. These are a desire to be independent of foreign powers; the hope of economic advantage; the experience of some previous political association; geographical proximity among states; a similarity of political institutions; feelings of unification; external threats; a similarity of political institutions.²¹⁹

William Maddox has provided conditions very similar to those of Wheare's. These are the presence of military and economic insecurity; the existence of uniformity among states of size, culture, political and social development; geographic contiguity among states; the presence of independent sources of political, financial and military power for the central government.²²⁰

Karl Deutsch too suggests that there are multiple factors that affect the formation of federal systems. He speaks of the "amalgamated security-community" which includes federal states and uninterrupted internal connections at the social level and a vast range of means of communications and transactions. The necessary condition that Deutsch cites for the "amalgamated security-community", based on thirty three case studies, include "a

²¹⁸ Lemco, op.cit., p.14.

²¹⁹ Wheare, *Federal Government*, p. 36.

²²⁰ Lemco, op.cit., p. 10-11.

distinctive way of life”, “expectation of economic gains”, and “unbroken links of social communication”.²²¹ His conditions for political stability include a mutual compatibility of primary values shared by the federal partners; a distinctive way of life within each constituent unit; the presence of popular expectations of stronger economic ties or gains to be made from a federal union; a marked increase in political and administrative capabilities of at least some participating units; the presence of superior economic growth on the part of at least some participating constituent units directly attributable to federation; the presence of unbroken links of social communication both geographically between territories and sociologically between different strata; a broadening of the political elite throughout the federation; the mobility of people, at least among the politically relevant strata; and a multiplicity of ranges of communications and transactions within the federation.²²²

Deutsch makes little mention of the political circumstances that would bring about these conditions and Riker argued that the conditions Deutsch presents are neither necessary nor sufficient for the amalgamation of political units.²²³ Riker emphasises that Deutsch makes little mention of military, diplomatic or political factors as important concerns in the development of federations.

Carl Friedrich, like Deutsch, is affected by the importance of communication system too. He reacted to Wheare’s institutional approach and maintains that federalism should not be seen as a static system characterised by a precise and definitive division of power between two levels of government. He argues that federalism is also a developmental federalisation of a political society that is the mechanism whereby separate political communities agree to negotiate solutions or decisions on common problems. He also argues that all federal systems have in common a balancing of their goals.

It can be concluded that the federal theories discuss the preconditions for the formation of a federal system and the conditions necessary for successful federalism. Among the preconditions are economic and military insecurity, the existence of a desire for union, a degree of trust, prior elite accommodation. The necessary factors associated with federal system itself such as division of power and institutions for intergovernmental relations are analysed in the following section before developing the conditions for successful federal systems.

²²¹ Ibid., 12

²²² Ibid., 12-13.

²²³ Ibid., 13.

THE OPERATION OF FEDERATIONS

So far, the various theories of federation have been analysed. Now it is time to examine the operation of federations in terms of both structure and process to understand how the federal systems function in practice as well as in theory. They will all help the researcher to develop the necessary conditions for successful federations.

1. Federalism as a Structure

Formal Governmental Structures: Key Features of Federal Constitutions

Although there has been wide and growing diversity in the mechanisms and principles through which this is done, there are similar issues with which all federal constitutional arrangements must deal. This diversity happens because of the variations in the powers and responsibilities that are divided between center and component units, the procedures for enforcement of federal constitutions, the extent of economic integration, the mechanisms of constitutional amendment, and the articulation of rules in the constitutional instruments themselves.²²⁴

There are four elements of federal structure; namely: a written constitution which shares power between two or three tiers of government and autonomy which cannot be amended unilaterally by one tier; a measure of fiscal independence consonant with the responsibilities of different tiers of government²²⁵; the representation of states in central institutions (bicameralism); and an independent judiciary. Bicameralism, here, refers to coequality of the legislative powers and political powers of the two chambers of the central legislature. Clear, equitable and legally binding financial arrangements for revenue-raising and revenue-sharing between central and provincial governments are necessary. An adequate judicial mechanism like a federal Supreme Court is the major safeguard in a federation for preserving democratic liberties and state rights. Disputes about the limits of the state and federal power are common in a federation. In any dispute between federal and state governments as to the extent of the powers allocated to them under the constitution, some body other than the federal and state governments must be authorised to adjudicate upon those disputes. This would be an impartial agency, not only to arbitrate disputes about the division of power between two jurisdictional spheres but also to interpret the meaning of the constitution and to protect and interpret the federal

²²⁴ Cheryl Saunders, "Constitutional Arrangements of Federal Systems," *Publius*, Vol.25, No.2, Spring 1995, p. 78.

compact. It should be independent from both federal and provincial government and should stand sublimely above both. This usually leads to a judicial review; the rights of the courts to annul or confirm the validity of laws passed by national or local legislatures. Thus, federal systems all seem to contain the same three characteristics: political authority is territorially divided between two or more autonomous sets of separate jurisdictions which operate directly upon the people; the existence of a single, indivisible yet composite federal nation that is accepted by all people as a federated nation; and finally, a compact between the separate sovereign jurisdictions struck through a written constitution.²²⁶ Sets of governments come to forget about uniformity, secession and conflict and a keen awareness of mutual dependence arises.²²⁷

A federal constitution recognizes and respects two separate jurisdictions as national and state, and describes their respective powers which are not meant to be equal. It is national power that is clearly favored. A federal constitution may be seen as a political compact that explicitly admits the existence of conflicting interests among the component territorial communities and commits them all to seek accommodation without outvoting the minority and the use of force.²²⁸ Elazar defines federalism as a political system established by compact in which at least two levels of government are endowed with independent legitimacy and a constitutionally guaranteed place in the overall system that possess its own set of institutions, powers, and responsibilities.²²⁹ This structural dimension of federalism is accepted as a key to the operationalisation of federalism in the first place.

Federal government involves a division of governmental functions between federal government, which has the power to regulate certain matters for the whole territory, and state governments, which have power to regulate certain other matters for the component parts of the territory. This division is made in a particular way: the actual allocation of functions between federal and state governments or vice versa. As Wheare points out, federal government means a division of functions between co-ordinate authorities; authorities which are in no way subordinate one to another either in the extent or in the

²²⁶ Ralph J. K. Chapman, "Structure, Process and the federal factor: complexity and entanglement in federations," in Michael Burgess and Alain-G. Gagnon, (eds.), *Comparative Federalism and Federation* (London: Harvester Wheatsheaf, 1993).

²²⁷ Duchacek, *Comparative Federalism*, op.cit., p. 192.

²²⁸ Ibid.

²²⁹ Elazar, *Federalism and Political Integration* (Tel Aviv: Turtledove Publishing, 1979), p. 29-30.

exercise of their allotted functions.²³⁰ Federalism is an arrangement of compromise between two territorial forces of national unity and diversity.

The constitutions of federal countries determine the division of legislative and executive powers, as well as the distribution of financial resources, to ensure that the various levels of government have real autonomy.²³¹ Normally, the constitution also provides for a supreme arbitration body empowered to resolve disputes and rule on controversial cases involving governments' constitutional powers. However, this does not prevent some federations from operating differently from the formal constitutional text through judicial interpretation. Amending procedure and method of enforcement are the two aspects of federal constitutions. The former one refers to a rejection of a situation where the possibility of amendment of constitution by a single order of government is possible.²³² Because the constitution is the supreme legal instrument in any federation and cannot be amended unilaterally, an amendment would require the assent of a significant number of the federation's component regions and, in certain cases, a majority of the population. However, this principle is not applied universally and the constituent federal document can be amended through special majorities in the legislature.²³³ Federal countries deal with amendment differently, through procedures ranging from approval of proposals, once initiated²³⁴, by a proportion of state legislatures, by legislatures representing a proportion of the people, by specially constituted conventions, or by the electorate.²³⁵ Constitutional amendment is difficult. Retention of veto power over constitutional changes by a majority of component units is vital in federations.

The constituent instruments of most federal systems except, provide for or assume enforcement through judicial review. However, in reality, all systems necessarily rely on self-policing by the legislative and executive branches of each order of government too.²³⁶ All courts are reluctant to intervene to identify unconstitutionality, particularly where the validity of federal legislation is at stake.

²³⁰ Kenneth C. Wheare, "What federal government is?"

Available at: www.federalunion.uklinux.net/archives/wherae.htm

²³¹ Saunders, "Constitutional Arrangement," *op.cit.*, p.63.

²³² *Ibid.*, 64

²³³ In other words, unilateral amendment can be possible. Especially in Germany where the constituent units are effectively represented in the organs of the central government, the analysis will be complicated. See Saunders, "Constitutional Arrangements," *op.cit.*, p.64

²³⁴ The most usual initiation procedure is the one by the federal legislature.

²³⁵ *Ibid.*, 65.

²³⁶ *Ibid.*, p. 66.

2. Federal Process

So far, institutional structure/approach or constitutional framework has been discussed. The institutional scheme is useful but at the same time there have been some limitations to this structural approach. The reason for this is that many countries with federal structures are not at all federal in practice.

Federalism is more than a structure which is why federalism should be understood as a matter of both structure and process. As Elazar argues, federalism is as much a process as a structure; it must combine both structure and process.²³⁷ But, whereas many things about institutional structure are known, the characteristics of political processes are not easy to understand because they are subject to change and variety within the same polity. Ralph J. K. Chapman says that in federations, it is important to adapt changing ways of dealing with issues that unexpectedly emerged: "The dynamic of processes should allow adaptation to occur while leaving the formal structures more or less in place."²³⁸ Duchacek argues that there are some extraconstitutional links between the center and component units which appear unexpectedly as a result of environmental changes and which blur the division between the two jurisdictions.²³⁹ Federalism is federalism, not as a power-sharing system, it is also a process of ongoing negotiations, an art of resolving conflicts, an approach based on compromise and cooperation. It can be said that there is no common model of federalism but a rich variety that depends not only on political structures and processes but on cultural variety and the socio-economic problems a society has to resolve, as Wolf Linder suggested.²⁴⁰

2.1 Instruments for Adaptation

One of the important factors that contribute to the longevity of federal systems and federation is their flexibility in adapting to changing conditions.²⁴¹ This can be done through formal and informal constitutional changes. Formal constitutional change is not easy and fundamental restructuring will be more difficult in practice once any crisis occurs in these systems. This can be done by altering the division of power, changing fiscal relations, creating or disbanding intergovernmental machinery, or by making more

²³⁷ Daniel Elazar, *Federalism and Political Integration*, p.30.

²³⁸ Chapman, "Structure, Process and the federal factor," op.cit., p. 88.

²³⁹ Duchacek, *Comparative Federalism*, op.cit p. 279.

²⁴⁰ Linder, op.cit., p. 156

²⁴¹ This has been done through judicial review, minor constitutional amendments, formal intergovernmental agreements, and the acceptance of practices and conventions.

fundamental changes to the broader political structure. However, major constitutional change is rare in federal systems and instead, most federations change their institutions and process through less formal ways.

Constitutions in federal systems are not static and evolve over time through judicial review and political understanding too, even in the absence of constitutional change. This is the informal constitutional change where the federal systems may depart dramatically from their constitutions in their political operation. "Perhaps the greatest departures are to be found in the fiscal relations between national and sub-national governments" says Roger Gibbins. As a general rule, national governments have turned out to have fiscal resources in excess of their legislative responsibilities as expressed in the federal division of powers and sub-national governments have tended to require fiscal transfers from the national government to meet their legislative responsibilities. The result of this imbalance is that, national governments have been able to use their fiscal resources to intrude into the legislative domain of sub-national governments.²⁴²

All federations have some kind of judicial arbiter whether, in a general Supreme Court or a more specialised Constitutional Court. Their implementation of the federal constitutional document can have powerful effects in the evolution of the federal system.²⁴³ Typically, federal systems have adjusted to social change through informal constitutional changes entitled in conditional grants,²⁴⁴ grants-in-aid, and Commonwealth grants. Where sub-national governments are burdened with legislative responsibilities that outstrip their fiscal resources, such grants provide essential relief. On the one hand, fiscal flexibility reduces the need for more formal constitutional amendment but, on the other hand, it is likely to be a source of constitutional tension as a result of the imbalance between fiscal resources and the legislative responsibilities of sub-national governments. In addition, changes in the nature of federal politics through political systems can be accepted as another way of social change without formal constitutional change.²⁴⁵ Riker points out that whatever the social conditions sustaining the federal bargain, it is the

²⁴² Roger Gibbins, "Federal Societies, Institutions and Politics," in Herman Bakvis and William M. Chandler, (eds.), *Federalism and the Role of the States* (London: University of Toronto Press, 1987), pp. 22-23.

²⁴³ Richard Simeon, "Adaptability and Change in Federations," *International Social Science Journal*, Vol. 53, Issue 167, March 2001, p. 147.

²⁴⁴ Central governments can make 'conditional' or 'shared cost' grants to the provinces in particular policy areas, and can attach conditions to how these funds will be spent. They can also make grants to equalise the ability of richer and poorer provinces to provide comparable rates of taxation. This powerfully assists weaker provinces to adopt to new policy concerns, and to reinforce the overall adaptability of the system.

²⁴⁵ Gibbins, "Federal Societies," op.cit., p. 24.

structure of the party system “which may be regarded as the main variable intervening between the background social conditions and the specific nature of the federal bargain.”

2. 2 Intergovernmental Relations

The analysis of the relationship between structures and processes which is found in the dynamic interaction of intergovernmental relationship (i.e. fiscal arrangements) needs to be given attention to understand the operation of federal systems.

i. Allocation of Administrative Responsibility: In some federations, the distribution of executive and legislative authority among governments has allocated executive and legislative responsibility to the same government as that to which legislative authority has been allocated. However, in some areas, states administer federal programmes through conditional grants by federal government.

On the other hand, in some federations like in Switzerland and Germany, the federal government has been allocated legislative jurisdiction over large areas, whereas the executive and administrative responsibility for those fields has been constitutionally allocated to provincial governments. This leads to close "interlocking relationships" between federal and cantonal or state governments.

ii. Fiscal Arrangement: The balance between the allocation of autonomous revenue resources to each level of government and their expenditure responsibilities is likely to shift over time due to the relative value of different taxes and costs of areas of expenditure. That is why, in every federation, there is a need for financial transfers to correct these imbalances. This will be an effort either to correct vertical imbalances or horizontal imbalances. The former one includes imbalances in the revenues and expenditures of each level of government through sharing of specific tax proceeds and conditional and unconditional grants. The latter one is about disparities in the revenue capacity of different constituent units by means of general equalization transfers and/or grants in aid for specific programs to improve the capacity of the poorer units, to provide their citizens with at least a minimum level of services.²⁴⁶

²⁴⁶ Ronald Watts, “Contemporary Views on Federalism,” in Bertus de Villiers, *Evaluating Federal Systems* (Martinus Nijhoff Publishers: London, 1994), p.13.

There is a close interrelation of fiscal arrangement with the delivery of social services. In most federations, responsibility for delivering the main social services such as health, education, and social security has been in regional and local hands where government is closer to the particular needs and circumstances. However, federal financial services become necessary for the large and ever-increasing costs of such services. That is why in most federations, the provision of social services has been an area of co-responsibility. The issue of intergovernmental controversy appears when both federal and state governments face financial constraint and the need to reduce deficit, and when the federal government tries to reduce financial assistance and off-load responsibilities. One of the distinguishing features of federation is the ability of general government to play a major distributive role.

iii. Cooperation and Competition in Intergovernmental Relations: There is both cooperation and conflict in intergovernmental relations in federations and this cooperation might appear either in federal-state relations or in interstate relations. The reason for some coordination and harmonization of activities is the occurrence of inevitable overlaps in the exercise of jurisdiction by different governments within federations.²⁴⁷ However, there will not only be cooperative intergovernmental relations but also competitive relations, which are characterized by bargaining. As Elazar mentions, the success of each federal system depends upon the balance between cooperation and competition in its intergovernmental relations.²⁴⁸

Traditionally, intergovernmental relations have meant the relationship between federal and state government, which left the third level (i.e. local authorities) to be determined by intermediate state governments. Of course, the importance and autonomy of local governments varied from federation to federation. For instance, in some federations, intergovernmental relations directly between federal and local governments have been considerable whereas in others they are determined by intermediate state governments. The position of local governments are most prominent in Switzerland and the US and, recently, in some federations like those in Germany and India, there have been efforts to formally recognize in their constitutions the position of local governments.

²⁴⁷ Ibid., 19.

²⁴⁸ Elazar, *Federalism and Political Integration*, pp. 193-4.

Factors Influencing the Operation of Federal Systems

The operation of federal systems is influenced by the following issues which need to address the underlying features of a given society:

1. Degrees of Decentralisation and Non-centralisation:

i. The Form and Scope of Constitutional Distribution of Legislative and Executive

Authority: In some federations, the government has both legislative and executive power whereas in others, the federal government legislates and the constituent units implement and administer legislation. The same applies to the sharing of fiscal jurisdictions. In this case too, the models vary considerably; they are selected and configured to suit the specific needs of the country. For its own reasons, a federation may decide to give more power to the centre while another will attribute the majority of the authority to its constituent units.

ii. Division of Powers between Central Government and Constituent Governments:

In a federation, central authority has exclusive and ultimate control over diplomacy, foreign affairs and defense in order to speak in the name of its territorial components with one single legitimate voice. In practice, it seems that there has been no exception to this principle. However, some limited exceptions are found in some federations such as Switzerland where the constitution also allows some minor links between cantons and neighboring nation-states and some other federations.²⁴⁹ However, the experience of most federations indicates that central power is likely to expand, at the expense of the powers of the regions.

Federal constitutions make the federal government independent of the constituent units by granting it the right to levy direct taxes and enforce the federal laws. The federal government must be able to finance its operations in the fields of international relations, defense and welfare functions. However, there have been some areas where the central government becomes dependent on the constituent units: state control of national elections, control over the upper chamber and local administration of national programs, constitutional provisions for indirect elections of one of the two houses of the federal legislature.

²⁴⁹ Sauders, "Constitutional Arrangement," *op.cit.*, p. 68

In all federal systems, the constitutional distribution of power is altered by various kinds of cooperative arrangements. Some are designed to simulate the effects of an exercise of federal power and may be a substitute for the transfer of power to the center. Others are directed at coordination, harmonization, or the implementation of common standards, with flexibility on matters of detail. The arrangements that are used are conditional grants, intergovernmental agreements, uniform legislative schemes, regular ministerial or officials' meetings, and joint executive agencies.

Experiences suggest that intergovernmental cooperation should be regarded as central to federations operation because it is an inevitable and desirable feature of all federations. Only some intergovernmental arrangements have a basis in the constitution itself; such as the provision for joint tasks in Germany, and for the most part, these arrangements have developed outside the constitutional framework, have uncertain constitutional and legal effects, and avoid the traditional mechanisms for the accountability of executive government.

iii. Division of Power as Significant and Residual: There are different models or methods for the division of legislative powers and variations for the location of residual and significant powers in one or the other level of government. Despite this variation, there appear to be three general trends in the distribution of powers. Some allocate specific powers to the center, either exclusively or concurrently, and all residual powers are left to the states, as in Switzerland and Germany. In other federations, powers given to the provinces are enumerated and the rest of the power is reserved by the central authority, as in Canada and Belgium where the constitution uses two lists in which powers are allocated to the center and to the provinces respectively, generally on an exclusive basis, although with the residue is reserved to the center. In some other federations, there have been long and detailed lists of powers reserved for the central authority, powers reserved for the component units and powers exercised by both elements, as in India and Pakistan. Thus, here a third list is included in their constitution which allows state powers to be exercised concurrently by either order of government.

Federalism necessitates some matters to be under the exclusive control of the general government and some under the exclusive domain of regional government. Territorial distribution of authority in a federal system has never been proposed on a fifty-fifty basis and the system favors the national power by placing in its hands control of defense, war

and taxes.²⁵⁰ As Arthur W. Macmahon says, no matter whether they are significant or residual, the matters entrusted to the constituent units must be substantial and not merely trivial.²⁵¹

iv. Constitutional Overlap between Federal and State Powers and the Spillover of

Federal Power: The dividing line between the central and the provincial powers is not clear and precise. There is also overlap in the territorial division of power. Federal constitutions place the power to conduct foreign policy in the hands of the national government, in most cases within the hands of the executive branch. However, the legislative branch has the power to modify or reject international treaties, influence the executive branch by legislative power over the public purse and prod or restrain the executive branch by different means of parliamentary controls such as resolutions or laws, debates, questions, and votes of confidence in cabinet systems.

As Duchacek points out, the possible spillover of federal power into the provincial spheres emerges as a result of the subject matter of the treaties contracted by the national government and foreign countries and subsequent need to pass the legislation necessary to bring these treaties into effect. When treaties concerning social and economic matters, as well as diplomatic and military affairs, are contracted by the federal government and implemented by national legislation, they invade the exclusive welfare and police powers of provincial and state powers.

Although each order of government usually has its own area of jurisdiction, two orders of government mutually exercise a given power which is known as concurrent or shared jurisdiction. Almost all federal countries make provision for concurrent jurisdictions, particularly in legislative affairs, given that cooperation and interdependence between orders of government are essential to any form of federal governance. In cases of conflicting legislation, the constitution determines which order of government will prevail. The provisions for sharing or reciprocal delegation of powers, often in the form of a Concurrent List, usually contain a clause that makes the federal law prevail over the provincial law when the federal authority chooses to legislate on any matter in the Concurrent List.²⁵² Constitutional overlap between federal powers and state powers may be seen in the reciprocal delegation of authority and in federal state subdivisions of one

²⁵⁰ Ibid., 142-143

²⁵¹ Arthur W. Macmahon, *Federalism: Mature and Emergent* (New York: Russel and Russel, 1962), p.4.

²⁵² See for more information Duchacek, *Comparative Federalism*, op.cit.

shared power so that one part of it is given to the federal government while another part of the same matter remains in the hands of the local authorities. Concurrent jurisdictions offer several advantages in federal structures. They introduce a degree of flexibility and innovation in the distribution of powers. For instance, the federal government may delay exercising its powers in an area that might eventually call for strong federal coordination.²⁵³ Concurrent jurisdiction allows state governments to develop their own policies in the interim. The federal government might also decide to establish national standards in certain areas, leaving the states to develop services in the manner that best responds to the unique identity of each region. Concurrent jurisdictions also allow a federal government to temporarily occupy a state's jurisdiction when that state is unable to deliver a particular service.²⁵⁴

v. Distribution of Financial Resources and Financial Self-sufficiency for Each of the Co-ordinate Authorities: The assignment of responsibilities/competencies to the different levels of government is a key issue for theories of federalism. From an economic point of view, federalism is defined as a system where jurisdictions within a nation-state have a considerable amount of tax and spending autonomy.²⁵⁵ According to the proponents of fiscal federalism, tax competition corresponds to the idea of fiscal equivalence, gives local politicians more responsibility, and leads politicians to manage their budgets more carefully and according to the preferences of their constituents.²⁵⁶ The traditional economic theory of fiscal federalism is concerned with the provision of public services by the various orders of government and the assignment of the proper fiscal instruments. Demand for public services varies across and within jurisdictions. Decentralisation provides incentives and possibilities for governments to generate better knowledge about the preferences of the people because they are closer to them and in turn, people are closer to their governments and can thus better control the activities of politicians and bureaucrats. According to a more recent body of literature, the positive effects of fiscal federalism are linked to the idea of a properly functioning interjurisdictional competition. In a federally organized system, citizens and capital have

²⁵³ Celine Auclair, "Federalism: Its principles, flexibility and Limitations," 2nd International Conference on Decentralisation, Manila, Philippines, July 25, 2002.

²⁵⁴ Ibid.

²⁵⁵ Ivan Baron Adamovich, and Gerald Hosp, "Fiscal Federalism for Emerging Economies: Lessons from Switzerland," *Publius*, Vol.33, No.1, Winter 2003, p.3.

²⁵⁶ Ibid.

better possibilities for "exit" from a jurisdiction than in centralist states. Thus, local governments are forced to be more aware of the preferences of citizens and enterprises if they want to prevent them from moving to other jurisdictions that offer better packages of taxes and public services.²⁵⁷ In addition, the higher intensity of interjurisdictional competition in federally organized states is said to produce incentives for innovations in the political sphere.

Competitive federalism is characterized by autonomy over taxes and public services. This primary authority of subnational governments should be combined with hard budget-constraints. Within a competitive environment, subnational governments will be punished if they underperform in comparison to other jurisdictions. Competitive federalism can only persist if the national government does not have the competences to centralize taxes and public services because, otherwise, the centre would gradually seize powers from the lower jurisdictions. In coordinated federalism, there is an adjustment of differences between jurisdictions. It is characterized by a higher level of harmonization within the federation. Coordinating and bargaining are the driving principles. If subnational governments are not able to prevent other jurisdictions from free riding or to enforce agreements, they will try to push competences to the federal government. Because subnational governments are not completely responsible for their financial situation, federal governments have a duty to help troubled governments.

If the governmental authorities in a federation are really to co-ordinate with each other in actual practice as well as in law, it is essential that there should be available to each of them, under their own unfettered control, financial resources sufficient for the performance of the functions assigned to them under the constitution. It is no good allotting functions to the federal or to state authorities and devising legal safeguards so that each should be limited strictly to the performance of its respective functions, unless at the same time adequate provision has been made so that each authority can afford to do its job without appealing to the other for financial assistance. For if state authorities, for example, find that the services allotted to them are too expensive for them to perform, and if they call upon the federal authority for grants and subsidies to assist them, they are no longer co-ordinating with the federal government but subordinate to it. Financial subordination puts an end of federalism in fact, no matter how carefully the legal forms may be preserved. It follows therefore that both state and federal authorities in a

²⁵⁷ Ibid., 4.

federation must be given the power in the constitution to each have access to, and to control, its own sufficient financial resources. Each must have a power to tax and to borrow for the financing of its own services by itself. It is not easy to devise a division of financial and taxing powers at the outset of a federation which will infallibly satisfy this criterion. It is likely that no reliable forecast can be made of the cost of the services allotted to the respective authorities or of the yield which the allotted taxing powers will give. Experience may show that some modification of the division of services and resources is necessary. This must be expected and provided for. If not, the system of federal government will soon break down in practice.

Regional economic profiles can also significantly change the relative weight of constituent units and sometimes harm national unity. That is why a number of countries have opted for forms of financial adjustment to guarantee their citizens a minimum acceptable standard of living.

2. Symmetry or Asymmetry in the Allocation of Powers to Constituent Units:

Although in most federations the formal allocation of jurisdiction to the constituent units has been symmetrical, in some federations asymmetrical constitutional arrangements or practices have been seen. This is the case where the intensity of the pressure for autonomous self-government has been much stronger in some constituent units than in others, as in Canada, Belgium, Spain, India and Russia. Watts notes that "...experience suggests that there may be cases where constitutional asymmetry is the only way to resolve sharp differences when much greater impulses for non-centralisation exist in some regions than in others within a federal system".²⁵⁸

Asymmetric federalism is a system of government in which powers are unevenly divided between provinces, i.e., provinces have different degrees of policy making autonomy. Some federations such as Belgium and Canada have opted for the asymmetric form of federalism, thereby granting certain national groups true autonomy. The asymmetry varies from country to country with the division of powers being based on the realities of each federation. For example, in Canada, Quebec has secured special status to encourage the use of French and to protect French-Canadian culture.

In most federal systems, constituent units are considered to be equal and have the same legislative powers. However, the constitutions of certain federations provide for an

²⁵⁸Watts, "Models of Federal Power," *op.cit.*, p. 29.

asymmetric division of powers in order to reflect the differences among their constituent units. These differences can be territorial, demographic, linguistic, cultural, religious or economic. Watts states that there have been basically five approaches to establishing constitutional asymmetry in the distribution of powers within federal systems. They have been developed to deal with particular problems in multiethnic societies. The first one has been to increase from the norm the federal authority in particular member states for certain specified functions (i.e. India). The second one has been to increase from the norm the jurisdiction of particular member states (i.e. the differentiated powers for Sabah and Sarawak within the Malaysian federation). The third approach has been to exempt the full application of central authority in specific areas (i.e. the EU's exemptions in the application of the Maastricht Treaty to Britain and Denmark). The fourth approach is for the constitution to give formally symmetrical jurisdiction to all member states, but to include provisions that permit any state in certain circumstance to "opt in" or "opt out" of these assignments (i.e. Canada). The last approach is to be found in the complex example of Belgium where constitutional asymmetry exists not only in the differences in jurisdiction of the three territorial constituent Regions and of the three non-territorial Communities but also in the inter-relation between Regional Councils and Community Councils.²⁵⁹

3. The Number of Constituent Units: The operation of federations is highly affected by the number and relative area, population and wealth of the constituent units in relation to each other within a federation.²⁶⁰ Watts argues that those composed of only two units seem to generate sharp bipolarizing tendencies that often produce instability. Where there are substantial disparities in area and population among constituent units, these may become sources of dissension over the relative influence of particular regions in federal policy-making. Disparities in wealth among regional units, making it difficult for citizens to receive comparable services, can have a corrosive effect on solidarity within a federation. This is the reason why many federations have desired to find some form of financial equalisation. In bicomunal societies, in order to disperse polarization, it is sensible to establish more than two units.

²⁵⁹ Ronald L. Watts, "The Distribution of Powers, Responsibilities and Resources in Federations," in Ann L. Griffiths and Nerenberg Karl, (eds.), *Handbook of Federations 2002* (London: McGill-Queen's University Press, 2002), pp. 463-464.

²⁶⁰ Watts, "Models of Federal power," *op.cit.*, p. 27.

Still, the existence of both formal constitutional arrangements and the evolution of a constitution mentioned above are not enough to make federalism work but also a commitment which is perceived as necessity or as the most suitable alternative is also vital. The image of unity is very important for the success of federal systems. As William Riker points out, federalism must be based on some deeper emotion than only geographic contiguity with cultural diversity.²⁶¹ Thomas M. Frank suggests that the leaders and their followers must feel federal and a positive political and ideological commitment to the primary goal of federation as an end itself should be present.²⁶² Daniel Elazar suggests that the most supportive political cultures led to the most successful federal systems and this is accepted by most students of comparative federalism.

Necessary Conditions for the Maintenance of Federations

It can be argued that all the theories and practices mentioned above help the researcher to conclude the conditions necessary for federalism to ameliorate ethnic differences in multi-ethnic societies. All these inform the conditions under which federalism is likely to achieve peaceful outcomes in Cyprus. This study aims to address some of these shortcomings in order to find out in which type of system and place federalism is most suitable. It can be argued that federalism is not a panacea and it can even exacerbate many problems if it does not address demographic, political, social, and economic factors of a given society.

i. Consociational Techniques and Procedures: Broadly speaking, federalism is a model that in principle is unrelated to any regulation of ethnic pluralism. Consociationalism may be a solution to some of the problems that federalism poses, and can well be applied as an additional instrument to render justice to groups that cannot be recognized under territorial federalism. That is why it is important to add consociational democracy to the federal systems to deal with ethnic conflicts in multi-ethnic societies. Each has its own rules, which may also be combined in order to achieve political stability.

As McGarry and O'Leary suggested, a federal system will not be able to accommodate ethnic diversity unless a consociational system is introduced to deal with problems in the centre between minorities and majorities. The implementation of both systems depends on

²⁶¹ William Riker, *Federalism: Origin*, op.cit., p. 35.

²⁶² Thomas C. Franck, *Why Federations Fail-An Inquiry into the Requisites for Successful Federalism* (New York: New York University Press, 1968), pp. 173-174.

the willingness of political elites to guarantee agreements and the readiness of the population to support them.

ii. Elite Skills and Motivation: The presence of flexible elites, for Deutsch and Lijphart, is among the necessary conditions for the maintenance of federal systems.²⁶³ Most successful federations seem to experience some association before union but with federalisation the constituent units wish to maintain some degree of autonomy. For most successful federations, leaders of constituent units have been convinced that their best interests will be served if they give up some independence for the sake of the federation as a whole. In spite of the fact that it is very difficult to find a determined and effective leadership in deeply divided multi-ethnic societies it can emerge within the context of peace building process and supportive international climate.

iii. Relatively Weak Central Government: One of the conditions that can be accepted for the maintenance of federal systems is that all successful federations have retained a strong governmental influence while retaining weaker levels of constituent autonomy.²⁶⁴ It is argued that the more centralised federations are more likely to remain politically stable. It is proposed that high levels of regional autonomy slow down the survival of most federations and should be minimised if one wants to preserve the federal structure. Although several federations have become so centralised as to resemble unitary states, by and large the most successful federal states (except Switzerland) retain the federal structure and process while stressing a high level of political centralisation.²⁶⁵ However, this is likely to work if the society is relatively homogenous. In deeply divided societies this is likely to exacerbate ethnic division. Dikshit argues that regionally grouped diversity within unity is vital to the maintenance of federalism. The survival of federalism necessitates effective regional autonomy which prevents the transformation of federalism into unitary government, together with increased centralisation of certain essential government powers and functions which enables the government to exploit the advantages of a larger base and better perform its functions. The more diversity is the greater the powers that have been assigned to the constituent units of government.²⁶⁶ Again, the issue

²⁶³ Ibid.

²⁶⁴ Lemco, op.cit., p.16.

²⁶⁵ Ibid.

²⁶⁶ Watts, "The Distribution of Powers," op.cit., p.450.

is to consider how deeply the society is divided. If it is a highly ethnically divided society, it will be likely to have a dual federal system where many issues are allocated exclusively to each order of government in order to prevent frequent decision-making deadlocks. The significance of the residual authority is related to the number and comprehensiveness of the enumerated lists of legislative powers. The greater the enumeration of specific powers, the less significant the residual power will be.²⁶⁷

It could be concluded that most federal-type systems show a tendency to centralization, which constitutional mechanisms are likely to be only partially successful in overcoming. However, at least at the beginning, there is a need for the central government to be allocated relatively less powers to prevent ethnic disputes appearing at the central level in multi-ethnic societies. It is important at this stage to keep centripetal and centrifugal forces in balance.

iv. The Existence of Cross-cutting Pressure: Federalism is likely to be successful when the primary political cleavages (i.e. region, language, class...) cut across each other rather than reinforce or overlap each other. The presence of crosscutting cleavages is important for Watts, Lipset and Dikshit. They argue that the fragmentation of some federations was importantly caused by cultural, economic, and social cleavages. Overlapping or cutting across one another and thus cancelling one another out is vital for the continuation of federal systems. If they reinforce one another, this will result in polarisation and conflict among regional groups. Watts argues that a decline in support for political compromise or for the federal solution will result in the federation's fragmentation. Reinforcing cleavages rather than cross-cutting cleavages are crucial elements of instability although Lijphart argues that federations break up when there is a weakening of elite accommodation or an increase in communication between subcultures at the mass level.

v. Social Capital: Federal institutional performance is influenced by social capital and shapes the formation of social capital. According to Putnam, participation in organizational life creates social capital, which enables interaction between citizens to be built on trust. In the various networks of associational life, a binding element arises in the

²⁶⁷ Ibid., 453.

form of norms facilitating cooperation.²⁶⁸ Social capital is likely to enable cross-ethnic cooperation and coordination and thus the development of a shared identity. Putnam states that voluntary cooperation is easier in a community that has inherited a substantial stock of social capital, in the form of norms of reciprocity and networks of civic engagement. For Putnam, the concept of trust is 'an essential component of social capital'.²⁶⁹ The greater the level of trust within a community, the greater the likelihood of cooperation. And cooperation itself generates trust. For Putnam, the key source of social trust is to be found in norms of reciprocity and networks of civic engagement, measurable by citizens' membership and participation in associations.

Social capital can be defined as assets to improve community life and solve social problems through fostering trust, mutual obligation and cooperation. Where social capital is high, individuals feel a sense of belonging, empathy with others, responsibility and motivation to solve common problems.²⁷⁰ Social capital can enhance relationships and problem solving among members of groups or communities. If the social capital connects only people of sharing common identities and values, it spans social differences in divided societies and can be the source of destabilising social conflict. This type of social capital can simultaneously reinforce the differences and social distance between members of the network and 'others'. Societies with multiple, internally-cohesive and separate communities face special challenges, particularly when these communities exist in larger economic and political hierarchies.²⁷¹ The solution to this problem is to establish relationship with 'others' across boundaries. This requires taking the time to learn about them and to negotiate new forms of action. "The assumed trust and understanding of homogenous groups need to be built in heterogeneous ones."²⁷²

vi. Sufficient Number of Federating Units: It has also been suggested that a condition important to the maintenance of a federation is that there be no one state, or two states, large enough to dominate the federation or threaten secession. In other words, to maintain federation, a sufficient number of federating units are necessary. Too few small

²⁶⁸ Robert Putnam, *Making Democracy Work- Civic Tradition in Modern Italy* (Princeton, NJ: Princeton University Press, 1993), p.167.

²⁶⁹ Ibid, p. 170.

²⁷⁰ Barbara J. Nelson, Linda Kaboolian and Kathryn A. Carver, "How to Built Social Capital Across Communities" Available at: <http://concord.spsr.ucla.edu/concord.pdf>

²⁷¹ Ibid.

²⁷² Ibid.

constituent units might have a great deal of trouble remaining economically viable and self-protecting. A sufficient number minimises the possibility of an overwhelmingly dominant state. With multiple units, there is less likelihood of a confrontation between the central government and all the units, and more room for bargaining and shifting coalitions of groups on different issues. So federalism becomes less of a zero-sum game. Where there is a single dominant group, it may have little incentive to cede power and authority to smaller groups through federal institutions.

vii. Asymmetrical Arrangements: Charles Tarlton maintains that great disparity in the size and influence of the different constituent units fosters an “asymmetrical” federation. When provinces become too diverse they are likely to form a federal government if they have sufficient political power and motivation to achieve unity. However, federations are more likely to dissolve if the provinces start to believe that a harmonious relationship can no longer exist. More commonly, approaches to asymmetric federalism involve giving one or several states more autonomy. Some provinces might have considerably more autonomy than others in areas such as taxation, immigration and citizenship, trade, transportation and communication and several social affairs sectors. The aim of this approach is to protect the distinctive characteristics of the two states and their interests. Scholars of federalism have turned their eyes to asymmetry, partly because in multi-ethnic federations, the practice of granting more powers to the most voracious territorial groups as a legitimate strategy for containing ethnic tensions has stimulated heated debates. Will Kymlicka argues that minority-nationalities, as opposed to regional based units, are entitled to special status because asymmetry “ensures that the national identity of minorities receives the same concern and respect as the majority nation.”²⁷³

viii. Stable, Institutionalized Bargaining and Political Parties: For Riker, federation was essentially “a constitutional bargain among politicians”.²⁷⁴ He states that even if union is economically and socially desirable, there is no guarantee it will succeed in achieving sustainable results. Stability and enforcement, and thus survival, of the federal bargain derive from fact that participants in the federal game can find no better alternative. Riker maintains that “the operation of political institutions, both those in the

²⁷³ Will Kymlicka *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford: Oxford University Press, 2001), p.105.

²⁷⁴ Riker, “Federalism,” p. 113.

formal Constitution and those which have grown up outside of it, is what immediately maintains the bargain".²⁷⁵ Riker suggested a hypothesis about the conditions for the ongoing success of federations: "Whatever the general social conditions, if any, that sustain the federal bargain, there is one institutional condition that controls the nature of the bargain...This is the structure of party system"²⁷⁶ His approach focused on the institutionally derived motives of political elites and the specifics of their self-interest.

Likewise, Filippov, Ordeshook and Shvetsova set out the theoretical conditions that will best guarantee long-term compliance with constitutional ground rules. These include the specification of those constitutional designs that will best represent the balance of national and provincial interest by institutionalising bargaining to ensure compliance. They argue that because the ongoing processes of negotiation and renegotiation in a federation pose an ever present danger to federal stability and effectiveness, regardless of its economic value otherwise, the primary purpose of federal design must be to keep those processes in check.²⁷⁷ Federation will be successful only if federal bargaining is restricted by constraints that correspond in part to explicit bargains among federal subjects over the allocation of authority between them and the federal centre, and other limits on their and the centre's actions. Compliance with any restriction on what can and cannot be subject to renegotiation depends on whether it is compatible with people's self-interest. Thus, a successful federal arrangement must provide not only the rules that yield stability in federal bargaining but it must also define the core institutional structure of the federal centre and its relationship to federal subjects in such a way as to ensure the maintenance of these rules as a product of people's self-interest. Constitution alone is not sufficient to engender the necessary motives; institutional structure must consist in part of rules that political elites sustain. They argue that the incentives needed to secure a stable federal state are primarily the product of a "properly developed" political party system. For them, the principal challenge of federal design is the need to somehow "institutionalise" bargaining so that relevant decision makers, competing in pursuit of their self-interest, do so in such a way as to minimise the extent to which conflict over outcomes infects the choice of rules under which bargaining and outcome selection occurs.

For them, the fundamental problem of federal design is to supply a stabilising institutional context for bargaining over an inherently redistributive policy. Many of these institutions

²⁷⁵ Riker, *Federalism: Origin*, op.cit., p.3

²⁷⁶ Ibid.

²⁷⁷ Filippov, Ordeshook, Shvetsova, op.cit., p.33

are constitutional and they are subject to negotiation and reinterpretation: "That is why the idea of constitution as a living document reflects the conventional wisdom that such things as the division of prerogatives and jurisdictions between federal subjects and federal centre should not be impervious to adjustment and redefinition as society evolves and circumstances change. If these adjustments are to remain incremental and evolutionary, however, then bargaining and renegotiation must be set in some larger and stable institutional context. Thus, an essential part of federal design is to create a constitutional supergame that encompasses federal bargaining and restrains it. This supergame can be thought of as a complex combination of rules, from general to specific, that work together to form an institutional equilibrium".²⁷⁸ These rules affect bargaining within the national government and bargaining over federal constraints. The institutional equilibrium must be one in which we can alter one of its working parts without destroying the operation of what remains. Unless a federation survives long enough for the rooting of a system of beliefs that will allow the state's institutional structure to constrain actions, bargaining over those core institutional yields the quick dismemberment of the federation. But if a federation is in place long enough, then the requisite beliefs establish an "institutional inertia" that render change more difficult. Stable, institutionalised bargaining requires that only partial adjustments and renegotiation of particular issues be allowed and that this be done within a broader fixed institutional context. A credible commitment to punishing defectors keeps the issue of a general renegotiation of federal terms from being raised by those units which otherwise might try to blackmail the union. A federal system in which all parties are regionally based, with none capable of making cross-regional appeals, or in which national and regional parties are quite separate will be less successful. So electoral systems should be designed to provide incentives for political leaders to build bridges rather than destroy them.

viii. The Absence of Large Economic Disparities among the Ethnic Groups: In federal systems there is a need to soften the economic disparities between the conflictual groups in order to make the system function. Otherwise, the poorer ones will not be able to compete with the rich ones, giving rise to discontent among their citizens and eventually even to secessionist movements. So, asymmetrical federalism is likely to deal with these problems. A fiscal system that offers sub-systems different financial models,

²⁷⁸ Ibid.

which consider their specific capacity, financial demands and efficiency with regard to the fulfilment of tasks, is typical of asymmetric federalism. If an autonomous unit is basically funded from outside means, at least the regional tax yield will have to be considered, since this is the only way to consider the connection between the economic capacity and the financial means of a region. Several systems leave the autonomous units at least a limited choice between their participation in the interlocking system and autonomous tax-raising. "The constitutional rules governing public finances in an asymmetric federal system must grant that differences between the competencies of different sub-systems and between their participation in the performance of joint tasks are taken into account by differentiating adequately between them with regard to the financial means with which they are endowed".²⁷⁹

Conclusion

It can be concluded that the integration and disintegration of federal systems depends on various factors. Riker's focus on political parties in maintaining the federal bargain²⁸⁰, Richard Simeon's discussion of intergovernmental bargaining relationships, and Watts's work stressing economic disparities, exploitation, competition and military factors all deal with such factors. However, the actual performance and disintegrative cleavages within federal systems cannot be explained solely by institution or by sociological or by political or by economic factors. Rather, there is a complex interplay among all the variables.²⁸¹ Burgess established a hierarchy of causes for each federation based on two principal factors; namely, perceived common interests and real or imagined external and/or internal threat. Burgess states that the motives for union remain very much a matter of conjecture as to how far we can prioritise them. In some cases, the political factors might outweigh the socio-economic factors, while in others the reverse might be the case. This is seen in the table below.²⁸² It is not possible to reduce the variety of factors impinging on the federal bargain, as Riker contended, to two simple criteria of necessity. The complexity of each historical experience makes this too difficult.²⁸³ A complex amalgam of socio-

²⁷⁹ Peter Pernthaler, "Asymmetric Federalism as a Comprehensive Framework of Regional Autonomy," in Ann L. Griffiths and Karl Nerenberg, (eds.), *Handbook of Federal Countries* (London: McGill-Queen's University Press, 2002), p.486.

²⁸⁰ Riker, William, "Federalism" in F.I.Greenstein and N.W.Polsby (eds.), *Handbook of Political Science*, Vol. 5 (Reading, MA: Addison-Wesley, 1975), p. 136.

²⁸¹ Lemco, op.cit., p. 17

²⁸² Burgess, *Comparative Federalism*, op.cit., p. 81.

²⁸³ Ibid.

economic, historical and political variables were also present at the creation (of a federation).

Common Interests	External and/or Internal Threats
<ul style="list-style-type: none"> a) Shared political values. b) Expectations of stronger economic ties and associated benefits. c) A multiplicity of ranges of communications and transactions. d) The desire for political independence. e) Prior political association. f) Strategic (territorial) considerations. g) Geographical proximity. h) Common cultural-ideological factors. (i.e. nationalism, religion and inherited traditions and customs). i) Political leadership and a broadening of the political elite. j) Similarity of social and political institutions. k) The appeal of federal models. l) The culmination of historical processes that were founded upon prior political commitments. 	<ul style="list-style-type: none"> a) A sense of military insecurity real or imagined. b) A sense of economic insecurity real or imagined. c) A perceived threat to the stability of the existing political order.

Federal bargain, the motives of political elites and agreement between elites, the understanding of what they are bargaining about it, voluntary union, and sufficient qualities of political leadership, asymmetric institutions, social capital, fiscal relations, sufficient number of constituent units, cross cutting cleavages, consociational techniques and procedures are considered as necessary conditions for the successful federal system in Cyprus.

CHAPTER 3

CYPRUS PROBLEM AND THE HISTORY OF NEGOTIATIONS

Introduction

This chapter demonstrates how difficult it is – given the history of conflict – to create the conditions for successful federal institutions in the specific context of the conflict in Cyprus. These difficulties include the experience of violent conflict, foreign intervention, mutual distrust and outside intervention through international organisations. The purpose of this chapter is to analyse the nature of the problem like the concept of bizonality, the ethnicity factor, military insecurity, territorial adjustments, the issue of sovereignty, the defacto division of the island, the bicomunal character of the society to which federalism might appear to be an appropriate solution. The federal idea has been perceived and developed as an approach to these problems and accepted by both leaderships without their being ready for its implications.

For the purpose of analysing these issues, there is a need to study the history of the Cyprus problem insofar it is relevant to an understanding of the background to the discussion of the Annan Plan and the history of the negotiations leading up to the Plan. Critical junctures in Cyprus's constitutional and political evolution since 1960 with a sharp eye on those aspects of its development that are relevant to federal, confederal and consociational ideas and practices have been highlighted. The chapter analyses the Annan Plan from the perspective of the main Greek Cypriot and Turkish Cypriot political actors. The purpose of the chapter is to acquaint the reader with some detailed information about the particular features and characteristics that constitute the main problems of Cyprus as a state, while also drawing attention to the existence of similar features in comparative case studies selected in the thesis.

This chapter argues that the Annan Plan did not take seriously characteristic features of both communities in Cyprus while constructing its institutional arrangements: economic inequalities and disparities, asymmetrical nature, social cleavages and polarized internal division. The solution will be possible in future but its survival will depend on the extent to which the accepted constitutional model addresses the social, demographic, economic, psychological and political dimension of the society. The traditional UN mediation and proposals are unlikely to bring cooperative attitudes between both communities. Confidence- Building Measures have to be put into force as soon as possible, and alternative institutional models should be studied that would address peculiar features of

the society. The successes and failures of federations in their delicate task of balancing 'unity' and 'diversity' could be explained by studying the contextual factors as well as institutional arrangements. The design of the federal system itself matters in terms of how powers are redistributed, the strength of intrastate mechanisms and mechanisms of intergovernmental relations. In deeply divided societies, the divided model with its watertight mode of dividing powers, a representative Senate and a form of intergovernmental relations that consists of various actors are important factors for successful federalism. The decentralised and divided model of federalism envisaged in the Annan Plan would have been likely to contribute to successful federal system but they should have been supplemented by a more unified system at the central government. A federal system will be likely to be successful when the autonomy, self determination and powers allocated to the minority groups are counterbalanced by other forces- shared values, an integrative party system, a sense of mutual commitment and a responsive central government that bind the groups together. They were all absent in the Annan Model. Federal institutions, by themselves, are no guarantee of either success or failure. They need to be reinforced by other factors, both societal and institutional. At the societal level, in addition to strong national/community loyalties and identities, federalism is likely to be successful if these are paralleled by shared overarching identities and values. The feelings of common interest and mutual respect and the existence of social capital are crucial conditions for the success of federalism. The values of both minority and majority are important here. For the Turkish Cypriots, it is a question of whether they retain some identity and remain loyal to the larger entity. For the Greek Cypriots the willingness to temper the commitment to simple majority rule and to accept the institutionalisation of differences are crucial. Currently, neither seems to exist in Cyprus. Both leaderships during the negotiations had never shown good will, and there has always been a feeling of dissent toward federalism. Neither side has wanted a compromise settlement. Both have viewed mediation as a way of pursuing their incompatible objectives. No type of ethnic federalism has ever been accepted by the Greek Cypriot leadership. It is true that ethnic federalism is likely to prevent the development of a country-wide overarching citizenship. In order to be able to achieve unity in diversity the constitutional framework needs to reduce the strong emphasis on separateness and counter the development of mechanisms that focus on integration.

It should be remembered that the UN or the EU are helpful but not as decision makers in place of the parties themselves. Federations imposed by external forces are more vulnerable to collapse than those that emerged out of domestic bargaining processes.

Historical Background of Cyprus Conflict

Since 1974, Cyprus has been de facto divided into two territories. The Greek Cypriots, who comprise 76% of the population, live in the southern two-thirds of the island while the Turkish Cypriots, who make up 19% of the populace, live in the Turkish Republic of Northern Cyprus (TRNC), a country recognized only by Turkey. The UN peacekeeping forces maintain a buffer zone between the two communities.

The Greek and Turkish Cypriots have had a history of coexistence as well as a history of conflict and separation. Most historical accounts show that the Greeks and Turks of Cyprus co-existed relatively peacefully during the three centuries of Turkish rule. However, differences concerning ethnic origin, religion, language, and customs inevitably prevented anything other than a low level of interaction.²⁸⁴ The two communities lived spread all over the island and mixed as a single geographic unit, with no substantial mono-ethnic enclaves; but socially and politically they were separate social entities, a disconnection and detachment that intensified over time. Both communities lived in separate quarters in towns and villages that were ethnically mixed, but most villages were exclusively Greek or Turkish. Each community had in place its own system of education conducted in its own language. Greek Cypriot and Turkish Cypriot children attending their respective schools learned a strong sense of what was, in effect, a different notion of patriotism.²⁸⁵ The political system in the Ottoman Empire also encouraged the existing tendency towards separation. Under the *millet* system, the Greek and Turkish communities were institutionalized as distinct communities, electing their own judicial and administrative officials. "This exclusive political socialization over a long period of time contributed to the crystallization of separate ethnic identities and aspiration".²⁸⁶

Such separation was mainly reinforced by the traditional tendency of both communities to identify themselves with the larger Greek and Turkish nations due to ethnic, religious, and linguistic ties, as well as separate administrative and educational systems. Historically,

²⁸⁴ Muzaffer Yilmaz, "The Cyprus Conflict and The Question of Identity," *Review of International Law and Politics*, Vol.1, No. 4, 2005, pp. 74-90

²⁸⁵ Ibid.

²⁸⁶ Ibid.

adversarial relations between the Greek and Turkish nations had the impact of developing separate self-views and restraining any tendency to achieve Cypriot national identity. The relationship of the two communities to their respective 'motherlands' touches upon issues of identity, security, national interests and 'historic enmity'.²⁸⁷ Even after independence, each ethnic group showed more loyalty to their own 'motherland' than to the state of Cyprus and its state symbols.²⁸⁸ The result is the absence of a single Cypriot identity. As Joseph S. Joseph states, "(d)espite four centuries of coexistence, the two communities remained separate, distinct, and self-contained ethnic groups divided along linguistic, religious, and cultural lines. The ethnic was reinforced by political division and attachment of the two groups to their motherlands. The lack of cross-cutting ethnic, social or political ties prevented the development of a common Cypriot political culture and overarching loyalties among the two groups"²⁸⁹ And the establishment of the Republic of Cyprus institutionalized this division. "Politics were coloured by ethnicity...(e)thnicity was thus brought into the political arena and the political game was transformed into an ethnopolitical struggle".²⁹⁰ Pavlos Tzermias points out that even "the terminology of the Constitution ignores things in common which formed and still form a bond between the two communities beyond all differences and contrasts".²⁹¹

Nationalism sustained very effectively the ethnic differentiation developing in Cyprus. As nationalism grew among the Greek Cypriots and as demands for greater political participation intensified against British colonial rule, the Turkish Cypriots, too, became increasingly conscious of their ethnic identity and their rights of participation in controlling the affairs of the island.²⁹² Fighting broke out in 1955. "Although the fighting raged between British troops and Greek Cypriot fighters, the prevailing tension and sense of urgency fostered a climate of ethnic suspicion".²⁹³ The Greek Cypriot desire for *Enosis*, a union with Greece, and the Turkish Cypriot opposition to it, fostering a separate demand for partition of the island gradually turned to violent confrontation in the 1950s. This

²⁸⁷ Vamik Volkan, *Cyprus: War and Adaptation: A Psychoanalytic History of Two Ethnic Groups in Conflict* (Charlottesville, VA: University of Virginia press, 1978).

²⁸⁸ Maria Hadjipavlou, "The Cyprus Conflict: Root Causes and Implications for Peacebuilding," *Journal of Peace Research*, Vol. 44, No. 3, 2007, p. 357.

²⁸⁹ Joseph S. Joseph, *Cyprus: Ethnic Conflict and International Politics* (London: McMillan Press, 1985), p. 33.

²⁹⁰ Ibid.

²⁹¹ Pavlos Tzermias, "Cyprus Identity," *Cyprus Review*, Vo. 6, No.1, Spring 1994, p. 84.

²⁹² Paschalis M. Kitromilides, "From Coexistence to Confrontation: The Dynamics of Ethnic Conflict in Cyprus," in Michael A. Attalides, *Cyprus Reviewed* (Nicosia: The Jus Cypri Association, 1977), p. 44.

²⁹³ Ibid., 48.

widened the psychological distance between the two Cypriot communities. Ethnic antagonism was reinforced by the support of Greece and Turkey for their ethnic communities in Cyprus. Both positions were irreconcilably opposed and led to what became, in the lexicon of international relations, the Cyprus Question. When international pressure led to a compromise settlement in 1959, and after protracted negotiations, Cyprus became an independent Republic in 1960, but the underlying ethnic conflict remained unresolved. The ominous signs of future strife could be gleaned from the repeated disagreements that strained the work of the committees drafting the constitution of Cyprus in 1959-1960. Many of the points of contention that appeared then were to reemerge as the major issues in the conflict that destabilized the Republic of Cyprus in 1963-64.

The 1960 Constitution afforded both ethnic groups cultural autonomy and institutional power-sharing guarantees within a common state. The provisions of this constitution match closely the principles of Arend Lijphart's consociationalism as a mechanism for sharing power and affording autonomy within a plural state. Both groups were given a guaranteed representation in the legislative and executive branches of the state, and in the civil service and the army, as well as significant powers of veto within these structures. These provisions were intended to secure the participation of both groups in the common affairs of state and were stressed in particular by the Turks who felt that the central administration would be otherwise Greek-dominated. As Burgess points out these principles were firmly institutionalised in a manner that formally recognised and reinforced the sense of two distinct cultural communities living together in a single polity on the island. However, the incorporation of non-territorial autonomy and power-sharing in the 1960 Constitution did not create a tolerant or workable bicomunal Cypriot polity, and its institutionalized pluralism did not stabilize even over the medium term.

The Constitution itself was drafted primarily by the two ethnic "motherland" states of Greece and Turkey. Provisions for the protection of the Turkish minority, and the conflicting demands of the Greek negotiators, resulted in a long and complex document with an inbuilt rigidity and susceptibility to intransigent use of the veto or other compromise measures. Implementation of the constitution was problematic throughout its first few years, with the emergence of crippling deadlocks within the central government.

The system rapidly became deadlocked over fiscal issues²⁹⁴ in 1963, prompting Greek Cypriot President Makarios to propose amendments to the constitution unilaterally. But, of course, the disagreements between the two communities were deeper than simply fiscal issues. David Hannay states that "The Greek Cypriots believed that this was part of a systematic campaign by the Turkish Cypriots to frustrate the proper working of the state and so lead to partition. In response, they threatened to push through unconstitutionally a number of constitutional amendments that would have removed the Turkish Cypriot veto".²⁹⁵ It came to be widely believed among Greek Cypriots that the Constitution favoured the Turkish minority at their expense. So, violent intercommunal conflict began when the Greek Cypriot leadership tried to change certain elements in the Constitution concerning power-sharing issues. The Turkish Cypriot leadership resisted the changes in the belief that they constituted an attack on their rights and interests as a community. David Hannay stated that "It [the Constitution] could only ever have worked smoothly with a high degree of cooperation between the two sides; in the hands of people who were in no way motivated to try to make it work, it provided a recipe for deadlock and frustration".²⁹⁶

The constitutional framework of the Republic of Cyprus which was premised on ethnic dualism, actually froze and sanctioned ethnic division.²⁹⁷ Instead of encouraging cooperation, it institutionalized separatist tendencies in its provisions for ethnic voting and split municipalities. This encouraged ethnic antagonism and discouraged development of socially based party politics and national symbols. The Greek Cypriot resented what they felt to be an unfair share of the bargain. The disappointment of Greek nationalism and the sense of deprivation felt by the behavior and apprehension concerning the eventual objectives of the Turkish Cypriots, whose uncompromising attitude over the immediate implementation of all the separatist provision of the Constitution was felt by the Greeks to be motivated by a desire to promote partition. The Turkish Cypriots remained extremely suspicious of any suggestions regarding change in the constitutional status quo. The result of all this was increased tension and escalating antagonism culminating in the

²⁹⁴ The five main towns would be split into Greek and Turkish municipalities, each empowered to raise its own taxes to finance its own public services aroused great resentment among the Greeks. They put forward various arguments for refusing to implement them.

²⁹⁵ Hannay, *op.cit.*, p.4

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*, 49.

constitutional impasse of 1963 and the breakdown of the 1960 settlement amidst renewed ethnic violence.

At the time of the creation of the Republic of Cyprus, there were two psychologically-separate communities deeply mistrusting each other. The new state could not remove old hostilities. Mutual suspicions remained and continued. The Republic could not evolve towards a nation-state because the two communities had not embraced the new state and seen the advantages of becoming a nation.²⁹⁸ From the very beginning of independence, both sides did not desire a partnership. Nor was the creation of the Republic able to produce a distinct Cypriot identity. "Greekness" and "Turkishness", with strong identification with the mainland nations, remained. One implication of the Constitution was that the Greek and Turkish members of the Government and the Legislature were people who represented the interests of, and were principally responsible to, their own particular communities. As Zenon Stavrinides states "Although they were all, in a sense, Cypriot leaders the very constitutional arrangements under which they reached public office were such that their Greekness or Turkishness was of fundamental importance".²⁹⁹ The Constitution, far from attempting to bring the two communities together, perpetuated their separateness by setting up structures and institutions to represent Greek and Turkish Cypriot interests instead of a unified Cypriot interest. As Burgess also points out "In retrospect, [the 1960 Constitution] had the unfortunate consequence of emphasising, to the point of exaggeration, the 'separateness' of the two communities".³⁰⁰ This structural composition of the state institutions and their relationships emphasise the bicomunalism of the polity.³⁰¹ However, as Burgess states, bicomunalism must be based on an extremely delicate balance between the centrifugal and the centripetal forces immanent in the polity. The 1960 Constitution, however, seems to encourage the system to develop in one direction: too much emphasis upon institutional separation, parallelism and the reciprocal veto so that it created a polity with too few powers, functions and relationships that overlapped, intermingled and dovetailed together to furnish the basis for cementing and bonding the two communities in an overarching sense of national state unity.³⁰² The character of the new republic tended to overstate its 'checks and balances'- the politics of

²⁹⁸ Ibid.

²⁹⁹ Zenon Stavrinides, *The Cyprus Conflict* (Lefkosa: CYREP, 1999), p.6.

³⁰⁰ Ibid.

³⁰¹ Michael Burgess, "What is to be done? Bicomunalism, federation and confederation in Cyprus," in Michael Burgess and John Pinder, (eds.), *Multinational Federations* (London: Routledge, 2007) p.130.

³⁰² Ibid.

restraint- at the expense of those institutional relationships, mechanisms and procedures that might conceivably have had a binding effect designed to energise the forces for unity and union. Such a constitution had no possibility of forging a new sense of comity, trust and reciprocity.³⁰³ Separateness can easily lead to separation. The failure of the Constitution lies in the nature of the negotiations that preceded the introduction of the constitution; constitutional negotiations that did not allow for the participation of the people of Cyprus. The result was a failure of political will.³⁰⁴

This dysfunctional set of arrangements lasted for only three years. In 1964, Turkish Cypriots withdrew from most national institutions and began to administer their own affairs. The period of 1963 to 1974 were characterized by intercommunal violence and conflict which led to the breakdown of the constitutional order, polarised the two communities even further and led to their physical separation.

Despite the long years of negotiations, both sides failed to reach a final agreement on a new constitution for Cyprus, and so the two communities remained in a state of de facto separation. By creating a territorial division of Greeks and Turks that had never existed previously, and thereby establishing two completely independent, physically separated states, the military partition since 1974 seems to have made any form of non-territorial autonomy for the Cypriot communities essentially redundant. This is reflected in the solutions to the Cyprus problem that have been proposed since 1974, which have generally acknowledged the de facto division of the island and aimed at some form of federation based on territorial regimes of autonomy to create an integral and bicomunal Cyprus. So, the relations between the two communities moved away from a predominantly consociational set of arrangements that protected the status of the two territorial communities within joint institutions, as outlined in the old 1960 constitution, towards some form of partnership of two territorial communities in a federation. Greek Cypriot policy has recognized this fact since the 1970s when it reluctantly agreed to pursue a policy of building a *de facto* bicomunal, bizonal federation for Cyprus that institutionalizes and protects the territorially rooted Turkish and Greek Cypriot communities. This is the official and recognized policy objective upon which decades of negotiations have preceded, monitored by a whole series of UN Secretaries General. In the absence of a clear and deeply rooted common national identity, Greek and Turkish

³⁰³ Ibid.

³⁰⁴ Ibid.

Cypriots pursued different agendas both in the period leading up to independence and in the tragic years to follow.³⁰⁵ At the centre of the contention in intercommunal talks have been competing visions of federalism put forth by each side, with the TRNC typically advancing confederation and the ROC a fulsome federation model. The Turkish Cypriot leaders have always promised that there would be complete equality of status in political terms in any future united Cyprus. However, Greek Cypriot elites contend that there is always be the danger that if a status of a people is accorded to the Turkish Cypriots, they may choose to exercise their rights as a people not to construct jointly a united Cyprus, but rather to seek international legitimacy for an independent state of Northern Cyprus or, still worse from the Greek Cypriot point of view, to seek a closer relationships with Turkey.³⁰⁶ Moreover, in the absence of an overarching Cypriot nationalism, two ethnic communities confront one another on the same island which carries a prior history of violent bicomunal conflict and following an unsuccessful attempt at power sharing within a single state from 1960 to 1963. This is an experiment that ultimately resolved itself into territorial partition.

An Overview of the Inter-communal Negotiations

In 1964, the U.N. authorized the establishment of a United Nations Peacekeeping Force in Cyprus to control the violence and act as a buffer between the two communities. The mediation attempts during 1963-68 brought no breakthroughs. The two communities were not invited to most of these negotiations. Throughout the 1960s, and even more so after 1974, the Turkish Cypriots believed that the constitution had simply been hijacked in 1963 by the Greek Cypriots and that it therefore no longer had any validity. They resented the fact that in their view the UN and other international organizations acknowledged the Greek Cypriots as the sole government of Cyprus. Denktas in particular was prone to argue that until that recognition was reversed, there could be no solution to the Cyprus problem. The refusal of the UN to do this led both Turkish Cypriots and Turks to suspect the Security Council and the whole international community of being biased against them.³⁰⁷ The Greek Cypriots regarded their recognition as the sole government of Cyprus as the jewel in their crown and used their position in various international organizations to

³⁰⁵ Barry Bartmann, "Facing new realities," *Perceptions*, September-November, 1999, Available at: <http://www.sam.gov.tr/perceptions/Volume4/September-November1999/bartman.PDF>

³⁰⁶ A.J.R Groom, "An End to Protracted Conflict?: Cyprus, the UN and Europe," University of Kent at Canterbury, 1992, p.22.

³⁰⁷ *Ibid.*, 5.

outmanoeuvre the Turks and Turkish Cypriots and to build up attacks against the latter's secession and their attempts to achieve international recognition. They believe that the Turks had always wanted to annex Cyprus for its own strategic ends and that the Turkish Cypriots' constant complaints about their plight was merely a false plea to disguise this intention.

The first negotiations between the two communities started in 1968. This pre-1974 phase of negotiations, conducted under the auspices of the UN, centered around giving up certain Turkish Cypriot rights and separatist provisions entrenched in the 1960 constitution in exchange for Turkish Cypriot local autonomy.

The 1974 coup and the military action taken by Turkey interrupted these efforts and created new realities with different terms and new positions. As Negatigil stated, before 1974 the intercommunal talks were focused on a unitary state with local autonomy for Turkish Cypriots, whereas after 1974 they have focused on a federal solution.³⁰⁸ Each party felt a sense of loss rather than a desire to make accommodations addressing mutual needs.³⁰⁹

The simple lack of willingness of the two sides to cooperate with each other was the main cause for the failure of the talks in the pre-1974 phase of negotiations.³¹⁰ The Turkish Cypriots insisted on maintaining the regional autonomy of their enclaves, while the Greek Cypriots demand was to maintain total control of the government and force a de facto creation of a unitary state. In 1974, the military junta in Athens supported a coup against President Makarios, replacing him with a more hardline supporter of *enosis*. Within days Turkey intervened and stopped their operations along the present Green Line which crosses Cyprus from east to west. Turkey took control of more than 36% of the island. This resulted in the division of island across an east-west axis. Consequently, there ensued an enforced movement of populations which had for centuries lived throughout the island in mixed and contiguous villages and, so, two ethnically homogeneous units were created, with virtually all Greek-Cypriots moved to live in the south and practically all Turkish-Cypriots gathered in the north of the island.

³⁰⁸ Zaim Necatigil, *The Cyprus question and the Turkish position in international law* (Oxford: Oxford University Press, 1989).

³⁰⁹ Maria Hadjipavlou Trigeorgis and Lenos Trigeorgis, "Cyprus An Evolutionary Approach to Conflict Resolution," *Journal of Conflict Resolution*, Vol. 37, No. 2, June 1993, p. 346.

³¹⁰ Ahmet Sozen, "The Cyprus Negotiations: From the 1963 Intercommunal Negotiations to the Annan Plan," in Ahmet Sozen (ed.) *Reflections on the Cyprus Problem: A Compilation of Recent Academic Contributions* (Famagusta: EMU Printing House, 2007), p.4.

Since the 1950s and especially the 1960s, the two communities had increasingly been politically, economically, socially, and psychologically separated. The 1974 partition gave this separation a geographical and ethno-demographic dimension. The two communities that have always regarded themselves as separate³¹¹ constitutes the main impediment to any rapprochement between the two ethnic groups.

Since 1968 the leadership of the two communities have negotiated under the UN auspices in order to find a comprehensive solution to the problem. Since the late 1970s, the U.N. has promoted negotiations with the aim of reuniting the island as a federal, bicomunal, bizonal republic. In the post-1974 era, during negotiations for co-habitation arrangements, the Greek Cypriot side aimed to limit the issues which were subject to non-majoritarian decision-making, and insisted on maintaining a system of representation which would be similar to that of 1960. The Turkish Cypriot side, in contrast, attempted to extend such issues entailing arrangements based on ethnic consociation and limited roles for the central organs.

The Greek Cypriot negotiation position has been shaped primarily by the events of 1974. A general sense of insecurity, a fundamental distrust of Turkish Cypriot secessionist objectives and a fear of Turkish occupation of the whole island have coloured all Greek Cypriot positions. These concerns were especially evident in the rejection of calls for a joint federal or transitional government and repeated calls for demilitarization, and were the primary driving emotions for the rejection of the Annan Plan at the 2004 referenda.³¹² Protracted negotiations, with little or no sign of progress, caused dissatisfaction in the Greek Cypriot community and forced its leadership to explore other avenues to enhance its position beyond the confines of the intercommunal talks. These included enhancing its military defence as a way of addressing the security dilemma, a policy of internationalizing the Cyprus problem and, throughout the 1990s, vigorous pursuit of its accession to the EU as a means of securing a 'European Solution'.³¹³ They were reluctant to abandon exclusivity over state sovereignty.³¹⁴ The net effect was that accrued Greek-Cypriot expectations were incompatible with the negotiations' outcome delivery.

The main aim of the Turkish Cypriot leadership in the negotiations has been to enhance and legitimize the post-1974 conditions by preserving and entrenching the basic structures

³¹¹ See for more information Richmond, "Ethno-nationalism, sovereignty," op.cit.

³¹² Michalis S. Michael, "The Cyprus Peace Talks: A Critical Appraisal," *Journal of Peace Research*, Vol.44, No. 5, September 2007.

³¹³ Ibid., p. 591

³¹⁴ Ibid.

of their administration. For the Turkish Cypriots, the main reason for distrusting the Greek Cypriots was their historical experience as an isolated minority, especially during the period between 1963 and 1974. They feared that the reunification of the island would reestablish their minority status.³¹⁵ Typical of most minority groups, the Turkish Cypriots were inclined to focus on communal rather than common interests.³¹⁶ This resulted in the pursuit of autonomy and self-determination, both within and outside the negotiation process.³¹⁷ This, in turn, was embodied in the often-stated preference for confederation or loose federation- a position that exacerbated Greek Cypriots suspicions about the extent of their commitment to a unified Cyprus. As David Hannay also states there are two real fears: Turkish Cypriot secession was the Greek Cypriots' nightmare and Greek Cypriot domination was the Turkish Cypriot one. As for the issue 'governance', Hannay points out that Greek Cypriots want mechanisms for deadlock-resolution, stressing 'functionality' which underpins the case for numerical majority rule as majority rule is more 'effective' and 'functional'. The Turkish Cypriots wanted dualism and political equality, including the executive leadership which is symbolic and effective – hence the insistence on a rotating presidency and a veto. The issue of sovereignty, therefore, remains at the heart of the dispute, the single dividing concern that marks the disagreements between the two sides in Cyprus. Greek Cypriots advocate the creation of a federal state whose central government would be able to extend its sovereignty over the entire island and thus over the constituent federal states, whereas, the Turkish Cypriots call for a confederal arrangement providing for a separate and sovereign Turkish Cypriot state. Both sides believe sovereignty is divisible, as is illustrated by the Turkish Cypriot attempts to found a recognized state and the Greek Cypriot acceptance of a federated state, but they hold an absolutist view of it. They believe that if both communities had absolute sovereignty, they would be secure.

From 1975, when inter-communal talks began in Cyprus, both parties have continuously declared that they seek an independent, non-aligned, bi-communal federal republic where the independence and territorial integrity should be adequately guaranteed against union

³¹⁵ Rauf Denktas, Personal interview, 30 July 2007 and Ergun Olgun, Personal Interview, 9 August 2007. See also Mumtaz Soysal, "Political Parties in the Republic of Northern Cyprus and their Vision of "the Solution,"" in Salem Norma, *Cyprus: A Regional Conflict and Its Resolution* (New York: St. Martin's, 1992), pp. 39-43.

³¹⁶ John Burton, *Conflict: Resolution and Prevention* (London: Macmillan, 1990), 142-145.

³¹⁷ Necati M. Ertekun, *The Cyprus Dispute and the Birth of the Turkish Republic of Cyprus* (London: Rustem, 1984).

in whole or in part with any other country and against any form of partition or secession.³¹⁸ But when it came to making a peace deal, the difficulty lay in the sensitivity of the Greek Cypriots to anything which might be held to constitute a recognition of the state of north Cyprus and the sensitivity of the Turkish Cypriots to anything which might seem to recognize the right of the Greek Cypriot authorities to call themselves the government of Cyprus.³¹⁹

Since the late 1970s, the international community has attempted repeatedly to craft federal proposals which have failed to mediate sustainable settlements. The idea of an independent federal bizonal and bicommunal republic was adopted by both sides. The 1977-79 High-Level Agreements resulted in the establishment of a new basis for future negotiations. They confirmed the establishment of bicommunal federal republic. However, although the result was not a significant breakthrough it did establish a framework for a solution based on a bi-communal, bi-zonal federation. The demand for a federation was a Turkish Cypriot one. By conceding federation the Greek Cypriots effectively recognized that the bi-communal unitary state of 1960 had gone beyond recall and that in the future Cyprus would need to consist of two units, with the Turkish Cypriots having a considerable range of responsibilities. But attempts to move beyond this conceptual breakthrough were systematically frustrated by the inflexibility and hesitations of both sides when it came to fleshing out the agreed framework.

By 1977, Makarios had officially agreed to a bicommunal, bizonal, federal solution. But many in the Greek Cypriot camp felt that this was a betrayal of the Republic of Cyprus and the state system more generally.³²⁰ The political debate in the Greek Cypriot side centered on how to gain concessions from the Turkish Cypriot side under the new framework. "During the post-1974 period the Greek Cypriot side went against the ethno-nationalist debate in order to gain the support of the international community in its quest for a favourable revision of the status quo".³²¹ So, they moved their position to a tight federation. The Turkish Cypriot leadership used ethnonationalist debates in order to justify their positions internally and in doing so fell foul of dominant international norms and precedents. However, later on the break up of multinational states in the post-Cold

³¹⁸ A.J.R Groom, "The Process of Negotiation 1974-1993," in Clement H. Dodd (ed.), *The Political, Social, Economic Development of Northern Cyprus* (Huntington: Eothen Press, 1993), pp. 15-45.

³¹⁹ Keith Kyle, "Cyprus: In Search of Peace," *Minority Right Groups International*, No.3, 1997.

³²⁰ Ibid., 52.

³²¹ Ibid.

War world would make the Turkish Cypriot community less keen on a federal solution and legitimized the idea of partition.³²²

After 1974, U.N. negotiations focused on reconciling the two sides' interests and re-establishing a central government. The parties to the conflict had agreed to UN-sponsored talks that aimed to reach a federal solution. Though the impetus for reaching a federal settlement was primarily external, reflecting the international desire to preserve Cyprus as a single state, there was hope that the Cypriot communities would nevertheless embrace the idea. However, this was not the case. Greek Cypriots preferred a unitary state with a majoritarian form of democracy. As a second best solution, they would reluctantly endorse a federation with a strong central government in order to secure the reunification of the island. The Turkish side demanded a Greek-Turkish bi-regional federation with strong regional governments, whereas the Greek side favored a multi-regional or cantonal federation with a strong federal government. Turkish Cypriots emphasized bizonality and the political equality of the two communities, preferring two nearly autonomous societies with limited contact. Greek Cypriots emphasized the freedoms of movement, property, and settlement throughout the island. The two parties also differed on the means of achieving a federation: Greek Cypriots wanted their internationally recognized national government to devolve power to the Turkish Cypriots, who would then join a Cypriot republic.³²³ For the Turkish Cypriots, two entities would join, for the first time, in a new federation. These views could affect resolution of property, citizenship of Turkish settlers, and other legal issues. So again, sovereignty became the major obstacle.

Since 1974, there have been many unsuccessful rounds of U.N.-sponsored direct and indirect negotiations to achieve a settlement: On November 15, 1983, the Turkish Cypriot leadership made a unilateral declaration of independence as the "Turkish Republic of Northern Cyprus" (TRNC). Turkish Cypriot leader Rauf Denktas argued that creation of an independent state is a necessary precondition for a federation with the Greek Cypriots. The UN Security Council condemned this move and called on UN members not to recognize the new state. After the 1983 declaration of the "TRNC," U.N. representatives conducted proximity or indirect talks on various issues. In 1984, the UN Secretary General Perez de Cuellar produced his Draft Framework Agreement, which he later

³²² Suha Bolukbasi, "Boutros Boutros-Ghali's Cyprus Initiative in 1992: Why Did It Fail?," *Middle Eastern Studies*, Vol. 31, No.3, July 1995, p. 461.

³²³ Carol Migdalovitz, "Cyprus: Status of U.N. Negotiations and Related Issues," Available at: <http://www.fas.org/sgp/crs/row/RL33497.pdf>

modified several times through Proximity Talks. This agreement provided a very important opportunity for both sides to move forward to the smaller details for a solution.³²⁴ Both leaders stated their satisfaction. However, when it came to signing the Agreement, it became fruitless. Perez de Cuellar presented the new Draft Framework Agreement to both sides on March 29 1986. The Plan stated that the new state would be bi-communal and bi-zonal with regard to its constitutional and territorial attributes respectively. Denktas accepted the final draft Framework Agreement but Kyprianou, after consultation with Greece, rejected it.

In the many abortive negotiations that followed, in the late 1980s, the Turkish Cypriot government generally accepted as a second best solution the notion of a confederation or very loose federation that would have a single international personality but would be composed of two sovereign states that would delegate competencies to the joint government. Denktas presented new concepts, such as "separate sovereignty for each community" which was inconsistent with the UN Security Council resolutions and the decisions agreed upon in the 1977 and 1979 Summits. Turkish Cypriots emphasized a solution that would keep the two communities separate in two sovereign states or two states in a loose confederation. But for Greek Cypriots, a solution based on two separate sovereignties was completely unacceptable because it was believed that it would effectively legitimate and make permanent the division of the island. It was also unacceptable to the UN and other international actors, who remained committed to a federal solution with a single international sovereignty.

Under the supervision of Secretary General Cueller, the UN representatives in Cyprus mediated to bring the two leaders together in Cyprus in 1988 and 1989. Although the two communities agreed on the bases for negotiations to be the 1977 and 1979 Summit Agreements and the general principles of a solution to be in line with a bi-communal and bi-zonal federal republic, they were now moving towards the details of the solution. In March 1990 the UN Security Council agreed a resolution indicating clearly for the first time that the two sides were to be treated on an "equal footing". In June 1991, Perez de Cuellar called for an international meeting. However, neither leadership were able to find a common ground. De Cuellar blamed the failure on Denktas's assertion that each side should possess a separate sovereignty, something which all U.N. resolutions would attribute solely to the Republic.

³²⁴ Ibid.

In August 1992, the UN Secretary Boutros Ghali introduced a "Set of Ideas". These ideas envisaged a loose bizonal and bicomunal federation with constitutional checks on majority rule and limitations to the freedoms of movement and establishment and the right of property. The attitudes of the two communities to the 'Set of Ideas' was diametrically opposed. This document went far beyond the 1977-1979 High Level Agreements. The ideas in the document envisaged a loose bizonal and bicomunal federation with constitutional checks on majority rule and qualifications to the freedoms of movement and establishment, and rights regarding property. However this did not bring about any significant breakthrough. In August, Boutros-Ghali said that Denktas's territorial ideas were not close to his "non-map". Although Vassiliou was ready to negotiate an agreement based on it Denktas rejected it. The Secretary General's November 19 Report implied Denktas's responsibility for the lack of progress. In any case it was never agreed, both sides still having difficulties with it when negotiations were suspended for the Greek Cypriot presidential elections in early 1993. The narrow victory of Glafcos Clerides, who campaigned against the Set of Ideas, meant that the negotiations for a settlement failed.

One of the significant indications of the 1992 negotiations was the explicit acceptance by the UN and many third parties that there was a deep "lack of trust" between the two communities. In November 1992 the UN Secretary General produced a series of "Confidence Building Measures" for the two communities with the aim of providing advantages to both sides and decreasing the great gap of trust that existed between them, something that could help them reach an overall agreement. In a manner similar to previous negotiations, the result again proved fruitless. The mostly humanitarian elements of the confidence building measures were politicized by both sides and the acceptance or rejection of any these measures become a political tactic for each side in order to gain bargaining power at the negotiation table. Hence, the guiding principle of the proposals, the urgent need of "building trust", was ignored by both sides.³²⁵ Instead, the UN tried, through 1993-1994, to get agreement on a major package of Confidence-Building Measures. These negotiations also failed to come to fruition.

The subsequent negotiations in the 1980s and 1990s never enabled agreement to be reached on the specifics of how that should be done. It is true that the switch from a unitary to a federal state had been a reluctant concession by the Greek Cypriots to the Turkish Cypriots, the former stood by the concept even when the Turkish Cypriots in

³²⁵ Ibid., 15.

1998 upped their demands and insisted on a confederation.³²⁶ In the negotiations that began in 1999, all Turkish Cypriot proposals after that date were based on a confederal model while all Greek Cypriot proposals rejected such a position that and continued to insist on a federal model as the only workable model for a solution. The 1992 Set of Ideas, while labeled a federation, contained a number of confederal elements in it and the same was true of the proposals that emerged during the 1999-2003 negotiations later on. The Set of Ideas established a bi-zonal, bi-communal federation with extensive autonomy for the two component parts, with a substantial territorial adjustment to the benefit of the Greek Cypriots set out in a map attached to the proposals, with limited returns of Greek Cypriot property owners to the north, and with security resting on a reduced Greek and Turkish troop presence and an international peacekeeping force.

It is very clear that neither leadership in Cyprus seemed inclined to make much of an effort to find a solution. Neither were they in a position to negotiate with any flexibility and in a spirit of give and take. There was no prospect for any further development in settlement negotiations. Clerides had won office campaigning against the Set of Ideas, and he had played his part in ensuring that the Confidence-Building Measures got nowhere. But, since that time, in a series of informal meetings with Denktas in 1995 he pushed hard for a framework approach based on reaching trade-offs on the most sensitive core issues, leaving the detail to be filled later. But still, from Denktas's point of view, he had more to lose than to gain.³²⁷

Since the conclusion of the High-Level Agreements of 1977 and 1979 and through the whole long series of UN-led negotiations thereafter, the two Cypriot parties had not reached agreement on a single piece of paper. As Oliver Richmond states; "Had the two sides been committed to a compromise solution, and had they been willing to take the political and personal risks associated with making concessions, a solution may have been reached before now".³²⁸

In 1997, Secretary General Annan called for indirect talks followed by open-ended, direct talks between Clerides and Denktas. Beforehand, Denktas said that he would not sign documents until the European Union suspended its accession negotiations with the (Greek) Cypriot government as the sole representative of Cyprus. He refused to sign a joint declaration at the end of the talks. After the EU's formal decision was made to begin

³²⁷ Ibid., 54.

³²⁸ Oliver Richmond, "Negotiating out of fear and fearing to negotiate," *op.cit.*, p.106

accession talks with Cyprus, Denktas informed the U.N. that "intercommunal talks have ended," and that he would only participate in talks between states having equal status. In 1999, the two sides came together reluctantly. Annan and his Special Advisor Alvaro de Soto began proximity talks with Clerides and Denktas. The Turkish Cypriot leadership tried to promote its confederation thesis. At the outset of talks, Annan said that he had concluded that the equal status of the parties "must and should be recognized" explicitly in a comprehensive settlement. Clerides boycotted the talks until reassured that they would take into account the U.N. resolutions that called for a solution Denktas continued unwillingly to remain at the negotiation table for the sake of the candidacy of Turkey to the EU. In 2000 Annan gave his "assessment" in a diplomatic "non-paper" that was welcomed by Clerides. Denktas rejected it and, announced his withdrawal from the talks because no progress could be made until two separate states were recognized.

The EU Commission's Agenda 2000 proposals on the opening of EU accession negotiations with a number of countries including Cyprus and dealing only cursorily and in a dilatory manner with Turkey's own EU application were a negative development from the Turkish and Turkish Cypriot point of view.³²⁹ Having agreed to open negotiations with Cyprus in March 1998, Denktas refused the offer to associate the Turkish Cypriots with the accession negotiations as implying their subordination to the Greek Cypriots and their acceptance of an illegal membership application.

Between 1999-2000 times periods, in the sessions of proximity talks neither side was prepared to reveal many of its cards during these early grounds.³³⁰ The Greek side was of the view that nothing had changed, that no real negotiation was going on and that Denktas was operating outside the scope of Security Council resolutions and Denktas's confederation proposals of 1998 and his basic requirements on status and sovereignty as a precondition for any real negotiation made no significant breakthrough. They exposed two mutually incompatible positions on many points, including some that had appeared close to agreement or provisionally settled in 1992. They demonstrated rather clearly that the two parties were not likely, spontaneously, to develop positions that were compatible or at least negotiable.³³¹ Proximity talks had broken down in November 2000. Denktas said he would not attend any further UN proximity talks unless the existence of the TRNC was

³²⁹ Hannay, *op.cit.*

³³⁰ *Ibid.*, 121.

³³¹ *Ibid.*, 123.

recognized. So, again, lack of a political will to find any solution prevailed and support for the status quo remained.

Early in November 2001 Denktas proposed a face-to-face meeting with Clerides and the two leaders agreed to begin direct talks in January 2002. Clerides observed, however, that there appeared to be no way of approaching sovereignty and whether there would be a new state or a continuation of the Republic of Cyprus.³³²

Although the two sides did not engage in a real give-and-take bargaining, the pressing EU enlargement calendar pushed the UN to put a comprehensive solution plan in November 2002: The Annan Plan. Before the Annan initiative both communities had become supporters of the status quo. This imperfect state of affairs was at least preferable to the uncertainties of any future regime that did not incorporate the antagonists' maximum positions/expectations (zero-sum game). The Turkish Cypriots feared that any reunification within a strong federation would see their position go back to the pre-1974 situation as an isolated minority dominated by a larger and more powerful Greek Cypriot community. The Greek Cypriots viewed any federal solution that did not include a strong central authority and the withdrawal of Turkish troops and settlers as no better than their existing predicament. They both considered the incentives for change to be worth less than the security of the status quo.³³³

The Annan Plan went through four drafts starting in November 2002 finalizing with a fifth completed document in 2004. It was the product of important milestones, principles and the agreements reached by the two sides.³³⁴ The new government in Turkey, hoping to secure EU membership, prepared itself to make concessions on the two state confederal solution that Denktas had backed for years. The Greek Cypriot side seemed to be in favour of it, despite very negative public reactions as revealed by polls, but with a presidential election imminent, President Clerides's position was not secure.³³⁵ The Turkish Cypriot government rejected the Plan.

Annan requested that Denktas and the newly elected President of Cyprus Tassos Papadopoulos permit separate, simultaneous referenda on the Plan on March

³³² Tozun Bahceli, "Saying Yes to the EU Accession: Explaining the Turkish Cypriot Referendum Outcome," *The Cyprus Review*, Vol.16, No.2, 2004 Fall

³³³ Michael, "The Cyprus Peace Talks," op.cit.

³³⁴ Including the 1977 and 1979 high-level summits, the Cuellar's Draft Framework Agreement and the fundamental principles of the Ghali's Set of Ideas.

³³⁵ Clement Dodd, "Report of the House of Commons Foreign Affairs Committee on Cyprus: A Review," *The Round Table*, Vol.95, No.383, January 2006, p.67.

30. On March 2003, the refusal of the Turkish Cypriot leadership to accept a somewhat modified version of the UN Plan in The Hague was considered a serious setback, but clearly Papadopoulos would have made every effort to secure its rejection had the Turkish Cypriot agreed to it.³³⁶

The UN plan had undergone several revisions in an attempt to win support. It was the Turkish Cypriot side which refused to even talk further, and which was blamed for the failure of the peace process. Papadopoulos wished to be sure that gaps in legislation and constituent state constitutions would be filled, that Greece and Turkey would commit to security provisions, and that there was time for a campaign on the referendum. On November 2003, Papadopoulos revealed that he would not have signed even if Denktas had done so.³³⁷ Denktas objected to the basic points of the Plan, would not put it to a referendum, and argued that negotiations should begin anew. Annan suggested that negotiations continue until March 28 and that referenda be held on April 6. However, the two sides failed to reach an agreement. Annan announced that it was not possible to achieve a settlement before Cyprus signed the EU accession treaty on April 16. Annan's April 1 Report said that Denktas "bears prime responsibility" for the failure. Hannay states that it was Denktas who prevented the negotiation and the acceptance of Annan Two or Three at Copenhagen and then later at The Hague, because of his prime concern over the recognition of the TRNC.³³⁸

The failure to get an agreement on a comprehensive settlement either before or at Copenhagen was a setback. The moment at which both sides were under great pressure to show flexibility, with a clear deadline set to concentrate minds, and when reaching an agreement would have brought equivalent benefits, had been allowed to slip away.

On the northern side of the island, opinion polls showed strong support for the Annan Plan. The Turkish government put the accent on finding a solution and was uncomfortable with the aggressive tone of Denktas's press statements. Denktas showed no interest in engaging in serious discussions of the main issues in the negotiations. A presidential election in the south resulted in the success of Papadopoulos who was less committed to the success of the negotiations and thus tended to be less flexible than Clerides. Those who did not like the Annan Plan voted for Papadopoulos.

³³⁶ Ibid.

³³⁷ Migdalovitz, "Cyprus: Status of UN Negotiations and Related Issues."

³³⁸ Hannay, *op.cit.*, p.19-20.

In his November 12 Report, Annan reiterated that “no purpose would be served” in renewing his mission of good offices unless both Cypriot parties, Greece, and Turkey were ready to finalize negotiations on the basis of his February 2003 Plan and to put the results to referenda shortly thereafter.

From the breakdown of the negotiations in May 2003 until the Turkish Cypriot parliamentary elections in December of that year, there were no active attempts to resolve the Cyprus problem. All that changed with the Turkish Cypriot parliamentary elections in December. The result reflected a substantial shift away from the rejectionist Denktas’s dominance of the Turkish Cypriot handling of the settlement negotiations. On January 12, 2004, after meeting with Turkish officials, Denktas admitted, “The Annan Plan is still on the table....” Kofi Annan invited the two sides, together with Greece and Turkey, to New York in February 2004 in order to give their final decision as to whether they accepted his conditions for the resumption of the Cyprus negotiations. Both Cypriot sides, due to intense pressure from their respective motherlands, the US, the UN and the EU, reluctantly agreed on the conditions of the UN Secretary-General for the continuation of the Cyprus negotiations. The conditions states that the two Cypriot sides would negotiate under the UN auspices until March 21. If they could not resolve their differences, Turkey and Greece would join them to try to reach a resolution between 22nd and the 29th of March. If there were outstanding unresolved issues after March 29, the UN would step. Both leaderships failed to agree on revising the Plan in talks held up to March 22. Neither side negotiated seriously. Papadopoulos and Denktas pressed for long lists of unnegotiable changes to the Annan Plan and showed no interests in negotiating trade-offs. However, the UN proposals were accepted, despite serious misgivings, by the Turkish Cypriot negotiator Mehmet Ali Talat, the newly elected prime minister of TRNC, representing a significant departure from the inflexibility of Rauf Denktas. The Plan was rejected by Papadopoulos. On March 29, Annan presented a final revised Plan and announced that the Plan would be put to referenda on April 24. An important change in Version V of the Plan states that it no longer required the endorsement and support of the leaders of both communities for it to be put to referenda. This was to prevent a veto by Denktas, but it then allowed both leaders to campaign against the Plan, an opportunity crowned with success not for Denktas, but for Papadopoulos.³³⁹ The Turkish government

³³⁹ Dodd, “Report of the House of Commons,” op.cit., p.67.

and Talat embraced and supported Annan V as warmly and enthusiastically as Denktas rejected it. Papadopoulos moved to outright and emotional rejection.

On both sides, initial reactions to the plan were unfavourable. Both Turkish and Greek Cypriot leaders disliked many of the plan's key provisions. The Greek Cypriot leaders were worried that a rejection of the plan might jeopardise Cyprus's imminent accession to EU membership. They declared the plan to be negotiable. However, most Greek Cypriots shared their leader's fundamental doubts regarding specific features of the plan that they believed would undermine the ability of the Greek community to exercise power consistent with its majority status and reduce external (Turkish) influence.³⁴⁰ The Greek Cypriot leadership's clear preference was to proceed to EU membership without a prior reunification agreement based on the Annan Plan. They expected that EU norms and rules would invalidate some provisions of the Annan Plan that were vital for Turkish Cypriots.³⁴¹

Denktas condemned the plan outright, citing, among other problems, the lack of any clear acknowledgement of Turkish Cypriot sovereignty. His bitter rejection was supported by right-wing allies but he no longer had the support of either the Turkish Cypriot population or the Turkish government. Many Turkish Cypriots were unhappy about the concessions they would be required to make under the Plan, but they were also ambivalent.³⁴² They were attracted by several other provisions, including the constitutionally equal status of the two communities, the wide measure of autonomy envisaged for the constituent states, the continued presence of some Turkish troops to underwrite their security and the conferral of EU citizenship. They were inclined to see the proposed terms as the best that they could reasonably hope to get. In the parliamentary elections of December 2003 in Northern Cyprus, this bottom-line consideration helped the pro-EU, pro-Annan Republican Turkish Party to achieve a narrow victory. Its leader Mehmet Ali Talat assumed the premiership as the head of a coalition government in early 2004, and further consolidated his party's position when he was elected to the presidency in April 2005.

The UN Secretary-General then imposed a final draft settlement, representing the fifth revision of the original plan in 2004. Finally the two sides agreed on putting the final plan

³⁴⁰ Hannay, *op.cit.*, p. 26.

³⁴¹ Like restrictions on three movements.

³⁴² I.e. The settlement of tens of thousands of Greek Cypriots in their constituent states; the recognition of Republic of Cyprus property deeds; the displacement and resettlement of tens of thousands of Turkish Cypriots that property transfers and border adjustments would require.

to the simultaneous and separate referenda for Greek and the Turkish Cypriots on 24 April 2004.

The campaigns on either side of the island were sharply contrasted. Before Papadopoulos's rejection, the Greek Cypriot leadership was divided over the Annan Plan. This split resonated with the overall anxiety that beset the Greek Cypriots, especially as they realized the inevitability of a deadline decision, while comforted by the certainty of EU accession. The angst was best epitomized by the left-wing party the Progressive Party of the Working People, AKEL's contradictory position started with a 'yes' campaign and moved to a 'no' stand two days prior to the referendum. The Turkish Cypriot leadership endorsed the Plan and its basic principles, arguing that it provided an appropriate framework for resolving the Cyprus dispute and for maintaining peace on the island.³⁴³ The larger ruling Turkish Cypriot leftist party, The Republican Turkish Party, CTP, and the Greek Cypriot right opposition party, Democratic Rally, DISI, were the main political agents promoting a 'yes' campaign prior to the 2004 referendum. Despite their long established solidarity, both leftist parties, AKEL and CTP, began criticizing each other's policies fiercely, accusing one another of adopting a nationalist stand.³⁴⁴ The Plan was also supported by smaller Turkish Cypriot leftist parties and liberal circles, as well as by Greek Cypriot liberals. On the other hand, Greek Cypriot president Tassos Papadopoulos and his party DIKO, (Democratic Party) as well as the smaller Greek Cypriot nationalist leaning parties campaigned for the rejection of the plan. In the North, Rauf Denktas and Turkish Cypriot right wing parties also campaigned for a 'no' vote.

The Greek Cypriot leadership announced its opposition to the Annan Plan arguing that it was not the product of negotiation, nor did it constitute an agreed solution between the parties', that it did not 'guarantee the single, sovereign character of Cyprus' and that 'it failed to address the serious concerns of the Greek Cypriot community regarding their security and the effective implementation of the plan'.³⁴⁵ Papadopoulos admitted his preference for a solution after Cyprus's accession to the EU when it would have more leverage over Turkey given Turkey's aspirations to become an EU member.³⁴⁶ The U.N., the EU, and the United States criticized Papadopoulos's speech as part of a distortion of

³⁴³ Speech by Mehmet Ali Talat during a press conference on 24, April, 2006: Available at: http://www.trncpresidency.org/news/april_24.htm

³⁴⁴ Vural and Peristianis, op.cit., p. 40.

³⁴⁵ Speech by T. Papadopoulos at the UN General Assembly on 23 September 2004. *International Debate*, March 2005, pp. 79-82.

³⁴⁶ "Cyprus President Calls for Rejection of UN Reunification," BBC Monitoring European, April 8, 2004.

and a propaganda campaign against the Plan to feed the Greek Cypriots' sense of insecurity, and the three objected to government restrictions on broadcasting views favouring the Plan.³⁴⁷ This has proved the importance of the political leaders playing a role in shaping the outcome of the negotiations.³⁴⁸

The Annan Plan was built up slowly and painstakingly over a period of 20 years which began with Perez de Cuellar's work on the island and which only reached its final and complete form in the negotiations. The Plan was based on the belief that the international context of the Cyprus problem had been fundamentally changed by the prospect of Cyprus's imminent accession to the EU. As a result, it was believed, it might at least be possible to reconstitute Cyprus as a single state within the EU and equip it with new European style power-sharing institutions that both communities would support. However, it failed to come to fruition. Michalis Michael states that the mediators failed to take into account the Greek Cypriots' historical dilemma over a federal solution. There has always been an undercurrent of dissent over federalism among Greek Cypriots, ever since their reluctant acceptance of it in the mid-1970s. Since the Republic of Cyprus had signed the EU Accession Treaty on 17 April 2003, Greek Cypriots were guaranteed EU membership regardless of how they voted. Thus, feeling they had nothing to lose, and encouraged mainly by the opposition of President Papadopoulos, 75.83 per cent voted no to the Annan Plan with the exception of former presidents' Clerides's Democratic Rally and Vassiliou's small liberal party.

The Annan Plan appeared at a time when Cypriot society, both Greek- and Turkish Cypriot, was in the process of transformation. Moreover, it coincided with the final stages of Cyprus' accession to the EU and the new impetus of Turkey's own bid to accede.³⁴⁹ Foreign powers have some power to decide how to proceed to find a solution. But, internal forces, power contestations, local ideologies and agency play a vital role that cannot be underestimated. The lack of complete information and lack of contacts and direct communication with the other are likely to cause negative stereotypes. Thus communication and trust-building are significant factors in peace-building.³⁵⁰ Next step should focus on this issue. The common interests shared by the two communities, and the mutual benefits that could result from a negotiated settlement, had not been sufficiently

³⁴⁷ "US Accuses Greek Cypriot Leaders of Derailing Unification Vote," *New York Times*, April 27, 2004.

³⁴⁸ Mustafa Akinci, Personal interview.

³⁴⁹ Nicos Trimikliniotis, "The Cyprus Problem: An International Relations Debacle or merely An Unclimbed Peak," *The Cyprus Review* Vol. 17, No. 1, Spring 2005, p. 144.

³⁵⁰ Maria Hadjipavlou, "The Cyprus Conflict," *op.cit.*, p. 360.

emphasized conceptually, practically or organizationally during the intercommunal dialogue.³⁵¹ The players in both communities who could discern these common benefits, and who had an interest in establishing a constructive intercommunal relationship, did not have the leverage or the resources to endow their perceptions and priorities with the necessary degree of legitimacy. Nor did the mediating parties have a clear sense of the perceptual shift that was necessary or the resources that would be needed to underpin it.³⁵² The EU's values constitutes today a new possibility for these multilevel entries into the Cypriot conflict system, so as to gradually transform it into a peace building system in which mutual trust, communication and dialogue will prevail.³⁵³ However, the external actors themselves are not sufficient to enable hostile groups to accommodate their differences but the institutions and the role of leaders play important role.

THE ANALYSIS OF THE ANNAN PLAN BY THE MAIN CYPRIOT ACTORS

This section analysis the main problems, issues, strengths and weaknesses of the Plan in the eyes of the main Cypriot actors. It is expected to find the reasons for the inability of the Plan to deal with ethnic division in Cyprus. They are all valuable since they will inform whether the preconditions for the formation of federal system, and condition for its success are likely to emerge in Cyprus.

Prior to the Annan Plan, the ideological confrontation between the left and the right had generated intra-communal divisions and conflicts within both communities. The political left expressed a vision of intercommunal solidarity and tended to adopt a pro-settlement orientation, stressing the interest of the whole people of Cyprus and the need for an inclusive collective identity.³⁵⁴ The political right in each community, on the other hand, presented itself as an advocate of national or ethnic interests, aimed at promoting intra-communal solidarity and at fostering political loyalty to their motherlands.³⁵⁵ Although the deep division between Turkish Cypriot and Greek Cypriot nationalisms has dominated Cypriot politics since the mid-1950s, the political left in both communities was persistent in presenting a post-nationalist common vision.³⁵⁶ After 1974 this conciliatory perspective predisposed the leftists on both sides to question the maximalist, 'ideal' preferences of

³⁵¹ Michalis S. Michael, "The Cyprus Peace Talks," *op.cit.*, p. 590.

³⁵² Fisher, "Cyprus: The Failure of Mediation," *op.cit.*, pp 307-326.

³⁵³ Maria Hadjipavlou, "The Cyprus Conflict," *op.cit.*, p. 364.

³⁵⁴ Vural and Peristianis, *op.cit.*, p. 46.

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.*

their respective communities. Prior to the submission of the Annan Plan, AKEL and CTP also stressed their common vision based on the principles of federalism, bi-communality, bi-zonality and political equality.³⁵⁷ However, the introduction of the Annan Plan has fostered new trends in Cypriot politics and a new alignment of the political forces on the island.³⁵⁸ The views of political actors on issues as sovereignty, territoriality, identity and power-sharing are no longer determined by an ideological disposition. Surprisingly, while the left rejected the Plan, the right supported it in the southern part of the island.

When the Plan was first published, all major political parties in South Cyprus expressed their support in principle for the Plan. However, there were crucial differences between the previous President Glafcos Clerides and the president Tassos Papadopolous. During the 2002-2003 negotiations, the team led by former President Clerides appeared to engage in the peace process. Yet, Clerides lost the elections to the so called "nationalist" Tassos Papadopolous in February 2003 who rejected the Plan in all forms whereas the former Presidents Glafcos Clerides and George Vassiliou supported it. In North Cyprus, the stark polarisation of opinions over the Plan emerged clearly in late 2002. The Turkish Cypriot leader Rauf Denktas rejected the Plan. Yet as late as 2002, the Turkish Cypriot leader came under increasing pressure from the pro-Annan Plan centre-left parties and civil society which resulted in the mass demonstrations in December 2002 and January 2003. Pressure culminated with the December 2003 parliamentary elections, in which the centre-left Republican Turkish Party led by Mehmet Ali Talat became the strongest party in the Turkish Cypriot Assembly. Talat embraced and supported the Annan Plan as warmly and vociferously as Denktas rejected it. In Northern Cyprus only President Rauf Denktas and a minority of extreme right-wing nationalists, much of whose support comes from settlers from the Turkish mainland had rejected the Annan Plan. They believe that the Plan does not adequately translate the mutually agreed principles of bi-zonality, bi-communality and the full political equality of the two parties into practical terms.³⁵⁹ In southern Cyprus, on the other hand, President Tassos Papadopoulos, a majority of the media and parties, including communist AKEL, the Greens and the right-wing DIKO had rejected the plan.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ergun Olgun, "The Annan Plan – Myths and Realities," Conference, Istanbul, Ceylan Intercontinental Hotel, 17 July 2003.

Analysis of the Plan by the Main Greek Cypriot Actors

For many Greek Cypriots the Annan Plan had a lot of disadvantages and most of the Greek Cypriot political parties were against it. Some Greek Cypriot political leaders also influenced the Greek Cypriot vote by strongly opposing the Plan.³⁶⁰ Van Coufoudakis argues that the totality of the Plan was seen as negative to Greek Cypriots' interests in terms of major derogations that deprived all Cypriots of fundamental rights; that the Republic of Cyprus would be replaced by a loose confederation of the two largely autonomous states -the new polity would be confederal in character due to the absence of a hierarchy of laws and the fact that the powers of the central government emanated from the component states-; that the functionality of the new state was questionable in view of the provisions for the executive, the legislative and the judicial branches, the presence of minority vetoes, and of non-Cypriot third parties casting deciding votes³⁶¹; that the economic cost of reunification and the vague pledges of external assistance meant that the Greek Cypriots would bear the economic cost of reunification; that security issues involving the gradual reduction and continuing presence of Turkish troops with expanded intervention rights, even after Turkey joined the EU; that were issues of citizenship definition and, of course, the future of the Turkish settlers.³⁶² He continued that for Turkish Cypriots, on the other hand, the Plan was positive because it maintained the Turkish Cypriot 'state' while removing the isolation it had faced since 1983; that the Turkish Cypriot 'component state' would remain under Turkey's protection while acquiring significant veto powers in the new republic; that there was the promise of significant economic assistance from external as well as domestic sources and the benefits of that would accrue from EU accession.³⁶³

The president of the Republic of Cyprus, Papadopoulos, who represented the rightist point of view, who favoured the continuation of the Republic of Cyprus under majority rule and who was less committed than Clerides to making the compromises necessary to bring about a successful conclusion to the island's problems, claimed that the Annan Plan did not satisfy the minimum targets they were set and the most crucial of their proposals had

³⁶⁰ Theodore Chadjipadelis and Ioannis Andreadis, "Analysis of the Cyprus referendum on the Annan Plan" 57th Political Studies Association Annual Conference, 'Europe and Global Politics', 11-13 April 2007, University of Bath.

³⁶¹ See Alex Efthymou, "Settle Cyprus through local Constitutional Convention, say foreign law experts," *The Cyprus Weekly*, September 2-8, 2005, p.14. See Van Coufoudakis, "Cyprus – The referendum and its aftermath," *The Cyprus Review*, vol.16, No.2, p.73.

³⁶² Ibid. 74-75.

³⁶³ Ibid.73.

not been met.³⁶⁴ These were proposals regarding the functionality of the Plan; its readiness for implementation on the day following the referenda; and the substantive reunification of the country in the economic, fiscal and monetary sectors. He said that his proposals to ensure functionality were not limited to the composition of the Presidential Council or the making up and functions of a Court of Primary Federal Jurisdiction or the Cooperation Agreement on EU matters. In contrast, they were extended to, and covered legislation, the Central Bank, the common monetary and fiscal policy, the shortening of time periods to regain property, the shortening of transitional periods, the administrative structure of the federal government, the election of the members of the parliamentary organs, the legislation and the decision-making mechanisms by administrative organs, the territorial aspect....³⁶⁵ It seems that the Greek Cypriot leadership had often brought forward efficiency and cost consideration arguments to bloc special governance and partnership arrangements from being adopted, the efficiency of decision making being a problematic area in power-sharing arrangements. The important thing was to construct a system that was likely to break a zero-sum game. On the one hand, the Plan introduced a more dual-federal system in order to avoid confrontation between the two hostile ethnic group but on the other hand it seemed to divide the two communities in too many respects and therefore likely to prevent the creation of mutuality and reciprocity and eventually a set of shared common interests which is so vital for the stability of federal systems.

Papadopoulos stated that the state of affairs envisaged in the Plan would result in continuous deadlock, which would lead the federal state to paralysis. In these circumstances, the distance between paralysis and dissolution of the federal state would be very short.³⁶⁶ Papadopoulos said that none of the above, however, should in any way be interpreted as negating the principle that the federal system, which must facilitate the satisfaction by territorially or ethnically concentrated population groups, of autonomy to pursue their political, economic, and cultural aspirations in freedom, without encouraging partitionist tendencies. Actually, this is true and he is right to express his fear to some extent. The decisional deadlock is more likely to occur in multi-ethnic federations. This is usual. First there is a need to embrace multi-ethnic federalism not solely any type of federalism. In multi-ethnic systems there is a need to develop mechanisms capable of

³⁶⁴ "Papadopoulos slams the plan", http://www.trncpresidency.org/press/news/papadopoulos_slam.htm

³⁶⁵ "The Cypriot President said No to the Annan plan", Available at: http://www.mpa.gr/article.html?doc_id=447579

³⁶⁶ Tassos Papadopoulos, "Keynote Address", 3rd International Conference on Federalism, 3-5 March 2005.

balancing the conflictual or centrifugal tensions it has to face given the deep societal cleavages. As Brunetta Baldi states, this means the territorial representation within the second chamber is likely to be weak to facilitate the national law-making process and the holding of the nation together, while distribution of power tends to be jurisdictional (to let the high diversity express itself in terms of self-rule), and asymmetrical.³⁶⁷ These are the cases in Belgium and Canada where two dominant ethnic groups constitute the country. Societies in which just two ethnic groups predominate are prone to structural rigidity. As Papadopoulos said, two unit federal systems are likely to be prone to deadlocks and a zero-sum game but this is more likely to happen if the country consists of two main ethnic communities. Bicomunal societies seem to be especially prone to constitutional crises or political violence. So long as the most significant political issues are defined primarily by relationships between the two ethnic groups, there is limited opportunity for interethnic group coalitions or cooperation.³⁶⁸ In situations of conflict and perceived threat, the dominant political parties are likely to represent their ethnic communities. Because no other ethnic parties exist with sufficient strength to allow for shifting coalitions, the party system may be frozen into a bicomunal pattern. Opponents may be locked into permanent opposition status, complicating the process of achieving political compromise. Psychologically, bicomunalism may raise levels of antagonism and distrust. Animosity cannot be easily diffused by a focus on other ethnic groups or by alternating patterns of alliance and opposition.

However, bicomunal societies do not inevitably produce political breakdown. There exist positive instances of two dominant groups cooperating. Despite inflexibilities created through bicomunal social structure, political mechanisms may help if implemented in an appropriate way. Furthermore, relationships can evolve between two communities. The peculiar institutional mechanisms like asymmetric arrangements and multi unit federations are likely to promote cooperation and integration.

It is true that the constitution itself is not sufficient to deal with antagonistic groups. As Alecos Markides, who was Attorney General under Clerides and who used his legal knowledge to frustrate progress in the negotiations during the proximity talks but to facilitate progress in the negotiations during the final year of negotiations, stated

³⁶⁷Brunetta Baldi, "Beyond the Federal-Unitary Dichotomy," Working Paper Institute of Governmental Studies, University of California, Berkeley, September 1999. Available at: http://igs.berkeley.edu/publications/working_papers/99-7.pdf

³⁶⁸ See Lijphart, *Democracy in Plural Societies*, p. 56

federations involve constant cooperation and if there is no cooperation or goodwill in the centre whatever the plan may contain the result will be continuous bitterness.³⁶⁹ This means that both communities need to develop certain networks that would enable them to cooperate before the establishment of federal system. Likewise, Claire Palley, who acted as constitutional consultant to the President of Cyprus from 1980 to 2004, and who rejected the Plan states that a constitution is a *not* a strong enough glue to hold any country with a division together. "I do not think it is a constitution that acts as the glue. It is the will of the people, social and economic conditions, surrounding circumstances, surrounding countries which make it possible for a political settlement to work. Federalism is a useful device where you have got divided society that may help but is not decisive generally".³⁷⁰ But it should be remembered that certain institutions are likely to help antagonistic groups to deal with their problems. The role of institutions as reflecting the social, political and economic cleavages should not be underestimated of course. As Papadopoulos points out "institutional arrangements, slowly developed elsewhere, and requiring consensus or support, cannot be introduced overnight into divided and different societies, which do not share the sophisticated political approaches of those who evolved with such institutions". This is true but it should be remembered that the chance for developing certain principles and arrangements that would help both sides to learn the ways to accommodate their differences has not been given by the Greek Cypriots as well as Turkish Cypriots. Nor was it given enough attention by the external actors. So again, lack of a political will to achieve common interests and thus an understanding of federal philosophy has naturally predominated in the Cyprus case.

Although some Greek Cypriot rightist parties and the left favour construction of a federal system they are not ready for its implications. This is the reason for the rejection of the plan. Toumazos Tselepis, member of the negotiating group from Akel Party, says that in Akel's opinion, the only way to unite the country is federation. "I do not think that it is strong enough by itself to resolve the whole problem but I think it is a realistic way to find solutions. Any solution will be seen to be less than functional if the political will is absent but this does not mean that a solution in itself is not important. We must realise that Cyprus is a very small island and partition is not a viable solution for such a small country. There is a trend towards unification in Europe. If we move politically contrary to

³⁶⁹ Alecos Markides, Personal Interview, 9 December 2008

³⁷⁰ Claire Palley, Personal Interview, 28 August 2007.

this trend, both sides of the political divide will face numerous problems, economically and in terms of political viability.³⁷¹ However, when it comes to signing an agreement under a federal formula that would push the island towards a genuine resolution to the problem both sides have remained consistently intractable.

The main problem in the negotiations is that both communities need to abandon even the model close to their ideal solution. As Michael Papapetrou who was the spokesman of former president Clerides and who was an enthusiastic participant in bicomunal meetings with Turkish Cypriots³⁷² and pro-Annan states "there is no ideal solution anymore. If we want to talk about reunification, peace in Cyprus and in population, this is synonymous to bizonal and bicomunal federation. I think that the last proposal of the Annan Plan got all the main substantial principles of such a political system for implementation in Cyprus and could lead to peace. Despite what happens the reality is that we have two communities living separately for more than thirty or forty years. It is not possible to restart as if nothing happened".³⁷³ So, in this situation he thinks that the federal approach is the ideal one which in reality results in the unity of the state as the Annan Plan did with one sovereignty, with one international personality, with one citizenship plus a local citizenship element, so the unity of the state will be achieved.

However, Claire Palley states that federalism is not going to work: Turkish Cypriots want to keep as much powers as they could just as many Greek Cypriots would prefer a unitary state with minority safeguards, Turkish Cypriots would prefer independence. For both sides federalism is not a compromise. "You would have over the years more centralisation because this has been for all federations to move closer. The strength of central power historically in many federal countries is going on and makes special efforts to redistribute power at the centre."³⁷⁴ However, it seems that this would not be so important ones the federal system is constructed and the benefits from this system was realised. As Papapetrou states "gradually things can be more functional but you have to start somewhere." He suggests starting from a loose federation and building trust, cooperation, freedom of communication, of capital etc., rooted in Cyprus. "We need some more time because for years we have been living separately and fanatics still exist on both sides. So due to the lack of a federal culture, it is important to start with a loose federation and

³⁷¹ Toumazos Tselepis, Personal Interview, 31 August 2007.

³⁷² Hannay, *op.cit.*, p.14

³⁷³ Michael Papapetrou, Personal Interview, 30 August 2007.

³⁷⁴ Claire Palley, Personal interview.

gradually build trust and then proceed.”³⁷⁵ On the other hand, Claire Palley states that in the Plan, the character of federalism was a very loose, decentralised federation and the powers are complicated by the special nature of the decision making process which involves cooperation agreements and where very great powers are divided ethnically. Many problems eventually would emerge including financial ones.³⁷⁶ These rigid rules have to be avoided to some extent for the purpose of balancing both unity and diversity.

Theophanous states that the constitutional arrangements proposed in the Plan create a dysfunctional state characterised by elements of federation and confederation. “The unity of the state is not safeguarded. It is specifically stipulated that there should be no hierarchy between the laws of the constituent states and those of the central government. The question that is raised is whether such an entity could function properly and effectively within the framework of the EU and the international arena. There seems to be three sovereign or semi-sovereign entities or three sources of power: that of the central government and those of the two constituent states. Given that on most issues double majorities are required, decision making will be coming up against a great number of grey areas.”³⁷⁷ However, this has worked in successful federal systems like Switzerland and Belgium. It is the cost of federal structure.

So, another problematic area in the negotiations from the Greek Cypriots official’s point of view is the concept of ethnicity. Article 3 of the constitution expressly stipulates that the exercise of political rights is tied to ethnic identity—to the so-called “status of internal partial state citizenship.”³⁷⁸ The article further states: “Other than in elections of senators, which shall be elected by Greek Cypriots and Turkish Cypriots separately, political rights at the federal level shall be exercised based on internal constituent state citizenship status. Political rights at the constituent state and local level shall be exercised at the place of permanent residency.” No one, therefore, can undertake political activity as a Cypriot, he must first identify himself as Turkish or Greek.³⁷⁹ So for many Greek Cypriots the Plan was excessively oriented towards a bizonal situation in the sense of creating permanent

³⁷⁵ Ibid.

³⁷⁶ Claire Palley, Personal interview.

³⁷⁷ Andreas Theophanous, *The Cyprus Question and the EU: The Challenge and the Promise* (Nicosia: Intercollege Press, 2004), p. 82.

³⁷⁸ Justus Leicht, “Cyprus: referendum on the Annan Plan,” 24 April 2004. Available at: <http://www.wsws.org/articles/2004/apr2004/cypra24.shtml>

³⁷⁹ Ibid

ethnic and legal separation.³⁸⁰ Again, as in the 1960 constitutions, the institutions rigidly emphasised on the ethnicity factor which would be likely to result in separation.

The Greek Cypriot leadership did not favour the Plan which envisaged a model that makes the central government weak and gives both political entities extensive local autonomy.³⁸¹ The Annan Plan envisages a loose common state in which most powers would be attributed to the constituent states, which would coordinate policies in their spheres of competence. It is designed to enable the system to function smoothly by ensuring that the two conflicting sides not confront with each other often. For example, providing the main social services like health, education, and social security has been given to the constituent states. However, federal financial services will become necessary ones the large and ever increasing costs of such services come into place. That is why, in most federations, the provision of social services has been an area of co-responsibility. This is not the case in the Plan. The Plan designed to separate both sides in many respects rather than unite them. However, as far as the Turkish side was concerned, this would create some problem in implementing or affording these policies in their own state (tax power) due to economic disparities. So, on that point there is a need for different arrangements to avoid the possibility of the Turkish Cypriot being completely dependent on central government, something which would betray the very basis of the federal idea. The Turkish Cypriot leadership never paid enough attention to this problem and it was never truly realistic about the issue. As Markides said Turkish Cypriots never put on the table any demand that the social services should be vested in the central government. "Mr. Denktas did not want any power vested in the central government. Actually he did not want a central government. He wanted something by far more loosely than you see in the Annan Plan. The Turkish Cypriot side never insisted that certain powers should belong to the centre because they would have financial difficulties in operating such a scheme. Under the Annan Plan the federal government can collect only particular taxes. Taxing power was vested in the constituent states. Therefore, if the Turkish Cypriots suddenly say that health services should go to the central government it would be immediately necessary to revise radically the whole taxation system under the Plan. You cannot give powers without the necessary financial support".³⁸² Markides also says that at least for a

³⁸⁰ Viola Drath, "The Cyprus Referendum: An Island Divided by Mutual Mistrust," *American Foreign Policy Interests*, Vol. 26, pp. 341-351.

³⁸¹ Palley, Personal interview.

³⁸² Markides, Personal interview.

period of time the central government should not have vital powers because of the risk of deadlock affecting everyday life. If social services like health services were to belong to the federal state there would be a deadlock. The quality of the risks of addressing the quality of everyday life by reason of the dysfunction of the central government are decreasing because everyday life will mostly depend on the efficiency of the local government and not the efficiency of centre.³⁸³ "If we have this system we fairly ensure that peaceful people's life will depend on the efficiency of the local government they elect. I think that this is a big, real advantage and that is a system that where conflict and this is indeed after the solution we manage to get along for a period of years".³⁸⁴ Markides states that the traditional thinking was that, Turkish Cypriots believe that they have the weaker economic community. "But on the other hand they will also have to envisage the future because under a unified Cyprus there would immediately be such a development everywhere and especially in the Turkish Cypriot area. The concept that Turkish Cypriots are the weaker community will soon be disappear I believe. The Plan contained the particular system of aiding the Turkish Cypriot federated part for a number of years. After a time, I believe that it would be sufficient".³⁸⁵ But the important think that is not understood is the fact that maintenance of federal systems depends on the competition between the federal units. If a federal unit cannot afford the implementation of many services, this will destroy the functioning of the federal system. So, Unlike Markides says this does not affect only the local governance but the federal governance as well. This issue has to be given enough attention and understanding. In federal systems there is a need for the central government to have sufficient degree of centralisation in the economy in order to achieve certain standards that would provide at least similar services for the people living in different constituent states. Deprivation especially in economic sense is likely to encourage people to move to different constituent units that would destroy bizonality. There is a possibility of discrimination that is likely to endanger the functioning of the federal system. The Turkish Cypriot leadership might be right in insisting on a decentralised economic system in order to avoid any possible stalemate. But what do they do not see is what if they cannot provide the same services as the Greek side it will cause dissatisfaction among their own people and result in a weakening in the functioning of the economy and eventually a similar weakening in the federation itself.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

Cooperation in itself is not enough for the functioning of a federation; competition too is a vital component. The huge economic disparities between constituent units are likely to intensify conflict due to an absence of proper competition.

In the negotiations, the Turkish Cypriot leadership demanded loose federation although in fact it was not intended. It favored and insisted on a confederal solution. The Plan was highly decentralised. As Turkish Cypriot leaders said many things will be in the hands of the EU, but they will still be administered by both communities. As Markides said, "why do they fear? They are forgetting that a very wide area of government will be in the hands of the Turkish Cypriot community themselves, not only social services but economic development".³⁸⁶ The reason is a lack of trust and so a sense of believing that two independent states is the only real solution. Turkish Cypriots have been administering themselves for more than forty years. They do not want to give up all these rights even if it was not recognized internationally. As Denktas said "when you are making an agreement you do not only look at what it gives you, you also look at what it takes away from you. The communities do not trust each other and the Annan Plan that almost nullifies the guarantee system for us is the end of the matter because we are the minority in numbers and we need protection because we know that Greek Cypriots for a century or more have an aspiration on Cyprus with Greece to take it over. It will not end by signing an agreement".³⁸⁷ Denktas has never realised that the economic conditions in the North have to be at least similar to that in South. So a certain level of centralisation should be established on economic issues as it is in many successful federal systems. The Turkish leadership sticks stubbornly to political rights but it should be kept in mind that economic efficiency is also vital for the continuation of a federal system. The same leadership focuses exclusively on how to get a maximum degree of political power rather than how to keep the federal system functioning.

Palley points out that many Greek Cypriots want a strong federal government especially concerning economic issues. "The only argument in the discussions was the economic power of being sufficiently centralised. Otherwise, they would have completely different decision rules applying to workers in the North: different wages, a different social security. They think that decentralisation is very bad for the economy. Turkish Cypriots like to have as much power as they can to control everything at home rather than at the

³⁸⁶ Ibid.

³⁸⁷ Denktas, Personal interview.

federal level because the Greek Cypriots are in a majority except in the Senate. They don't like this and therefore they want to keep it at this level. The EU does not subsidize everything in order to attempt to equalize the economies of both communities. The costs of running a modern state are high. That is why, some economic powers should be more federalised. That may come up in talks if talks get serious because we want functionality, workability."³⁸⁸ Vassiliou points out that "there is a need not only for coordination but a lot of central authority. This central authority would ensure that things worked correctly in a single state."³⁸⁹ There is a need for correlation and co-responsibility in social services. Social services are a huge responsibility in any society and there is an unbroken demand for money. Unless there is cooperation you will have complaints (i.e. social insurance). For Vassiliou, these issues need to be addressed once there is goodwill and a desire to make it work. If not, nothing can be actualized. So, maximum decentralization is needed but also coordination.

For Eichengreen, Faini,, Hagen, and Wyplosz, "a significant weaknesses of the assignment under the Annan Plan is the lack of federal competences in areas where lax policies by one constituent state can undermine the effectiveness of policies aiming at the protection of citizens in the other constituent state, and where inappropriate policies in one constituent state can distort trade and competition in the internal markets of the UCR (education, health, social security, and commercial and industrial regulation including the regulation of safety of the workplace, minimum work standards, and product safety). There is a risk that less economically developed Turkish Cypriots state would try to compensate comparative disadvantages due to lower capital equipment and a less educated workforce by introducing a significantly weaker regulatory regime."³⁹⁰ For them another weakness is the lack of federal competences for financial regulation other than banking regulation. The risk here is that lax policies in one constituent state can undermine systematic stability in the other constituent state. The States should run policies determining their economic development, but the plan lacks the federal regulatory framework necessary to ensure the negative effects associated with such decentralisation will be avoided. Art 19.5 calls upon the federal government to take necessary measures in lieu of the defaulting constituent state if a constituent state fails to fulfil obligations of the

³⁸⁸ Palley, Personal interview.

³⁸⁹ Ibid.

³⁹⁰ Barry Eichengreen, Riccardo Faini, Jurgen von Hagen, Charles Wyplosz, "Economic Aspects of the Annan Plan for the Solution of the Cyprus Problem," Report to the Government of the Republic of Cyprus, February 17, 2004, p.viii.

UCR vis-à-vis the EU. "But it is unclear what the federal government could do to force a constituent state to pass and enforce proper regulation in these areas. Given its financial and administrative weaknesses as constructed in the Plan, the federal government will be unable to implement policies for which a constituent state will be responsible. Nor will the federal government have much financial leverage to penalise constituent states for laxity in discharging their responsibilities."³⁹¹ If tax collection is to be done by the constituent state administration, the latter can easily withhold their shares of indirect taxes, giving the federal government no leverage from that end. Short of a genuine federal competence in these areas and the means to implement federal policies, federal enforcement of EU rules will be weak at best. Art 14e assigns the federal government competences for the federal finances, including budgetary policy, indirect taxation, and federal economic and trade policy.

According to them, the federal government may not have the means to fulfil its obligations if a constituent state refuses to deliver proper implementation. The problem is aggravated by Art 14.4, which stipulates that international obligations, which include EU obligations, will be implemented by the level of government under whose competence they fall. This is balanced by Art 19.4 which stipulates that in cases where the EU requires the existence of a national authority to implement a part of the *acquis communautaire* this authority will be established at the federal level.

Likewise for Papapetrou, one of the weaknesses of the plan is the lack of stronger, clearer authority of the supreme financial authority in order to be able to implement certain policies. "So we can make policy with the laws and regulations. You cannot have tax quite different between two sides because this undermines any financial authority. So you need a unified policy vis-a-vis economy."³⁹² He indicates that Cyprus is too small to be divided into two economies. Certain measures for the protection of the financially weaker parts of the population are necessary in order to encourage financial activity. He believes in one economy to have targets and maximum economic development. "As soon as the limitations would be lifted and be a member of the EU, the North side will receive enormous amount of money for development and from investments. So, it would be a very serious benefit of the Annan Plan."³⁹³

³⁹¹ Ibid

³⁹² Papapetrou, Personal interview.

³⁹³ Ibid.

Distribution of functions is particularly related to economic and fiscal policy issues. For Papadopoulos, no state can be considered unified, unless it has a unified fiscal and monetary policy and an integrated economy, assured by freedom of movement of persons, capital, and goods. He states that in the Annan Plan, these principles were ignored. "But they are relevant not only to the efficiency of the State but also to legitimacy. The functional weaknesses of the Plan endanger the smooth activity and participation of Cyprus, with one voice, in the European Union".³⁹⁴

George Vassiliou states that one of the main objectives of the solution should be to contribute towards achieving parity between the two Constituent States. "I am convinced that the convergence will be faster than we can estimate for many reasons...[like] ... the flow of investment both by international businessman and Cypriots residing abroad; the significant increase in the number of tourists visiting Cyprus and particularly the Turkish Cypriot Constituent State; the help that the EU and the international community will provide, mainly to the Turkish Cypriot constituent state. ... Convergence will be the result of all the factors referred above and only to a very small extent due to direct federal transfers".³⁹⁵ He states that the Greek Cypriots in the first years will carry the full burden of the Federal Budget while Turkish Cypriots will benefit substantially from it. "With unification, there is a guaranteed and prosperous future for the Turkish Cypriots. We thus expect the Turkish Cypriot side to catch up with the Greek Cypriot side and achieve economic parity within a reasonable time frame. Given that we succeed in creating a positive and trusty environment as a result of a successful partnership, this is expected to occur very quickly. Our estimates show this to be possible within the next ten years, if not earlier."³⁹⁶ He argues that parity can only be achieved through investment and development.

Vassiliou states that within the EU, there cannot be any significant discrepancy in the tax rates among the states or their federated components. Income taxes can differ among the states but the rates between the two states should be at least similar, if not identical. This is beneficial for both, but mainly for the Turkish Cypriots. For him, the solution will result in immediate benefits to the Turkish Cypriot economy. It is plausible to assume that economic development accompanied by prudent fiscal policy and practices will

³⁹⁴ Papadopoulos, "Keynote," op.cit.

³⁹⁵ George Vassiliou, "The Economics of the Solution Based on the Annan Plan," September 2003, Available at : <http://www.kema.com.cy/Annan%20Plan%20En.pdf>

³⁹⁶ Ibid.

considerably improve the fiscal stance of the Turkish Cypriot component state. Tax revenue is expected to rise gradually to relatively similar ratios to those of the Greek Cypriot state, as the two economies will eventually converge.³⁹⁷ VAT and the other indirect taxes are the main source of income especially of the Turkish Cypriots. The Plan specifies that one third of the total revenue from VAT and other indirect taxes, after paying the dues to the EU, will also be returned to the constituent states in proportion to their respective population size. The Plan also specifies that an amount, not less than 5% of all indirect taxes, net of transfers to EU, will be used to finance cooperative endeavours between the Constituent states or between municipalities. After adding up all the above costs, we still expect a huge surplus to result, particularly since on the basis of the Plan, servicing the debt will be the responsibility of the Constituent States. This federal surplus is not surprising since most of the entailing high expenditure activities like education, healthcare, social security, welfare, etc. remain in the domain of the Constituent States. As a result both Constituent States would face very significant deficits. So, as Vassiliou states, at least for an initial period of say ten years, two thirds instead of one third of VAT should be returned.³⁹⁸

Those who favour unification under the federal system rely on the EU that would help both communities to deal with their problems too. This is to some extent true. The EU is likely to insist on both communities reaching a compromise using the carrot and the stick. As Vassiliou stated "When we have a solution, then I am convinced that trust between the communities will be addressed in a relatively short time but it requires determination and the desire to solve the problems on the part of the political leaders. Thank God for the EU. In the EU, the philosophy of compromise is very strong and at the same time the philosophy of helping one another and so on". But this is not enough to engage in accommodative behaviour in federal systems. Another thing is that federalism is not only a constitutional arrangement or a sociological characteristic of some societies but it should be considered as a way of life and it has a moral dimension.³⁹⁹

Cypriots cannot deal with their problems just because of the EU membership. Vasilliou states that there was a possibility that federalism could manage ethnic conflicts with the Annan Plan. He says that the Annan Plan would have helped find the solution. Within that

³⁹⁷ Ibid.

³⁹⁸ Ibid.

³⁹⁹ Samuel V. LaSelva, "Federalism as a Way of Life: Reflections on the Canadian Experiment," *Canadian Journal of Political Science*, Vol.26, No.2, January, 1993, p.231.

solution, despite the problems, he believes that there was no danger of ethnic conflict. "Don't forget that we are part of the EU that, by itself, defines everything. You have to accept that unfortunately because of our history, the Turkish Cypriots do not trust the Greek Cypriots and the Greek Cypriots do not trust the Turkish Cypriots or rather Turkey. There is a very deep fear of Turkey and on the other hand Turkish Cypriots have a fear of Greece. I would even say many people have an inferiority complex, you can not do anything about this. Because of that they wanted to be sure that whatever they did they would have a say. So, this would certainly make decision difficult. But I am an optimist and a realist and I believe that because we are in the EU".⁴⁰⁰ He admits that if they were not in the EU, he would have never accepted the Annan Plan because the possibilities of break up would have been huge for him. But being in the EU, he was convinced that all these weaknesses of veto rights need for agreements would have been overcome. Otherwise, "Cyprus would have never had the position in the EU. They would always say we abstain. After a beginning they would realize that this is not realistic and not to the favor of the country. If you look at it objectively, for goodness sake, the interests of the country which is one, with all these vetoes, we will work within the EU. But to do that, you have to be optimistic".⁴⁰¹

However, Claire Palley points out that this is not the case. "Provisions of the Annan Plan could not have been changed under the EU umbrella because it is a matter for the constitution and there is no question of challenging anything just because it was contrary to *acquis communautaires*. The Plan prevailed over the *acquis communautaires*. You cannot change the constitution unless you get the agreement of both constituent states. The EU can interfere in those areas where it has competences. Competences were reserved in many ways to both constituent states or to the Cyprus Republic. If they did not reach an agreement because of the decision-making processes, the EU could change things. That is a very optimistic point of view. I wish I believed in it. If Greek Cypriots had believed that they would have supported the Plan".⁴⁰² This means that although EU membership is likely to facilitate cooperation, it is itself less likely to develop the tradition of compromise.

Many of the interviewers underestimate the importance of the separation of competences, which is so crucial in federal systems, due to the EU factor. They put too much emphasis

⁴⁰⁰ George Vassiliou, Personal interview, 8 December 2008.

⁴⁰¹ Ibid.

⁴⁰² Palley, Personal interview.

on the EU being in charge of dealing with many issues. Toumazos Tselepis points out that it is very important to be able to have separation of competences in a proper way. For him this is not a serious question in the Annan Plan. "More or less necessary competences for the central government are here to safeguard the unity of the country, economy of the country and international relations of the country. The main policies also are decided in Frankfurt not in Cyprus and many problems are transferred to the EU. So, I don't think this is a major problem."⁴⁰³ He believes that many things would be left to the EU and there is no reason to worry. But still everything would need cooperation and coordination in spite of the EU.

Costas Apostolides, member of the negotiating group of Republic of Cyprus, who was in favour of the Plan but the continuation of the Republic of Cyprus as well, states that on the distribution side, there was always an agreement that there should be a development fund for the Turkish Cypriot community coming out of federal funds or directly from the Greek Cypriot administration. "We support the upgrading of the Turkish Cypriot economy not through budget support but through a direct assist developmental system. This is an aspect of inefficiency of the Plan."⁴⁰⁴

For Costas, one part the Annan Plan was efficient, in other aspects it did not solve the problem. "Federal systems are more expensive because you have to support more levels of government. So, there are more redistributive costs, something the Annan Plan did not address. Taxes would have to increase every time because it is more expensive system to support vis a vis a centralised system. However, in the Annan Plan this is more or less fixed." Costas, too, believes that the EU law changes everything and solves many problems. EU wants also certain things. Protection of competition has to be federal. You have to have price competition. Regulation, or standards would not be federal. Minimum standards should be provided. This is the inefficient side for Costas: Administrative inefficiency. He is right in pointing out that regarding delivering social services to constituent states, the standards have to be similar. It has to be the federal government that provides standards. Like many other economists, Costas believes that many problems go away with the EU. "I do not think it is necessary to separate people but I do not disagree with the idea of more local government as one would have in federations because that would take most of the areas of possible friction away. "We have the EU reducing the

⁴⁰³ Toumazos Tselepis, Personal interview, 31 August 2007.

⁴⁰⁴ Costas Apostolides, Personal interview, 10 August 2007.

risks of conflict and you will also have the federation reducing them. But I think on the whole Cypriots get on fairly well together. I do not expect serious problems. By having local administration in the second community, the areas of possible friction are addressed to your local government rather than the Greek Cypriots.”⁴⁰⁵ Similarly, Papapetrou states that the concept of EU weakens the national factor and strengthens the supranational factor and enables both Greek and Turkish Cypriots to cooperate and the interests of both communities to benefit. “The advantages would be so big that will not make us think of the differences from the past because our problems and priorities will be different.”⁴⁰⁶ Papapetrou also points out that with the accession of Cyprus to the EU the vast majority of the important decisions are taken in Europe; in Brussels, or in Frankfurt and not in Cyprus and both communities are bound to implement policies that are decided upon by the EU.

In federal systems there are various ways of dealing with disputes between the central or provincial governments. In many states, the highest national judicial authority – generally the Constitutional Court or Supreme Court – has jurisdiction in disputes between the central and provincial governments. In situations where the constitution or statute that establishes the allocation of political authority between the central or provincial governments is unclear, the judicial branch plays an important and ongoing role in clarifying the judiciaries in different states exercise judicial review over the allocation of political authority between central and provincial governments. Other states have created separate mechanisms or formed special councils/committee to resolve disputes between central and provincial governments before they reach the judiciary. Under the Annan Plan, it could be likely that every issue would be transferred to the Court to be dealt with so both sides would be reluctant to show an effort to reach an agreement. It is likely that this would create deadlock many times which would paralyse society. So, the Greek Cypriots see it as a sign of inferiority and injustice. Papadopoulos stated that the Annan Plan is unjust to the Greek Cypriots and does not give serious guarantees about functionality and viability. Papadopoulos points out that deadlock resolving machinery has been suggested to resolve dilemmas. “But views are not always reconcilable and ultimately the will of one or the other side will prevail. The problem has not been avoided, but has been exacerbated by using other parts of the governmental system as substitutes. It

⁴⁰⁵ Ibid.

⁴⁰⁶ Palley, Personal interview.

was proposed that the federal Constitutional Court should take executive and legislative decisions if the federal executive or the federal legislature could not agree.” For him, to add insult to injury, foreign judges were included in the Court, while, at the same time, this organ would already be overly politicised by its executive and legislative interventions. This combination of ineffective decision-making procedures and damaging deadlock-resolving machinery was one of the important concerns of the Greek Cypriots”.⁴⁰⁷ Claire Palley states that both sides opposed foreign judges because it was seen as being too insulting for a country that is treated as if it was not capable of deciding itself.⁴⁰⁸ Theophanous argues that the foreign judges would potentially acquire immense political powers through a Supreme Court which is unique. “Decision making processes would frequently be deadlocked because of the need for special or double majorities. If this is not feasible, the matter will go to the Supreme Court where, if the division on ethnic line persists, the final decision will be taken by the foreign judges. The Plan provides for a rotating presidency and for double or special majorities in the decision making process which would tend to create more bottlenecks. The efficiency and effectiveness in the decision making process would be severely restricted.”⁴⁰⁹ Markides says that “In the court, you have to be able to make a decision. At least for the transnational period, for the first five years or something to have a person that is really neutral and who can help would be a very good idea. But again this relates a feeling of inferiority and a complex of not being truly yourself for Turkish Cypriots and would point to a lack of self- confidence as far as the Greek Cypriots were concerned. He states that as those who criticize the provision of a deadlock resolution mechanism did not do so in time they did so during the period leading to the referendum but not before and that the Greek Cypriot side had not raised this issue in strong terms during the negotiations. The solution was a Greek idea. “Our initial reaction was hostile but at the end of the day we accepted it because nobody suggested anything better”.⁴¹⁰ During the period leading to the referendum it was made a big issue. One of the most difficult of the issues to solve concerned the deadlock resolving machinery. Nobody who criticized the three judges notion suggested any real effective and viable deadlock resolving machinery alternative that would have a chance of being accepted by both communities. Papapetrou states that

⁴⁰⁷ Ibid.

⁴⁰⁸ Palley, Personal interview.

⁴⁰⁹ Theophanous, *The Cyprus Question*, op.cit. p. 81.

⁴¹⁰ Markides, Personal interview.

"It is not best for the country to have foreign judges or foreign people to decide in cases of deadlock. But in the absence of any substitutes to support, we have to use it as a temporary basis because, with a solution, with unification, especially Cyprus in the EU, confidence between the two communities will be built up very quickly. The priorities of both communities will not be based on national criteria but rather on ideology. Irrespective of whether you are Greek or Turkish Cypriot, you have to be in a group. So all these situations will make all these small and narrow nationalistic differences vanish".⁴¹¹ He believes that although vetoes or consensus is not the best way to administer the country, he thinks that the Annan Plan could be more functional if it avoids deadlock. "But we have to understand that we have to start from a compromise. As time passes, there will be a will for unification and working together especially from the fact that major decisions have been taken in the EU not in Cyprus".⁴¹² "It is not easy to find an alternative deadlock resolution mechanism. This is the negative side of the Plan which is not consistent with the separation of powers. A court cannot deal with political questions. This is the main principle of any democratic system. Three powers must be separate. In our case, in a case of deadlock the court will decide."⁴¹³ In federal systems, in any case of dispute between federal and state governments concerning the extent of the powers allocated to them under the constitution, some body other than the federal and state governments must be authorised to adjudicate upon those disputes. This would be an impartial agency not only to arbitrate disputes about the division of power between two jurisdictional spheres but also to interpret the meaning of the constitution and to protect and interpret the federal compact. It is needed to be independent from both federal and the provincial government and should stand sublimely above both. Another negative element for him is the existence of foreign judges who will decide for Greek Cypriots and Turkish Cypriots. Tselepis says that the principle of political equality between the two communities is respected, at least by Akel. And it means that in some cases there is a need for a kind of consensus between two communities. For him the question is if both sides are not able to reach a mutual agreement and work a consensus, they will then face a deadlock. However, "in this case, in the case of Annan Plan, deadlocks are excluded probably because the court will decide in these cases. This is a positive element".⁴¹⁴ He states that "in such cases, in other federal

⁴¹¹ Papapetrou, Personal interview.

⁴¹² Ibid.

⁴¹³ Tselepis, Personal interview.

⁴¹⁴ Ibid.

systems, they create some kinds of commissions, committees composed of all sides in order to decide but in the case of Cyprus if we create a committee to decide we need equal representation of the two communities because if there is a deadlock it will be on questions which demand consensus. So, if we have a deadlock and we propose to create a Commission we cannot have more Greek Cypriots than Turkish Cypriots or vice versa. The representation must be equal. In a case of equal representation it is possible that if we face deadlock they will be unable to find a solution". Thus, "the system of the Annan Plan is not consistent with the separation of powers but on the other side they realise that this is a realistic way to avoid deadlocks and it is important for the functionality of the federation to avoid deadlock. We can view this question optimistically. It may not be dangerous for both communities to have somebody else decide for them. This will help them to avoid this situation." In all countries, the Supreme Court may directly and indirectly play a political role. However, the way the Annan constitution is structured is such that the Supreme Court will be very busy and eventually the three foreign judges will become very influential, perhaps the most influential political figures in Cyprus.⁴¹⁵

Apart from the decision making process being likely to give rise to deadlock, attention should also be paid to the possibility of two units ending in deadlock. Although the Greek Cypriot leadership is aware of the problem of two unit federations, it does not want even to think about other possibilities. Neither side seem to ready to share power. As Markides stated "the problem is not from the concept of federalism but from the fact that there are only two members of the federation. It is too late to go back to three or four federal parts. Who is going to administer the other. This is like creating another deadlock even before starting negotiations. So, I think we must stick to the concept of a bizonal bicomunal solution whatever the difficulties". For Toumazos Tselepis, this is a serious difficulty in the Annan Plan. "The federation will be composed of two regions and two communities. Mechanisms will have to be in place to avoid deadlocks between regions and communities. "Deadlock resolution mechanisms are always a problem but in Cyprus the problem is even more serious because of the two communities and two regions and because of the history of the problem". For Papadopoulos the main thing is to discourage any group, area, community or unit from pursuing secession or partition. This consideration is most important in the case of Cyprus, when the constituent units would be

⁴¹⁵Theophanous, *Cyprus Question and the EU*, op.cit., p. 82 .

only two, and where one of the units has, as its declared aim, the establishment of a separate state, coupled with the claim of unanimous co-decision at all levels".⁴¹⁶

Vassiliou states that "We have to give to the federated states the maximum degree of competences".⁴¹⁷ This is the idea that is also supported by the Turkish Cypriot leadership. However, they do not see the possibility of certain difficulties. This is likely to work if the constituent units are more than two and they do not have deep economic disparities. Of course it is viable if the constituent units are able to afford to legislate and administer many aspects. But what if they cannot? What is the point of having that much loose federal system if they cannot implement even the simplest decisions and fulfill its duties and obligations because of economic inefficiency? This would create another major obstacle in operating the federal system. This has been realized by the Greek Cypriot leadership⁴¹⁸ who demand more centralization, at least in the economy.

The Analysis of the Plan by Turkish Cypriot Actors

In the Presidential election on 16 February 2003 in the Greek Cypriot-administered part of the island, Greek Cypriots replaced Glafkos Clerides who declared his receptivity to the UN plan, with Tassos Papadopoulos who rejected it. By contrast, on the 13 December 2003 in the parliamentary elections in the Turkish Cypriot-administered north, the pro-Annan parties did well. Although the Annan Plan fell short of satisfying some Turkish Cypriots' aspiration for a separate state, it went a long way to satisfy two key objectives, viz. the desire for self-government and the continuation of Turkey's guarantor rights. The prospect of imminent EU citizenship seemed to represent a better prospect for their future than continuing on with the existing state of affairs. Arguably, the primary motivation for Turkish Cypriots to support the Annan Plan was the economic benefits that would flow for their community.

The former Turkish Cypriot President Rauf Denktas said that when the matter was looked at from the point of sovereignty, permanent derogations and the presence of the Turkish army on the island, the plan was no success at all.⁴¹⁹ The rightist parties and Denktas believed that federalism envisaged in the Annan Plan would not bring a workable

⁴¹⁶ Papadopoulos, "Keynote," op.cit.

⁴¹⁷ Vassiliou, Personal interview.

⁴¹⁸ Markides, Personal interview.

⁴¹⁹ "Denktas Says No", http://www.trncregency.org/press/news/denktas_says_no.htm and Turkish Republic of Northern Cyprus President's Office, "Annan Plan is the Removal of Turkey from Cyprus," Available at: http://www.trncregency.org/press/news/annan_plan_removal.htm

solution. Actually, they have never believed in the ability of any form of federal system to deal with the ethnic problem in Cyprus. Denktas states that "power-sharing cannot work since it was experienced in 1960-63".⁴²⁰ However, the situation would be different from the one experienced in 1960s. Beside a consociational system, the system would also be governed according to a territorial based federal structure. For the Turkish Cypriot leadership that would not make any difference.

The president of the TRNC, Mehmet Ali Talat argues that the Annan Plan envisages a good federal system: It proposes a federal system in which both communities are involved in decision making mechanisms. That is why neither community would feel that it is excluded from the system. "It is not possible to take decisions that each is against. If there is no consensus the plan demands each community reach certain threshold percentage before any decision can be taken."⁴²¹ For Olgun, who represents rightist opinion in North Cyprus, and was Denktas's undersecretary, federalism is not the right model for Cyprus today. "Federation does not put an end to the aspiration of Greek Cypriots to be the dominant force in Cyprus. The EU umbrella is nothing. No matter how good a text you may have it is nothing. And I do not think that it is a good text anyway. The Plan does not give enough powers to Turkish Cypriots to confront the challenges coming from Greek Cypriots. The written text does not necessarily mean that it is a good plan. Everything is about people".⁴²² For Olgun, the Annan Plan is a written legal text and it becomes meaningless when applied to circumstances that do not fit within its parameters. He states that there are tremendous weaknesses in terms of checks and balances to protect Turkish Cypriots against this intention, an historic aspiration of Greek Cypriots. "In the 1960 Constitution, Turkish Cypriots were not only vested with veto rights on important issues, but they were also given the right of separate majorities. That was for the collective interest of the Turkish Cypriot community. That is not the case in the Annan Plan. It is not a collective right on the part of the Turkish Cypriot, but one unknown individual".⁴²³ For Denktas the Annan Plan created a state of affairs where the majority would have a hand in everything. "In fact it was not establishing a federal state it was establishing a majority government with certain powers to what they all regarded but did not say the minority

⁴²⁰ Denktas, Personal interview.

⁴²¹ Mehmet Ali Talat, Personal interview, 18 August 2007.

⁴²² Olgun, Personal interview.

⁴²³ Ibid.

Turkish Cypriot community.”⁴²⁴ This statement shows that in spite of the strong rights of both communities in the centre given in the Annan Plan, the leadership was not ready for any type of power-sharing. However, for Talat one of the most important strengths of the Annan Plan is that it is designed to protect the political equality and maintain a balance between both communities. Moreover, for him, the principle of political equality would be guaranteed by the arrangement in which the senators would be elected on the basis of nationality. That means that no matter where they live they will vote for their representatives in the Senate based on their ethnic origin. Talat points out that both constituent states are given competences to execute and implement certain policies in order to diminish confrontation between the two sides. When necessary, they would cooperate with each other. And if they can do this, they are in a position many competences together in the future. “As soon as you improve confidence, ethnic characteristics will lose their importance. There would be a need from senators of both communities to select the members of the council of ministers. Thus, the extremes on either side will be denied the chance to be elected by their respective communities”.⁴²⁵ For him, this is an important and correct mechanism which allows those who are willing to come to an agreement, the moderates, to be elected. For example, the Turkish senators would not vote for extremist, fanatical Greek senators even though the Greek senators might vote for them. The same mechanisms of protection against fanaticism would operate for both sides. It would take the vote of both communities to elect them, a very unlikely, if not impossible eventuality. “Nothing can be done if it is opposed by any community.....it can be functional as well, since there is no veto power for any single person to lead to deadlock.”⁴²⁶

The Turkish Cypriot leadership under Denktas never thought the federal system or any type of power-sharing arrangements was a possible option. This is expressed clearly in many of the things that Denktas has said. “The Plan foresaw one people in Cyprus made up of two communities. Two national establishments, two national communities were partners irrespective of population numbers but in order to protect them each community was granted a veto right. But such an agreement can work only as long as both sides are committed to it, and work to maintain it.”⁴²⁷ He states that under the Annan Plan there is a

⁴²⁴ Denktas, Personal interview.

⁴²⁵ Talat, Personal interview.

⁴²⁶ Ibid.

⁴²⁷ Denktas, Personal interview.

Greek Cypriot party which had destroyed the 1960 agreements in order to become the master of the whole island, to convert Turkish Cypriots into a servile minority group and to get rid of the Guarantee system. "The Greek side pretended to be talking federation but while proposing a federation their real motive was to dismantle the Guarantee system, and to remove Turkish soldiers from the island. I made all the concessions they needed except that the status of the Turkish Cypriot people should be a cofounder partner and therefore a sovereign people as one of the two sovereign peoples but not as part of a single entity in "one" people: We wanted to be Cypriot people but as two separate people communities. We had all these rights under the 1960 Constitution. It did not work because the Greek Cypriots did not accept it and they wanted to get away with it. This time without the guarantee of admitting us to the EU and allowing the Greek Cypriots the right to argue within the EU legal framework what laws Turkish Cypriots might be governed by, the Plan cannot be implemented."⁴²⁸ Again, the Turkish Cypriot leadership insistence on separate and national orientations left no room for the emergence of an integrated Cypriot society but led to the cementing of antagonisms between the ethnic communities. It is crystal clear that there is a deep mistrust. Building trust is so necessary in order to make hostile communities realise that shared common interests would enable them to run any federal system.

It is important to design a federal formula to deal with ethnic conflict. However, this is not enough for the maintenance of federal systems. The preconditions of federal systems have to be available in every federal society in order to be sustained. The lack of desire for a federation makes the system unstable and even facilitates ethnic conflict. That is the main reason that explains the failure all previous negotiations and agreements in Cyprus. Neither side have never really bargained nor negotiated on the basis of federal philosophy. In order to encourage the two antagonistic parties to work for common ends which are vital in a federal system there is an urgent need to reduce mutual hostilities and build up trust. This would eventually help both sides to form a Cypriot identity. Engage in cooperative acts for common goals that could not obtain on their own would help them to deal with their mutual hostility and to develop a larger group consciousness. Having and working on common goals would enhance bonds between the parties in conflict. The European Union can offer such a chance to successfully overcome some problems: ones that both communities had worked together on and tasted the benefits of togetherness.

⁴²⁸ Ibid.

Eventually, particularistic antagonisms would be dissolved and a new group identity could develop as the participants become caught up in a web of mutual dependence.

Ergun Olgun, stresses the preconditions for the successful working of federal systems. One thing should be remembered about federal systems, especially ethnicity-based ones that are established by the antagonistic groups. It is nothing to do with having a "strong" or a "high degree" of mutual interest and trust as preconditions for the successful working of the system as he argues. He states that there is some kind of "very strong" common interest especially at the initial stages of the formation of federation that would be strong enough to keep them together against the pressures or against the problems that they will encounter in the process of establishing such things in a federation. Olgun says that "where two constituents which form a new federation which hopefully after so many years mistrust and conflict between them, allow federalism to be the basic attraction to allow them to speak to each other. So the requirements would be that they have a "very strong" common interest to work together and a "high degree" of mutual trust between the parties".⁴²⁹ According to Olgun, this is also absent. He states that a need for cultural partnership, the degree of tolerance and respect, an overarching "strong" mutual interest trust and confidence needed for success.⁴³⁰ Likewise for Denktas federalism needs a supporting 'spirit', which does not exist in Cyprus. "Federalism in Cyprus, in whatever shape, will not work. You cannot design such an institution to solve the ethnic problem. Federation is dealing with the feelings, beliefs, and national aspirations of peoples."⁴³¹ These are true but they are not possible to develop unless there is real commitment. The Turkish Cypriot leadership made constant reference to path dependency, and seeing little alternative but a two state solution. Many of these preconditions are likely to develop under specific arrangement if leaders really want to.

Lack of goodwill and a void the area of 'common interests' have always resulted a breakdown in negotiations. Mustafa Akinci who was the leader of the centre-left Communal Democracy Party (TDP) and who was determined to work for a compromise settlement, and who was in favour of the Plan, points out the importance of good will as well as common interests in accommodating differences. "Now, we do not have either but concerning common interest we can achieve that understanding with the process. We first identify ourselves as Greek and Turkish rather than as Cypriots. So we cannot meet under

⁴²⁹ Olgun, Personal interview.

⁴³⁰ Ibid.

⁴³¹ Denktas, Personal interview.

the Cypriot identity. That is why, it is difficult to reach consensus since we have the tradition of conflict culture. So this will depend on the process. We need to develop a common culture. Both communities, to a large extent, are not ready but there are some in both communities who have that culture and who should help people to move in that direction. At the moment Cypriots are not ready for federation. Everything will not be perfect, but we will learn to deal with our differences by learning day by day".⁴³²

For Denktas, in Cyprus, settlement on the basis of equality does not exist. "The Greek Cypriots look at numbers. A paper guarantee partnership is not acceptable because we have no confidence".⁴³³ However, it should not be forgotten that at least some attempts (i.e. Confidence Building Measures) have been introduced to deal with these problems but they were all rejected by both sides. All the negotiation processes proved that the Turkish Cypriot leadership had never believed in and were never committed to any form of power-sharing. As Denktas said "there are advantages in the Annan Plan but when you are making an agreement you do not only look at what it gives you, you also look at what it takes away from you. The fact that it almost nullifies the guarantee system for us is the end of the matter because we are the minority in numbers and we need protection because we know that Greek Cypriots for a century or more have an aspiration with Greece to take over Cyprus. It will not end by signing an agreement. Mutual suspicions exist. So, if there is no confidence between two sides, how can you have a federation?"⁴³⁴ He is right in saying that without the conditions of common interests and trust, it is likely that a federal experience would fail. Both communities should share this. Instead of blaming the other side it would be sufficient to start from somewhere in order to at least start to build some degree of trust. This is in sharp contrast to Olgun's position, who believes that mutual trust is a *sine qua non* for any discussions to begin.

The problem is that due to disparity in the size of the population of Turkish Cypriots, Denktas did not accept shared sovereignty. "They take away our sovereign rights as second people, it takes away statehood and makes us a province". He does not seem or want to understand that this is exactly what federal systems are about. "The Plan will stop very short of being a proper federation. When the balance of population numbers is so different, trying to equalise it in such a way that the majority population are unhappy to

⁴³² Akinci, Personal interview.

⁴³³ Denktas, Personal interview.

⁴³⁴ Ibid.

accept a new arrangement will immediately destroy the concept of federation.”⁴³⁵ As Denktas claimed, it is obvious that one of the aspects of the demographic structure of multi-ethnic polities, which would seem critically important to federal stability is the number and relative size of groups claimed to condition the degree of political accommodation of the various ethnic groups and the degree of systemic stability. Where a single group enjoys a strong majority position, the political status of the remaining groups may be very unstable. So what is important here is to find particular institutional arrangements that would enable them to share power rather than divide both communities forever as rightist parties and the leadership under Denktas desired. This is asymmetric federalism. Both communities would face obstacles because in an asymmetric society to achieve solution between groups requires that the members of different groups be accorded different rights. This accommodation of difference may impose restrictions on the members of the bigger community; hence it is a burden.⁴³⁶ So, one of the challenges facing Cyprus today is to find an acceptable form of “asymmetrical federalism”. Asymmetric arrangements grant powers to one region which are not given to the other. This should not be considered only as a set of extra-rights for a particular community, but also more importantly, as a process that aims to achieve a progressive political and social integration.⁴³⁷

For Olgun, the federal system envisaged in the Plan cannot avoid ethnic conflict in Cyprus because Greek Cypriots believe that Turkish Cypriots are not equal. This fear, to some extent, could be dealt with by different constitutional arrangements mentioned above. However, all the UN proposals designed a model that emphasise equality, which make them so rigid and so complex. Moreover, only the two main communities can polarize the system but if this is added in two units in federation the problem is likely to be double. The spatial distribution of ethnic groups is another aspect of the demographic structure of multiethnic polities important for stability in federal systems. The potential for secessionist movements will be much greater if a group is concentrated in a particular region and constitutes the overwhelming majority of the population of that region. In the model designed in the Annan Plan both aspects of demography would presage a high level

⁴³⁵ Ibid.

⁴³⁶ Niyazi Kizilyurek, “Historical grounds of Federal State in Cyprus,” Available at: <http://www.cypruspolicycenter.org/dosyalar/niyaziKizilyurek.doc>

⁴³⁷ Metto Gianni, “Multiculturalism, Differentiated Citizenship, and the Problem of Self-Determination,” in Fred Dallmayr and Jose M. Rosales, (eds.), *Beyond Nationalism? Sovereignty and Citizenship* (New York: Lexington Books, 2001), p. 236.

of political instability. The demographic structure of Cypriot society would hardly seem likely to provide extensive political accommodation of Turkish Cypriots and it is likely to provide the basis for attraction to a strategy of secession. So, what is important is to disperse the majority group and establish more than two constituent units in order to avoid concentration of the minority in one unit. However, this alternative has never been given any serious attention at by either side or by UN.

It is evident that in order to overcome the possible difficulties of a possible Cypriot federal state, there is a need for something more than institutional arrangements like leadership as stressed by the centre-left Pro-Annan Party the Communal Democracy Party (TDP) leader Mustafa Akinci. But it should be realised that for the establishment of a federal system both leaderships should believe and convince their followers that there is no any other choice. They should accept and teach their communities that federalism is both self-rule and shared rule. For instance, the Turkish Cypriot leadership do not see that federalism, while endorsing the perpetuation of several cultural groups in a single political society, also requires the existence of a common political culture. Members of all cultural groups will have to acquire a common political language and conventions of conduct to be able to participate effectively in the competition for resources and the protection of groups as well as individual interests in a shared political arena. Thus a multi-ethnic democratic state is not grounded in a kind of national identity, but in the socialisation of each citizen in a common political culture.⁴³⁸ This would require the political will to consider the interests of all those who live in the same country, independent of their ethnic and cultural peculiarities. The Turkish Cypriot leadership always paid attention to only how to get maximum self-governance and equality rather than how to stand as protector of common institutions.⁴³⁹ The institutions are likely to play important roles in achieving an integrated Cypriot society. However, including the 1960 constitution and the Annan Plan, all the UN constitutional proposals prevented both communities in developing the necessary bonds that would help them function as a unified Cyprus. The loyalty to the respective ethnic community and not to the Cypriot state was seen as “the healthy expression” of the national identity.⁴⁴⁰ As Niyazi Kizilyurek stated that “What seemed to be in conflict in Cyprus were the national ambitions and the existence of the Cypriot State

⁴³⁸ Kizilyurek, op.cit.

⁴³⁹ Fatma Azgin, workshop in NearEast University, Cyprus Problem, 31 May 2007.

⁴⁴⁰ Kizilyurek, op.cit.

itself; the former was over-emphasised and the latter was underestimated.”⁴⁴¹ The formation of the Cypriot state in 1960 had institutionalised this. Eventually, the two communities found themselves in a violent conflict, which has put an end to a coexistence of Greek and Turkish Cypriots ever since. The similar constitutional model in terms of preventing both communities to develop common interests has been introduced in the Annan Plan. As far leftist pro-Annan party (New Cyprus Party) leader Alpay Durduran claims, the Plan was objectionable due to its dividing character and the way it limits the relationship between the two communities. “One of the weaknesses of the plan is that it divides everything. It was likely to prevent the establishment of bicommunal institutions that is why our party has been turned into bicommunal one in order to bring both communities together. Under the Plan, there is no opportunity to bring two communities together. For example, fitting with a bicommunal plan that we now support, the composition of the Senate would facilitate a dependence of political parties from both communities on each other that would enable them work together. Under the Annan Plan, representation in the Senate would be based on a 50-50 ratio. So, it is not possible for a government to get a vote of confidence from the parties of the other community. If a government had been formed as a result of a vote of confidence, the Turkish Cypriot parties can be part of the government if it would have enough deputies. The prime minister could have come from either community. This is not the case in the Annan Plan. The parties of both communities in the parliament would not need each other. The non-existence of bicommunal institutions divides and leaves both communities separate. It’s very obvious that in both the Senate and the House of Representatives division and fighting would be inevitable and Cypriots would not be able to develop good relations with each other. So, it was a risky plan actually”.⁴⁴² This means that the Plan does not give a chance to the development of the federal principles like reciprocity and mutual dependence.

Cooperation is an essential feature of federal systems. When it comes to cooperation, both leaderships show a sign of exaggerated fear. Olgun says that federalism is so complex and so complicated, so costly to them. All partnerships require different mechanisms to solve decision-making problems. You cannot make decisions on your own in a partnership. You have to find ways of making decisions and that require an “investment of effort”. For

⁴⁴¹ Ibid

⁴⁴² Alpay Durduran, Personal interview, 5 December 2008.

Papadopoulos, co-operative federalism which took years of experiment to work out and such complex models when they are transplanted to new governing institutions, where urgent daily decisions are needed – for example, as in the EU and external relations spheres – will risk deadlock and impotence in the relevant federation from the outset, reviving confrontation. This indicates that both communities are not ready for a settlement under federalism. Federalism is not solely an institutional arrangement but also a way of life.

The efficiency of decision-making is an important factor for the maintenance of federal systems. This requires a proper institutional arrangements as well as a certain amount of shared interests and trust. However, this has never been given particular attention by either community. Although the Greek Cypriot leadership has thrown an emphasis of doubt on the workability of the federal system it has never suggested any other formulas. The foreign judges solution introduced in the Plan was rejected. Talat says that the plan has some weaknesses concerning deadlock resolution. The Supreme Court would be in charge of resolving political deadlocks. “However, in spite of the weaknesses of this arrangement, it would also make politicians find solutions and not create deadlock, and to reach a common ground through a dialogue. In that respect the Plan has an understanding of how to prevent conflicts between the two communities. But, here, the most important thing is good will. With good will people can run a country with the worst kind of mechanisms. The good will and desire to work together are essential factors.”⁴⁴³ Both communities were against the mechanism of the three foreign judges to make political decisions for both communities. “But we accept it at least for a while. Foreign judges can be more impartial. So there is no problem in accepting foreign judges since the Cyprus problem has already transferred to the UN and accepted its arbitration. They will be appointed by the Executive Council so there would some guarantee that they would be impartial. During the negotiations, I always asked Mr Papadopoulos why he was always afraid and assumed that all the time there would be deadlock. Why should I want a system that could harm Cyprus as a whole especially its relations with the EU. I don’t believe that every time we would be dragged into deadlocks. That kind of attitude is very normal in countries having a lack of trust between different communities.”⁴⁴⁴ According to Alpay Durduran, instead of foreign judges the Constitutional Court could have consisted of

⁴⁴³ Talat, Personal interview.

⁴⁴⁴ Ibid.

people from different occupations rather than been taken exclusively from the legal profession. So for him the issue of equality as precondition would not have to be insisted upon if other ethnic minorities like Maronites, Armenians and Arabs could be represented within this institution. "From time immemorial, the issue of equality has been akin to two goats meeting on the bridge to fight. That is why, in order to prevent this polarisation, it is needed to add some others ethnic groups too. There are different conflict resolution mechanisms like committees. Certainly, other solutions are better; for instance, cross voting. Bicomunal political parties can be established which would enable them to solve many problems by themselves. We had experienced conflict resolution mechanisms during 1960-63. If motherlands had not interfered, both communities would have had the chance to deal with their problems".⁴⁴⁵ So, both communities should be given a chance to solve their own problems in different, common mechanisms that will make them realise the cost of disagreement.

Concerning decision-making deadlock, Denktas argues that "if there was trust between the sides, if it was a wanted result then there would be no need for foreign judges."⁴⁴⁶

Unlike most of the Greek Cypriot officials Denktas believes that local judges on both sides would be sufficient but because there is no trust between two communities, foreign judges are introduced which would limit independence and sovereignty. Olgun believes that under the functionality argument Greek Cypriot political leaders are trying to introduce majoritarian decision-making and governance arrangements instead of exploring alternative partnership consensus-building mechanisms.⁴⁴⁷

For Olgun, at least for the first year three foreign neutral judges' opinions will be necessary and critical. So, it is possible that the two sides will rethink their position and they would not want to be seen to be in a losing position in the case of a third element in the process finding against them. "I think the catalytic role of the neutral party (judges) is a positive thing."⁴⁴⁸

For Denktas "The Annan Plan makes us one community in one people".⁴⁴⁹ It is clearly shown that the Turkish Cypriot leadership under Denktas wanted to have a solution where both communities would have absolute sovereignty. However, this is not a federal system. In a federal state each national community can achieve a limited national self-

⁴⁴⁵ Durduran, Personal interview.

⁴⁴⁶ Denktas, Personal interview.

⁴⁴⁷ Olgun, "The Annan Plan," op.cit.

⁴⁴⁸ Olgun, Personal interview.

⁴⁴⁹ Denktas, Personal interview.

determination but not a separate national sovereignty. While they are part of one country, this is not a renunciation of their right of self-government. It is rather a matter of transferring some aspects of their powers to the common polity, on the condition that other powers remain in their own hands or transferring some powers of the common polity to each unit.

For Olgun, powers in the constituent state do not amount to much because all economic power is in the hands of the EU and, since Cyprus is a member of the EU, this economic power is going to be concentrated in the central government. "Monetary policy, fiscal policy, economic policy are mainly determined by the central government not by the constituent states. Therefore, economic life is under the control of the central government. Any power enjoyed by the constituent states would, in practice be very limited".⁴⁵⁰ However, Alpay Durduran claims that from the pessimistic point of view, a loose federal government is a positive thing. "The lesser the cooperation, the fewer the problems will be. I feel that the stronger the central government, the better the system for Turkish Cypriots since there would be political equality in the centre. Why should we not want strong central government since we would have political equality in the centre? And why should not Greek Cypriots want it lose also? I think we have to insist on this. However, both parties support an opposite view. For me, this is a contradiction. This idea was born from the fact that the Greek Cypriots want to dominate the whole system. That is why they want strong central government. This is wrong. When I talked to Clerides about this issue and said that since the Turkish side as the weaker group would have political equality in the centre why do you not insist on a loose federal system with the Turkish side in a strong central government. Clerides said that this is an idea that came from the past: When we start negotiations you will see and cannot believe that we, as a Greek Cypriot leadership, will support exactly the opposite"⁴⁵¹ (loose federalism instead of tight)⁴⁵² as in the case of Belgium.

As Olgun claimed above, it is quite evident that the legacies of the past shape the intensity of hostility and the depth of fear of all peoples within a federation. Past marked by mass civil and physical oppression leave long-lasting legacies that hamper the positive effects of federalism.⁴⁵³ The most intractable problems of accommodation in federalist states

⁴⁵⁰ Olgun, Personal interview.

⁴⁵¹ Durduran, Personal interview.

⁴⁵² Ibid

⁴⁵³ Olgun, "The Annan Plan", op.cit.

today are those with legacies of recent violence. Violent pasts do not always keep alive violence in new federal arrangements. A process of political learning may take place in which elites and citizens come to realize the traumatic implications of their past intransigence and become more cooperative as a result.⁴⁵⁴ Whether political learning takes place and whether enmity and apprehension continue have much to do with the way that political actors/elites frame the history of sub-national groups. People do not always learn from their mistakes. Political leaders must focus more energy on assessing how and when the legacies of a violent past provide a forum for positive political learning and when they do not. The origins and maintenance of a culture open to compromise will always be affected by themselves. Olgun never believed that actors can 'shape' a country's path. It is witnessed that actors can and do break historical patterns, despite their strong influences. Political institutions can be likely to generating incentives for cooperation and for accepting the legitimacy of a multi-ethnic regime, even if there is an element of conflict or competition between different groups. Their effectiveness will be influenced by long-term factors, but they may generate a context in which the negative effect of long-term factors can be transformed. Mustafa Akinci states that the role of a leadership is crucial in these cases. "The position of Papadopoulos on the Annan Plan was "no" whereas Denktas's was "never". Neither Denktas nor Papadopoulos wanted any solution and they tried to get rid of it. Instead of reaching an agreement, the Greek Cypriot leadership tries to enter the EU as the sole representative of the Cyprus Republic. Neither leadership had any goodwill. So, as we can see, leaders can orient their followers to negative directions or positions, as Papadopoulos did. If he had introduced the Annan Plan properly to his community, it would have been possible to reach a solution. Papadopoulos presented the plan as sort of devil. For reconciliation there is a need to give and take. There is no any other choice. Turkish Cypriots were ready for this. The Greek Cypriots would have been ready for this as well if their leadership had pointed them in this direction, given them the correct information about the plan, and if the Akel party had not changed its original position of supporting the Plan".⁴⁵⁵ For him, leadership means the ability of those who can build and foster the confidence and faith of their citizens to understand the realities, facts that would convince and then teach and eventually direct their followers into a positive position.

⁴⁵⁴ Nancy Bermeo, "Democracy and Lessons of Dictatorship," *Comparative Politics*, Vol.24, No.3, April, 1992, p. 274.

⁴⁵⁵ Akinci, Personal interview.

“Akel did not do this. The leaders can help to create a lack of confidence among the hostile ethnic groups”.⁴⁵⁶

According to Alpay Durduran the important thing is to reach a solution as soon as possible. “A constitutional structure has been established. If and when the Turkish army and the other unnecessary agencies leave the island, then Cypriots will have a chance to live in a peace. One of the advantages for the Turkish Cypriot side was been given extraordinary guarantees including veto rights, and the same rights as the majority. In the Annan Plan, the decision-making process would have been very difficult. It would have given more rights and guarantees to Turkish Cypriots than the ones in the 1960 constitution, making governance less likely to function. However, difficulties bring more cooperation if they have learned their lessons and if they do not have another choice. That is why if they want to remove that arrangement, they would need to have more cooperation and earlier normalisation of relationship and eventually a movement toward a development of Cypriot nationality.

Durduran states that Cypriots have a bad tradition of accommodation. “During the period of the Ottoman Empire, a division of national consciousness remained very strong. It was not possible to form any bicomunal institutions like political parties. Only the communist party established in the 1920s, envisioned a bicomunal character for the island. The party held this vision up to the 1970s.” Durduran mentions an important aspect of political parties: nationwide. A broad range of scholars has come to conclude that federalism works best in certain sorts of party systems. Stability is most likely in countries where regional parties exist but where decentralized, countrywide parties dominate the political arena. A system in which only regionally specific parties compete is unlikely to be stable.⁴⁵⁷ Even a mixture of countrywide and regional parties can be destabilizing if the latter dominate. The systems that combine regional parties with federalism successfully are those that reduce the relative strength of regional parties through electoral law and institutional design.

Those Turkish Cypriot actors like the Greek Cypriot ones who are optimistic about the federal solution in Cyprus rely on only one outside actor: the EU that would enable both communities to work for common interests. Although they believe that both communities themselves cannot deal with their problems due to lack of certain preconditions like

⁴⁵⁶ Ibid

⁴⁵⁷ Van Houten, “The International Politics of Autonomy,” Conference on ‘Regional Autonomy of Ethnic Minorities,’ Uppsala, 10-13 June 2004.

mutual need, tradition of accommodation, they want to transfer their problems to the EU and be dealt with at that level. Mustafa Akinci points out that in order to form any constitutional design there is a need for a feeling of mutual need. Then, leadership skill and tolerance come later. "When the Annan Plan was formed there was such a mutual need. I believe that together within the EU and working within the EU institutions, within the process of a new way of life, a cultural understanding that will prevent conflict, will be born. I mean new understanding; a new cultural conception and a new way of life together with EU norms would help both communities to accommodate their differences. The EU, of course, is not a panacea but I believe it is still an important element. It is true that for there to be a successful federal system significantly important preconditions are absent in Cyprus. But this is a process. If the Conflict Building Measures had been implemented, the relationship between two communities would have been started much earlier. Now, the only way is to solve our problems is with the EU norms".⁴⁵⁸

Another important aspect in the negotiations was economy. Talat believes that the plan also provides necessary measures in order to soften somehow regional disparities through subsidies from the EU and special funds and money from the central government. He believes that under the Annan Plan and the EU umbrella, the Turkish side would have many benefits like achieving regional parity through EU funds and if possible Turkish government assistance.⁴⁵⁹

Ali Erel, who was the leader of non-political movement, established in 2002 and designed to support a settlement and for joining the EU and the head of former Chamber of Commerce in Northern Cyprus states that in many respects the EU in an economic sense would govern Cyprus. Erel believes that both communities at the constituent level and federal level would have great benefits with this kind of solution. "In a very short period of time both side would have increased their GNP. They could not see this. With the solution, within a very short period of time (within 3-5 years), North Cyprus would have caught up with South Cyprus by means of investment and tourism. We need EU directives and rules in order to make our economy function properly."⁴⁶⁰ He argues that both communities eventually will feel there is a necessity to compromise under the EU. There would be no need for both sides to agree or to wait until a compromise was reached. Erel says that when any issue falls under the competence of the EU, neither side will have an

⁴⁵⁸ Akinci, Personal interview.

⁴⁵⁹ Talat, Personal interview.

⁴⁶⁰ Ali Erel, Personal interview, 13 August 2007

idea what kind of trouble they would have. The EU would direct many things. Ali Erel states that "I believe that people living within this geographical area, are unable to design such a governance, democracy, human rights, or a management system of the economy within the next 50 years. The EU has already done this within its own borders. Even If both communities wait 50 years more, they would not develop such a culture of working together so they have to import it. You import the EU rules and apply them regardless of whether you like them or not."⁴⁶¹ However, Erel, like all other interviewees believes that it is not possible for both communities to deal with their problems by themselves. Although he admits that the best solution would be the one in which both sides sit and agree to a set of common features that they both could share, it would not be easy given the absence of such a culture. "The EU would give guarantees to both sides that they would not experience what happened in 1963.....I personally believe that the solution under an EU umbrella would work because such a solution would result in a functional economy and economic integration under the EU. The EU would improve and enhance both sides' living standards and welfare and the central government composed of both sides' representatives would be in a position to solve their problems together. Should any problem or problems appear between the communities regarding any aspect of the economy, the EU would try to solve the problem with a stick or carrot solution. The EU has a critical power here. This third dimension, the EU, will bring about a solution every time."⁴⁶²

So, this non-political movement also believed that not only could ethnic problems be dealt with but that economic disparities between both communities could be removed. However, according to Ozay Mehmet, the Annan Plan does not contain the necessary measures to soften economic disparities between the two communities. He states that the federal budget would be financed from indirect taxes, principally VAT, (the Greek Cypriot state assuming nine tenths of the burden with the Turkish Cypriot State the remaining one tenth⁴⁶³). The EU would also subsidize the federal government. The transfers should be directed at narrowing the existing economic disparities between Greek Cypriots and Turkish Cypriots. Fiscal transfers should be used to achieve economic parity and eventually political stability and peace. Vassiliou points out, "When we look at the

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ Ozay Mehmet, "The Vassiliou Report on the Economics of the Annan Plan," 14 October 2003, email correspondence between Ozay Mehmet and George Vassiliou.

budget of the Greek Cypriot Constituent state, it is seen that the revenue from direct tax is higher than indirect tax. Direct tax remains within the constituent state while the revenue from indirect taxes is split between the federal government and the constituent states. On the revenue side, the Turkish Cypriots rely on indirect taxation (60%). The level of direct tax proceeds is lower in relative terms than in the Greek Cypriot case, which reflects the lower economic activity in North Cyprus.”⁴⁶⁴ So for him one third to two thirds of indirect taxes should be redistributed to the constituent states. According to the anti-Annan economist Ozay Mehmet, under the Annan Plan, EU transfers and transfers for inter-communal projects do not appear to be directed at narrowing the existing economic disparities between Greek and Turkish Cypriots.⁴⁶⁵ Similarly, Ergun Olgun suggests that the constituent states should be given access to more financial resources than is envisaged in the Annan Plan. Unlike the economists interviewed in this survey, Olgun believes that the transfers coming from the EU and the federal government would not be sufficient because “in ethnic countries, the risk of discrimination is the main barrier to government harmony.”⁴⁶⁶ For Olgun constituent states do not have the means and in the central government, because of asymmetry in decision-making mechanisms, the Greek Cypriots would have a stronger hand in decision-making regarding finances. “Economic and financial powers are in the hands of the central government plus the EU. All the dirty work to be done is allocated to the constituent states and they will be without the means to do it. It is mainly indirect taxes (VAT) and not direct taxes that contributed to the economy in the North. Furthermore, custom duties etc, which are the second source, are also under the control of central government”.⁴⁶⁷ So, in order to succeed, each level of government must have adequate resources to carry out its responsibilities, especially if these responsibilities are exclusive. This does not seem likely in the Annan Plan. It does not contain the measures necessary to achieve relative parity between the two units. It is more likely that there will be a huge gap between the two units. So, redistributive asymmetrical financial intergovernmental transfers have been employed to make the fiscal capacities of the member states more symmetrical⁴⁶⁸ and this arrangement might help Cyprus to deal with its problems.

⁴⁶⁴ George Vassiliou, “The Economics of the Solution Based on the Annan Plan,” September 2003, p.14.

⁴⁶⁵ Mehmet, *op.cit.*

⁴⁶⁶ Olgun, Personal interview.

⁴⁶⁷ *Ibid.*

⁴⁶⁸ Watts, “The Distribution of Powers, Responsibilities,” *op.cit.*, p. 464.

For Akinci, the economy constitutes a fundamental cause of many conflicts. "If a country has deep economic and social disparities among its different parts/subunits, it becomes very difficult to maintain a system based on so called "equality". Those subunits which have more or less economic parity with one another are more likely to maintain the system because they would have more to lose if they cannot maintain the base system. So, I believe in regard to establishing economic parity, the part the EU could play was a real opportunity in the Cypriot crisis. However, for me, the real momentum for a solution has been lost. From now on the negotiation process will be more difficult".⁴⁶⁹

According to Necdet Ergun, liberal and pro-Annan economist and a member of negotiating committee, under the Annan Plan, the regional economic parity would be quickly achieved. The economically poor Turkish Cypriot side would progress economically and financially and would reach rich Greek Cypriot side because of the removal of uncertainties. He believes that not only the financial transfers and the subsidies from the central government and the EU that would allow the economy to grow but huge opportunities for future growth would follow. Let's join the EU and let the EU deal with divergences."⁴⁷⁰ "Both sides would have tremendous advantages because the EU would help to run the system designed in the Annan Plan. The culture at the moment is dominated by the battle of separate national interests. Under an EU umbrella the conflict would be approached differently and certainly not from the position of conflicting nationalities."⁴⁷¹ For him, the partnership designed in the Annan Plan is not similar to the one in the 1960s. "Now we have an EU dimension which makes many things different. If there was not a third dimension, the EU, but only the central government and the constituent states, there would have been no chance to manage the system for the simple reason that the parties are without the culture of proper engagement."⁴⁷² He points out that the federal structure is important to deal with many problems especially those arising from the ethnic factor but it is itself not enough to be viable. However, under the EU umbrella it becomes viable.⁴⁷³ Nonetheless, this is not a simple task. The EU is not in itself enough to deal with antagonistic behaviour between two communities. Many things still would be run by the two communities. They have to engage in compromise many times. As Claire Palley points out, if Cyprus cannot reach an agreement through a succession of

⁴⁶⁹ Akinci, Personal interview.

⁴⁷⁰ Necdet Ergun, Personal interview, 6 August 2007.

⁴⁷¹ Ibid.

⁴⁷² Ibid

⁴⁷³ Ibid.

compromises, then nothing can be done under EU terms. It is difficult to have it even in Belgium, which has a long tradition of compromise. Belgium is constantly watchful of possible problems. "If decision making processes had been less difficult, it probably could have gotten together. It has been a good thing that up to 60 per cent of the decision-making regarding any EU Brussels now affects member state. That could be very good thing".⁴⁷⁴ However, on the one hand, she says that only on certain issues does the EU have the right to make decisions. On security, the environment, energy, and agriculture, the EU has no role to play. "What happens if they do not want to coordinate? With cooperation and coordination, you build so many veto powers". This is one of the real problems in the model according to Paley⁴⁷⁵ that militate against problem solving strategies in Cyprus with an EU framework.

It can be concluded that the external actors like the UN and the EU should not impose federalism on any state. Every federalist country that split apart or turned towards unitarism in the twentieth century was because of the influence or the imposition of an outside power. Many of these splits were violent. If federalism is to be stable and "peace preserving" it must be endorsed by local actors.⁴⁷⁶ Outsiders can, at most, provide local actors with the information to make the right choices.

Some Significant Issues

The negotiation processes since 1960s and the evaluation of the ideas of the main political actors have convinced me that there are several significant issues which should be taken into account. All are likely to direct how to deal with ethnic problems in Cyprus

The Negotiation/Bargaining Processes: The bargaining process determines to what extent the federal system is likely to work. Commitment to the federal philosophy as well as its institutions is vital. Readiness to accept both shared rule and self-rule is inescapable. What has been witnessed in many cases in Cyprus is that the parties negotiated in order to receive indirect benefits rather than to arrive at a compromise solution.⁴⁷⁷ There is much discussion of peace settlement, but not much discussion of what peace entails and what the two parties view as constituting peace. What is needed in the Cyprus case is a

⁴⁷⁴ Palley, Personal interview.

⁴⁷⁵ Ibid.

⁴⁷⁶ Nancy Bermeo, "The Import of Institutions," *Journal of Democracy*, Volume 13, Number 2, April 2002, pp. 107-108.

⁴⁷⁷ Richmond, "Ethno-Nationalism, Sovereignty a Negotiating Positions," op. cit., p. 56.

framework which focuses on what the two communities can share rather than what sets them apart. Both parties need to adopt a picture of what it is that they are negotiating for, which will guarantee peace, stability, and prosperity for the future.

For Oliver Richmond what is significant in conflict situation in which mediation plays a role is the perceptions of the two parties of what they desire from such a process. "It must be asked what has motivated the two sides to negotiate in the forum of the UN and if this motivation has necessarily been directed at the search for a compromise."⁴⁷⁸ The views of the two sides of peacemaking have evolved into a perception that it was a relatively cost free method of continuing the struggle for concessions from the opposition while avoiding making the costly concessions entailed in a possible compromise solution. For the Turkish Cypriot side, the continuation of the peacemaking mission has been harmful to their cause: they would have been happy if the peacemaking operation had lapsed and recognition of their entity had begun to ensue. Yet for the Greek Cypriot side, the protracted negotiations had the added benefit of preventing this from occurring while keeping their positions on the issue fresh in the minds of the international community.⁴⁷⁹

The characterization of the peacemaking process in Cyprus as being prompted by a fear of losing and yet also containing an element of fear with respect to making concessions appears to be accurate. Negotiating out of fear, but fearing to negotiate has led to a situation in which mediation and negotiation became part of the conflict environment, resulting in the failure of significant and protracted efforts to bring peace.⁴⁸⁰

The negotiating process indicates that the conflict in Cyprus is not simply a conflict of substantive issues, such as territory, refugees, etc., but mostly a conflict of mistrust, fear and suspicions. Because of that, maintenance of peace between two communities might not be achieved by institutional arrangements alone. On Cyprus, one of the main obstacles has been the lack of a majority identifying themselves as Cypriots. In the absence of such support, the Cypriot state did not survive and perhaps will not survive in the future unless this identity issue is successfully overcome.⁴⁸¹ If a Cypriot identity is to be generated, the first step towards that end should be overcoming the existing psychological barriers between the communities and developing a certain degree of inter-ethnic friendship. This is the main reason of stalemate in the negotiation process. Imposing any proposal on both

⁴⁷⁸ Richmond, "Negotiating out of fear and fearing to negotiate," *op.cit.*, pp.99-100.

⁴⁷⁹ *Ibid.*, 107.

⁴⁸⁰ *Ibid.*

⁴⁸¹ Yilmaz, "The Cyprus Conflict," *op.cit.*, p.43.

communities is likely to risk any future solution. According to Michael Burgess, what is clear is that if the federal idea is to have any relevance at all to the future of Cyprus, it must have the possibility of working.⁴⁸² The domestic dimension of the Cyprus problem suggests that ultimately there must be some form of political will strong enough to overcome the deep-seated mistrust and hostility that still exists between two communities. A new type of federal arrangement of an unprecedented kind might be forged from an essentially fragile political will that insists upon the 'separateness' of the distinct identities rather than upon their 'unity'".

Those who favour reunification from each community believe it due to the EU factor. Surely, the EU membership changes the context of the conflict but it is not by itself the answer. In order to achieve a federal Cyprus there is a need to have to succeed in the process of hard bargaining and negotiation before they are likely to have the substance of an agreement.⁴⁸³ One of the important elements in successful negotiation processes is the motivation of political leadership to gradually reduce the level of conflict and bring it under effective control. However, the political leaders in Cyprus concerned preferred to press for the full achievement of their objectives rather than accept compromise.

As Alpay Durduran points out, all of the UN proposals were not designed to enable both communities to cooperate in order to govern the island. "These proposals were for the purpose of convincing Turkey and Greek Cypriots to say 'yes'. The fighting is between them and not Turkish Cypriots. Nobody thought Turkish Cypriots because they knew that Turkish Cypriots would say yes if Turkey accepts it. Real negotiations, a bargaining of give and take never took place. The parties realized that there are only two solutions; either a federal system or a return to the status quo. That is why the Greek Cypriots did many things that were never expected like accepting rotation. For Greek Cypriots, it was understood that without a solution they would have to live alongside a northern Cyprus that was ten times more powerful militarily. They initiated strategies on how to bring the Turkish side to the table."⁴⁸⁴

For Cypriots, federation came as a result of lack of any other alternative and discontent from the status quo. Both communities are not familiar with how to get ready for federation. In the negotiation process the idea of how to construct a federal constitution

⁴⁸² Burgess, "What is to be done?" op.cit

⁴⁸³ Ibid.

⁴⁸⁴ Durduran, Personal interview.

was not thought through rationally. It was always conceived in terms of what I can get what I can from an opponent regarded as my enemy. No rationality of thought.⁴⁸⁵

The UN pushed the Cypriot parties to reach a compromise as quickly as possible. But considering the existence of psychological barriers between the communities, it appears that a quick solution on Cyprus is neither possible nor advantageous. A Cypriot nation cannot be created "outside pushes" but can only be derived from internal dynamics. Third parties are helpful in this process, working as communicators and facilitators, but not as decision makers in place of the parties themselves. As Claire Palley states "had there been genuine negotiations, as opposed to imposed arrangements dressed up as negotiations, more compromises would have been made by all concerned".⁴⁸⁶ For example the Greek Cypriot leadership's suggestions were based on the functionality and workability of the solution while the Turkish Cypriots' ones were nothing to do with functionality.⁴⁸⁷

Multiunit Federal Systems: The ethnonational polarization in Cyprus can be dealt with the different constitutional arrangements proposed so far. Instead of creating two constituent units, multiunit may be introduced to reduce the polarization between the two units. Ethnonational polarization in decision-making processes paralyses the society. For example, Canadians realised the problems of two units inherited in federal systems. Although federation in Canada has been affected by a "strong bicomunal element" it was deliberately not established as a bipolar federation with only two constituent units. The leaders anticipated the potentially dangerous dynamics of a bipolar federation, namely zero-sum games and eventually deadlock through mutual veto power. This is also the case in Belgium. This issue has never been considered at all in the negotiations nor in the proposals for a comprehensive solution in Cyprus.

Economy: Economic inequalities have been one of the problematic areas in Cyprus. The GNP of Greek Cypriots today is three times higher than that of the Turkish Cypriots. The economic wellbeing of the Greek Cypriots leads Turkish Cypriots to believe that they lack motivation for a solution and, thus, lack the desire to share power.

Disparities in wealth and fiscal capacities among constituent states are likely to intensify conflict by making it difficult for citizens to receive comparable services. Reducing

⁴⁸⁵ Ibid.

⁴⁸⁶ Palley, *An International Relations Debacle*, op.cit., p.90.

⁴⁸⁷ Ibid., 145.

disparities among constituent units in financial capacity is very important. The distribution of financial resources is important mainly due to having the capacity to enable or constrain governments in the exercise of their constitutionally assigned legislative and executive responsibilities. A common characteristic of the allocation of fiscal powers in nearly all federations is that the majority of major revenue sources have been assigned to the federal governments. The concentration of resources in the federal government is necessary if it is to perform the redistributive role usually expected of it.⁴⁸⁸ Concerning the allocation of expenditure powers, the thing is to look at the legislative and administrative responsibilities assigned to each government. Where the administration of a substantial portion of federal legislation is assigned to the constituent states as in Switzerland and Germany, the constitutional expenditure responsibilities of the regional governments are significantly broader than would be indicated by the distribution of legislative authority taken alone. In these federations, substantial federal transfers are a typical feature.⁴⁸⁹

Every federation has found the need to correct financial imbalances. Adjustments have usually taken the form of transfers from the federal to the regional units of government due to control of major tax sources by the federal governments generally. So what is important relating to the Cyprus problem is that central government has sufficient financial power. If the constituent units do not have sufficient financial powers to be able to implement or to afford their policies allocated them by the constitution in their own state, it is likely to depend on central government which means an end of federalism in any real sense.

As Watts says redistributive asymmetrical financial intergovernmental transfers have been employed to make the fiscal capacities of the member states having sharp variations in the wealth and fiscal capacities, more symmetrical⁴⁹⁰ and this arrangement might help Cyprus to deal with its diversities.⁴⁹¹ It is the case that federations may discriminate among constituent units on grounds of population and among regions on the basis of economic conditions.⁴⁹²

⁴⁸⁸ Watts, "The Distribution of Powers," *op.cit.*, p. 457.

⁴⁸⁹ *Ibid.*, 457-458.

⁴⁹⁰ *Ibid.*, 464.

⁴⁹¹ *Ibid.*

⁴⁹² John McGarry, "Socio-cultural Identities and Asymmetrical Federalism," *Asymmetrical Federalism and the Plurinational State*, paper for the 3rd International conference on Federalism, Brussels, 3-5 March 2005.

An asymmetric economy may be introduced to deal with many problems. However, this has not been even mentioned, realised or accepted by both sides in Cyprus as well as the Annan Plan. For example, according to Papadopoulos, if financial burdens are seen as having been unjustly allocated, or if the arrangements are perceived as making the government unviable, such federation will be unjust. For Papadopoulos, regarding the economic aspects of the Plan, its economic viability is doubtful. He says that the implementation of the relevant provisions entails unbearable economic effects for the Greek Cypriots, while the whole structure of the Plan would lead to a serious economic crisis and adverse repercussions on the Greek Cypriots' standard of living. Here, the important think is to develop a culture of solidarity as in Switzerland to deal with economic disparities among the constituent units. This seems relatively difficult in Cyprus.

Asymmetry: Cyprus has considerable asymmetries in population, area and wealth between the two communities, which may endanger stability easily if it is not supported by proper institutional design. Asymmetric federalism may provide a way of accommodating major political and capacity differences among constituent units. The significance of underlying cultural, economic, social and political conditions that led to pressures for asymmetry and with the extent to which a system that is highly asymmetrical in its components may have difficulty in generating harmony and unity.⁴⁹³ It is less likely that these symmetric arrangements envisaged in the Anna Plan would be able to contribute to conflict resolution and regime performance in Cyprus since Cyprus is an asymmetric and deeply divided society. These particular features of Cyprus have to be taken into consideration before structuring any constitutional model. However, it should be also remembered that asymmetrical devolution of powers without representation and protection at the federal level will not be sufficient.⁴⁹⁴ The reason is that federations can be majoritarian creatures, and asymmetrical devolution of powers cannot compensate for this, although it is likely to go some way to providing recognition of that territorially concentrated group's claims to be a nation, deserving a recognition and protection. That is the problem in Canada. Although Quebec has some sort of asymmetric power, it does not have effective power in the centre. Still, generally, despite some serious stresses and

⁴⁹³ Charles D. Tarlton, "Symmetry and Asymmetry," op.cit., pp.869-874.

⁴⁹⁴ Katharine Adeney, "Comment: The Necessity of Asymmetrical Federalism," *Ethnopolitics*, Vol.6, No.1, 2007, p. 119.

strains, asymmetry has been relatively successful in keeping Quebec within Canada.⁴⁹⁵ Within the Belgian federation asymmetry exists in the differences in the jurisdiction of the three territorial constituent regions and the three non-territorial constituent communities, and in the interrelation between Regional Councils and Community Councils, which have been combined in Flanders and in the special position of Brussels as a region.

Gurr finds that minority group discrimination does contribute to conflict.⁴⁹⁶ Where there are substantial disparities in population among the constituent units, these may become sources of dissension over the relative influence of particular regions in federal policy-making. Thus, the symmetrical allocation of authority in federal systems is likely to intensify ethnic conflict in deeply divided societies.

The Annan Plan follows the method of splitting differences between the communities through exclusive competences. The allocation of political authority is an important issue especially for those states emerging from violent conflict. The UCR comprises two separate "entities," which have equal authority and responsibilities. However, as Watts states constitutional asymmetry may resolve sharp differences when much greater impulses for non-centralization exist in some regions than in others within a federal system.⁴⁹⁷ The attempts to solve the problem partly through symmetric arrangements seem to fail. So, I think it is time to think about the possibilities of asymmetric federalism for Cyprus. The problem is that the Turkish Cypriot leadership has always demanded symmetry in all aspects. However, they also complain and fear that economic disparities will eventually place them in a minority position. On the one hand they want more and more decentralization, and on the other hand they realize that they could not afford many things because of their poor economic situation. It is expected that a solution under the umbrella of the EU, would ensure an improvement in their economy.⁴⁹⁸ But the important thing is whether they would catch up to the economic level of Greek Cypriot without any major problems that would be likely to destabilize the federal system. Otherwise, other areas outside the economy but within the federal structure could be adversely affected.

⁴⁹⁵Ronald L. Watts, "Asymmetrical Decentralization. Functional or Dysfunctional," *Indian Journal of Federal Studies*, Vol.5 No.1, 2004.

⁴⁹⁶ See for more information Ted Robert Gurr, *Why Men Rebel* (Princeton: Princeton University Press, 1970).

⁴⁹⁷ Watts, "Models of Federal Power," *op.cit.*, p. 29.

⁴⁹⁸ Erel and Vassiliou, Personal interview.

Conclusion

All of the UN plans have sought to reconcile the Greek Cypriot desire for a single Cypriot state with the Turkish Cypriot desire for a two-state solution; all have envisaged creating a bi-communal, bizonal federation on the island and all have affirmed Cyprus as having sole sovereignty. These plans represented a basis for an agreement that would have been acceptable to the International Community, but none have persuaded the Cypriot parties. The advent of the EU framework was supposed to break this impasse by means of the norms, discursive change and practical pluralism of regional integration. This approach was to serve as a “catalyst”, in contrast to the reinforcement of the status quo of which the UN has been accused.⁴⁹⁹ “This has not turned out to be the case, at least not in the way it was envisaged”. Despite repeated failures, the international actors have persevered with their mediation efforts to achieve a federal solution. “Their hope is that an acceptable power-sharing system might yet be found if attitudes in one or both parties were to change or if changed external circumstances forced one or both of the communities to recalculate their long-term interests”.⁵⁰⁰

This chapter argues that it is difficult to create the conditions for successful federal institutions due to the legacies of inter-communal violence, combined with larger Greco-Turkish enmities, political aspirations (majoritarian system versus partition), the experience of bad tradition of accommodation, deep-seated mistrust and hostility between two communities, the strong bicomunal element of the problem, foreign intervention and outside intervention through international organisations. Before designing a model, the negotiators should focus on certain characteristic features of the society. They will then be able to contribute to the successful application of a federal system: the deep economic disparity between constituent states, the deep asymmetric nature of the society, nature and number of constituent units, and social capital.

The type of federalism in the Annan plan is less likely to be successful in dealing with ethnic conflict in Cyprus. It is highly decentralised which makes the system dysfunctional since there is a deep economic interregional inequality (disparities in wealth). Symmetrical allocations of power are likely to contribute ethnic conflict. The Plan

⁴⁹⁹ Oliver P. Richmond, “Shared sovereignty and the politics of peace: evaluating the EU’s catalytic framework in the eastern Mediterranean,” *International Affairs*, Vol. 82, No.1, 2005, p. 150.

⁵⁰⁰ Tozun Bahceli and Sid Noel, “Imposed and Proposed Federations: Issues of Self-Determination and Constitutional Design in Bosnia Herzegovina, Cyprus, Sri Lanka and Iraq,” *The Cyprus Review*, Vol. 17, no. 1, Spring 2005, p. 24-25.

establishes two units which is highly fragile and bipolar and likely to result in failure. The Plan does not involve unified institutions in the centre. The model does not encourage the establishment of integrative party system and does not establish responsive central government. So the Plan does not address the particular features of the society.

CHAPTER 4

COMPARATIVE CASE STUDIES

Introduction

Comparative case studies have been chosen in order to explore the options for a federal Cyprus in real-world settings. They compare several federal countries in terms of both conflict resolution and efficiency in decision making. The comparative case studies help to explain more clearly the consequences of particular arrangements that would inform constitutional discussions on federal Cyprus under the Annan Plan. Through identifying similarities and differences, comparison helps to draw attention to certain features whose significance overlooked and underestimated in the Annan Plan. Comparative case studies suggest both positive and negative lessons through identifying successes and failures of different arrangements and mechanisms employed to deal with similar problems in Cyprus.

This chapter argues that consociationalism and federalism works successfully not solely because of the consociational and federal institutions themselves but the existence of favourable conditions as well. It is true that it may be possible to reach an agreement in Cyprus under consociationalism and federalism even under very difficult and impeding circumstances, but its eventual success will to a great extent depend on whether at least some of the factors that favour consociationalism and federalism are met during the post-agreement period. This chapter suggests a need to inquire not only as to whether power sharing is useful but also whether Cyprus is a suitable place for this.

Successful federalism in Cyprus requires federalism with a high degree of self-government, multi-number constituent unit, political culture of tolerance, compromise and solidarity, rigid language boundaries, voluntary union, asymmetric arrangements, relatively few veto players at centre, the existence of cross-cutting cleavage, elite skill and motivation. Under these conditions, federal system under the Annan Plan is less likely to be an effective model for the accommodation of ethno-political conflict.

This chapter is divided into two parts. Part 1 explains the nature and history of the ethno-political problem of consociational democracy in Belgium and Switzerland. Here, the focus is the extent to which consociationalism as an institutional settlement deals with ethnic problems. The aim is to discuss not only the consociational institutions but also the conditions that make consociationalism work. This part also studies federalism in Switzerland, Belgium and Canada and the way these federal systems do manage ethnic

conflict. Here, representation of constituent units at the federal level and the constitutional allocation of legislative and administrative power and fiscal arrangements in these federal countries are discussed since they determine the necessary conditions for a successful federal system in Cyprus.

Part 2 of the chapter studies the relationship between the efficient decision-making process and the consensual relationship between the majority and minority involving voting and frequent bargaining. It is argued that political decentralisation and the strengthening of minority rights in parliament is likely to increase the transaction costs of policy making and reduce the speed and efficiency of the law-making process.⁵⁰¹ Here, institutions in terms of the number of actors who can block (veto) a policy change are discussed. The more veto players there are and the more their preferences diverge, the harder it is, on average, to change policy. This part studies the efficiency and effectiveness of decision-making in Germany and Canada. The research aims to discover the extent to which the number of veto players influences the effectiveness and efficiency of decision making in Cyprus.

PART 1

4.1 CONSOCIATIONALISM AS A CONFLICT MANAGEMENT

Consociational democracy is a system of government which attempts to bridge different groups in states with strong cleavages. It is a system in which the elites of the different groups co-operate and seek coalitions beyond the numeric minimum necessary for gaining power. The consociational system can be observed as a strategic response of former majority political elites to the growth of "segmented pluralism" in a specific institutional setting in circumstances where it was difficult for the former governing majorities to continue governing against the opposition of strongly organized minorities.⁵⁰²

BELGIUM

Belgium was considered a typical example of consociational democracy, where potential instability is countered by elite accommodation and techniques of power sharing among

⁵⁰¹ Thomas Saalfeld and Rolf Becker, "Cohesion, Veto Players and Agenda Control: Explaining the Dynamics of the Legislative Process in 17 West European Parliaments," 1981-1991 Paper for the Political Studies Association - UK 50th Annual Conference, 10-13 April 2000, London. Available at: <http://www.psa.ac.uk/cps/2000/Saalfeld%20Thomas%20&%20Becker%20Rolf.pdf>

⁵⁰² Gerhard Lehmbruch, "Consociational Democracy and Corporatism in Switzerland," *Publius*, Vol.23, No.2, 1993, pp. 43-44.

segments. Tensions between linguistic groups have been a central feature of Belgian politics since the late 19th century. The fact that these tensions are superimposed on and intersect with religion and class further intensifies the situation.⁵⁰³ Although ethnic conflict in Belgium has been intense, it is peaceful. Disruptive, non-violent territorial protest became widespread in the 1950s and 1960s and peaked in the late 1970 but has declined since then. Although through out much of the post-war period Flemish and Walloon identities gained strength at the expense of a Belgian identity, in the 1990s Belgian and regional identities appear to have become more marked.⁵⁰⁴

Linguistic Profile of Groups

The contemporary Belgian federation has a population of over ten million divided over three regions: the Flemish region (58 %), the Walloon region (32.6 %), and Brussels (9.4 %). The three official languages are Dutch (56 %), French (43.5 %), and German (0.5 %). Since the early 1900s, the Flemish and Walloon regions have been virtually unilingual⁵⁰⁵, while Brussels has evolved from a town that spoke predominantly Flemish dialects to a primarily French-speaking city after World War II. Most German-speakers are located in the eastern cantons which is now the German region.

Many more carefully defined small pieces of territory were transferred one way or the other across the linguistic border. In Wallonia, Flemish immigrants integrated and in Flanders, most Francophone families of elite background adjusted to the change of language patterns. However, this is not the case in Flemish municipalities adjacent to Brussels where the Francophone presence has increased since the last census.⁵⁰⁶ Language usage is still a sensitive question in and around the Brussels region. Frenchification has continued in Brussels since 1947. Current estimates of the proportion of Dutch-speakers fluctuate between 10% and 20 % for the 19 municipalities that constitute the Brussels capital region. French-speaking citizens living in the Flemish suburban municipalities around Brussels took an interest in extending the borders of the capital to secure their

⁵⁰³ Andre Lecours, "Belgium", in Ann L. Griffiths, *Handbook of Federal Countries, 2002* (London: McGill-Queen's University Press, 2002), p. 59.

⁵⁰⁴ Liesbet Hooghe, "Belgium: Hollowing the Centre," in Nancy Bermeo and Ugo Amoretti (eds.), *Does Federalism Matter? Political Institutions and the Management of Territorial Cleavages* (Baltimore: Johns Hopkins Press, 2004), p. 2.

⁵⁰⁵ This is largely due to the language law of 1963 which transferred 25 communes from Flanders to Wallonia, and 24 communes in the opposite direction.

⁵⁰⁶ Liesbet Hooghe, "Belgium: From Regionalism to Federalism," in John Coakley, *The Territorial Management of Ethnic Conflict* (London: Frank Cass, 2003), p. 77.

linguistic survival. This is the situation in six Flemish municipalities adjacent to Brussels, where French-speakers constitute up to 30-50% of the population.⁵⁰⁷ Flemish political elites did not want to extend bilingualism to these areas being fearful that it would lead to a process of Frenchification similar to that which had occurred in Brussels.⁵⁰⁸

Main Sources of Inter-ethnic Tension: Flemish Nationalism, Walloon Nationalism and Territorial Conflict on Brussels

Belgium was created as a strongly centralised unitary state which operated almost completely in French. While the constitution of 1831 guaranteed linguistic liberty, French became the only official language. This was unacceptable to the Flemish who saw Belgium as a bilingual and bicultural nation. As a result, a Flemish Movement emerged and struggled to achieve Dutch equality with French. The rise of language politics produced over time a complex pattern of consociational accommodation between the Flemish and Francophone pillars overlain in turn by class, left-right and clerical—anti-clerical cleavages.⁵⁰⁹

With the first series of language laws of the 19th century, Flanders became bilingual, while the rest of the country continued to be unilingual. Formal-legal equality was achieved with the Equalisation Act of 1898, although French remained the dominant language. Ethnic demands and conflict management were initially non-territorial, but increasingly obtained a territorial aspect which was facilitated to a large extent by territorially segregated Dutch- and French speakers. Reform in the 1930s moved towards territorial unilingualism⁵¹⁰ in Flanders and Wallonia, in which the boundaries could be adjusted after each language census, and bilingual institutions in Brussels and in areas with linguistic minorities. All the laws of 1930 transformed Flemish society into a Dutch-speaking community with a Dutch-speaking elite, and transformed prior linguistic concerns into territorial claims. However, Flemish nationalists started to perceive a Francophone threat on their boundaries because of the loss of some Flemish territory after each language census, especially around Brussels. Linguistic homogeneity has further increased in the Flemish and Walloon regions due to a strict policy of unilingualism since the 1930s,

⁵⁰⁷ Hooghe, "Belgium: Hollowing the Centre," p. 4.

⁵⁰⁸ Wilfried Swenden, "Belgian Federalism: Basic Institutional Features and Potential as a Model for the European Union," RIIA Conference-Governing together in the New Europe, Robinson College, Cambridge, UK, 12-13 April 2003, p.3.

⁵⁰⁹ Keating, "Asymmetrical Government," op.cit., p. 82.

⁵¹⁰ See Hooghe, "Belgium: From regionalism," op.cit., p. 79.

which has been reinforced in the 1960s. As a result of linguistic homogeneity in the two main regions, the language usage issue is under control except in and around Brussels. Laws passed in 1962-63 created four linguistic regions: Monolingual Flanders, monolingual Wallonia, bilingual Brussels and a German-speaking area. A series of censuses determined linguistic borders and the communes (municipalities) were fitted into their proper language region. With the hope of increasing homogenisation, the border was frozen in 1963 by abandoning the census as an adjusting tool, and enforcing administrative unilingualism. However, many Francophones have never accepted the freezing of the linguistic border around Brussels.⁵¹¹ The provision on Brussels passed in 1963 created the greatest conflict. The bilingual area of the capital was fixed at the existing 19 communes, a long time goal of the Flemish. The internal administrations of the city's communes were to become bilingual. All these measures were resisted by Francophones. The maintenance of 'facilities' in French in six suburban communes of the capital represented a defeat for the Flemish and raised the possibility of further migration of Francophones into Flemish territory. The conflict-generating results of the language laws were seen in the elections afterwards. The 'community parties'⁵¹² increased their vote. All these developments put pressures on the established parties.

In the period before 1963, the Belgian political system was dominated by three "political families" each headed by a corresponding political party: Social Christians, Liberals and Socialists. These parties and their associated interest groups formed the 'pillars' of the Belgian political system. From the 1960s, community relations were increasingly polarised, as political parties and civil society were split into Flemish and French components. This was followed shortly by the rise of a territorial regionalism, initially in Wallonia as a response to industrial decline and the loss of its former economic advantage. Then, a new regionalism emerged on the Flemish side, seeking its own place in Europe unencumbered by the burden of Wallonia. Another problem was the situation of Brussels, a historically Flemish city that had gained a large Francophone majority.

In Flanders, an integrated territorial-linguistic movement gave rise to nationalist or semi-nationalist claims. After World War I, cultural autonomy was the most urgent demand of the nationalist movement. The period following World War II was shaped by the

⁵¹¹ Maureen Covell, "Belgium: The variability of ethnic relations," in John McGarry and Brendan O'Leary (eds.) *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflict*, (London: Routledge, 1993), p.284.

⁵¹² Volksunie (Flemish nationalist), Rassemblement Wallon (Wallon regionalist) and Front Democratique des Francophones (Brussels-based).

increasing linguistic and national awareness of the Flemish community, caused by its economic rise and the decline of heavy industry in Wallonia. After 1945, divergent economic developments between north and south gave rise to Walloon nationalism. Belgian high finance which had made considerable profits in the glory days of Wallonia's industry, made few investments and turned instead increasingly to Flanders. Wallonia felt abandoned by high finance in Brussels and by Flanders. Walloons feared that in a unitary state their economy would be restructured on Flemish terms. Political parties in the Walloon region have traditionally been more supportive of state intervention than in the more conservative Flemish region or free market-oriented Brussels. Many Walloons were also afraid of political domination by the Flemish, because the latter held a majority of the seats in the national parliament. The Walloon population increased at a much slower pace than the Flemish. All these factors gave rise to the national consciousness of the French-speaking community and have led to numerous constitutional and legal reforms which have granted increasing powers to the Dutch, French and German-speaking communities. The Walloon Movement was a serious challenge to the Belgian unitary state as it demanded an autonomous Wallonia in a federal Belgium. The Walloon nationalist demands were mollified in part, through the economic expansion programme of the 1950s and 1960s and subsequent decentralisation of industrial policy and regional development in 1970. The new structures respected the linguistic border between Flanders and Wallonia and became the first regional policy instrument although the genuine regional autonomy was not recognized until the reform of 1980. Finally, in the 1960s and 1970s the form of conflict converged in and around Brussels, where the Francophone "nationalist" movement flourished. Since its independence, Brussels has expanded into the Flemish countryside and has become increasingly French speaking especially since the 1950s.⁵¹³ As Flanders became Dutch speaking in the 1960s and 1970s, the Flemish movement turned its attention to Brussels. The expansion and 'verfransing' (assimilation to French) of Brussels was a reminder of the earlier Francophone threat to Flemish culture in Flanders. Expansion was stopped by the 1963 law, which defined the linguistic frontier and official bilingualism in the capital. However, the Francophones reacted due to their majority position in the capital. Brussels produced its own Francophone nationalist

⁵¹³ About a quarter of French-speaking Belgians live in Brussels while fewer than 3 % of the Dutch-speaking do so.

movement which obtained the highest success in the 1970s. By 1970, ethnic conflict turned territorial and the three nationalist movements demanded some form of federalism. A separate Brussels movement emerged as a result of conflict about the appropriate constitutional structure of Brussels. Only in 1989 were Flemish and Francophones able to agree upon autonomous institutions for Brussels with special minority guarantees for the Flemish. The boundaries of the Brussels metropolitan area were confirmed, without granting additional rights to the Francophones in the adjacent municipalities. However, for many Francophones from the Brussels area the debate is not closed.

The Consociational Legacy in Belgium Politics

A consociational system rests on four important rules: groups or segments govern themselves as much as possible; each group/segment receives a proportional share of common resources; group leaders mediate links between state and citizens; active public participation is discouraged in order not to disrupt elite accommodation which places segmental elites in a key position. In Belgium, these were the political parties, and the party leaderships that played the critical role. Parties connected societal segments with decision making among elites. Several techniques were relied on, the arbitral, delegatory, and limited government principle. In the 20th century, this supermajority protected Christian Democrats against potential Socialist domination. In 1970, this was given to the new segmental forces-Flemish and Francophones- the same support on constitutional issues.⁵¹⁴

The concept of power sharing indicates governments covering broad coalitions of several parties representing a majority of the cleavage groups. In Belgium, this power sharing has two dimensions: there is the constitutional regulation of the equal number of Flemish and Walloons in government, while the structure of the party system requires coalitions which necessarily also include the different "spiritual families".⁵¹⁵ The Senate ensures minority representation by having same members nominated by the assemblies of the three linguistic communities. There are six large political parties along with regional ones. The division into the three main traditional parties has defused many linguistic confrontations. Thus, not all issues of parliamentary debate have become determined by the interests of Flaams and Walloons, but other groups defined by class and religion could cooperate

⁵¹⁴Hooghe, "Belgium: Hollowing the centre," p.19

⁵¹⁵Bieber, "Consociationalism-Prerequisite or Hurdle for Democratisation in Bosnia?," op.cit., p. 90.

outside linguistic distinction.⁵¹⁶ The autonomy for minorities in areas of their interests is at the heart of the functioning consociational democracy. All the relevant competencies lie with the groups themselves while their votes count in the Senate. Furthermore, constitutional changes require the consent of the communities as well as a two third majority.

Non-majoritarian rule has been a constant feature of Belgian politics since its independence, a factor which has facilitated territorial conflict management. Yet the kind of anti-majoritarian institutions have varied over time. In response to territorial conflict, Belgium changed from one non-majoritarian regime with strong consociational characteristics to federalism. The current constitutional design has inherited many non-majoritarian features of the pre-federal period. Although Belgian political institutions transformed since 1970, the fundamental features of conflict management remain.⁵¹⁷ Until the late 1980s, territorial conflict was managed in a unitary framework, largely by resorting to consociational rules that constrained one group from dominating the other. Before 1970, non-territorial, non-majoritarian rules were used in a consociational regime. Territorial conflict emerged in a regime that tended to co-opt challengers rather than exclude them; that depended on broad agreement.⁵¹⁸ Thus the reform of 1970 introduced primarily non-territorial mechanisms for managing growing territorial conflict. It was the first significant institutional response to regionalism or nationalism in which the unitary state was modified. Four measures of power-sharing were introduced on national institutions: the government was to consist of an equal number of Dutch and French-speaking ministers, making decisions by consensus; members of the national government were subdivided into separate Dutch and French language groups; language policy legislation and certain constitutional laws were subject to special voting requirements (a majority of each language group, a majority within each, and an overall two thirds majority of yes-votes); and an "alarm bell procedure" which gives 75% of a language group to judge a legislative proposal harmful to relations between the Flemish and French communities, the measure would be postponed and referred to the national government. This procedure designed further to protect French-speakers and also used in the bilingual region of Brussels where it protects the Flemish minority.

⁵¹⁶ Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven-London: Yale University Press, 1984).

⁵¹⁷ Hooghe, "Belgium: Hollowing the centre," p. 19.

⁵¹⁸ Ibid.

With all these measures, the Francophones received some of the guarantees they were seeking for protection against their minority status at the national level. The 1970 reform also entrenched two models of territorial devolution in the constitution. First, to accommodate demands for cultural autonomy, the constitution defined communities (as French, Flemish and German) that had fluid territorial boundaries. A limited form of cultural autonomy was put into effect in 1971 with the establishment of cultural councils for the communities, each with its own executive. This cultural devolution made language groups in the national parliament act as the communal legislative bodies. The community executives remained part of the national government fully responsible for the implementation of cultural policy legislation. The Communities thus did not get a separate administrative apparatus. Belgium is a particular case since the communal and territorial institutions overlap greatly. It is a reflection of a long tradition of cultural autonomy and the utilisation of diverse concepts of autonomy as a means of problem-solving, thus diffusing complex issues such as Brussels. Second, the principle of regional socio-economic autonomy (as Flanders, Wallonia, and Brussels) was written into the constitution but it was not implemented during the 1970s.

The two components of constitutional reform fit into a non-majoritarian approach to conflict management. The first four measures guaranteed that each segment had a fair share in joint activities and could not be overruled by the other. The second one promised cultural self-rule where possible. These two steps used consociational, delegatory, and limited government mechanisms. The 1970 reform was an attempt to co-opt nationalist challengers by applying familiar non-majoritarian principles to a new cleavage.

The constitutional revision in 1980 set Belgium on the path of territorial devolution which created a separate executive and administrative apparatus for regions and communities, but no independently elected councils. However, nationalist pressures pushed the reform in conflicting directions: regionalisation preserved unitary features, but adopted some federal or confederal attributes.⁵¹⁹

Belgium opted for a devolution in which most competencies of regions, communities or the national state were exclusive rather than concurrent. Regionalisation also established a jurisdictional rather than a functional division of labour in which a government would combine legislative authority and implementation.⁵²⁰ Thus, to keep conflict low, the

⁵¹⁹ Hooghe, "Belgium: From Regionalism," *op.cit.*, pp. 85-86.

⁵²⁰ *Ibid.*, 86.

system attempted to combine separate institutions, equal legal status, exclusive competencies and jurisdictional division of labour. On the other hand, several features required interlocking between central and regional levels. The same people exercised political control over national and regional executives because the regional and community councils were not directly elected, but consisted of the members of the language groups in the national parliament. The blending of central, community, and regional levels restricted regional autonomy and forced the different arenas to consult or collaborate to make policy-making effective.⁵²¹ The distribution of competencies necessitated collaboration but each arena's exclusive control over its thin slice of policy area complicated this. The divergent forms of institutionalisation of ethnoregional interests created divisions too, because Flemish, Francophones, Walloons and Bruxellois disagreed on whether the territorial or the nationality principle should take priority. These clashes contaminated the central level, which was divided along language lines.⁵²²

The constitutional revisions of 1988-1993 have further strengthened the role of the sub state entities. With the reform of 1989 the new Belgian structure resembled a subdivide form of dual federalism, in which regions, communities and national government had primarily exclusive competencies and in which the division of labour was primarily jurisdictional.

In the 1993 reform, the constitution recognizes three languages groups but in territorial terms. The political elites were able to pass constitutional reforms that aimed to reform the Belgian state because of the tradition of consociational compromise. The success of these arrangements was dependent on the continuation of a consociational trust between the political elites representing the constituent pillars of the Belgian state. However, the practice of consociational compromise produced reforms that were ambiguous and complicated. With each reform, competence were further divided and demarcated. The search for clear-cut legal compartmentalization reflects the decaying consociational trust.⁵²³ The process of federalization has followed the path of legal precision in the demarcation of competences. This tendency for exclusive codification reflects the deteriorating trust between the federal partners. According to Erk and Gagnon, the emerging distrust between Flemish and French-speakers is closely associated with the

⁵²¹ Ibid.

⁵²² Ibid., 86-87.

⁵²³ Jan Erk and Alain-G. Gagnon, "Constitutional Ambiguity and Federal Trust: Codification of Federalism in Canada, Spain and Belgium," *Regional and Federal Studies*, Vol.10, No.1, Spring 2000, p. 104.

eroding consociational regime. In the absence of consociational trust between the political elites, the mutually reinforcing divisions which resulted from the end of the old regime have worsened the tensions, thus strictly limiting the room for genuine reconciliation.⁵²⁴ The consociational regime based on three pillars has been replaced with a bipolar one, where the divisions of denomination, class, language and region tend to reinforce one another.

As a result, the Belgian federal division of powers is now based on a system of exclusive competences, with an exhaustive demarcation of issue areas. As a result of the intensification of tension between the Walloons and the Flemings, the inclusion of safeguard mechanisms into the federalization of Belgium was almost inevitable. While the minority Walloons wanted to ensure their position in the federal system, the Dutch-speaking minority in predominantly French-speaking Brussels also saw legal precision as a safeguard. The consequence was a process of comprehensive codification of competencies that still continues. In addition to this system of exclusive competences, a number of legal safeguard mechanisms further complicate the institutional structure of the Belgian federation: "special majority laws"; "alarm bell procedure"; the equal linguistic composition of the Council of Ministers; and an equal number of judges on higher jurisdictions.

Ethno-linguistic division has become the most important dimension of social cleavage in Belgian society, to such an extent that the three former consociational pillars have broken down along linguistic lines. Thus the Belgian federal arrangement is not the outcome of a grand strategy aiming to construct a comprehensive federal structure, it is rather, largely, the outcome of the demise of the consociational regime, the crystallization of societal cleavages along mutually reinforcing lines and the subsequent loss of trust between these subgroups, politization of issues that formerly belonged to the realm of elite accommodation, the desire of these groups to expand their exclusive competencies and overall distrust towards consensual politics at the centre.⁵²⁵

Consociational Devices as a Management of Conflict

The durable mix of cooperative and autonomist features in Belgian nationalist conflict management is a result of consociational tradition in Belgian politics. The mechanism of

⁵²⁴ Ibid., 105.

⁵²⁵ Ibid., 107-108.

consociationalism that was introduced to manage religious and class conflict helped to contain nationalist conflict from the 1960s. Various techniques of consociationalism are used to manage conflict between contesting groups. One way is to give each group control over central policies that matter most to them. This was applied to the allocation of ministerial portfolios.⁵²⁶ Another one is mutual check, which may be used when parties do not want to give up a central policy area.⁵²⁷ The technique of allocating new resources is another device. The Belgian centre released additional resources to fund linguistic quotas in public service and public procurement.⁵²⁸ In the late 1970s, nationalist conflict appeared close to turning into violence and consociational techniques had successfully diminished potentially violent religious conflict; they promised to achieve the same for potentially violent nationalist conflict. But this consociationalist style of conflict management created an incentive structure in which nationalism became an attractive strategy.⁵²⁹ The consociational legacy was crucial in the elite's capacity to contain nationalist conflict. They successfully exported consociational devices from religious to nationalist conflict, and they flexibly changed the currency for compromise from goods/money to competencies which made nationalist conflict avoid violence. Hooghe, however, states that, this response made it advantageous for competing groups to carry on nationalist conflict. Consociational cooperation and group benefit became closely linked to group separatism which resulted in a hollowing out of the centre.⁵³⁰ Major parties agreed to replace consociational devices by federal rules. They believed that federalism would become Belgium's best chance for survival because it offered them an opportunity to restrain the creeping separatism embedded in consociational politics. Consociational conflict resolution requires that elites represent relatively monolithic segments.

⁵²⁶ Big expenditure departments like defence, public works/public housing were given to Walloon socialist ministers, who could create jobs for the declining Walloon economy. Flemish Christian Democrats were given agriculture and culture to satisfy their sizeable rural constituency or felt pressure from cultural nationalists. See Hooghe, "Belgium: From Regionalism," *op.cit.*, p. 91.

⁵²⁷ Education policy after the "school war" in the 1950s to lessen tensions between the Catholic private school network and the secular state network. The solution was to appoint a deputy minister for education from the side of the religious cleavage opposite to that of the minister. When in the early 1970s the ministry of education was divided along linguistic lines, this device was simply extended one level down. A non-Catholic became minister for education in the Flemish community with a Catholic deputy-minister at his side. In French-speaking Belgium, a Christian Democratic minister had a non-Catholic deputy. In this way, non-Catholics in Flanders were assured that they would not be discriminated against by the powerful Catholic network, while Catholics in Wallonia received the same assurance with respect to the dominant non-Catholic state system. This method became a more general feature in the 1960s and 70s when several ministerial departments introduced linguistic deputy ministers. *Ibid.*

⁵²⁸ *Ibid.*, 92-93

⁵²⁹ *Ibid.*, 93

⁵³⁰ *Ibid.*

Opposition within a segment is destabilising. Yet interparty competition within the regional or linguistic "segments" undermined the dominant parties' authority.⁵³¹ The Flemish Christian Democrats' capacity to deliver a deal was threatened by nationalist parties, and by the nationalist outbidding from the Liberal and Socialist parties. The Walloon Socialists faced similar challenges in Wallonia from the regionalist movement and nationalist factions in the other mainstream parties. In a federal system, opposition within a region is institutionalised. Governments backed by a simple majority rather than near-unanimous support make and break deals. The Flemish Christian Democrats and the Walloon Socialists could anticipate being major coalition partners in governments of their respective regions.

Consociationalism works best when government is limited. Yet nationalists ordinarily demand an expanding role for public authority- not limited government. Federalism can accommodate such demands for greater autonomy.⁵³² The Flemish Christian Democrats wanted and received extensive community autonomy in education and cultural policy whereas the Walloon Socialists wanted, and obtained extensive regional autonomy in economic development policy, industrial policy and public housing. The extent of federalisation has been largely a function of the particular policy preferences of these two dominant parties. Consociationalism requires an equal status among the segments, otherwise it may become a control regime. A potentially destabilising situation emerged in the 1970s, when the end of Flemish linguistic discrimination and the reversal of economic fortunes briefly tempted the Flemish demographic majority to pursue a majoritarian logic within a unitary Belgian framework. Federalism blocked these ambitions.⁵³³

It can be argued that evaluating the degree of consociationalism in Belgium after 1961 means looking at the way in which the ethno-linguistic tensions have been dealt with. The important thing is to keep in mind the nature of the segments and the ways in which they are represented in central decision-making. Moving towards more regional autonomy created two entities in which the two major political forces of the country- the Christian Democrats and the Socialists- became even stronger. It is a feature that has certainly facilitated state reform and tried to contain the ethno-linguistic conflict, and removing some contentious competencies from the centre seemed a good way to do this. It also

⁵³¹ Ibid., 94

⁵³² Ibid.

⁵³³ Ibid.

allowed at the same time the demands of the regionalist parties to be taken into account. The split of the Belgian parties into two unilingual parties reinforced this process. The segments of the ethno-linguistic conflicts are territorial, but the territories have a meaning that remains firmly linked with the old pillarised segmentation. Belgian cleavages - religious, economic and ethno-linguistic - are cross cutting and therefore neutralise each other. Each pillar, the Catholic, the Socialist and the Liberal is internally divided by at least one of the other conflict dimensions. This can be considered as one of the explanations, together with the consociational prudent leadership, of the stability of the regime.⁵³⁴ The pillars in Belgium have been built on a combination of religious and economic cleavages, and that the ethno-linguistic cleavage cuts across both of these. The cross-cutting cleavages are an important brake on the escalation of conflicts.

Explaining why some countries at some moments opt for consociational techniques, and why other elites opt for other methods, remains one of the crucial questions and weaknesses of the consociational theory.

SWITZERLAND

Switzerland is a country with a strong consociational tradition, the corresponding experience of decision-making through bargaining and accommodation. Switzerland's predominant bargaining style of policy formation has its strong roots in the institutional framework and in the political socialization of the elites. Switzerland is characterised by the participation in the executive of all major political parties, with the accompanying preference for decision-making by broadly based compromises. Swiss "consociationalism" is a special case in several aspects. The Swiss case is peculiar insofar as the segmented organizational networks of the minority groups (Catholics and socialists) were in turn horizontally fragmented by regional and linguistic cleavages that are institutionally entrenched in the cantonal organization of the Swiss federal system. Over the centuries, the Swiss were troubled by divisions between town and rural cantons, between Protestant and Catholic cantons, and by linguistic tensions. Since 1848, with the exception of the Jura Crisis, there has been no ethnic conflict capable of undermining Swiss political institutions. Switzerland has avoided the disturbing consequence of ethnic hostility, which seemingly is associated with multi-ethnic, plural societies, by allotting

⁵³⁴ Kris Deschouwer, "And the Peace Goes On? Consociational Democracy and Belgian Politics in the Twenty-First Century," *West European Politics*, Vol. 29, No. 5, November 2006, p. 897.

substantial cultural and communal responsibilities to the regional governments, the cantons.

The Swiss have been able to manage their language and religious pluralism because these two aspects of their ethnicity generally overlap rather than coincide: the process of cross-cutting loyalties operates effectively. The linguistic boundaries do not coincide with, but cut across the religious boundaries in most cases, and therefore serve to offset one another.⁵³⁵

Demography of Switzerland

The largest religion in Switzerland is Roman Catholicism, to which some 43% of the population hold. Various Protestant faiths number some 35% of the population. There are four official languages: German 65%, French 18%, Italian 10% and Romansh with less than 1%, a minor language largely descended from Latin and spoken in a few Alpine regions in south-eastern Switzerland. These language groups have managed to live in relative peace together except, during the Sixties, when French activists in the Jura succeeded in winning separate canton status for their part of a predominantly German-speaking canton.

Among the 26 cantons, 22 are strictly monolingual although three languages, Germans, French, and Italian, are recognised as official languages at the federal level.⁵³⁶ There are four plurilingual cantons, of which three are bilingual (German and French) and one trilingual (German, Italian and Romansh). In these cantons, each municipal or rural commune decides on its official language. There is some tension between the dominant German Swiss (17 cantons and roughly 75% of the population) and their French (4 cantons; 20%) and Italian counterparts (one canton; 5%), but this tension is more about regional economic concentration than culture. Multilingualism with the important exception of the Jura problem never became as crucial as the question of religious minorities.

Only the Italian-speaking Swiss are religiously homogenous. Both German-speaking Swiss and French-speaking Swiss are religiously divided, which creates a political framework of great complexity, in which the linguistic and religious minorities can

⁵³⁵ Morris-Hale Walter, *Conflict and Harmony in Multi-ethnic Societies: An International Perspective* (New York: Peter Lang Publishing, 1996), p. 32.

⁵³⁶ This means in practice, that a French Swiss citizen moving to German speaking Zurich, for instance, must learn the language of that canton if she or he wants to communicate with cantonal or municipal offices.

combine to form a majority. This constitutes a system of checks and balances which prevents permanent freezing of the front lines when either religious or linguistic issues arise. Switzerland, through a process of cross-cutting loyalties, has been able to maintain political integration due to strict decentralisation, infrequent movement between cantons in the past and the relative constancy of ethnic proportions. Each of its territorial subunits is remarkably homogeneous.

Religious Cleavage: Tensions between Catholics and Protestants

There was much religious strife in the Old Swiss Confederation, and four religious civil wars took place from the 15th to the 18th century. After the war of secession in 1847/48 in which the protestant - and liberal - cantons crushed the rebellion of the catholic and conservative cantons of inner Switzerland, religion was the first cultural cleavage confronting the modernized and democratized political system of Switzerland. From the beginning of modern Swiss federalism, most of the cantons were religiously homogeneous and this was an important modifying structural factor in the Swiss variety of cultural segmentation.

The Catholic minority discovered institutional resources when it struggled to restore its political equality. The revision of the Federal Constitution in 1873-74 was influenced by this cultural struggle. The constitution of 1874 aimed at a fully secularised state, and led to the elimination of public functions of the church. Catholic conservatives eventually achieved a good constitutional compromise. Federalism permitted Catholics to maintain the particularities of their culture in their own cantons and later on, direct democracy permitted the Catholic minority to participate in federal decision-making. Through the introduction of a referendum Catholic conservatives were able to challenge the proposals of the radical-dominated parliament. In 1918, a coalition of Catholic conservatives and Social Democrats succeeded in breaking the majority rule for elections to the National Council. The introduction of proportional rule meant the end of the absolute majority of the radical democrats in parliament. This was the beginning of power-sharing and consociational democracy in Switzerland for the Catholics.⁵³⁷ It brought political influence, recognition and success to the Catholic part of society. Thus, it can be said that the specifically Swiss variety of consociationalism, which emerged on the federal level

⁵³⁷ Linder, *Swiss Democracy*, op.cit., p.21.

with the integration of the Catholic Party, was the result of a set of constraints constituted by the institutions of federalism and direct democracy.

Conflict over religious issues became intense especially in the mixed cantons. Now the historical cultural conflicts between Catholics and Protestants have vanished.⁵³⁸ Since the reformation, the institutional practice of accommodative communal government was put to a strong test by the religious cleavage where, in the long run, it contributed successfully to the management of these conflicts.

Tensions between Language Groups

In 1848 language became a really big issue in Switzerland. In the last 150 years, there have been many conflicts among the language groups, but, generally speaking, these conflicts could be managed quite smoothly. The greatest potential conflict line was between German and French speakers. Tensions between these two language groups were particularly high during World War I when the French speakers sided with France, the German speakers with Germany. The most severe language problem arose not at the national level but within the bilingual Bern canton which is predominantly German speaking but has a French speaking minority in the Jura. This is an important case in modern Swiss history where integration failed. In a struggle of more than forty years which included riots and violence, the Jura minority, who felt discriminated against by Bern, fought for separation from the old canton and for autonomy. The Jura region had a double minority- French-speakers practising the Catholic religion in a Protestant canton populated by German-speakers. There were also socio-economic differences. The Jura region claimed to be economically neglected. In the Jura region, there was the rare case of overlapping socio-economic, language and religious differences. This overlap, however, was not equal throughout the region. The southern part was economically better off and had a Protestant majority. The new canton of Jura was created, but the southern districts had voted to stay with the old canton and therefore the small ethnic Jurassian population, because of its internal fragmentation, has not been integrated into a single political unit. Thus, the potential for ethnic conflict was not removed by the 1978 solution.⁵³⁹ Catholics and French-speakers in the southern districts still complain about being a minority, cut off from the ethnic body to which they feel they belong. However, if the southern districts

⁵³⁸ Ibid., 20.

⁵³⁹ Ibid., 27.

were to be integrated into the Jura there would be a new problem for the Protestant minority, which feels more akin to the Bern canton.⁵⁴⁰

The historical specificity of the Swiss experience should be kept in mind while comparing it with other consociational countries. One of its important aspects is the importance of cultural cleavages linked to linguistic diversity. Although many observers in Western Europe indicate the existence of persistent trends toward erosion of traditional religious and ideological cleavages, the same is not true of language and of area: Belgium is an excellent example. The difference in Switzerland is that the autonomy of language communities within a federal framework is an established fact since the Napoleonic era. In the last decades, the "trench" between German- and French-speaking Switzerland apparently has become deeper - at least in the perception of many *Romands* (French-speakers). However, with the exception of the Jura problem, subcultural segmentation has not been a major political problem for Swiss society as a whole.⁵⁴¹ The virtues of pluralism may lie partly in the fact that the different cultures are separated from each other by the political autonomy and territorial boundaries of the cantons.

Accommodation through Consociationalism

Conflict resolution in Switzerland relies on power-sharing (consociationalism) which seems to facilitate peaceful conflict resolution among culturally different groups. Historically, the vote counted both, when constitutional changes were ratified, and in the bi-cameral law-making process of parliament. This favoured institutional power-sharing from the very beginning of the modern federation. Minority veto in Belgium is exercised through the Senate. All changes in the Swiss constitution must be approved in a referendum by a majority of all votes cast, and by a majority of cantons. This gives special protection to the smaller cantons and they can block any amendment if they are united. This is generally some sort of veto. Furthermore, the rule of the proportional representation of minorities was extended to most federal authorities and government bodies. Proportional rule is used in different criteria-or groups- in the same body. In the 'magic formula' of the Federal Council, party affiliation is not the only criterion of proportionality. The Federal Assembly follows the rule of linguistic proportionality. However, there is some flexibility in the system in that over-or under-representation is

⁵⁴⁰ Ibid., 27.

⁵⁴¹ Ibid.

allowed but is compensated for over time. Language relations in Switzerland are relatively harmonious at the national level, mainly due to a pattern of consociationalism practised among the language groups. One important consociational element in the relationship among the Swiss language groups is that the three major groups are all represented in the federal cabinet. It is a peculiar feature of the Swiss political system that the number of seats in the cabinet, the Federal Council, is set in the constitution. The number is seven, and there is no prime minister, only a yearly rotating chair, decided according to seniority. When modern Switzerland was founded in 1848, the federal parliament elected five German speakers, one French speaker, and one Italian speaker to the Federal Council. This distribution of seats gave to the two minority language groups combined a roughly proportional share of the seats in the Federal Council. The proportional rule leads to political quotas. An unwritten rule says that two of the members of the Federal Council should be of French- and one of Italian-speaking origin. Thus, more recently, the minority language groups are often even somewhat overrepresented with two French speakers and one Italian speaker on the Council.⁵⁴² So, these institutional arrangements let Romans, Italian, and French-speaking minorities live within their own culture inside the boundaries of their cantons. As cantons, the minorities have a political voice in the decision-making of central government. The members of the Federal Council are primarily seated in linguistic rather than partisan blocs. There are statutory rights for linguistic minorities. Linguistic minority is guaranteed by the principle of 'territoriality': the cantons are authorised or charged to guarantee the traditional language of their regions. The principle of linguistic proportionality is not only applied to the Federal Council but to all aspects of the Swiss political system. "The consequences of this proportional or quota rule can thus have astonishing results for the fair representation of different cultural minorities".⁵⁴³

Another consociational element in the Swiss political system is the rule that the linguistic minorities should have veto power in matters of vital interest to them. Strong Swiss federalism is an important consociational element too. Of all the public expenditures, only about one-third occurs at the federal level, the other two at the cantonal and communal level. Matters that are closely linked to language, in particular education and culture are to a large extent handled at the cantonal level. Of the 26 cantons, only four are linguistically

⁵⁴² Jürg Steiner, "Switzerland and the European Union: A Puzzle." Available at: <http://www.ies.ubc.ca/events/swiss/steiner.html>

⁵⁴³ Linder, *Swiss Democracy*, op.cit., p.22.

mixed. The others have a sole official language, and newcomers from other language regions have to adapt, in particular for schooling. With this great cantonal autonomy in educational and cultural matters many potentially explosive linguistic conflicts are withdrawn from the federal level. These various consociational elements contribute to the relative harmony at the national level. Otherwise, there might have been a possibility that German speakers as a majority group would have played the political game in a competitive way and one could expect that the language situation in Switzerland would be much worse. The linguistic minorities in Switzerland would most likely not have accepted being permanently excluded from positions of power. The consociational explanation is also supported by the case of the Jura; for a long time, the German speaking majority of the Bern canton was unwilling to practice consociationalism towards the French speaking minority in the Jura, and this lack of consociationalism was an important contributing factor to the strife in the Jura. Compared with many multi-cultural societies which have difficulty in coping with their cleavages, Swiss society has integrated successfully. Consociationalism or power-sharing as an institutional arrangement helped to stabilize relations among the Swiss language groups. However, it is not correct to base consociationalism alone on linguistic harmony. The relative harmony among the language groups allowed a consociational pattern to take place. There are a number of favourable factors for religious and multicultural integration and several potential factors contribute to linguistic harmony. Among them, there is the *economic wealth* of the country and the *relative equal distribution of this wealth* among the language groups. The religious, linguistic and socio-economic cleavages do not coincide with the geographical boundaries of the cantons; rather, they crosscut each other contributing to integration. Among socio-economically poor cantons, there are both German- and French-speaking states. The accumulation of different issues into one two-sided political conflict, for instance with poor Catholic French-speakers on one side and rich Protestant German-speakers on the other, could never develop. Most of the cultural groups have experienced being part of a minority.⁵⁴⁴ Another factor is that the two major language groups are divided into cantons which have their own strong identities. Furthermore, the border between French and German speakers is made by three bilingual cantons. This fluid border, together with the cantonal segmentation within the language groups, is another reason that the language

⁵⁴⁴ Ibid., 25.

groups are not so sharply pitted against each other.⁵⁴⁵ Pressure from outside helped the Swiss to establish their own identity. The common interest in survival as an independent nation was more important than internal differences on cultural issues. All these factors reinforced each other, and contributed to linguistic harmony at the national level. Thus, consociationalism has helped harmony, which, in turn, has helped consociationalism.⁵⁴⁶ However, in recent years, the language cleavage has become more important in Swiss politics. "Consociationalism is used even more carefully than ever before in relations among the language groups".⁵⁴⁷ There are some powerful factors that increased the importance of the language cleavage. The decreased importance of religion in Swiss politics is one of them. The decreased salience of neutrality as a foreign policy device is another one. Today, Switzerland has a much more active foreign policy than in former times, which has the consequence that the different foreign policy approaches of the language groups have become much more manifest. Cantonal borders have become less important. This is particularly true for the French speaking cantons which contribute further to the perception of a common French speaking identity. Interactions across language borders have become less frequent.⁵⁴⁸ As Steiner says consociationalism is more important than ever if Switzerland wants to stay together. Otherwise, the language groups would drift apart more and more.⁵⁴⁹ Consociational democracy provides with an insight into the Swiss political nature. Lijphart has often discussed consociationalism in the sense of discrete elements or processes which can be used as conflict-reducing mechanisms.⁵⁵⁰ In this sense many aspects of Swiss political life reflect the operation of such mechanisms. Power-sharing with the federal system has been a way of delimiting potentially destructive conflict. It was used most recently to immobilize ethnic conflict in the Jura by creating a separate canton for the Northern separatist districts, and has helped to ease intense political pressure over religious and other ethnic issues. The territorial principle which guarantees the right of cultural integrity to historical ethnic populations whether or not they are in the cantonal majority could be considered a consociational element in Swiss politics. The long-standing practice and popular affirmation of proportionality,

⁵⁴⁵ Steiner, "Switzerland and the European Union," op.cit.

⁵⁴⁶ Ibid

⁵⁴⁷ Ibid

⁵⁴⁸ For example, the traditional year that German speakers spent in a French speaking canton after the end of mandatory schooling has become almost completely a thing of the past.

⁵⁴⁹ Steiner, "Switzerland and the European Union," op.cit.

⁵⁵⁰ David Earle Bohn, "Consociationalism and Accommodation in Switzerland," *The Journal of Politics*, Vol. 43, No. 4, November 1981, p. 1239.

which seeks to represent effectively all major groups in the highest levels of government, reflects the spirit of consociational democracy. Elite behavior also could be conceived as conforming to consociational principles. But the tendency to bureaucratize problems - reducing them to administrative questions, the practice of collegiality of collective decision-making in the Federal Council, and willingness to accept as legitimate the fundamental interests of all participants and the inevitable restraints these interests place on the decision-making process do affect a reduction of conflict and create the appearance of a united front. Swiss neutrality reduces the pressure that otherwise would weigh upon governmental institutions. These elements correspond to the ultimate purpose of consociational democracy that of reducing institutional destabilizing tensions and strife in order to keep political conflict manageable. These elements conform to a traditional spirit of accommodation and compromise which has characterized Swiss politics for centuries.

4.2 ACCOMMODATION BY FEDERALISM IN COMPARATIVE PERSPECTIVE

Today, the peaceful solution of multi-ethnic conflicts and the integration of fragmented societies is one of the most difficult problems in many countries. Scholars have developed formulas for the prevention and resolution of societal conflicts and in many instances they propose various forms of power-sharing arrangements to prevent civil strife from breaking out. The main one is the federal principle which aims at achieving both political integration and freedom, appealing to multiethnic states as a means of managing their ethnic diversities. The self-rule notion of federalism could be interlinked with ethnic autonomy or the right of groups to maintain and develop their peculiar identities. During the past two centuries, federalism has been shown to be successful in realizing two basic goals of such complex societies: maintaining the unity of the common state and protecting the particularities of the smaller communities.

SWITZERLAND

The modern Swiss Confederation was established in 1848 when a loose association of autonomous cantons were united within one state. They had fought one another in a civil war in 1847 and their peaceful co-existence was made possible by the establishment of state structure which found a balance between the interests of the state as a whole and the interests of the individual cantons. Up to the end of the 19th century, the causes of conflict were much more for religious reasons between Protestants (55%) and Catholics (44%)

than for cultural reasons between the different languages. This has changed in the 20th century and today, religion as a cause of conflict has disappeared. Much more important is the language issue. Democratic decisions of the people by referendum show that language groups have very different opinions on foreign policy, European integration, social security and environment. If, in the upcoming years, the gap between language communities becomes larger, one can foresee important conflicts between the different communities.⁵⁵¹ These emerging new tensions among different linguistic communities let the new Constitution of 1999 emphasize the obligation of the Federation to improve peace and understanding among the different linguistic communities. The constitution, as the previous one, states all four languages, namely German, French, Italian and Romansh, as official languages of the country. The three main languages (German, French and Italian) are legally on an equal footing. In the case of the Romansh language, the Swiss Constitution provides only the guarantee for the Romansh speaking citizens to have their official contact with the federal administration in their own native language.

While the Constitution of 1874 clearly states that the different people of the sovereign cantons form the Federation, the new Constitution bases its legitimacy on the composed Swiss nation on one side and on the peoples of the cantons on the other side. The traditional political procedures and institutions such as direct democracy, federalism and local authority have been so strongly internalized that they turned a culturally diverse population into a politically homogeneous people. Federalism referring shared rule among the different cultures and strong self-rule (autonomy) of cantons and municipalities has been and still is the most important integrative factor to unite the Swiss population. According to Fleiner, it is these common political values that explains why Switzerland has not been up to now split up into language and/or religious communities. Thus, the legitimacy of the Swiss Confederation is based on the peoples of the cantons as well as on a "Swiss nation" composed of a rich diversity of different cultures and religions. This nation is fragmented by the Cantons, which represent the political units of the federation. The homogeneity of the state thus is based on the common understanding and on the common perception of the fundamentals of politics. This historical reality implements finally the federal structure of the federation. Fleiner claims that "if the Constitution

Thomas Fleiner- Gerster, "Switzerland: subsidiarity, ethnic and cultural diversity." Available at: <http://federalmcart.ksu.ru/conference/konfer3/flajner.htm>

would not take this reality into account, the Confederation would finally split into the different ethnic communities".⁵⁵²

Religious and language communities always claimed their rights under the title of collective rights, which in certain cases may restrict individual liberties. Equality of community may often have even priority with regard to equality of individuals. Direct democracy, the guarantee of cantonal autonomy in the Constitution and a political climate defending and promoting federalism have been the guarantees of the Swiss multiculturalism. These instruments have been developed for the settlement of conflicts and for the defence of minority interests.

One of the characteristic features of Switzerland is that political areas (cantons) do not correspond with areas of religion or language and therefore belonging to one language group does not mean that you belong also to the same religion. This is one of the main reasons that 'ethnicity', as in Belgium, never played an important role in Switzerland and 'citizenship' is much more strongly developed.⁵⁵³ In other words, all economic, religious and linguistic fragmentation of the cantonal societies did not coincide socially or geographically except in the region of the Jura.

The operative units are territorial rather than linguistic. For many purposes, religion is a more consequential divider than language, and the Protestant-Catholic divide cuts across language zones.⁵⁵⁴

Briefly, it can be said that federalism in Switzerland has offered the societies of the cantons the highest autonomy for keeping their own government, ample opportunities to live differently and to maintain their regional traditions and culture. Although Flaus Armingeon states that "the linguistic divide still exists and is of great relevance"⁵⁵⁵ in the last 150 years, the cleavages of religion and language have cooled. As Wolf Linder and Adrian Vatter point out "to a large scale, Swiss society is a product of its political institutions..."⁵⁵⁶

⁵⁵² Ibid.

⁵⁵³ Romedi Arquint and Murezi Michael, "Democracy, Federalism and Multiculturalism-The example of Switzerland," Seminar by Federal Union of European Nationalities, July 2003, <http://www.fuen.org/pdfs/20030822RAMMgech.pdf>.

⁵⁵⁴ Crawford Young, "Ethnic Diversity," op.cit., p.12.

⁵⁵⁵ Klaus Armingeon, "Swiss federalism in comparative perspective," in Ute Schmidt-Wachendorfer, *Federalism and Political Performance* (London and New York: Routledge, 2000), p. 120.

⁵⁵⁶ Wolf Linder and Adrian Vatter "Institutions and Outcomes of Swiss Federalism: The Role of the Cantons in Swiss Politics," *West European Politics*, Vol.24, No.1, January 2001, p. 109

The Swiss are able to accept equal rights for all three languages despite the fact that the German language is spoken by at least 65 to 70 % of the population. Thus no "nation" can claim to have priority with regard to its constitutional status.⁵⁵⁷ It can be said that one of the important reasons for the impressive results achieved by Switzerland is the fact that it has never been a nation state although the German-speaking population has been a substantial majority in the country. Because there are no clearly defined socio-economic, linguistic or regional frontiers in the country, almost every Swiss knows from his own experience what it means to belong to a minority.⁵⁵⁸ Whereas Belgium practises positive discrimination i.e. machinery to protect minority rights, Switzerland has never granted special rights to any minority. The Federal Court in Switzerland has provided for language guarantees on the bases of the *principle of territoriality*. This means that in a French-speaking territory the official language is French, in an Italian-speaking territory it is Italian. This means also that a German-speaking Swiss family moving to a French-speaking territory will send their children to French schools and vice-versa. This principle is considerably weakened in territories with mixed language traditions and in bilingual towns. The principle has been introduced as an instrument or a means to guarantee peace among different language groups.

Direct democracy gives Swiss citizens the power to call for votes on any issue at any level – local, cantonal or national, provided they can collect enough signatures in support of their proposal. This special kind of federalism keeps the country together, despite cultural, linguistic and religious differences. The use of referendums and initiatives remain wider and their impact on the system deeper at cantonal and communal level than at the federal level.

For Klaus Armingeon Swiss federalism "is a success story if evaluated against the criteria of constraints on central government, sustainability, integration of territorially concentrated socio-cultural groups, preservation of socio-cultural and political regions, and people's satisfaction with the way democracy works".⁵⁵⁹ Jonathan Steinberg points

⁵⁵⁷ Thomas Fleiner-Gerster, "The Swiss experience of multiethnic society and federalism as a mean to solve multiethnic conflicts". Available at: <http://www.ecsanct.org/conferences/ecsaWorld2/Fleiner-Gerster.htm>

⁵⁵⁸ Natella Akaba, "The Swiss Experience and Prospects for a Peaceful Abkhazian-Georgian Peace Settlement" in Tinatin Khisadelli, "Federalism and Consociationalism" in Bruno Coppier, David Dachiasvilli and Natella Akaba, *Federal Practice: Exploring Alternatives for Georgia and Abkhazia* (Brussels: VUB University Press, 2000), p.76.

⁵⁵⁹ Armingeon, "Swiss Federalism," op.cit., p. 121.

out that "Its institutions have evolved in a matrix of conflict- religious, ideological, linguistic, economic, social and military- and have turned into a system of concordance and conflict resolution. Its complex representative machinery, its magic formulae and multi-member executives, its referenda and initiatives, its jigsaw puzzle of territories, turn the political machinery into an acute and sensitive device for registering, channelling and resolving the movements caused by twitches of the body politic. Around and through the entire set of structures the values-longevity in service, anonymity, a certain populist cosiness, a general awareness of how things are done according to the 'unwritten rules'- unify behaviour across all the differences...Swiss national identity arises from these shared values and attitudes."⁵⁶⁰

Federal Institutions

Strong bicameralism, the so-called 'double majority' requirement and the cantons' participation in the policy making process which determine the decision-making process to a significant extent are the important characteristics of Swiss federalism. Article 3 of the Swiss constitution states that unless it is decided by constitutional amendment that certain powers are to be conferred to the federation they lie with the cantons. The proposal to confer any power on the federation needs the approval not only of a majority in both chambers of parliament, but also of a popular majority and a majority of the cantons (double majority clause). This demands a broad consensus in favour of the proposal, both among the political elite at the federal and cantonal level and among the people. Consequently, centralization in Switzerland has been slow.⁵⁶¹ Although the central government's influence has certainly increased, the Swiss solution still exhibits a marked preference for extensive cantonal autonomy.

There are a number of formal and informal channels through which the cantons take part in the federation's decision-making process. One of the most important institutions of cantonal influence is strong bicameralism. The Swiss federal Parliament is divided into two chambers, the National Council is composed of 200 seats, representing the people, and the Council of States is composed of 46, representing the cantons. In the Council of States each canton has the same number of votes. Two members come from each of the 20

⁵⁶⁰ Jonathan Steinberg, *Why Switzerland* (Cambridge: Cambridge University Press, 1996), p.251

⁵⁶¹ Adrian Vatter, "The Transformation of Access and Veto Points in Swiss Federalism," *Regional and Federal Studies*, Vol.15, No. 1, March 2005, p. 3.

full cantons and one from the 6 half-cantons. There is no cantonal representation as such in the federal executive of the seven-member Federal Council, but unwritten proportionality rules stipulate that not more than one councilor should come from the same canton and that the college should contain at least two non-German speakers, one Protestant and one Catholic.

Members of National Council are directly elected in proportion to the population of each canton (each of which must have at least 1 representative). Each chamber has the same powers, and no federal statute can be enacted without the agreement of both of the chamber. The Council of States has the reputation of causing a status-quo bias by blocking policy innovations proposed by the government or the first chamber. However, the influence of the cantons through the Council of States has declined due to the fact that cantons are not allowed to instruct their representatives. The only external influence on Members of Parliament is their need to be re-elected.⁵⁶² With the shift to direct elections, members are now elected on party lines and owe greater loyalty to their party than to their canton. However, cantons also serve as constituencies for elections to the National Council so the cantonal basis of representation remains strong.

Cantons have great autonomy and significant participation rights in central government decision-making. Important issues need the *consensus* of important majority or minority groups. This concept of decision-making is also to be considered in the double majority system which gives cantons the same power despite their size on territory or population as to every citizen. All popular initiatives and parliamentary decisions on constitutional amendments and on some international treaties need a double majority of the people and the cantons.

The major role of the cantons in federal decision-making is not only found in the formal elements of the constitution - bicameralism and the double majority clause- but also in the pre-parliamentary process of federal legislation and in the implementation of federal policies. Thus, an element of Swiss political culture implies that not only the majority but also a *consensus* with important different groups and representatives be accomplished. The cantons have influence on the process even before a proposition comes to the Parliament. Cantonal participation is particularly strong at the beginning of the policy process (policy formulation) and at the end (policy implementation). In recent years, the

⁵⁶² Thomas Stauffer, Nicole Topperwien, Urs Thalmann-Torres, "Switzerland," in Ann L. Griffiths and Karl Nerenberg, *Handbook of Federal Countries*, 2002 (London: McGill-Queen's University Press, 2002), p.318.

influence of the cantons both in the pre-parliamentary and the post-parliamentary stage has generally diminished in comparison to the weight of other actors. However, this was dependent on the administrative resources of the cantons: the complexity and high degree of regulation of national policies causes mainly small and poor cantons to face increasing difficulties in the process of policy formulation and implementation. Larger cantons are better able to defend their interests at the federal level. However, the general decline in the vertical institutions does not apply to the double majority requirement. In the last 30 years, this instrument has strengthened the collective power of the cantons, and in many cases, the indirect effects have exceeded the direct ones.⁵⁶³

The system of proportionality in all important political institutions, the system of peoples and cantonal majority for constitutional decisions, the fact that every federal decision must be implemented by the canton and that there are no real administrative means for the government to execute are the characteristic features of Swiss federalism. It can be said that the proportional representation of the population in parliament, government, courts and almost all political authorities is another consequence of the convictions, that legitimacy cannot be reached by simple majority but needs consensus of important parts of the society.

Direct democracy helps to solve ethnic conflicts through enabling the small ethnic groups who are majority in a small local territorial unit to decide whatever they can on their own and through permission on the lower level to find common solutions on a consensus bases which takes into account that everybody somehow depends on everybody. So it is possible on the local level to develop tolerance and respect of the other and principle solidarity among different ethnic groups as far as the inhabitants of the village or the town conceive the mutual dependents of every important group of the town. Switzerland has given specific rights to specific minorities. It has always delegated autonomy to all cantons or districts whether they are composed of a minority or a majority. Through popular initiative, and popular referendum the citizens can react to decisions taken by authorities that they believe are made against their basic interest. Thus they do not need to have party representation according to ethnic, linguistic or religious lines. This may be one reason that parties in Switzerland did not develop along such lines except the Catholic party.⁵⁶⁴ Switzerland has seen to be satisfied with the experience since it extended the use

⁵⁶³ Vatter, *op.cit.*, pp. 1-17.

⁵⁶⁴ *Ibid.*

of *referenda* from revisions of the constitution proposed by the government (the compulsory referendum), to the vetoing of most types of legislation (subject to obtaining a required number of signatures), then to the initiating of revisions of the constitution. This increase in the scope of the referendum fits a culture that has valued and practiced direct democracy for a very long time. Cantons have collective veto power over any shift of competences to the federal level because all amendments to the federal constitution are subject to approval by a majority of cantons, as well as of the people, in a mandatory referendum. This means that if popular and cantonal majorities do not coincide, amendments are not passed.

The composition of the executive branch of the federal government, the Federal Council, is a very important factor of shared rule. For government decisions, all members of the Federal Council have equal votes. The Federal Council and its administration draft almost all law-making propositions and they negotiate whenever an international treaty is discussed. The Federal Council shows the particularity of the Swiss way of conducting politics: consensus-driving democracy. It is composed of seven Federal Councillors, elected by both chambers of the federal parliament, each of whom is head of the ministry, and together they are the Swiss Executive. The Swiss governing coalition includes all major parties. The balancing act performed when composing the 7 member Swiss executive is the result of a 'magic formula'.⁵⁶⁵ And, unlike Canada, those ministers do not serve at the will of a prime minister; the system is collegial, hence consensual. For government decisions, all members of the Federal Council have equal votes. As much as possible, all major groups are given representation in the Council. This means that the important political parties are represented as well as the language groups, the cantons and both genders. A legislative proposal would have little chance of being accepted by the people if one or more major group did not support it. Since a strong opposition would be able to block most legislative activity, it is in the interest of every party to have the other groups involved for all important proposals. Since the revision of 1999, the constitution states that the Confederation will only assume the task that requires uniform regulation.

Institutions of Swiss federalism open up channels for subnational veto players to block centralization and slow down policy change. The requirement for a double majority of cantons and people for constitutional amendments, in combination with the cantonal

⁵⁶⁵ With only 7 seats the executive manages to include 4 parties, at least 2 non Germanophone cantons including that of Vaud, and normally 4 Germanophone ministers, 2 Francophones, 1 Italophone, and 3 to 4 Protestants as well as Catholics.

implementation of federal law, increase the number of veto points and grant the cantons a strong veto power position in Switzerland's political system. Strong federalism and direct democracy are crucial competitive veto points, entailing as they do the coordination of numerous actors at the sub-national level, all of whom try to shift the political power towards the arena under their control.

Unlike in other federations, the Swiss Federal Supreme Court has no direct influence on the balance of powers between the cantons and the federation, even though it is the highest federal judiciary authority (Article 188). This is mainly due to the historical mistrust of the population towards the power of judges and an extremely strong belief in democracy.⁵⁶⁶

The Federal Government and the Constituent States

The rights of participation of the lower tiers of government are numerous. The cantons have the possibility to intervene at nearly every stage of the political decision-making process, either by influencing policy formulation, decision-making or implementation.⁵⁶⁷

The requirement of a cantonal majority for constitutional amendments is a very effective veto point in the hands of the cantonal population in order to prevent shifts of power to the centre.⁵⁶⁸ The population is granted a say in national matters since it elects the members of the second chamber of parliament.

Constitutionally, Cantons are the only actors free to determine their own policy-making role within the limits of the federal constitution, although this freedom has been progressively reduced by the process of centralization. They vary greatly in size, both geographically and demographically, in their political influence and in the length of the time they have been in the Swiss federation but nonetheless, they all have the same rights under the federal constitution. They still tend to perceive of themselves as independent and sovereign. They hold vestigial elements of statehood including a concept of cantonal demos and citizenship, full taxation power and a 'residual powers' clause. "They are probably more autonomous, more organic and more 'self-conscious' than regional units in other federal systems. Historically, the cantons have preferred to retain their policy-making autonomy rather than to cede it to the central level in exchange for a significant stake in federal decision making. Not only are they represented in one chamber of the

⁵⁶⁶ Ibid.

⁵⁶⁷ Wolf Linder, *Swiss Democracy* (New York: St. Martin's Press. 1998).

⁵⁶⁸ Vatter, op.cit., p. 12.

bicameral Federal Assembly, they are also fully involved in pre-parliamentary consultations on draft legislation, a crucial agenda-setting phase in the Swiss law-making process".⁵⁶⁹ Cantons and communes undertake most of the financing and implementation of federal laws and policies. There is a great deal of inter cantonal cooperation, through conferences of ministers and signing of 'treaties', known as concordats, on a range of matters that cantons want to retain as their exclusive competence but on which some degree of harmonization is also deemed desirable.

Cooperation and Coordination

Contrary to the vertical institutions of federalism, horizontal cooperation between the cantons has gained in importance. The number of intercantonal agreements and conferences has been growing which open up the possibility for the cantons to exert informal, yet direct vertical influence on domestic and foreign policy.

The aforementioned traditional nineteenth century institutions of federalism are powerful veto points, helping to protect the interests of small, conservative and rural cantons with a preference for the status quo. On the other hand, the vertical institutions that developed in the twentieth century, which require more active cantonal participation, serve mainly the densely populated and urban cantons equipped with sufficient administrative resources as access points.

The electorate's veto power has been constantly strengthened at the expense of the influence of cantonal executives and legislatures. This reinforcement of direct democracy has led to attempts by subnational governments to influence national politics through informal channels.⁵⁷⁰

It can generally be said that at the implementation stage, the clear distinction and division of power between the federation and the cantons has been blurred by mechanisms of intensive cooperation between the different levels within the federal system. Most federal programmes and central government functions are carried out by the cantons and the municipalities. In many policy areas, legislative power lies with the central government, while the subnational units regulate policy implementation. This institutional arrangement is called cooperative federalism which involves the cooperation of different levels of government within the same policy programme. At the same time, it has led to a complex

⁵⁶⁹ Clive Church, *The Politics and Government of Switzerland* (Basingstoke: Palgrave, 2004), pp.163-86.

⁵⁷⁰ *Ibid.*, 14.

system of financial compensation between the federation, the cantons and municipalities.⁵⁷¹ The implementation of central government programmes depends on the political will of the cantons and on their administrative capacities. On the one hand, administrative federalism strengthens conflict resolution capacities as well as the flexibility and adaptability of the system but on the other hand, it may produce inconsistent policy outcomes, weaken the governance capacity of the centre and make actors less responsible.⁵⁷²

Financial Arrangements

The division of competences relates essentially to the legislative sphere, while policy implementation is overwhelmingly carried out at lower levels. This is also seen in the fiscal sphere. All three levels have revenue-raising powers and broadly speaking aim to be self-financing although there is a considerable degree of revenue sharing. Reflecting the distribution of policy implementation, cantons and communes spend more than the federation. The federation has been granted tax income on a limited temporal basis only and cannot extend it unilaterally. Although they do not depend on income from the center, cantons get help from the federation through sharing in federal taxes as well as by receiving grants, refunds and subsidies in compensation for their implementation role and/or investment. This is done through an equalization fund intended to smooth the imbalances in revenues among cantons. However, significant differences persist and the overall financial impact of equalization is much weaker than in other federal systems, such as Germany.

All cantons have a right of legislative initiative and, unlike the federation, many use the financial referendum on important items of public expenditure. The greater part of citizen participation in decision-making -through direct democracy- takes place at the cantonal and communal levels rather than at the federal level.

Most of the cantons are very small and due to their limited size, and often irregular borders, these small cantons are simply not effective as 'functional' administrative units.

According to several studies, direct democracy and federal power-sharing are among the main reasons for the fiscal weaknesses of the Swiss central state. They seem to be strong

⁵⁷¹ Ibid.

⁵⁷² Ibid.

veto points against high public spending and taxes.⁵⁷³ Experts also point out that peculiarity of administrative federalism in Switzerland in which cantons of different size assume plentiful tasks in the implementation of federal programmes often results in lax standards and, therefore, in inconsistent policy outcomes, because small cantons in particular lack sufficient financial, human and administrative resources.⁵⁷⁴

Swiss federalism is characterised and defined by the idea of solidarity between the cantons and different parts of the country. Inter-cantonal competition exists to a certain degree (e.g. where the taxation policies are concerned), but differences between weaker and stronger cantons or regions are balanced by transfer payments.

Solidarity with the less developed regions is one of the most important issues for any federal country seeking a solution to ethnic conflict and this is the case in Switzerland. The latest constitutional conflict in Belgium has grown from such conflicts. The Netherlands part of Belgium believes they are paying too much for the development of the Wallonian part of Belgium. Thus it is almost indispensable to create a political culture of solidarity among different ethnic groups. Tax-and expenditure autonomy on one side must be linked with measures to soften somehow regional economic disparities. Economic promotion with infrastructure specially developed in underdeveloped regions is therefore very important.

Distribution of Powers and Functions

Switzerland is characterized by a cooperative federalism in which there is a functional division of competencies between the federation and the cantons rather than dualistic separation: legislation largely produced centrally; implementation largely done regionally or locally. The principle of loyal co-operation between levels of government is central to its working and is reflected in the tax system which is also divided both vertically and horizontally. Federalism has become a key component of Swiss national identity, which is based on 'constitutional patriotism' rather than on shared ethnicity or culture.⁵⁷⁵

⁵⁷³ See for more information Linder, *Swiss Democracy*, and Herbert Obinger, "Federalism, Direct Democracy and Welfare State Development in Switzerland," *Journal of Public Policy*, Vol.18, No.3, 1998, p.257.

⁵⁷⁴ Sonja Walti, "Institutional Reform of Federalism: Changing the Players Rather than the Rules of the Game," *Swiss Political Science Review*, Vol.2, No.2, 1996, p. 133.

⁵⁷⁵ Clive Church and Paolo Dardanelli, "The Dynamics of Confederalism and Federalism: Comparing Switzerland and the EU," *Regional and Federal Studies*, Vol. 15, No. 2, June 2005, p. 172.

The division of competences between the three levels of government is primarily regulated through constitutional norms: federal norms regulate the relationship between canton and communes. The presence of constitutional rules at both federal and cantonal level means that each of the three levels operates within legal constraints and has to respect the autonomy and prerogatives of the other levels and to cooperate with them. This said, there is a clear hierarchy of levels. Cantonal constitutions and legislation constrain the communes' margin of manoeuvre while the federal constitution and laws prevail over cantonal laws. Importantly, cantonal acts are subject to judicial review by the Federal Tribunal while federal acts are not, and can only be challenged through referendum.

The formal division of competences is less clear-cut than might be expected: it is not fully specified and it operates through several categories- fully cantonal, joint, and fully federal- which are not straightforward. The complexity arises from the fact that the joint competences are shared between the two levels in a variety of different ways and that even within fully federal competences policy implementation is typically left to cantons and communes. In other words, the division of competences relates essentially to the legislative sphere, while policy implementation is overwhelmingly carried out at lower levels.

The blurring over time of the division of competences and of responsibilities makes the process of decision-making rather difficult. Devising a rational and effective division of labour between the different levels of government, and an efficient system of 'fiscal federalism' is far from easy. The current system of financial equalization is very difficult to understand and is hard to reform given the vested interest at play and the tendency by each level of government to offload onerous tasks onto another. Tax competition among cantons is also a delicate issue, difficult to tackle without some form of fiscal harmonization which would impinge on the fiscal autonomy of the cantons. Policy competences are significantly more centralized under the 1999 Constitution than they were under the 1874 Constitution.⁵⁷⁶

According to the principle of administrative federalism, the laws and regulations of the centre are administered, as much as possible, through the civil service of the federated units. The advantages of Swiss administrative federalism is in reducing the cost of administration, and localising, hence hiding federal power. It also facilitates the

⁵⁷⁶ Ibid., 179-180.

implementation of the principle of territorial separation of the official languages. Switzerland has remained one of the most decentralised countries. The concept of decentralization in Switzerland provides three main levels of decision: local assembly of citizens and local authority, citizens of the canton, cantonal parliament and cantonal executive, and citizens of Switzerland, two chambers of the federal parliament and the federal government. Despite growing responsibilities over the last decades, the central government controls only about one-third of public revenue and expenditure. In contrast, the cantons and the communes control about two-thirds of public financial and personnel resources, are the main responsible actors in a wide range of policy programmes, and play a prominent role in implementing most federal programmes.

The cantons and the communes have wide-ranging autonomy and are able to take many political decisions. This decentralised division of power and the attempt to solve issues at the lowest possible level (principle of subsidiarity) form the basis of the Confederation and keep the state as close as possible to the people.

Swiss federalism permits a far greater decentralisation of power. Many decisions are made at a communal or cantonal level. The cantons are responsible for executing and adapting laws to suit their own needs and this, too, helps provide a sense of unity and empowerment.⁵⁷⁷ The competences given to the Confederation in the Constitution are usually restricted to the legislative powers. Implementation of the statutes is part of the residual power of the Cantons.

BELGIUM

The present system in Belgium has been the result of constitutional reforms that transformed the unitary state into a federal one due to the deepened centrifugal tendencies of regionalism. The federalisation of Belgium occurred step by step through constitutional-institutional reforms in 1970, 1980, 1988, and 1993. The driving force behind the process of decentralisation was the result of the context of the Flemish Movement's historical struggle for cultural/linguistic preservation and the more recent fight of the Walloon Movement for economic autonomy.

⁵⁷⁷Jonathan Summerton, "What keeps Switzerland together?" Available at: http://www.swissworld.org/dvd_rom/eng/direct_democracy_2004/content/federalism/federalism.html

The Belgian federal model involves three communities and three regions, even though, generally speaking, reference is made to two ethnic groups: the Flemish and the Walloons. Belgium is thus divided into a Flemish Community, a French Community and a German-speaking Community, whereby the first two have competence in Brussels for Dutch-speaking and French-speaking residents respectively. There are also three Regions: the Flemish Region, the Walloon Region and the Brussels Capital Region, with its nineteen communes. The Walloon Region also exercises competence for territorial matters in the German-speaking Community (the East Cantons with their 9 communes and 68.000 inhabitants). The institutions of the region of Brussels reflect a commitment to the dual representation of Flemish and Francophone inhabitants. Federalism in Belgium has been grown out of linguistic differences, but they have promoted even greater differentiation due to the system itself that encourages interregional comparison and provides limited possibilities for the development of cross-cutting cleavages.

Federal Institutions

The senate is composed of 71 seats. There are 40 members, of which 25 are Dutch and 15 are French, directly elected by popular vote, 31 are indirectly elected in the following manner: 10 each are drawn from the French and Flemish Community Council and 1 from the German Community Council and 10 of which 6 are Dutch and 4 are French are appointed by Senators from the 2 previous categories. The Chamber of Deputies is composed of 150 seats and members are directly elected.

Usually in this system, the upper house that represents subnationals is relatively weak. As an example, the bicomunal composition of the federal executive as well as the technique of special (double) majorities needed to change many constitutional provisions, including the catalogue of sub-national competences, ensures that the interest of Flemish and French communities are taken into account. In other words, for community questions, the legislative process involves a special procedure that necessitates majority support within each parliamentary linguistic group (French and Flemish) both in the House and Senate as well as a two third majority in each of the two chambers.

However, these features reduce the need for a strong federal second chamber whose representatives articulate regional interests in federal decision-making.⁵⁷⁸ Community interests continue to be predominantly taken care of by the leaders from the regional

⁵⁷⁸ Ibid.

parties, comprising the leading members of the federal and, increasingly, regional executives. In other words, the procedure for amending the Belgian constitution requires the support of a two third majority in each chamber. This procedure does not involve the constituent units or even include references to linguistic groups. The legislative process as it relates to community issues offers more protection for the minority linguistic group than the amending formula of the constitution.⁵⁷⁹ Paradoxically, whereas since 1993 the regional parliaments must endorse international treaties which affect their domestic competencies, their approval is not yet required for proposed changes to the constitution or special majority laws affecting their competencies. Concerning the issues of international relations and the structure of the state, bills have to be approved by both the House and the Senate on an equal footing.

The major language groups hold a mutual veto power in the centre. This way, the French speakers ensured that their demographic and increasingly also socio-economic minority position would not lead to their political marginalisation. Since federal MPs represent linguistically split parties which do not campaign across the language border, they are not likely to scale back the current levels of regional autonomy. This requirement that both language groups must approve changes to the federal structure of Belgium largely compensates for the Senate's failure to represent specific Community or Regional interests.

Sensitivity to the protection of the French-speaking minority is reflected in the federal executive where there must be an equal number of Dutch- and French-speaking ministers. The Prime Minister is exempt from that rule and is most often Flemish.

There are a number of legal safeguard mechanisms: "special majority laws" which requires separate majorities from the linguistic groups as well as two thirds of the total votes cast; an "alarm bell procedure" which suspends parliamentary procedure; the equal linguistic composition of the Council of Ministers; and an equal number of judges on higher jurisdictions. The special laws implementing the institutional and financial reforms must be voted for by a two-thirds majority and with at least 50% of the votes in favour being cast in each linguistic group (Dutch- and French-speaking).

Belgian politicians have always been reluctant to give substantial power to the judiciary in the political system.⁵⁸⁰ The Cour d'arbitrage (Arbitration Court) controls the

⁵⁷⁹ Lecours, *op.cit.*, p. 64.

⁵⁸⁰ *Ibid.*

constitutionality of laws with respect to the division of power among the federal government, Regions and Communities. The scope of the Cour remains quite narrow in other matters: it can rule only on the principles of equality, nondiscrimination, and freedom in the area of education. Its composition is guided by the idea of linguistic parity and resistance to the "government of judges". Thus, the Cour includes 12 judges, half of whom are Dutch-speakers and the other half French-speakers, and also half are professional judges and half are ex-politicians who are not necessarily trained in the law. There are two Presidents, one from each linguistic group, working on the basis of an alternating effective presidency. The Arbitration Court which arbitrates in legal disputes between the various levels of government, and has an extensive network of contact committees to prevent and resolve disputes by consultation, co-operation and co-ordination. This is an example of affirming a principle - devolution of power - whilst establishing practical measures to resolve problems of overlap and the need for practical co-ordination.

Belgium uses a number of mechanisms to resolve disputes between different levels of government outside of the formal judicial system. The 'Concertation Committee' is one of the chief political dispute resolution mechanisms. It is a multilateral body composed of the federal Prime Minister, five federal ministers, and six members of federated governments. It is also equally divided between French- and Dutch-speakers. This committee does not review the legality of a particular act, but the practical advisability of an executive or legislative act. The committee can stop any action on the part of any level of government for 60 days while it tries to reach a compromise. Legislative assemblies can also, upon a vote of three-quarters of their members, submit the legislative bill of another assembly to the Concertation Committee. If no solution emerges within the 60 days, the challenged legislative measure can be adopted.

The system is based on no direct democracy, unlike Switzerland, because it would threaten many of the delicate checks and balances built into the system and would possibly cause open conflict between communities, if the result of a referendum was different in each. The system is underpinned by complex reciprocal minority guarantees at every level, based on community membership. People living near the language border or near Brussels are accorded some limited facilities for the use of their own languages, in their relations with the authorities, and in some cases they may vote across the language

border. Otherwise strict principles of territoriality and unilingualism apply, except in bilingual Brussels.

Distribution of Powers and Functions

The constitutional distribution of power is extremely detailed. In theory, at least, nearly all legislative powers are exclusive. Wide ranging socio-economic powers, as well as cultural and personalised services, have been devolved. Residual powers lie with the sub-regional authorities. Belgium is a federal state with wide-ranging autonomy for Communities and Regions, including in the international field. Significant rights to conduct international relations and conclude treaties have been devolved to the regions and communities, without requiring the approval or intervention of the federal government, in those areas where the regions or communities enjoy devolved domestic competence. The three territorial regions hold powers over economic issues and development related to their territories including environmental and agricultural policy, research and external commerce. The primary powers of the three non-territorial communities include educational policy and linguistic and cultural matters. Moreover, communities may engage in some foreign relations directly. "In distributing competences between different units, the Belgian structure minimises the likelihood of persistent conflict and controversy".⁵⁸¹ In practice, the competences which have been assigned to the regional level are very detailed and extensive in scope. Extracting the Community and Regional competences from the total list of public competences leaves defence, justice, internal security, taxation policy and social security as the only federal competences. These federal powers are not insignificant. Social security (i.e. unemployment, insurance, pensions and the bulk of health care) is the most important expenditure, not only at the federal level, but for Belgian public policy as a whole.

The extensive legislative autonomy of the Regions and Communities is paralleled by the presence of autonomous Regional and Community administrations. While powers are technically always devolved in a similar fashion to similar entities, those entities may and do organise their institutions differently. The most important distinction is the decision by the Flemish authorities to combine the Flemish community and the regional institutions, while such fusion has not taken place on the French side of the country. This has led to

⁵⁸¹ Sherrill Stroschein, "What Belgian Can Teach Bosnia: The Uses of Autonomy in 'Divided House' States," *Journal on Ethnopolitics and Minority in Europe*, Issue 3, 2003, p.14.

different patterns of cooperation in the North and the South of the country. This construction becomes even more complicated since the 1993 constitutional revision by allowing that areas of competence of the French Community can be transferred to the French-speaking Community Committee of the Brussels Region.

In this unique Belgian model, Brussels has an even more unique position. A Belgian compromise was reached whereby a joint 50/50 - representation system of government for Belgium (in which Flemings represent almost 60 % of the population) was accepted in exchange for a joint 50/50 - representation system of government for Brussels, (where about 20 % of the population is Dutch-speaking). Hence the Brussels Region is limited to the 19 communes, even though so-called facilities are assigned to French-speakers in six communes on the outskirts of Brussels (with a total population of 66.000), so that the files of some of their inhabitants can, at their request, be handled in French even though the Flemish Community has complete supervision over those municipalities. In the Brussels Region itself, such problems do not arise, given that the Brussels government, both for the region and the communes, is officially bilingual (Dutch and French). The Brussels Region has the same areas of competence as the Flemish and the Walloon Regions, with the difference that: Brussels laws are called ordinances and not decrees.

The centre is entitled to set the overall norms, standards for economic and for legal matters. But an enormous proportion of economic power has been given to the regions and almost all powers on education, linguistic matters and others, in other words, all residual powers belong to Communities. This makes the centre weak and both the regions and the communities strong. The territorial structure of Belgian federalism has promoted social polarisation along ethnoregional lines in at least two mutually reinforcing ways: it has led to a restructuring of key social and economic arrangements to reflect underlying ethnoregional divisions, and it has given ethnoregional significance on a variety of issues, including many that have nothing to do with language or culture.⁵⁸² These developments show how they have promoted identification at the regional level while rendering regional differences a fundamental source of tension.

Belgium does not adopt the system of administrative federalism that is characteristic of German and Swiss federalism. In Belgium, federal laws are implemented by federal departments or agencies and Regional or Community laws are implemented by regional departments or agencies. Another feature which sets Belgian federalism apart from the

⁵⁸² Ibid.

German and Swiss variant relates to its characterisation as dual federalism: unlike Germany, there is little concurrent federal legislation, formally prescribed joint action programmes or framework legislation. Consequently, with one minor exception, namely the power of the Regions to raise income taxes, Belgian federal and Regional laws stand on an equal footing: both are subordinate only to the constitution.

There is a complex, limited but significant, financial solidarity between the regions and communities, within but also across linguistic boundaries. Procedural stabilisers have been built in to prevent political instability - for example, the regional parliaments cannot be dissolved. The right of dissolution of the Federal Chamber is now very restricted.

Accelerated movement toward a linguistically based federal system furthered regional unilingualism. Flanders and Wallonia have become more linguistically homogenous.⁵⁸³

This movement also hastened the division of a host of social and economic institutions along language lines.⁵⁸⁴ Many of these divisions were necessitated by the structure of a system in which political power was organised along language community and language region lines. Their net effect has been to reinforce regional structures and identities through diminishing opportunities for interregional interaction and communication, through weakening cross-cutting cleavages, and through providing regionally grounded institutional frameworks within which interests can be articulated and goals can be pursued. Because primary powers are vested in territorial units that correspond closely to language divisions, almost every issue with differential regional impact has the potential of sparking ethnoregional polarization. Moreover, as the process of federalism deepens, regional, social and economic institutions are likely to become even more powerful, thereby reinforcing these tendencies. Because primary powers are vested in territorial units that correspond closely to language divisions, almost every issue with differential regional impact has the potential of sparking ethnoregional polarization. This tendency is particularly evident in the economic sphere. When the economic centre of gravity was transferred from Wallonia to Flanders, it was understood in ethnoregional terms: Wallonia was losing out to Flanders.

The regionalisation process in Belgium has brought the country closer to the model of bicomunal polities by structuring so many interests in terms of the opposition between

⁵⁸³ With the exception of a few communes around Brussels and along the language border where minority language rights were eventually guaranteed.

⁵⁸⁴ I.e. broadcasting services and the political parties are among the institutions that have been divided along linguistic and regional lines.

French-speaking Wallonia and Dutch-speaking Flanders. This in turn has produced polarities that typical of bicomunal systems, have both taken on a life of their own and have overridden other potential polarities. The territorial structure of Belgian federalism has promoted social polarization along ethnoregional lines in at least two mutually reinforcing ways: it has led to a restructuring of key social and economic arrangements to reflect underlying ethnoregional divisions, and it has given ethnoregional significance on a variety of issues, including many that have nothing to do with language or culture. These developments show how they have promoted identification at the regional level while rendering regional differences a fundamental source of tension.

There is no hierarchy of standards between national or federal law on the one hand and community and regional law (decrees or ordinances) on the other. The principle of 'federal law shall override Land law' is therefore not applicable in Belgium⁵⁸⁵. When conflicts of competence arise, these are dealt with by the Court of Arbitration, a kind of Constitutional Court, for legislative acts (bills) and by the Council of State for executive or administrative acts.⁵⁸⁶ Conflicts of interest between the federal state and the Communities and regions, or between these amongst themselves, are brought before the Consultative Committee in which national, regional and community ministers have seats. However, a hierarchy of standards exist between European law and Belgian and community or regional law.

Cooperation and Coordination

The cumbersome process of decision-making among Flemish and Francophone members of the national government combined with the historical drive towards regional autonomy led to a distinctly dual type of federal system. The centre was carefully carved up between the two linguistic groups and their corresponding regional governments. Federal and regional competencies were divided as sharply and precisely as possible in order to decrease the volume of decisions which Flemish and Francophone politicians must take together. The volume of concurrent or shared competences has been kept to an absolute minimum. Federal and regional laws stand on equal footing and are subject to the constitution or Special Majority Laws only. Competencies attributed to either level of

⁵⁸⁵Van Ginderachter, "The Belgian Federal Model." Available at: <http://www.ecsanet.org/conferences/ecsaworld2/Ginderachter.htm>

⁵⁸⁶ A community decree on education, for example, can cancel or amend an earlier national law, without the national legislator being able to do anything about it, since this matter has been wholly transferred to the communities.

government are as a general rule of an exclusive nature, in which one level of government is solely responsible for legislating and administering policy. Belgian federalism was construed to require as little intergovernmental cooperation as possible. However, in part reflecting today's complex social realities, dual federalism remained a fiction. Furthermore, different policy aspects are often attributed to different levels of government. In this sense, federal and regional governments cannot operate in completely watertight zones if their policies intend to generate real impact.⁵⁸⁷ Europeanisation regularly forces the regions into cooperation on policies which the Belgian constitution clearly assigns exclusively to the regions. For example, social insurance (e.g. unemployment and health insurances) is federal but preventive health care is a Community competence.

The 'federalisation' of Belgium results from considerable tensions and antagonism between the two major linguistic communities. Cooperation is perceived as the necessary counterpart to the increased autonomy of the federated entities. Several crucial institutions are built on the principle of linguistic parity as in the Council of States, the Court of Arbitration and the federal Cabinet. This type of institutional cooperation reflects the bipolar nature of Belgium.

Given the high degree of antagonism between the two main linguistic communities, the small number of federated entities and the bipolar nature of many of the central institutions, actors on the Belgian federal scene are often engaged in a 'zero-sum game'. Because federalisation has proceeded through dissociation, it is often assumed that parties will not negotiate, agree or respect their commitments, unless they are forced to do so. In that context, it has seemed necessary to introduce a degree of formalism in intergovernmental relations. The large number of statutory-based cooperative mechanisms reflects this perceived need. So is the role of courts in enforcing those mechanisms.

In a country with such a fractured distribution of powers, a large number of policy areas require the adoption of cooperative agreements. One of the many original features of the Belgian federal system is the creation - so far, only on paper - of special tribunals designed to resolve disputes involving cooperative agreements. The fact that, so far, no

⁵⁸⁷For example, social insurance (e.g. unemployment and health insurances) is federal but preventive health care is a Community competence. See Wilfried Swenden and Maarten Theo Jans, " 'Will it stay or will it go?', Federalism and the sustainability of Belgium," *West European Politics*, Vol. 29, No. 5, November 2006, p. 879.

such ad hoc tribunal has actually been set up suggests that political rather than quasi-judicial, solutions are sought.

The constituent units have great power in international relations which can be seen as either pushing the federal logic to its ultimate conclusion, or as presaging a more decentralised, compartmentalised form of political organisation.⁵⁸⁸ This is one of the constitutional provisions that are significant for political accommodation in multilingual/multi-ethnic societies and federalism in Belgium. This has been incorporated into Belgian legislation to protect minority groups or to prevent one community or region taking measures which conflict with the interest of the others. While regions and communities have important autonomous powers, Belgium has to act as a single member state in the EU. The system is based on the notion of consensus-building and therefore is equipped with several consensus-building mechanisms such as special committees and working groups whose role is to facilitate the reach of such consensus. It seems that when joint interest and self-interest converged between communities, then consensus was reached more easily on the position that Belgium adopted in the EU. However, when the interests of the communities conflicted, then the search for consensus became a real challenge. In those cases the role of the federal government became extremely important in playing the arbitrator between the communities, proposing package deals and promoting an environment conducive to consensus-building.⁵⁸⁹ The role of the EU was also important in encouraging an agreement through providing an incentive to coordinate, cooperate and find a consensus fast at the national level if their position was to be heard at the EU level. Moreover, the EU framework induces the communities to mediate their extremist positions towards one another and be more willing to compromise on issues that they otherwise would not have. The most important incentive to cooperate came from the realisation that reaching a consensus is critical for the survival of the Belgian system.⁵⁹⁰ The negative aspect of the Belgian system is how complex, time-consuming and personnel-consuming it is. This was reflected in the endless discussions between numerous Belgian actors at different levels of the decision-making process.

The best knowing instrument of intergovernmental coordination is the Deliberation Committee which brings together the federal Prime Minister, six federal ministers and six

⁵⁸⁸ Ibid.

⁵⁸⁹ Angelos Sepos, "Belgium's Federal System in the European Union: A model for Cyprus?," *The Cyprus Review*, Vol.13, No.1, Spring 2001, p. 118.

⁵⁹⁰ Ibid., 119.

ministers who represent the Regional and Community governments. The other one is called Interministerial Conferences. Both in Deliberation Committee and Interministerial Conferences decisions can only be reached by consensus, and without the direct threat of governmental instability the intergovernmental arena has until today proven ineffective in settling conflicts.

Financial Arrangements

Although the Belgian regions can spend unconditionally, their high levels of spending autonomy are not matched with adequate levels of fiscal or taxation autonomy. In this regard, the autonomy of the Belgian regions is very small.⁵⁹¹ Communities are entirely dependent on federal grants because their partly 'non-territorial' character rules out tax autonomy. On the contrary, since regions have the more clearly identifiable territorial basis, their levels of fiscal autonomy could be more easily extended. In the Flemish case, that revenue could be used for Community purposes as a result of the institutional merger between Region and Community. Today, regions remain dependent from general grants or shared tax revenues (VAT and personal income) for about three quarters of their expenditures. Despite the non-conditional character of these grants, the Flemish Region, in particular, is keen on increasing its degree of Regional fiscal autonomy. Regional fiscal autonomy would benefit Flanders, at present the most affluent Belgian region.

With the institutionalisation of a linguistically-based federal structure, the comparative economic status of Flanders and Wallonia has taken on new significance. Now, practically every issue of economic aid to a particular industry, neighbourhood, commune, or province carries with it larger questions of interregional equity. Moreover, many national programmes that benefit one region more than another are questioned. Consequently, debate over regional fiscal issues has been one of the greatest sources of instability over the past several years. There has been a tendency to interpret most issues in regional terms.

Concerning interregional fiscal debates, for the Flemish, national fiscal policies effectively put the inhabitants of Flanders in the position of subsidising Wallonia. They point particularly to social security which has remained under national government control. The disproportionate share of national benefits that Walloons receive under the social security programme has become something of a rallying point for Flemish

⁵⁹¹ Swenden and Jans, *op.cit.*, p. 885.

nationalists. For the Walloon, fiscal allocations that are made in proportion to regional wealth have created unacceptable imbalances in, for example, funding for schools. This is the result of the structure of federalism which imposes logic in which linguistic identity, institutional politics, and social interest that are largely spatially coincident and mutually reinforcing.⁵⁹² In the reform phase, the disaggregation and decentralisation of national civil-society networks were supportive of the reform process. As power centres devolved, they devolved. Now, this process may have gone too far. It contributes to the growing separation of the two polities. Like political parties, civil-society networks and NGOs could be part of residual national cement, counter-balancing centrifugal tendencies, if they were able and willing to do so.

Inter-regional transfers have become more visible, and the target of criticism, as federalisation has proceeded. They have seemed to be a one-way street, with Flanders as the net contributor to Wallonia. This has become particularly clear in relation to the most important remaining and increasingly expensive mechanism of financial solidarity, the social security system. Federalisation of social security, and with it financial responsibility, has become a key demand of the most radical Flemish nationalists. For Wallonia, this is regarded as non-negotiable. These Flemish- Walloon fiscal transfers weakened intercommunal solidarity.

It can be concluded that due to the linguistic situation, the Flemings felt minoritized for years and the collective memory of this marginalisation expresses a feeling that they are “not quite at home” in Belgium, in spite of their slight demographic majority. The historical dominance of French, the sizable French majority in the capital of Brussels, and the relatively small demographic advantage of Flemings all contribute to an atmosphere in which the French and Flemings do not behave according to a clear minority/majority relationship.⁵⁹³ The Belgian model is based on territorial, non-territorial structures and exclusive competencies. Territorial and non-territorial autonomy structures address the concerns of the Flemings who would prefer further state decentralisation. The Belgian structures also include the allocation of exclusive government competencies, which

⁵⁹² Alexander Murphy, “Belgium’s Regional Divergence: Along the Road to Federation,” in Graham Smith, (ed.), *Federalism: The Multiethnic Challenge* (New York: Longman, 1995), p. 93.

⁵⁹³ Stroschein, “What Belgian Can Teach Bosnia,” *op.cit.*, p. 4.

minimises the number of zero-sum negotiations between groups.⁵⁹⁴ The structure of Belgium has incorporated a number of innovations that maximise the benefits of devolution for the Francophone population. The use of both territorial and non-territorial units in its administrative structure produces a flexible array of institutions that allows for compromise between groups. These units maintain various competencies over different-issue areas, a mechanism intended to reduce the probability for conflict.⁵⁹⁵ The regional councils possess significant powers and many community issues are debated in regional terms and have regional effects. Federal executive must have an equal number of Dutch- and French-speaking ministers. A weak federal level has an interest in preventing deadlocks through shifting more competencies to regions and communities: Dual federalism.

Federalism was built to deal with tensions between two language communities, but the structure of federalism perpetuates this bipolarity insofar as Flanders and Wallonia are the dominant players and only occasionally Brussels constitutes a significant third.⁵⁹⁶ Bipolar or dyadic federations do not usually stand a high chance of survival.⁵⁹⁷ The structure of Belgian federalism stresses the bipolarity that was already present in the Belgian party system. Parties which do not have to campaign for support among members of the other language community will be tempted to outbid the other parties on ethno-regionalist issues. The bipolar is taken straight into the federal government which is composed solely of members representing monolingual political parties. The consociational and anti-majoritarian devices that operate at that level may function as significant institutional shock-absorbers. However, at best they mitigate, but do not reverse, the centrifugal logic of Belgian federalism. Therefore, not only the regional, but also federal politicians assess the relevance of the centre from the viewpoint of its costs and benefits to their respective language communities.⁵⁹⁸ The bipolar federal system and the bifurcated party system raise the legitimacy question: who still speaks for the centre. There are few institutions of symbolic significance left along which a Belgian identity can be sustained or constructed: Monarchy.

⁵⁹⁴ Ibid., 15.

⁵⁹⁵ Ibid. 11.

⁵⁹⁶ Swenden and Jans, *op.cit.*, p. 889.

⁵⁹⁷ Fillipov, Ordeshook and Shvetsova, *op.cit.*

⁵⁹⁸ Swenden, *op.cit.*, p. 890.

The reforms have reinforced the salience of the linguistic and regional division and reduced the incentive for cooperation. Regional economic differences continue to plague Belgium, adding to the tension.

CANADA

Canada is a federal country which has been affected by the country's linguistic diversity, centred on the French-English relationship, its regional and ethno-cultural diversity. Canada has two official languages, French and English. English is the mother tongue of more than 60% of Canadians and French about 24%, mostly concentrated in Quebec.

Canada is the product of the 1867 British North America Act that formed a highly centralised federal system. All the powers not vested in the central government were not left to the states. Sovereignty remained with the federal government which retained the power to invalidate provincial legislation within one year of its enactment. Despite its origins, however, Canada has become highly decentralised due to several factors.⁵⁹⁹ First, judicial interpretation of the division of powers broadly favoured provincial governments over the federal government. Second, the country's central institutions have been unable to represent adequately Canada's regional diversity, and there has consequently been popular support for the assertion of provincial power, especially in the stronger provinces. Third, provincial areas of responsibility, such as health, welfare and education, which were of little governmental consequence in the nineteenth century, mushroomed in the twentieth, thus greatly enhancing the role of the provinces. Finally, post-World War II nationalism in Quebec has helped to force a process of decentralisation from which other provinces have benefited.

Canada's two principal constitutional documents are the Constitution Act, 1867, and the Constitution Act, 1982. The Constitution Act, 1867 specified the general provisions for the distribution of powers, and the establishment of Parliament, the provincial legislatures and the courts. The Constitution Act, 1982, patriated the constitution from the last vestiges of British authority by introducing a Canadian amending formula, affirmed aboriginal and treaty rights of the aboriginal peoples of Canada, and introduced an entrenched Charter of Rights and Freedoms which applies to all citizens and to which all governments and legislatures are subject.

⁵⁹⁹ David Cameron, "Canada," in Ann L. Griffiths and Karl Nerenberg, (eds.), *Handbook of Federal Countries* (London: McGill-Queen's University Press, 2002), p. 108.

Federal Institutions

Historically, federal political institutions have displayed a certain capacity to provide services in French. However, until recently these facilities were not available outside Quebec and the federal capital Ottawa. Whatever the level of government services in French, the critical measures of political accommodation are those which focus on the distribution of power: representation within governmental structures and control over governmental outputs. In both respects, the impact of demography has been strong and political accommodation correspondingly limited. This has been one of the important issues in Cyprus case as well.

In Canada, politics at the federal level is mostly majoritarian as there are no formal power-sharing arrangements between Francophones and Anglophones involving, for example, mutual vetoes. Policy decisions are made by an executive where the prime minister wields a lot of power.

The upper house of the Canadian Parliament is the Senate. There are 105 members who are appointed by the Governor-General based on the recommendation of the Prime Minister according to a system of rough regional representation and political considerations. Although the Constitution gives the Senate extensive legislative powers these are rarely fully exercised because the chamber lacks democratic legitimacy. That is why there are few checks on the power of the executive when it is supported by a majority in the House of Commons.

The Lower House, the House of Commons, consists of 301 members who are elected on a single member constituency basis with seats apportioned based on population, to serve for a maximum five year term.

Legislation must be passed both by the House of Commons and the Senate, which in effect gives the Senate a veto. "In practice it has rarely exercised its power, and is unlikely to do so."⁶⁰⁰ As an appointed chamber, it has become a house of prime ministerial patronage, and as such lacks democratic legitimacy.

Federal legislative powers opens with a sweeping grant of authority, stating that Parliament may "make laws for the peace, order and good government of Canada" in relation to all fields not explicitly assigned to provincial legislatures. The drafters of the constitution then listed 29 heads of power that form part of the general grant of authority to Parliament. In the years since 1867, however, the courts have declined to confirm this

⁶⁰⁰ Ibid., 111-112.

broad understanding of the Peace, Order and Good Government. Instead they have relied heavily on the 29 enumerated heads of power⁶⁰¹ and have restricted POGG to three principle situations: where the distribution of authority leaves a legislative gap; where the matter is of 'national concern', but not caught within any of the enumerated federal powers; and where there is a national emergency.

The general amending formula requires the approval of the Parliament of Canada and the approval of seven of the 10 provincial legislatures together having at least 50 % of the population.

The original Canadian constitution was forged out of military and economic necessity and created an institutionally centralised system of government. The provinces were given no privileged access to national decision making. Central institutions never developed into forums for the representation of provincial interests. Instead, the party with the greatest national electoral strength dominated the House of Commons. In the House of Commons, the French-Canadian presence has usually been roughly proportional to the French-Canadian presence within the total population. Within a parliamentary system that usually has been marked by majority governments, the presence of a large contingent of French-Canadian M.P.s has been no guarantee of direct French-Canadian participation in the government itself. But Quebec French-Canadian M.P.s usually have found themselves to be within the government party. Despite the dependence of government parties upon the Quebec vote, the French-Canadian presence within the cabinet has rarely exceeded the French-Canadian proportion; usually it has been somewhat less. "The prevailing norm of Canadian cabinets has been proportional representation of all politically important elements of the Canadian population, whatever their contribution to the government party's electoral victory".⁶⁰² The Senate was and remains an enfeebled, almost insignificant, upper house. The presence of French Canadians has been weakened in the upper levels of the federal bureaucracy. This weakness seemed to be reflected in the outputs of the federal government. The dominant French Canadian perception was that the federal government had been controlled by the English Canadian majority.⁶⁰³ So, French

⁶⁰¹ Some of the important enumerated powers are: regulation of trade and commerce which now covers inter-provincial and international trade and commerce, and the general regulation of trade affecting the whole country; unemployment insurance; taxation which allows the federal government to raise revenue 'by any mode or system of taxation'; treaty power which gives the government of Canada the power to negotiate and sign binding international treaties. Ibid., 109.

⁶⁰² Kenneth McRoberts, "Quebec and Canadian Political Crisis," *American Academy of Political and Social Science*, Vol. 433, September 1977, p.23.

⁶⁰³ Ibid., 25.

Canadians secured only limited opportunities for influence and participation in federal political institutions.

Judicial power is vested in the Canadian Supreme Court. Its existence is based simply on federal legislation, not on a constitutional provision and its judges are appointed solely by the government of Canada with no formal provincial role, although judges are generally appointed based on regional criteria. Neither are provincial interests represented at the national level through the party system. A single national party has dominated national politics. Parties at the provincial level have little in common with national parties; indeed, in the case of some provinces, quite different parties operate at the provincial level. Canada's parliamentary federation has produced a strong executive in Ottawa and in the provincial capitals which combined with a weak Senate has led to executive domination of relations between and among the federal partners.

Distribution of Powers and Functions

The Constitution allocates powers between the federal and provincial governments. The broader and more comprehensive assignment of authority was to the Parliament of Canada and any power not specifically allocated by the constitution was deemed to fall to the federal Parliament (the residual power). The powers exclusively assigned to the provinces were meant to be specific and limited. The federal and provincial governments are independent of each other; there is not a hierarchical relationship between the two orders of government. The provincial legislatures and the federal parliament are each considered sovereign within their own constitutionally defined areas of jurisdiction. Almost all constitutionally specified legislative powers are exclusive powers of either the federal or provincial governments. Although most powers are defined as exclusive powers the use of intergovernmental transfers has meant that in many policy areas the jurisdiction is a de facto concurrent jurisdiction.⁶⁰⁴

Among the power assigned to the provinces are: direct taxation which gives provinces the right to "direct taxation within the province in order to the raising of revenues for provincial purposes"; management and sale of public lands providing provinces with a significant source of revenue and a substantial capacity to manage the provincial economy; health and welfare; municipal institutions; local works and undertakings;

⁶⁰⁴ Lori Thorlakson, "Comparing Federal Institutions: Power and Representation in Six Federations," *West European Politics* Vol. 26, No. 2, April 2003, p.15.

property and civil rights within the province; and matters of a local or private nature. There are four specified concurrent powers: on agriculture, immigration; natural resources, education⁶⁰⁵ and; pensions. In addition to the relatively few concurrent powers, there are three areas in which federal and provincial authority overlap: criminal law; courts; federal spending power and cost programs.

The Canadian federation tend to allocate legislative and executive power in the same policy area to a single level of government, in a style of dual federalism, in which the two levels of government act autonomously. Canada has a wide range of areas in which both levels of government have jurisdiction. Canada is highly decentralised on both revenue and expenditure measures.⁶⁰⁶ The two federations with plural societies, Switzerland and Canada, allocate responsibility to the state in matters of language and cultural policy. Although these competencies are shared with the federal government in Canada, in Switzerland cultural policy is concurrent.

Cooperation and Coordination

Intergovernmental fiscal relations have been the focus of much of the tension between the federal government and the provinces in Canada. Some time ago, the provinces negotiated the right to shape and administer most of the federally funded programmes in such areas as healthcare and education. And special additional funding and administrative powers have been devolved to Quebec. But most of the battles have concerned 'who gets what' rather than how programmes are organised, and have been much sharper and more territorially focused than similar debates in Germany and Switzerland.⁶⁰⁷ This fact demonstrates the extent of Canada's 'stateness' problem. The fact remains that even after more than 130 years, many of the citizens of Quebec continue to question both the moral authority of the federal government and the scope of its activities. And this applies even though the province administers most of the federally funded programmes and even though Quebec remains a net beneficiary of federal largesse.

The absence both of a constitutionally established national forum for the expression of provincial interests and the lack of the sort of central-local connective tissue that is endangered by strong party ties has meant that, as far as intergovernmental relations are concerned, Canadian politics has always had a confrontational and even combative

⁶⁰⁵ Canada is unusual in vesting so little authority for education matter in the federal government.

⁶⁰⁶ Ibid.

⁶⁰⁷ Ibid.

character. Confrontation has been encouraged by the linguistic, economic and geographic distinctiveness of many of the provinces. This especially applies to Quebec, whose relationship with ROC has been particularly traumatic over the last 30 years.⁶⁰⁸

The federation has evolved largely through the non-constitutional process of intergovernmental relations. Negotiations between the executives from each order of government have allowed the federal government to pursue general policy objectives while at the same time leaving the provinces a major role in designing and financing the programs that meet the federal government's Canada-wide objectives. This process has also been flexible enough to accommodate many of the particular needs of the provinces, but the historical demands of Quebec, for a greater degree of fiscal and policy autonomy from the federal government has put a considerable strain on the process of intergovernmental relations. In recent years the larger and wealthier provinces have begun to articulate a position similar to Quebec's.

Financial Arrangements

The federal government has long been active in the economic affairs of the provinces. The constitutional rationale for intervention was the 'federal spending power' or the capacity of the central government to finance shared-cost programmes, usually on a 50/50 basis, in established areas of exclusive provincial competence. Although no specific reference is made to this power in the constitution, it has been inferred from federal taxation powers and control over the public debt and property. After World War II the federal role in such areas as health care insurance, education, pensions, and unemployment insurance was extended. By 1970 Canada had acquired a large and complex system of intergovernmental grants and tax subsidies. Disputes over the federal level of intergovernmental aid were minor compared with controversy over the distribution of federal benefits between provinces. Many in Quebec have criticised federal aid programmes and the general structure of federal taxation as favouring ROC and discriminating against Quebec.⁶⁰⁹ However, in recent years Quebec has received substantially more per capita in federal transfers than has Ontario or most of the eastern provinces. Quebec has also been the largest net beneficiary in absolute terms.⁶¹⁰ Alberta, Ontario and British Columbia as

⁶⁰⁸ David McKay, *Designing Europe: Comparative Lessons from the Federal Experience* (Oxford: Oxford University Press, 2001), p. 66.

⁶⁰⁹ *Ibid.*, 63-64.

⁶¹⁰ *Ibid.*, 64.

donor provinces have been prepared, albeit reluctantly, to subsidize the others. The distributional crisis of Canadian federalism, while serious, had not developed to the point where a constitutional breakdown would involve not just Quebec's secession but also a general disintegration.

In Canada both the federal and provincial governments have broad taxing powers. The constitution gives the federal government an exclusive power to "raise money by any mode or system of taxation".⁶¹¹ However, the constitution also gives the provinces the power to apply direct taxation in their provinces. As a result, the federal and provincial governments share several of the most significant taxation powers.

The provinces have constitutional jurisdiction in areas that have become the most costly expenditure responsibilities but they also have access to considerable financial resources. The provinces are able to finance a large percentage of their expenditures out of their own revenues but there has always been a divergence between the provinces' revenue capacity and their expenditure responsibilities, which has resulted in a degree of vertical fiscal imbalance. There are also considerable differences in the size, population and economic wealth of the provinces that have resulted in horizontal fiscal imbalances which have led to the development of two types of transfers from the federal government to the provinces: conditional transfers and equalisation. In the former one the federal government transfers funds to the provinces that are to be spent in policy areas in constitutional jurisdiction of the provinces. The federal government attaches modest conditions to these funds and the provinces must satisfy these conditions in order to receive the transfers. This allows the federal government to influence, or in some cases establish policies that are outside its constitutional jurisdiction. All the provinces are eligible to receive these transfers. The latter was established to address the horizontal fiscal imbalance between the 10 provinces. These are unconditional transfers and only the less wealthy provinces are eligible to receive them.

Quebec and the Search for Political Accommodation

Canada has comprised two prominent national groups, each invested of a separate spatial identity. "French and English Canadians, though cohabiting the same country, have kept

⁶¹¹ Ibid.

the distinctions between themselves sharp and intact".⁶¹² The French Canadian spatial identity thus evolved into something quite distinct from the English Canadian spatial identity. Although these two territorial perceptions are increasingly at odds with one another, Canada has been free of violence plaguing other multi-ethnic states with asymmetrical spatial identities, but these separate perceptions have obstructed attempts to fashion a compromise that would sustain each group's national identity while also preserving the Canadian state.⁶¹³

At the cradle of Canada in 1867, the main task was to reconcile "two nations" which had been "warring in a single state" and bring them together in a federation. This federation has been affected from the beginning by a "strong bicomunal element". Nevertheless, it was deliberately not established as a bipolar federation with only two constituent units. Because the leaders of Canada West (later Ontario) and Canada East (later Quebec) anticipated the potentially dangerous dynamics of a bipolar federation namely zero-sum games and eventually deadlock through mutual veto power, they invited the maritime colonies Nova Scotia and New Brunswick to join. By 1999, another six provinces and three territories had been admitted or carved out of the existing area.⁶¹⁴ This multi-polar structure allowed Quebec occasional alliances with various Anglophone provinces on particular topics.⁶¹⁵ In spite of these incidental common interests, which often reduced polarisation, Quebec has still assumed a different stance on many crucial topics. The repeated failure to reach an agreement on a comprehensive constitutional reform that was usually caused by dissention between Quebec and the rest of Canada reflects this gap. Since the 1970s, secession has always been a possibility.⁶¹⁶

Most of the Canada's political institutions have been closely structured by the demography of language. Restricted representation within federal institutions, limited influence over federal decision making, and refusal by provincial governments to grant French language rights have divided the Canadian population into an English speaking majority and a French speaking minority. This pattern was partially reversed through the establishment of the province of Quebec, giving French Canadians majority status within

⁶¹² David H. Kaplan, "Two Nations in Search of a State: Canada's Ambivalent Spatial Identities," *Annals of the Association of American Geographers*, Vol. 84, No.4, December 1994, p. 585.

⁶¹³ Ibid.

⁶¹⁴ Ibid.

⁶¹⁵ Ronald Watts, "Federalism and Diversity in Canada," in Yash Gai (ed.) *Autonomy and Ethnicity. Negotiating Competing Claims in Multi-ethnic States* (Cambridge: Cambridge University Press, 2000), p.42.

⁶¹⁶ Ibid.

certain jurisdictions. However, with the limited accommodation of French Canadians elsewhere in Canada, the existence of a Quebec provincial government would only institutionalise secessionist sentiment rather than pre-empt it. By the 1960s, due to the greater opportunity and necessity for inter-ethnic contact the potential for ethnic conflict was greater. By the 1970s, Quebec separatism had become a broad-based movement, drawing most particularly upon ethnic conflict within Quebec, but also upon a growing demand that the government of Quebec meet basic social and economic needs. Federalism no longer provides as clear and reliable a basis for accommodation as it once did. Once an ethnic collectivity defines itself as a modern society and in particular seeks to occupy major economic institutions, it may be very difficult to identify major governmental institutions which it can afford to leave in the hands of another level of government, in which it will always have only minority representation and influence.

Yet Canada's demographic makeup appears to rule out any co-equal status at the federal level. Improved representation within federal bureaucratic structures and improved French language services appear difficult to secure; they cannot respond to ethnic conflict within Quebec. The search for a formula will be likely a long and difficult one, severely hampered by the demography of Canada's two linguistic groups.⁶¹⁷

Several attempts have been made to renegotiate the fundamentals of the constitutional settlement. None has thus far succeeded. Instead, the special status of Quebec as a 'distinct society' has been recognised in many ways, from the composition of the Supreme Court to opt-outs by Quebec from full participation in such federal programmes as old-age pensions- for which the government of Quebec has been compensated.

The only successful reform during this era of "mega-constitutional politics" was the Constitutional Act of 1982, finalised against the explicit opposition of Quebec. Language rights were the extremely critical issue at the centre of controversy, as Quebec refused to accept Section 23 of the Charter of Rights and Freedoms. That provision ran contrary to Quebec's attempts to foster the use of the French language and was therefore rejected. Another recent controversy involves Canada's long negotiated reform of social services and health care. In the end, the Social Union Framework Agreement was again signed by all provinces except Quebec. The views of Quebec and the rest of Canada were sometimes so dramatically opposed that on several occasions Ottawa resorted to an approach of negotiating at first with the nine Anglophone provinces and bargaining afterwards on a

⁶¹⁷ Ibid., 31.

bilateral basis with Quebec. Thus the antagonism between Anglophone and Francophone Canada remains as the country's defining cleavage. Although significant French-speaking minorities still exist in New Brunswick and Ontario, this cleavage is at present mainly represented by the rivalry between Quebec and other provinces. Kossler states that with the historical legacy of their distinctiveness and invigorated self-esteem since the "Quiet Revolution", the Quebecers have never perceived their province to be like the other nine.⁶¹⁸

The accommodation of Quebec's distinctiveness within Canada called for a federal state with considerable asymmetrical elements. This distinctiveness cannot only be reduced to linguistic differences. It is also based on cultural, religious, historical, and legal differences. These preconditions resulted in substantial asymmetries in the constitution of 1867, related overwhelmingly, but not exclusively, to Quebec. The respective provisions affected the distribution of powers and financial resources, the representation of provinces at the federal level and minority rights.

In the 1960s, Quebec was the arena of a significant social change which came to be known as the "Quiet Revolution". Quebec's self-esteem following the "Quiet Revolution" found its first expression in the province's growing desire to abstain from federal programmes, which were in principle symmetrically accessible to all provinces and uniformly designed. Among the programmes of this kind those that rearranged financial relationships within the Canadian federation proved to be of particular and lasting importance. Throughout the public debate of the 1960s, the idea of official bilingualism had been presented as an absolutely necessary element for Canada's reform so that its eventual implementation in 1969 was simply the last step. However, as opposed to its considerable endorsement in Anglophone Canada, bilingualism caused deep disagreement in Quebec. This policy was regarded as an assimilationist strategy which would eventually entail predominance of the majority language in all provinces. "The effects of official bilingualism in the end proved to be divisive, rather than integrative".⁶¹⁹ With the victory of the Parti Quebecois in the 1976 provincial elections, the quest for a new constitution

⁶¹⁸ Karl Kossler, "Changing Faces of Asymmetry- The Canadian Example," in Francesco Palermo, Carolin Zwillling and Karl Kössler (eds.), *Asymmetries in Constitutional Law - Recent Developments in Federal and Regional Systems* (Bolzano/Bozen: Eurac Research, 2009), p. 138.

⁶¹⁹ Ibid., 147.

faced even more pressure, as secession was looming over fierce debates. The Constitutional Act of 1982 was implemented against Quebec's explicit resistance. For the most part, it is entirely opposed to asymmetric federalism. The Meech Lake Accord of 1987 failed to gain the necessary support of all the provinces and became a victim of opposition to both its asymmetrical treatment of Quebec and its symmetrically decentralising elements.⁶²⁰ The failure of the Meech Lake Accord was perceived by many Quebecers as a personal rejection by Anglophone Canada and a symbol of the enduring reluctance to acknowledge their distinctiveness. The Charlottetown Agreement of 1992 addressed many requests with sometimes asymmetrical and sometimes symmetrical approaches. For different reasons, mainly the watered-down recognition of Quebec's distinctiveness and discontent with the provisions concerning the distribution of powers, a majority of Quebecers also voted against the accord. The accord did not meet the demands of neither the Western provinces nor of Quebec.

In 1994, the Parti Quebecois returned to power and demanded in a referendum one year later a mandate for separation and a subsequent "partnership" with Canada, which was still to be negotiated. This initiative was eventually rejected by the voters of Quebec with only a slight majority of 50.6%.

One feature of Canadian federalism that has had a significant effect on the dynamics of intergovernmental relations is the asymmetry that exists between the various provinces.

The new strategy of gradual change at the subconstitutional level ought to be a reform of Canada's social and healthcare system. From the mid-1990s, the provinces tried to agree on a shared position regarding negotiations with the federal government. In 1999, however, agreement was reached between Ottawa and all the provinces except Quebec. The Social Union Framework Agreement that established common quality standards for social programs across Canada was not signed by Quebec. It did not include the possibility of compensated opt-outs, nor did it acknowledge asymmetrical federalism. One way out of Ottawa's influence towards more provincial freedom to create separate programs, are compensated opt-outs.

Throughout Canadian history, opt-outs have proven to be a crucial and very controversial issue.⁶²¹ Though the Constitutional Act of 1982 allowed for provincial opt-outs, the only exemptions in the less costly fields of education and culture were to be compensated. By

⁶²⁰ Ronald Watts, "The Canadian Experience with Asymmetrical Federalism," in Robert Agranoff, (ed.), *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos, 1999), p.129.

⁶²¹ For more information see Kossler, "Changing Faces of Asymmetry," op.cit.

contrast, the provinces' own programs in areas with exploding costs, namely social services and health care, were excluded from compensation. Only the Health Care Agreement of 2004 provided the possibility of compensated opt-outs in one of these particularly expensive fields.

For a long time, Quebec had been the only proponent of asymmetrical federalism in Canada. It is obvious that asymmetries in the original constitution of 1867 primarily served to accommodate this province's distinctiveness in terms of language, culture, religion, history and legal tradition. Only during the era of "mega-constitutional politics" did things change and asymmetry was no longer confined to Quebec but ought to be accessible for other provinces as well. Five years later, this approach was put into practice through various provisions in the Constitutional Act of 1982. In the newly introduced general procedure for constitutional amendments the dilemma between allowing enough scope for the flexibility of asymmetrical policy-making and the wish to keep up appearances of symmetry, was solved in the following way: the accessibility of opt-outs was simply extended to all provinces. Even the Charter of Rights and Freedoms, which was supposed to provide for symmetry, was interspersed with a generally accessible element of asymmetry: any province was granted the right to exempt itself from the applicability of certain provisions by making use of the "notwithstanding clause". Remarkably, this opting-out section was not introduced at the request of Quebec, but on the demand of Saskatchewan. Whereas most of Canada's "old designed asymmetries" were supposed to serve the specific purpose of accommodating Quebec, its "new optional asymmetries" are accessible for all other provinces, albeit in practice mostly utilized only by Quebec.

In order to restore its special status, new claims might be asserted by Quebec. Trying again to be on an equal footing with Quebec, the other provinces, regarding themselves as unprivileged, could make the same claims. According to the idea of "asymmetry for everyone" this would eventually lead to "... a decentralizing dynamic in which any devolution in favour of Quebec must be extended to the other provinces as well, leaving Quebec's desire for special status unsatisfied and triggering further demands for decentralization."⁶²²

⁶²² Rainer Knopff and Anthony Sayers, "Canada", in John Kincaid and G. Alan Tarr (eds.), *Constitutional Origins, Structure, and Change in Federal Countries* (Montreal&Kingston, London and Ithaca: McGill-Queen's University Press, 2005), p.114.

Canada's asymmetrical federalism, which was primarily designed to accommodate the distinctiveness of Québec, appears to have been an effective device in managing conflicts within its multinational setting. In particular, the new approach of gradual subconstitutional change seems to have contributed substantially to a relief of tensions and a stabilization of the Canadian federal system in recent years. Support among Quebecers for an outright secession of their province has decreased considerably.

PART 11

4.3 EFFICIENCY AND EFFECTIVENESS OF FEDERAL SYSTEM

It is relatively easier to construct a federal model to deal with ethnic conflicts but the important thing is to find the balance between the ability of governments to reach decisions and the avoidance of negative consequences of those decisions for some members of a society for the maintenance of the system. This has been one of the important issues that had to be dealt with properly in the Annan Plan. This will determine the stability of the system. For this purpose this section studies veto players and transaction costs of legislation in Germany (too many veto players) and Canada (too few veto players) to see to what extent the number of veto players affect the efficiency and effectiveness of decision making.

Veto players and the Transaction Costs of Legislation

The representation of states in central government policy-making is part of the essence of federalism. Federal systems generate more veto players because of the use of qualified majorities and bicameralism.⁶²³ The institution of the upper chamber of parliament enables federal units to bargain and take part in central decision making. If this legislative institution is vested with significant powers, and the national executive is dependent on the support of the parliament, in order to secure legislative majorities the upper chamber may effectively serve as a veto player. The composition of upper chamber varies depending on different forms of representation and principles of selection. The method of selection affects the influence of subnational governments or executives over the upper chamber. In order for regional actors to participate in central decision-making, and serve as institutional veto players, the upper chamber of parliament should have real powers. Lijphart rates the strength or weakness of bicameralism by looking at formal

⁶²³ George Tsebelis, *Veto Players*, op.cit.

constitutional powers and legitimacy based on the modes of selection of the two chambers.⁶²⁴ Tsebelis and Money put emphasis on mechanisms of reconciliation; that is, the impact of rules, procedures and time frames when the two chambers have to come to an agreement, in order to resolve deadlocks.⁶²⁵

Certain parliamentary procedures shape the dynamics of the legislative process, accelerate or delay the passage of legislation. Theoretically, a 'veto players' or 'veto points' framework will be helpful to explain the transaction costs of, and especially the time required for, legislation.⁶²⁶ This chapter aims at analysing the relationship between the number of veto players / veto points and the transaction costs of decisions.

Federal systems may include veto players within and outside the parliamentary arena which include powerful interest groups, independent central banks, the army, the courts (particularly constitutional courts), constitutionally required super majorities and referendums. They are likely to influence the dynamics of the legislative process. The comparative analysis of federalism is strengthened if the possibility of the constituent number of federation is considered as institutional veto players. There exist federations where laws cannot be passed without the approval of a majority of the constituent members of the federation like Switzerland.⁶²⁷ The number and resources of such actors with veto powers has significant implications for the policy process and policy choices. When there is a system with only one veto player, the parliamentary majority party will face very little opposition in the policy process. When there is a political system with several coalition parties with different electoral constituencies and different policy goals, the result will be different. Moreover, the other political bodies like regional governments, central bankers or constitutional court judges with significant veto powers, entirely different 'constituencies' and incentive structures as well as different preferences, the outcome will be different and difficult.

Veto-players approaches are mainly interested in the question of policy stability and change. Tsebelis explains that policy stability generally increases with the number of, and ideological distance between, veto players in a political system. The nature and number of veto players/veto points affect the procedural efficiency of the legislative process.

⁶²⁴ Arend Lijphart, *Patterns of Democracy*, op.cit., pp.205-213.

⁶²⁵ Tsebelis and Money, *Bicameralism*.

⁶²⁶ Ibid.

⁶²⁷ Alfred Stepan, "Institutional and Partisan Veto Players in Unitary and Federal Systems" in Edward L. Gibson, *Federalism and Democracy in Latin America* (Baltimore: Johns Hopkins University Press, 2004).

Buchanan and Tullock and Sartori have discussed the assumption that the transaction costs of legislation are a function of the number of decision makers with veto powers.

In federal systems, the attribution of a relatively favourable pattern of representation to smaller units may generally increase the sense of the 'legitimacy' the system generates amongst its citizens (as long as it is not perceived by citizens of larger states as tilting the balance of influence towards smaller entities). In such systems, smaller groups – characterized by specific cultural or linguistic ties for example – are able to block decisions they consider to be detrimental to their own interests. Accordingly, such groups may choose the option of 'voice' rather than 'exit' within the federal structure. However, it seems likely that the protection of the interests of individual components in a system has an optimum beyond which the flexibility of the system decreases, leading ultimately to a situation in which the system is no longer capable of generating decisions (or of reforming itself).

Kaiser classifies different veto points according to their intended effects on the decision-making process. *Consociational veto points* lead to power sharing in the executive and are intended to foster consensual decisions. The existence and strength of '*delegatory veto points*' is expected to affect the speed of legislation negatively. Federalism, membership of the European Community, neo-corporatist arrangements and other delegatory veto points increase the arenas and range of strategies available to parliamentary minorities to block or delay government legislation.⁶²⁸ The existence and strength of '*expert veto points*' is also expected to have a negative effect on the speed of parliamentary legislation. Constitutional courts, independent central banks and similar expert bodies are likely to increase the range of strategies available to parliamentary minorities to overturn or delay policy changes initiated by the majority, increasing the incentives for the majority to bargain with minority parties.

Legislative process in countries with a large number of veto points is expected to be slower than in political systems with fewer such institutions. The former offer more influence to parliamentary minorities than the latter and have a wider choice of veto points and strategies to overturn parliamentary majority decisions after the passage of a bill. The more such veto points are available to a minority, the more incentives for the majority to bargain with the minority and seek a degree of consensus, the more time is

⁶²⁸ Saalfeld and Becker, "Cohesion, Veto Players and Agenda Control," op.cit.

needed to pass legislation. The existence and strength of '*legislatory veto points*' is expected to affect the speed of the legislative process negatively. The existence and strength of a second chamber and the extent to which the government and/or parliamentary majority controls the parliamentary agenda are two sets of legislative veto points. Some parliaments give minorities very few veto points, although the importance of delaying tactics given by the procedures of parliament should not be underestimated even in such parliaments. Others provide minorities considerable powers to co-determine the agenda both on the floor of the chamber and in committee. For deeply divided Cyprus, the former one is more likely to deal with problems than the latter. The Annan Plan introduces the latter one which seems to exacerbate ethnic division in Cyprus.

The efficiency and performance of the federal system will rest upon the context in which the state operates, such as the degree of heterogeneity of society. Although Germany is relatively homogenous in terms of ethnicity, the cooperative model which involves too many veto players is less likely to be model for Cyprus. This has been realised in the Annan Plan which introduced instead dual type of federalism with relatively few veto players but many veto players at centre. The effectiveness and efficiency of decision-making in federal systems will be explored comparing Canada, a country with few institutional veto players and a clear separation of powers between the national and state levels with Germany's interlocking federalism, which has created many institutional veto players.

GERMANY

Germany is characterised by cooperative federalism, which involves joint decision-making indicating the importance of co-operation and consensus. In cooperative federalism, decision-making is shared between the federal government and regional governments, so that legislation is primarily of a concurrent in the sense that both the federal state and the regional states (or *Länder*) concur in determining legislation. Legislation is decided by the two Chambers, one of which, the Bundesrat, is made up of the delegates of the individual *Länder* governments. Because the Bundesrat has veto power over some legislation approved by the Bundestag, federal and regional authorities have to cooperate with each other to ensure the smooth functioning of the political and decision-making system. The functional division of labour necessitates a strong representation of the interests of the federal units at the central level, both to ensure an

efficient implementation of federal policies and to prevent federal units from being reduced to mere 'administrative agents' of the federal government. The votes of the states differ by size, but only moderately which creates astonishing differences in representation. Although the smaller states are heavily over-represented in the Bundesrat, that overrepresentation of the small states in the Bundesrat is less extreme than overrepresentation in the the Swiss Ständerat in which each state or canton has two seats.⁶²⁹

The sharing of policy competences is complemented by a joint tax system. The federal government and the federal units share the most significant tax revenues, allowing for a redistribution of financial resources between richer federal units with strong spending power to poorer with weak spending power (fiscal equalization). The functional and fiscal interdependence of the two main levels of government not only gives rise to 'interlocking politics' and 'joint decision-making', but also favours the emergence of a policy-making system in which policies are formulated and implemented by the administrations on both levels of government ('executive federalism')⁶³⁰ although the bulk of federal legislation is implemented by regional governments and administrations.⁶³¹ Although the Länder enjoy strong representation in central level decision-making through the Bundesrat, the federation represented by the directly elected *Bundestag* and the federal government provides a powerful counterweight to this, based not least on political identity and legitimacy the federation generates its dominance in the legislature, and its spending power.

The Bundesrat is considered to be among the most important institutional 'veto players'. It plays a stronger role in the federal decision-making process than most of its counterparts in other advanced democracies. The Bundesrat's veto powers- or more precisely, the proportion of bills which the Bundesrat can effectively veto – has significantly increased over the past decades,⁶³² although this share has fallen slightly since the constitutional reform of 2006.

⁶²⁹ See Manfred G., Schmidt, *Political Institutions in the Federal Republic of Germany* (Oxford University Press, 2003).

⁶³⁰ In executive federalism, the federal government makes most of the laws, but it leaves their implementation to the states. Tanja A. Börzel, "What can federalism teach us about the European Union? The German experience," *Regional and Federal Studies*, Vol.15, No.2, June 2005. pp. 245-257.

⁶³¹ About 60 percent of all federal legislation, is subject to the absolute veto of the majority in the Bundesrat, while other matters are subject to suspensive veto.

⁶³² Whereas just about 42 percent of all federal bills were considered to fall into the category of so-called *Zustimmungsgesetze* between 1949 and 1953, this proportion has grown to 60 percent in the past decade.

In practice all important federal legislation at the domestic level requires concurrent majorities in the Bundestag and the Bundesrat and thus depends upon the agreement of Länder governments. Additionally, the federal government is strictly limited in its executive powers, having to rely upon the administrative services of the Länder for the implementation of most federal legislation. The federal government cannot adopt and implement effective public policy without Länder agreement in a number of important policy areas. However, the federal government can design and pursue bargaining strategies against the Bundesrat. Although the federal government is able to bargain with the Länder over policies which it considers essential to the national interest or to its own political survival, it still must obtain their agreement. If the federal government insisted upon its objectives, it has often had to buy support for national policies at the expense of permanent improvements of the institutional and financial position of the Länder.⁶³³

The Bundesrat has the function of territorial representation and has the function of partisan political representation. Criticisms arose largely because of the “gridlock” between the government and its majority in the Bundestag on the one hand and the majority of Länder votes in the Bundesrat on the other – the problem being that the federal government parties have not controlled a majority of the Bundesrat votes for much of the time since the 1980s.⁶³⁴

The Federation has become deeply involved in policy areas which were initially mainly under the rule of the states. The outcome has been increasing centralization and reduced economy of the states, because the states have concurrent legislative power only as long as and to the extent that the Federation does not exercise its right to legislate by statute. However, the states reduced capacity of self-determination is compensated, however, by strong participatory rights in the process of federal decision-making, mainly in the framework of the second chamber of the national legislature. The consent of both the federation and a majority of the federal units are required for the major policy initiatives. Legislative change of the constitution requires two-thirds majorities in the lower and upper houses. Thus, the majority of the votes in the Bundesrat can veto a change in the constitution desired by the federal government and the majority of the lower house. The Bundesrat also plays a powerful role in legislation below the level of constitutional

⁶³³ Fritz W. Scharpf, “The Joint-Decision Trap,” *op.cit.*, pp. 239-278; Fritz W. Scharpf, *Governing in Europe*, *op.cit.*

⁶³⁴ Arthur B. Gunlicks, *The Länder and German federalism* (Manchester: Manchester University Press, 2003), p.387.

change. The Bundesrat, thus, controls a veto point of greatest strategic importance. And even in legislation which does not require the consent of the Bundesrat, the upper house possesses a qualified veto. The Bundesrat can require a reconciliation procedure on controversial legislation regardless of whether its consent is formally required. When the reconciliation procedure has been exhausted, the Bundesrat may still raise an objection to the bill which amounts to a qualified veto. If the veto is based on an absolute majority in the Bundesrat, it can be overcome by an absolute majority in the lower house of Parliament, the Bundestag. If the objection is based on a two-thirds majority, the Bundestag can override the objection of the Bundesrat only with a two-thirds majority. The federal government often finds itself dependent upon bargaining and consensus with the majority of the states in the Bundesrat. These constraints will be more rigid if rival majorities exist in the Bundestag and Bundesrat.

It can be understood from the above information that the institutional structure of Germany's federalism emphasizes cooperation and compromise seeking. However, in cooperative federalism policy making tends to be a complicated and time-consuming process comprising many hundreds of committees.

At least two opposing modes of conflict resolution are operative in Germany's polity. The first mode is based on bargaining and resembles the techniques of compromise seeking in consociationalism. The second mode of conflict resolution resides in majority decision-making and is derived from a pure majoritarian model of democracy. The coexistence of bargaining and majority rule is likely to produce undesired outcome, such as substantial delays in problem solving, or a long-standing constitutional crisis. Blockades of the decision-making process have so far been the exception in Germany's federalism rather than the rule.

Cooperation between the federation and the states, sharing of power and intertwining of policy-making contribute to bridge the vertical and horizontal fragmentation of the decision-making process in Germany through a high level of intergovernmental 'interweaving' or *Politikverflechtung*. As a consequence, the relevant political actors in federal government and in the states find themselves confronted with a wide variety of interdependent decision-making situations.

The federal government's scope for policy making is confined by a wide variety of institutional constraints, among them powerful co-governing institutions, such as the opposition party, and numerous veto players, such as the upper house of parliament in

most legislative processes. One of the main interests of veto players approaches is the question of policy stability and change. Tsebelis demonstrates that a government's ability to change the status quo decreases with the number of, and ideological distance between partisan and institutional veto players, even where they have a preference for change. A further important variable is the internal cohesion of collective veto players such as political parties. The more cohesive collective actors are, the stronger is the impact of the number and ideological distance of veto players on the stability of the policy status quo.⁶³⁵ Germany, like Belgium and Switzerland, has relatively large number of veto players, especially when the federal government does not control a majority in the Bundesrat. Tsebelis' veto players theory expects that the ideological distance between partisan veto players is important for the governments' ability to move the policy status quo, as long as there are at least two veto players. Even if there are a large number of partisan veto players, the impact of this number will remain relatively modest, as long as they have similar policy preferences. Problems for policy innovation can arise, especially, if usually the two partisan veto players in the elected chamber are joined by a third, institutional veto player, the Bundesrat. The Bundesrat becomes a veto player for laws requiring Bundesrat consent, when the parties forming the federal government do not control a majority in the Bundesrat. Under this condition, the governing parties may need to win the support of at least one Land government fully or partially controlled by one of the opposition parties. Not only is the number of veto players then increased by one, the ideological distance within the enlarged set of veto players is also likely to increase. The constitutional veto powers of the Bundesrat will then increase the scope for policy gridlock.⁶³⁶ Here the important aspect is the party ideology as a key variable influencing the scope of gridlock, although a territorial dimension, that is regional interests which are largely independent of party ideology and strategy, may also play an important role.⁶³⁷ When the Bundesrat is an institutional veto player, the ideological position of at least one of the national opposition parties, either major or minor opposition party will need to be taken into account, at least in the case of bills for which Bundesrat consent is necessary. However, in most cases the federal government will have to take the preferences of the main opposition into account. If and when the Bundesrat has veto powers, the ideological

⁶³⁵ Thomas Saalfeld, "Political Parties," in Simon Green and William E. Paterson, (eds.), *Governance in Contemporary Germany* (Verlag:Cambridge University Press, 2005), p. 54

⁶³⁶ Ibid., 62.

⁶³⁷ Ibid.

distance between veto players increases sharply. If and when the federal government does not control a majority in the Bundesrat and electoral competition between the major parties is intense, there is scope for gridlock.⁶³⁸

German federalism is interlocked. There has been no substantial reform of the constitutional and institutional foundations of cooperative federalism. Formal constitutional amendment requires two-thirds majorities for reform in both parliamentary chambers are needed. Bundesrat consent will be needed for most laws, if there is no substantial relocation of legislative competencies to the Lander. Federation and Lander will remain interlocked. That is why, the Bundesrat can provide a power-base for the opposition.

For a decision to be passed in the Bundesrat an absolute majority of votes is needed. Most of the time in the cases where party-political loyalties come into conflict representatives in the Bundesrat will abstain (the so-called Bundesrat clause).⁶³⁹ In practice the Bundesrat clause has meant that the federal government can no longer count on the help of Land governments classified here as 'others' to help them win an absolute majority in the Bundesrat.

It can be argued that the Lander has a major role in federal politics: the vast areas of joint policy-making between the Länder and the federal government rather than a clear-cut separation of the tasks of the Länder and the federal government. This has lead the joint federal-Länder tax policies which cover two-thirds of the tax income of all levels of government; the so-called Joint Tasks, which comprise a complicated system of federal-Länder co-operation in a number of policy fields enumerated in the Constitution; financial aid to the Länder and local governments by the federal government the areas in which aid is possible are so widely defined that federal legislation needing the consent of the Länder covers almost all kinds of subsidies; framework legislation: this is legislation which allows the federal government to involve itself in policies reserved for the Länder; the federal parliament legislates on a framework to which Länder parliaments must adhere when making laws; this kind of federal legislation needs the consent of the Bundesrat.⁶⁴⁰ Thus, here it is seen that the number of cases in which the Bundesrat had a veto is high.

⁶³⁸ Ibid., 77.

⁶³⁹ Roland Sturm, "Divided Government in Germany: The Case of the Bundesrat," in Robert Elgie, *Divided Government in Comparative Perspective*, (Oxford, Oxford University Press, 2001), p.173.

⁶⁴⁰ Ibid., 177-178.

A Germany with divided government has attracted attention because it was seen as an obstacle to efficient government. Reformers disliked the role of the Bundesrat and especially the need for compromising with the Bundesrat majority. Informal grand coalitions made decisions behind closed doors with no particular level of government or institution wanting to take responsibility. In the worst case the result is gridlock.

Cooperative federalism became identified with *Politikverflechtung*, or a kind of intergovernmental, interlocking decision-making process in the Bundesrat, in joint tasks, in conferences and expert committees, etc., all subject to the “joint decision trap” according to which the requirement of unanimity or near-unanimity leads to inefficient, ineffective, and fiscally wasteful decision making based on the lowest common denominator. For the critics the biggest problem with German federalism is that levels of government are so intertwined that they often block each other, making any reform exceedingly hard. Germany's federalism has worked well but in recent years, it has often come to a grinding halt.⁶⁴¹ According to a group of economic professors “the practical structure of federalism creates a great or perhaps the greatest obstacle for the implementation of basic reforms”. The reason is that “the federal government and the 16 Lander block each other's actions and the entire political process moves agonizingly slowly. The most obvious example is the blockades that both houses of the federal legislature have erected against each other”.⁶⁴² There are other problems, such as the slow-moving coordination between the federal government and the Lander. The antagonism between the Bundestag and the Bundesrat is also an important problem. The Bundesrat holds veto power over 60 percent of all federal laws.

CANADA

Many practices of cooperative federalism-intergovernmental coordination of policy planning, financing and implementation- that is seen in Germany can be found in models of dual federalism such as in Canada. One important feature of cooperative federalism in Canada is the frequent use of federal-provincial conferences and inter-provincial meetings to negotiate a wide range of policy issues. Usually, interaction between the two levels of government is likely to occur whenever the constitution gives a function to both levels,

⁶⁴¹“Untangling the system: Efforts to cut through the knotty German federal system may not get far,” *Economist*, Vol. 369, Issue 8349, 11/8/2003, p. 47.

⁶⁴² Hartmut Kühne, “Grand Coalition makes change possible: Germany on the brink of federal reform,” *Forum of Federations*, Vol. 5, No. 2, March/April 2006, p.5.

fails to clearly allocate a policy area, or when governments do not have the resources to perform their assigned functions. Despite these co-operative elements in Canadian federalism, the way in which power is divided is still qualitatively different in the German case, where joint federalism has meant a crucial role for Lander control over federal decision-making. The representation of state governments in the federal legislative arena is a decisive factor in joint federalism. This structured competition creates an incentive for national party organisations to influence state governments through partisan channels. If this effect is present, a high degree of vertical integration in party organisations is expected to be found because national parties have an incentive to ensure that their sub-national branches are strong contenders in elections. This affect can be seen in the German parties, yet not in the Canadian parties.⁶⁴³ Co-operation between the two levels of government is not an essential of efficient decision-making in this federal state, where cooperative federalism is just as likely to behave as competitive federalism. The decisive element, a crucial role for sub-national governments in federal policymaking, is missing in Canada.⁶⁴⁴

The case of Canada is an example to the de facto power of the upper house being limited by the political costs of exercising its de jure powers. The upper house is weak, due in part to the fact that it is composed of appointed, not elected, representatives of each region in the federation. Although the powers of the Canadian senate are almost equal to those of the lower house, the senate rarely rejects or amends legislation. Its inaction is the result of norms – as an appointed body it lacks legitimacy – so its de facto powerlessness must be considered to be the result of informal institutional rules. It can be said that the institutional configuration creates a joint federalism effect, in which the state governments play a key role in policy making at the federal level, strongly in Germany but not in Canada.⁶⁴⁵

Canada has two institutional veto players: the lower house of parliament and the constituent members of the federation. Canada does not have upper houses where the exercise of an absolute veto is accepted as politically possible. On paper the Canadian Senate lacks the legitimacy or nerve to be an institutional veto player. All of its members are nominated by the Prime Minister. Many observers estimate that in a democracy such as Canada, if a Senate with no democratic origins in elections tried to exercise their

⁶⁴³ Thorlaksao, op.cit., p. 7

⁶⁴⁴ Ibid., 17-18.

⁶⁴⁵ See for more information Tsebelis and Money, op.cit.

theoretical potential to be a constitutionally normal veto player, they would risk being abolished.⁶⁴⁶ In many federations, the second house is elected giving it a claim to democratic legitimacy. Canada's non-elected Senate is unique among federations and there is a long history in Canada of pressure for Senate reform. The impetus for Senate reform stems from the conviction held by many Canadians that federal decision-making is not sufficiently responsive to regional diversity. It has become impossible to reconcile an unelected Senate blocking the legislative will of the elected House of Commons with the demand by Canadians for more democratic and responsive government.

Canada has a relatively decentralized form of federation: while the federal government enjoys an important measure of fiscal dominance, the provincial governments have retained and developed significant jurisdictional and programme responsibilities that ensure their prominence in the lives of the citizenry. Decentralisation in Canada has occurred due to judicial interpretation of the division of powers that broadly favoured provincial governments over the federal government; the country's central institutions that have been unable to represent adequately Canada's regional diversity, and there has consequently been popular support for the assertion of provincial power, especially in the stronger provinces; the provincial areas of responsibility, such as health, welfare and education that mushroomed greatly enhancing the role of the provinces.⁶⁴⁷

Legislative agendas are almost entirely set by first ministers (premiers, territorial leaders and the prime minister) and their cabinets, and legislators rarely dissent from their party's vote. As a consequence of this concentrated power, provincial premiers have come to monopolize the representation of regional difference on the national stage. Federal politicians, either in the legislature or in the cabinet, play a lesser role in the representation of territorial diversity.

The Canadian system expresses a divided rather than a shared model of federalism, including watertight compartments for the division of powers; independent taxing authority for both orders of governments; and weak provincial representation at the centre. Legislation must be passed both by the House of Commons and the Senate, which in effect gives the Senate a veto. However, in practice it has rarely exercised its powers.

⁶⁴⁶ Ibid.

⁶⁴⁷ Cameron, "Canada," p.108.

The representation of states in central government policy-making is part of the essence of federalism. Yet a strict definition would seem to exclude Canada since the provinces are not formally represented as veto players in the decision-making process of the federal government. Yet the federal and provincial governments are clearly locked into an ongoing process of intergovernmental contracting that takes place primarily outside of central government institutions. The Canadian central government goes so far as to sign formal, contractual agreements with the provinces. Even though the Canadian central government need not obtain the approval of the provincial governments in order to make policies, it often cannot implement them without cajoling, striking bargains with, and making side-payments to provinces.

Executive dominance of the legislature and jurisdictional decentralization add up to a premium being placed on intergovernmental cooperation and negotiation, much of it conducted out of view of the general public. Elected legislators at both the federal and provincial level do much less to determine the course and details of public policy; the bulk of those decisions are made in the forums of executive federalism and intergovernmental relations.

In most federations, disputes of both procedure and substance are settled by judicial process. Canada is possibly unique in the extent to which almost all kinds of disputes are settled by political negotiation and compromise.⁶⁴⁸ This includes disputes about the constitution itself and the amendment process as well as matters of jurisdiction, policy and finance. Federal-provincial relations have been the principal context of the disputes, many of which have centred on the relations between Quebec and the federal government. The process of resolving these disputes has raised the status of the provinces and made Canada probably the most decentralized and politically vigorous federal system in the world.⁶⁴⁹

The dominant characteristic of Canadian politics is the sometimes protracted bargaining between the provinces and especially between the provinces and the federal government over the practical problems of jurisdiction, finance and policy making. Some observers have suggested that the power of the provinces poses a threat to the integrity of the federal power and possibly even to the unity of Canada. Although regionalism in Canada undoubtedly has substantial economic and social foundations, it has until recently lacked clear political direction or purpose and still lacks effective institutional expression.

⁶⁴⁸D.N., Maciver, "The crisis of Canadian federalism," *Round Table*, Issue 334, April 1995, p. 219.

⁶⁴⁹ Ibid.

As mentioned above, in Canada the territorial units are unusually vigorous and articulate while the machinery for accommodation at the federal level is relatively weak and decentralized. None of the federal institutions is well adapted to the purpose of resolving the complex multilateral conflicts that occur. The Senate is, too powerless to be effective and repeated efforts to reform it have come to nought. In the House of Commons strict party discipline has usually made regional interactions and cooperation across party lines all but impossible. The federal bureaucracy, with little power and few resources and not much responsibility for the delivery of services, does not have much capability or opportunity to influence political outcomes. The judiciary has always had a major influence on the federal system, but many now feel that its impact has become too narrow and intermittent to shape the development of the system.

The political parties, both inside and outside parliament, have signally failed as instruments for the aggregation of regional and provincial interests, much less their accommodation at the centre. Because of the shortcomings of federal institutions the process of conflict resolution has been conducted through the machinery of inter-provincial and federal provincial cooperation. Much of the time, however, this machinery is too decentralized, cumbersome and anarchic to contain and manage the conflicting interests involved. It consists of federal-provincial negotiations and agreements conducted at both political and official levels. The weakness of this process of federal-provincial intergovernmental negotiation is that it is itself an expression of the territorial conflicts which it is expected to resolve. Nevertheless, federal-provincial collaboration is essential not only to the smooth working of the Canadian federation, but to its actual survival. The federal-provincial conference is the only possible forum for such collaboration. The problem is that on contentious and important issues the conferences frequently fail to agree except on broad goals expressed in terms of vague generalities, such as 'common purposes' or 'national unity'. On the other hand the conferences have had a number of notable successes and there are many areas where intergovernmental cooperation goes on quietly and effectively, almost unnoticed. It is when issues are perceived sharply in terms of the political or institutional interests of provinces, governments or other powerful groups that negotiations become protracted and agreement difficult.

With all its built-in defects and operating faults the federal-provincial conference is the only possible forum for negotiation and accommodation on the constitution. In these negotiations, therefore, there were 11 actors and, because of the convention of unanimity,

each one could exercise a veto on agreement. Moreover, because of the nature of the federal-provincial conference system, even agreements reached at conference could be frustrated by the pressure of provincial interests or provincial opinion or because of lack of support in the provincial legislature. While Canada has all the hallmarks of a classical federal constitutional order, including a constitutional division of powers and judicial interpretation of those provisions, the practice of Canadian federalism in recent memory has been much more fluid.⁶⁵⁰ While jurisdictions are still jealously guarded by both levels of government, they rely on cooperation with one another for implementation of most areas of public policy. In the absence of a mechanism like subsidiarity, the Canadian federal system has been much more reliant on the cooperative behaviour of governments. A notable feature of Canada's original constitution is the dual character of the division of competences. The 1960s and onward is regarded as an era of cooperative federalism, witnessed by increased cost-sharing by the federal and provincial governments and, to manage the cooperation, the rise of executive federalism – the process of coordination and negotiation either at the bureaucratic or the political level. Described as 'federal-provincial diplomacy', this practice has provoked considerable criticism for its democratic deficit. In seeking efficiency, intergovernmentalism can quickly undermine the structure of a federation with routine resort to compromise and pragmatic innovation. Flexibility and pragmatism are not always in the best interests of integration. The structural and institutional variables that make Canadian federalism so susceptible to intergovernmentalism do not readily exist in the much more institutionally diverse federal Europe.⁶⁵¹ "In terms of basic institutional performance and policy effectiveness, the Canadian federation appears to be doing well."⁶⁵² However, there are some major failings in the eyes of many governments and citizens. The perceived legitimacy of present federal arrangements is one of the failings. Shifts in the balance of authority between the two orders of government, and among the provinces themselves, have at points led to a perception that federalism is failing to strike the necessary equilibrium between unity and diversity. The distinctive Canadian approach to federalism, which is an emphasis on jurisdictional federalism, combined with British Westminster-style governance in both the federal and provincial capitals has imparted a distinctly elitist quality to Canadian

⁶⁵⁰Gerald Baier, "The EU's Constitutional Treaty: Federalism and intergovernmental relations - Lessons from Canada," *Regional and Federal Studies*, Vol.15, No.2, June 2005, pp. 205-210.

⁶⁵¹ Ibid.

⁶⁵² Herman Bakvis and Grace Skogstad, *Canadian Federalism: Performance, Effectiveness, and Legitimacy* (Don Mills: Oxford University Press, 2002), p. 4.

democracy at both the federal and provincial levels. This concentration of power has also exacerbated conflict between governments. The absence of an effective second chamber of Parliament to represent provinces limits the opportunity for formal provincial involvement in federal policy-making. Rather than interprovincial disputes being resolved within the upper chamber of the central government, they are channeled into forums, such as meetings between ministers or senior officials, in which governments rather than citizens or directly elected representatives are the major players.

Rare among federal systems, the federal character of Canada's constitution is focused almost entirely on the exclusive jurisdiction of the national and provincial governments. Federations like Germany in which state governments are represented directly in the second parliamentary chamber are instances of 'intrastate federation'. Federations like Canada, in which provincial societies are represented by provincial governments directly, are examples of 'interstate federalism'. In the latter, most intergovernmental relations take place between governments rather than within a body such as a senate.

The co-existence of jurisdictional overlap alongside the legal emphasis on jurisdictional exclusivity produces the first and preponderant element in Canadian executive federalism: the competitive dynamic. As their activities and goals overlap, governments of both orders often find themselves in competition over their jurisdictional authority and status. Despite this competition, governments also realize that securing their own policy goals is often contingent upon accommodative actions by other governments. This recognition yields the second element of Canadian federalism: the cooperative component. Both cooperative and competitive elements have given rise to an elaborate pattern of intergovernmental relations and a range of informal mechanisms that on many occasions have allowed constitutional rigidities to be circumvented and enabled politicians to respond to societal demands and problems. The informal mechanisms that have facilitated intergovernmental cooperation have acted as forums in which the political elites in question have taken positions on which they refuse to compromise.

Weak performance, in the form of gridlock in the mechanisms of intergovernmental relations like executive federalism, will normally lead to policy ineffectiveness. Problems will go unresolved and challenges unmet where effective action requires

intergovernmental cooperation. But intergovernmental consensus, ordinarily a feature of a well-performing federation, does not necessarily yield effective policies.⁶⁵³

One of the important problems in Canada is the democratic deficit that accompanies executive federalism, which has been the defining feature of Canadian federalism. Political elites representing Canada's 14 governments have bargained with one another and struck compromises around specific programs. In so doing, they have also helped preserve Canadian unity, striking the consensus needed to bridge regional and linguistic divisions within the country. The limited number of actors involved has allowed decisions on major policies that require federal-provincial cooperation to be reached quickly and efficiently.

Under the constitution, each of the provincial legislatures enjoys exclusive legislative authority in relation to the same list of subject matters, has access to the notwithstanding clause of the Charter of Rights and Freedoms, and possesses a veto over the amendment of specified items in the Constitution as well as the right to utilize the opting-out provision of the general amending formula. However, as far as legislative is concerned, some of the provisions of the Constitution apply to only one or two but not all of the provinces (i.e. provision on denominational schools applies only to Ontario). The lack of uniformity in the constitutional position of the provinces is not the same as an inequality between them. The provinces share equality with respect to the basic grant of legislative powers.

Some, like Preston King argue that the extent to which a federation's central government incorporates regional units into its decision procedure on some constitutionally entrenched basis is critical to the success of the system as a whole. In Canada, students of federalism have been interested in the issue that they more or less coined the study of 'intrastate' federalism which refers to the arrangements by which the interests of regional units- the interests either of the government or of the residents of those units- are channeled through and protected by the structures and operations of the central government. Interstate federalism refers to the division of powers between the two levels of government. In Canada, there is only one central institution in which the equal-province principle is given effect. That is the amending formula, or at least that part of it that requires the unanimous consent of the provincial legislatures as well as Parliament for the amendment of specified provisions of the Constitution. Other than that, the question of equal provincial representation has arisen explicitly only in connection with the long-standing issue of

⁶⁵³ Ibid., 17

Senate reform. Empirically speaking, equal member state representation in federal second chambers is uncommon. The Canadian Senate features regional rather than provincial equality.

The Senate can initiate any bills except bills providing for the expenditure of public money or imposing taxes. No bill can become law unless it has been passed by the Senate. In theory these powers are formidable. But the Senate rarely rejects a bill passed by the House of Commons, and has very rarely insisted on an amendment that the House of Commons rejected. In other cases, the Senate has not adopted bills before the end of a session, thereby effectively stopping them from becoming law. Most of the amendments the Senate makes to bills passed by the Commons are clarifying or simplifying amendments, and are almost always accepted by the House of Commons. The Senate's main work is done in its committees, where it goes over bills clause by clause and hears evidence, often voluminous, from groups and individuals who would be affected by the particular bill under review.

It seems that the Canadian system works efficiently than the one in Germany.

Conclusion

This chapter studies several federal countries in order to explore the way many issues especially ethnic ones are dealt with under federal systems. These real settings help the researcher to develop the necessary conditions for a successful federal system.

One condition is the fact that the federation's national communities should not only have self-government but there should also be consociational governance. Otherwise the center becomes a preserve of the dominant group, and there is little incentive for the minority to embrace the federation, even if it has considerable self-government.⁶⁵⁴ Consociationalism helped to stabilize relations among the Swiss and Belgian language groups. Historical tradition of consociationalism serves to provide elites with legitimacy to undertake initiatives opposed by large segments of the electorate, providing opportunities for more radicalised elites to advance devolution.⁶⁵⁵ In Belgium elite management of socio-political issues has long been the norm. The result was the reduction of Parliament to a 'rubber-stamping body' in which elite compromises are reached outside the legislature, often at

⁶⁵⁴ Ibid.

⁶⁵⁵ Britt Cartrite, "Contemporary Ethnopolitical Identity and the Future of the Belgian State," *Nationalism and Ethnic Politics*, Vol.8, No.3, Autumn 2002, p.47.

lengthy negotiation sessions in secluded areas, to then be passed overwhelmingly by Parliament.⁶⁵⁶

As the Swiss example shows, successful federalism requires a political culture of tolerance and compromise. "For a federal system to work, the various political players involved must realise that compromising is not a sign of weakness, but in fact a sign of strength," Thomas Fleiner, states.⁶⁵⁷

Dividing a country, internally, by rigid language boundaries is the solution adopted by Belgium and Switzerland.⁶⁵⁸ These two countries do not restrict the internal mobility of individuals but restrict the mobility of languages in the public sphere. Since primary powers are vested in the cantons, the territorial structure of Swiss federalism discourages the development of ethnonationalism across language community lines.⁶⁵⁹ The likelihood of the development of Belgian-style linguistic polarisation is small since the territorial structure of Swiss federalism ensures that cross-cutting cleavages will remain strong. The Swiss case highlights the potential advantages of a system in which federal territories are not derivatives of the spatial structure of large-scale cultural divisions. For Belgium, it suggests a possible avenue for mitigating ethnoregional polarisation.⁶⁶⁰ The larger lesson of the Belgian and Swiss case is that the actual geographical configuration of federalism matters. The particular political geography of Belgian federalism has generated its own set of conflicts. The Belgian federation is centrifugal and the process towards more devolution is likely not completed. It is bipolar since the successive reforms were responses to conflicts between the two major language groups. It is also multipolar, since the bipolar nature of the conflicts did not generate a clear territorial division of the country into two entities, mostly because of Brussels. The Belgian federal model is almost inevitably complicated. The many institutions and consultative procedures which were built into the Constitution must guarantee overall coherence for the benefit of all. When they are abused by one or other, centrifugal forces may take over and divergences become institutionalised. This would only end up achieving exactly the opposite of what was

⁶⁵⁶ Ibid., 63.

⁶⁵⁷ Thomas Fleiner-Gerster, "The Relationship between Federalism and Rights," in Thomas Fleiner-Gerster and Silvan Hutter, (eds.), *Federalism and Decentralisation: Constitutional Problems of Territorial Decentralisation in Federal and Centralised States* Vol.2, Fribourg: Edition Universitaires, 1987, p.65

⁶⁵⁸ Ibid.

⁶⁵⁹ Jurg Steiner, "Conclusion: Reflections on the Constitutional Theme," in H. R. Penniman, (ed.), *Switzerland at the Polls: The National Elections of 1979* (Washington, DC: American Enterprise Institute for Public Policy Research, 1983), p.166.

⁶⁶⁰ Robert Senelle, "Constitutional Reform in Belgium: From Unitarism towards Federalism," in M.Forsyth, (ed.), *Federalism and Nationalism* (New York: St. Martin's Press, 1989), p. 72.

originally intended; i.e. a federal union where confrontation makes way for cooperation. The partitioning of the multilingual state into unilingual zones has sometimes been considered but rejected by the dominant group. Such rejection characterises the central government's policies in Canada. Canada objected to the creation of rigid language borders of the kind adopted by Belgium and Switzerland, in the name of a dream of cross-national French-English bilingualism. The Swiss way of reducing the linguistic conflicts that occur in bilingual cantons has been to move from the dominant language borders the dominated language within the same state to the dominant language borders the lower ranking language but is separated from it by rigid boundaries.⁶⁶¹ Similarly, Belgium evolved from a unitary into a federal state in the course of an increasingly rigid definition of linguistic areas that were given increasingly wide powers over economic and cultural matters. The policy of territorial overlap of languages kept the territories of the linguistic minorities open to penetration by the dominant language and led to conflicts. Such conflicts can be lessened by a move towards solution of the dominant language that borders the lower ranking language but is separated from it by rigid boundaries; in other words, by some form of linguistic federalism.⁶⁶² In Canada, provincial boundaries do not in most cases separate different societies. Although one of its provinces, Quebec, has a clear ethnic distinctiveness, the political and the language boundaries do not coincide. Quebec has attempted to move the federation in the direction of ethnolinguistic federalism but the federal government resisting that move. Yet Canada came close to adopting principles that would have strengthened linguistic federalism, at least in Quebec. A Swiss type of language boundary had been desired but the amended Canadian constitution of 1982 pulled in the opposite direction by making language an individual rather than a group right. Federalism based on linguistic cleavages far resisted by the federal government may become again the more obvious solution if the separatist movement regains vigour. At a low level of geographical concentration, separatism will seem hopeless, while at a high level of concentration, which reduces the contacts with the dominant group, one may feel that one's culture is secure enough and thus be more willing to accept the status quo, especially so if that status quo is associated with economic benefits. The Swiss technique of rigid language boundaries juxtaposing unilingual areas, beyond reducing conflicts, may well be also an anti-separatism method.

⁶⁶¹Jean Laponce, "Canada: The Case for Ethnolinguistic Federalism in a Multilingual Society," in John Coakley, (ed.), *The Territorial Management of Ethnic Conflict*, (London: Frank Cass, 1993), p.30.

⁶⁶² *Ibid.*, 30-31.

In both Belgium and Switzerland the political system has moved ever closer to producing an overlap of political, administrative and language boundaries, the latter providing the map that attracts the others. This attraction led to the separation of the cantons of Vaud and Jura from Bern and to the division of Belgium into distinct economic and cultural regions with increasing legislative and budgetary powers. In both cases the minority languages have either retained their positions, as in Switzerland, or improved them, as in Belgium.⁶⁶³ Canada's asymmetrical federalism has been also an effective device in managing conflicts.

Highly decentralised system is likely to deal with ethnic problems and it is the model designed in the Annan Plan for Cyprus. However, the asymmetric nature of the society especially demographic and economic conditions between constituent units should be reflected in the institutions. Ethnicity base federalism without exaggerating division is likely to accommodate differences.

The major problem in federal systems is the emergence of many veto points. This is clearly seen in cooperative-joint federalism with a strong upper house. The way in which power is divided is also crucial. This helps to understand the relation between the efficiency of the decision-making and the number of veto players. Exclusive jurisdiction (dual federalism) seen in Canada provides a level of government with greater autonomy in the exercise of its powers and more effective decision making at the central government. In Germany, relatively few policy fields fall under exclusive state competence but it is compensated in the strong upper house which tends to block decisions and become, many times, inefficient in taking decisions. In Canada, the federal and provincial governments are clearly locked into an ongoing process of intergovernmental contracting that takes place primarily outside of central government institutions. This might be more likely to work in deeply divided societies like Cyprus where conflictual communities are likely to deal with their problems outside of central government institutions (See chapter 3 of the thesis). The central government institutions are feared by the Turkish Cypriots due to the majority status and domination of the Greek Cypriots there, whereas the Greek Cypriots are worried that the central government could not function because of the minority veto power of the Turkish Cypriots. (Chapter 3 of the thesis). It is not rational to expect these antagonist groups to come together for many issues needed to be decided effectively and efficiently.

⁶⁶³ Ibid., 42

Both in Canada and Cyprus, the impact of demography has been strong and political accommodation correspondingly limited. However, asymmetric federalism in Canada has been successfully used to deal with these problems.

CHAPTER 5

CYPRUS AND THE ANNAN PLAN IN COMPARATIVE PERSPECTIVE

Introduction

The Annan Plan has not been subjected to any sort of coherent and methodological analysis, and it is my intention here to undertake this task. This chapter studies the effects of federalism in selected countries and the Annan Plan in relation to conflict, inequality and participation. Due to the lack of proper examination and study of the successful multi-ethnic countries' way of dealing with their ethnic problems in the literature on Cyprus, the founders of the Plan could not draw attention to certain features the significance of which were either overlooked or underestimated. The literature on the Cyprus problem has been insufficiently studied and so have the successes and failures of different arrangements and mechanisms employed to deal with similar problems elsewhere. They are important because many lessons could be learned from these countries when examining the Cyprus case. This chapter aims to fill this gap as well. It can be argued that federalism as envisaged in the Plan is likely to produce undesirable effects. A federal model for the reunification of the island based on strict ethnicity is likely to exacerbate ethnic differences. Efficiency rather than rigid ethnicity should be taken into consideration. Institutions, themselves, are not enough for the maintenance of federal systems. In Cyprus, the workability of power sharing arrangements would depend on the achievement of certain conditions.

The chapter is divided into two sections. The first section summarizes the Annan Plan in the theoretical language of comparative federal studies. The discussions here are focused on three points: federal institutions, distribution of competencies, and fiscal federalism. The second section analyses and evaluates the Annan Plan against the background of existing models of federal systems drawing on the case studies studied in the previous chapters. The question that this chapter addresses is the possibility of accommodating ethnic pluralism through federal systems, using Cyprus as a test case. Is the federal system envisaged in the Annan Plan likely to be an effective model for the accommodation of ethno-political conflict in Cyprus? What type of federalism would be most suitable for Cyprus? Moreover, this thesis analyzes multi-ethnic federal countries as a way of dealing with ethnic conflict while paying attention to issues of decisional efficiency. Federal systems have high costs of consent because the costs of reaching a decision are believed to rise with the number of actors involved (see above). Examining the structure and as

well as the operation of these institutions in similar cases help to develop necessary conditions for successful federal system in Cyprus.

5.1 ACCOMMODATION BY FEDERALISM

The Latest UN Constitutional Proposal –the Annan Plan- in the Theoretical Language of Comparative Federal Studies

Federalism has come into existence in the discussions about a reunited Cyprus with the special appeal of being able to offer possible solutions to the ethnic problems. The reason is that federalism is accepted as the only principle which rests upon the dual goals of unity and diversity. Federation is something like an alliance that is consciously created with a set of structural rules. The aim of federation is to create and maintain a nation while preserving the identity and traditions of the constituent units.⁶⁶⁴

Federation with consociational features remains the option seen by the UN as the most suitable system of government for a deeply divided and post-conflict Cyprus. Through the years, there have been several proposals for a solution to the Cyprus problem by Secretary-Generals of the UN. Since the 1970s, federalism together with consociationalism has been agreed upon to pursue a policy of building a bicommunal, bizonal federation for Cyprus that eventually institutionalizes and protects the territorially rooted Turkish and Greek Cypriot communities.

Federal systems are complex political systems that vary widely in their origins, constitutional design and operative political process. They become even more complex when they combine regional autonomy for a geographically concentrated ethnic group with consociational power-sharing in the central government.⁶⁶⁵ At the core of the federal idea is the belief that sovereignty is divisible and in certain circumstances ought to be divided.⁶⁶⁶ This is the case in the Plan revealed by the U.N. Secretary-General's Kofi Annan on 29th of March 2004 for the reunification of Cyprus which establishes a federal system combined with consociational elements. However, although the two leaderships in Cyprus have come to accept, involuntarily, a federal system, neither accepted the implications of power-sharing and consequently the divisibility of sovereignty (See chapter 3). Although the Greek Cypriot side rejected the plan in a referendum, the Turkish

⁶⁶⁴ Lemco, op.cit., pp. 5-6.

⁶⁶⁵ Bahceli and Noel, "Imposed and Proposed Federations," op.cit., p.13.

⁶⁶⁶ Ibid.

Cypriots accepted the Plan just merely due to the broader appeal of the EU factor and its economic advantages (Chapter 3).

Federal Government and Institutions

There is a need for use of appropriate institutional safeguards to underpin the smooth working of federation in Cyprus. Although the institutional requirements may vary from country to country, and the safeguards may have to be made to fit to meet the demands of particular situations, it is possible to identify certain basic structures and mechanisms that are essential to almost any form of federal government including the Annan Plan. The Annan Plan prescribed a loose federation with some consociational power sharing features. In order to accommodate, preserve and promote distinct identities, the Plan established a federal system of government comprising two ethnic component states, and one bicommunally organized common state for Cyprus. Both would govern themselves and shared a common constitutional government of the whole. Thus, two orders of government were to be formed, and each act directly on its citizens, a formal distribution of legislative and executive authority and allocation of revenue resources between two orders/tiers of government, including some areas of autonomy for each other are established. Provision for the representation of regional views within the federal policy-making institutions and a written supreme constitution that is not unilaterally amendable were to be established. These are important because the character of representation and power-sharing within the federal institutions is likely to accommodate diversity in Cyprus. Concerning representation of the both communities in legislature, with regard to federal second chamber the constituent units were equally represented. Regional representation is usually a factor in the constitution of the federal executive government in practice. The amending procedure for a federal constitution is also likely to provide an opportunity for the expression of views on a regional basis. These were all established in the Plan.

The Foundation Agreement of the Annan Plan proposed a federal structure reflecting and guaranteeing the political equality of Greek Cypriots and Turkish Cypriots. It was also designed to reflect in a democratic manner the larger numbers of Greek Cypriot citizens and carried cast iron guarantees against the domination of one side over the other. Political equality would have been ensured through the composition of the Senate that provided an equal number of Senators from each constituent state, the decision making

process in the Senate and the provision for a collective Presidential Council with rotating Presidency and Vice-presidency.

The legislative power of the United Cyprus Republic (UCR) was to be exercised by a federal parliament composed of a Senate and a Chamber of Deputies. Each Chamber would have 48 members. The plan proposed a Senate with 50-50 composition and was to be elected on a proportional basis by the citizens of Cyprus, voting separately as Greek Cypriots and Turkish Cypriots. In other words, for seats in the Senate, the plan provided for 24 senators from each constituent state, who would be elected on the basis of their ethnic background reflecting a multi-ethnic society within the ethnic division. While this has been unacceptable for the Greek Cypriot leadership and far leftist Turkish Cypriots elites due to dividing the country further, the Turkish leadership under Mehmet Ali Talat stated that the ethnicity factor would disappear as long as both communities cooperate and build trust.⁶⁶⁷

The Chamber of Deputies was to be composed in direct proportion to the number of people holding internal constituent state citizenship status in each constituent state, providing that each constituent state would have been attributed no less than one quarter of the seats. Thus it reflected the population of the island with a slight weighting of seats towards the smaller Turkish Cypriot population (minimum of 25 per cent of seats per constituent state).

The plan empowered the two-house Parliament to amend the Constitution. It also underlined that the Constitution of Cyprus could only be amended by a separate majority of the voters of each component state in accordance with the specific provision of the constitution. An amendment was to be referred to and approved at separate referenda of the two constituent states before it could come into force. All legislation and government decrees had to be separately adopted by the Chamber of Deputies and the Senate, the referenda mechanism aimed at guaranteeing that the rights of the Turkish Cypriot people would not be eroded by the Greek Cypriot's overall parliamentary majority.

Executive power was to be exercised by the Presidential Council. The plan proposed a collective Presidential Council with a rotating chair. The plan stated that the office of the head of state was to be vested collectively in a Presidential Council of six equal members, four Greek Cypriots, two Turkish Cypriots, and parliament might elect additional non-voting members. The composition was to be proportional to the number of persons

⁶⁶⁷ Mehmet Ali Talat, Personal Interview.

holding the internal constituent state citizenship status of each constituent state, though no less than one-third of the voting members and one-third of any non-voting members of the Council must come from each constituent state. The chair of the Council would rotate among the six members. This would mean that Turkish Cypriots would represent the Presidential Council as head of state one third of the time. The members of the Council would be elected from a single list requiring the support of at least two fifths of the Senators from each constituent state. The members of the Council would have had equal notwithstanding voting rights. Neither the President nor the vice-president would have had a casting vote or otherwise increased powers within the Council. This arrangement had been rejected and found unfair by the Greek Cypriot leadership due to their majority status.⁶⁶⁸

The differential size of the population was to be reflected in the composition of the Chamber of Deputies; a maximum of 75 % of the deputies would have hailed from the Greek Cypriot state and a minimum of 25 % from the Turkish Cypriot state; the decision making process would have occurred in the Chamber of Deputies; the composition of the Presidential Council: four members from the Greek Cypriot State and two members from the Turkish Cypriot State; the provision ensuring that two terms could have been served as President of the Presidential Council from the Greek Cypriot State for every term served by a Turkish Cypriot member of the Presidential Council.

Guarantees against domination included the election of the Presidential Council from a single list with the support of at least 40% of the Senators of each constituent state ensuring clear support from each constituent state; the provisions which stated that decision making in the Presidential Council was to be by consensus if possible, otherwise by simple majority provided that it includes at least one member from each constituent state.

However, for the Turkish Cypriot leadership under Rauf Denktas this arrangement reduces the Turkish Cypriots to minority status whereas Greek Cypriots saw it as unfair and unacceptable because, in their eyes, it would make the system unworkable and inefficient.⁶⁶⁹ What needs to be found is a balance between the two desired models; a looser federation demanded by one side and a more centralized system demanded by the

⁶⁶⁸ Palley, Markides, Denktas, Olgun, Personal interview.

⁶⁶⁹ Ibid.

other. The implication of this federalism itself would seem to be unacceptable to either the Turkish Cypriot leadership or their Greek counterparts (See chapter 3).

Disputes about the limits of the state and federal power are common in a federation. In any case of dispute between federal and state governments as to the extent of the powers allocated to them under the constitution, some body other than the federal and state governments must be authorised to adjudicate upon those disputes. This would be an impartial agency not only to arbitrate disputes about the division of power between two jurisdictional spheres but also to interpret the meaning of the constitution and to protect and interpret the federal compact. It needs to be independent from both the federal and the provincial government and should stand ultimately above both. This usually leads to judicial review, the rights of the courts to annul or confirm the validity of laws passed by national or local legislatures. Article 36 (2) of the Annan Plan set that the Supreme Court would have had exclusive jurisdiction over disputes between the constituent states, between one or both constituent states and the federal government and between organs of the federal government. To make the Supreme Court an efficient legal arbitration institution, its composition was designed in a way that it included three international judges, in addition to three judges hailing from each constituent state who were to be appointed by the presidential council. The Supreme Court would also have been given a right to decide not only legal but political issues which theoretically seems to be contradictory. To avoid deadlock, the Plan introduced the Supreme Court as a deadlock resolution mechanism which was rejected by Greek Cypriot leadership as being against the separation of powers and insulting⁶⁷⁰ whereas the Turkish Cypriot leadership did not pay much attention to it and saw it as a necessary for only a short time.⁶⁷¹ Turkish Cypriot leadership has never paid attention to the efficiency of the federal system because it believed that in any case the system would result in deadlock and eventually it would not work. That is why the Turkish Cypriot leadership never accepted federalism and demanded a two state solution due to the deep population difference and thus fear of domination by the Greek Cypriots.⁶⁷²

⁶⁷⁰ Palley and Tselepis, Personal interview.

⁶⁷¹ Denktas, Olgun and Talat, Personal interview.

⁶⁷² Rauf Denktas, Personal Interview.

The Federal Government and the Constituent States

Not only is the character of representation and power-sharing within the federal institutions in the Plan are important issues in order to accommodate diversity but a constitutional establishment of regional units with self-government is an essential feature of federations. Under the Plan, each order of government would have had exclusive jurisdiction rather than concurrent jurisdiction. Executive responsibility for a particular matter is generally assigned to the same order of government that has legislative responsibility over the matter. The federal system makes sure that the functions of government are divided in such a way that the relationship between the legislature, which has authority over the whole territory, and those legislatures which have authority over parts of the territory, is not the relationship of superior to subordinates but is the relationship of co-ordinate partners in the governmental process.

Federalism necessitates some matter to be under the exclusive control of the general government and something under the exclusive domain of regional government. Territorial distribution of authority in a federal system has never been proposed to be on a fifty-fifty basis and the system favors the national power by placing in its hands of defense, war and powers of taxation. Delegation of the execution of federal laws to local units is a frequent feature in many federations but highly limited in the Plan. The Plan, for example, provided for the implementation of federal legislature by the constituent states where this is appropriate.

A federation under the Plan decided to give more power to its constituent units rather than to its federal government. The Annan plan would have equipped the federal government with specific powers, comprising those necessary to ensure that Cyprus could speak and act with one voice internationally and in the European Union, fulfil its obligations as a European Union member state, and protect its integrity, borders, resources and ancient heritage. All remaining powers which were the bulk of the powers and include most matters affecting the day-to-day life of citizens or requiring major budgetary expenditure would have fallen within the sphere of competence of the constituent states, which were to enjoy residual powers.

It was planned that each constituent state would have had right to sovereignly exercise, within its own territory and within the limits of the UCR, all powers not expressly vested in the federal government. In federal systems each constituent unit could not have had sovereignty unlike the one desired for Denktas, but sovereignly would have exercised

their rights. The powers of the federal government and the constituent states would have been separately respected but neither would have infringed the stated rights of the other.

In all federal systems, the constitutional distribution of power is altered by various kinds of cooperative arrangements. Some are designed to simulate the effects of an exercise of federal power and can be a substitute for the transfer of power to the center. Others are directed to coordination, harmonization, or the implementation of common standards with flexibility on matters of detail. Arrangements include conditional grants, intergovernmental agreements, uniform legislative schemes, regular ministerial or officials' meetings, and joint executive agencies.

The Annan Plan would have contained mechanisms to promote cooperation and coordination between the constituent states, and between them and the federal government. These would have included Constitutional Laws, Cooperation Agreements, and would have facilitated for cooperation and coordination funded by the federal government. The concept of Constitutional Laws was developed to regulate in a uniform manner the exercise of powers by the constituent states (and the federal government) at a level of detail not appropriate for the Constitution. This could not be done through federal law, given the principle of no hierarchy.⁶⁷³ Cooperation agreements between the federal government and the constituent states, inspired by the Belgian model were the mechanism to ensure cooperation on foreign and European Union relations, as well as on police matters. The constituent states would have been cooperating and coordinating both with each other and with the federal government through a mechanism to include constitutional law approved by the federal Parliament and the constituent states; cooperation agreements which the constituent states would have been able to conclude with each other or with the federal government on matters that fall within the sphere of competence of the parties.

The constituent states were to be of equal status. Each constituent state would have possessed identical powers and functions; Both would have sovereignly exercised these powers within its territory and within the limits of the UCR's Constitution; the people of the Greek Cypriot State and the people of the Turkish Cypriot State would have had effective representation in all federal institutions and effective participation in decision making processes at the federal level; each constituent state would have been able to initiate and participate on equal terms in the coordination and harmonization process

⁶⁷³ See in the Appendix Annan, Kofi "Report of the Secretary-General on his mission of good offices in Cyprus." It is also available at: <http://www.americanembassy.org.cy/AnnanReportApril2003.htm>

between itself and the other constituent state or between the constituent states and the federal government; any amendments to the Constitution of the UCR would have had to be approved by the people of the Greek Cypriot State and the people of the Turkish Cypriot State, through separate referenda. The two constituent states would have organized themselves freely within the limits of the UCR Constitution and in conformity with the basic principles of the rule of law, democracy and representative republican government under their own constitutions.

The equality concept introduced in the Plan brings rigid and inflexible rules of law.⁶⁷⁴ It should be remembered that the applicability of the concept of equality on every issue in asymmetric societies like Cyprus is likely to intensify conflict. The Annan Plan that envisaged that model has been failed. So, instead of putting too much emphasise on equality in every respect it seems better to turn our attention to alternative models that would be more likely to produce positive outcomes like asymmetric arrangements.

Distribution of Powers and Functions

There are two ideal models in the literature on federalism: dual federalism and cooperative federalism. Dual federalism emphasises the institutional autonomy of different levels of government, aiming at a clear vertical separation of powers. Each government level has an autonomous sphere of responsibilities and holds both legislative and executive powers. The federal units are represented by an equal number of directly elected senators, irrespective of the size of the geographical unit they represent. So, the senate does not reflect the territorially defined interests as represented by the executives of the federal units, but rather the functional preferences of the electorate or the political parties within the federal units.⁶⁷⁵ The federal units articulate their interests through voluntary coordination and cooperation with the central government, usually in the framework of intergovernmental conferences. The institutional autonomy of each government level presupposes a fiscal system granting federal units sufficient resources in order to exercise their competences without financial interventions of the central level. They usually have comprehensive fiscal autonomy allowing them to levy their own taxes and to have independent sources of revenue. This is more like a model of Belgium and Canada.

⁶⁷⁴ Durduran, Personal interview and see chapter 3.

⁶⁷⁵ Börzel, "What Can Federalism Teach Us," *op.cit.*, p.248.

Cooperative federalism is based on a functional division of powers among different levels of government: the central level makes the laws while the federal units are responsible for implementing them. The vast majority of competences are concurrent or shared. This functional division of labour requires strong representation of the interests of the federal units at the central level, both to ensure an efficient implementation of federal policies and to prevent federal units from being reduced to mere "administrative agents" of the federal government. The reduced capacity of self-determination is compensated by strong participatory rights in the process of federal decision-making. Major policy initiatives usually require the consent of both the federation and a majority of the federal units. Federal units are represented by their governments in relation to their population size, with smaller states usually enjoying over-representation. The sharing of policy competences is complemented by a joint tax system. The federal government and the federal units share the most significant tax revenues, allowing for a redistribution of financial resources between richer federal units with strong spending power to poorer ones with weak spending power (fiscal equalisation). The functional and fiscal interdependence of the two main levels of government not only give rise to 'interlocking politics' and 'joint decision-making', but also favours the emergence of a policy making system in which policies are formulated and implemented by the administrations on both levels of government.⁶⁷⁶ The UCR system of multilevel governance appears to correspond more closely to the model of dual federalism than to cooperative federalism: It would have had an autonomous sphere of competences in the sense of holding both legislative and executive responsibilities in selected policy sectors. The vast majority of legislative competences were not to be shared or concurrent. But unlike in systems with dual federalism, constituent states would have been given a strong role in federal institutions. Members of the federal parliament were to be elected on the basis of territorial representation. Political decisions would have required a high degree of consensus. There was to be a relatively clear separation of competences. Since the large majority of competences would have remained exclusive, it seems that there would not have had great problems resulting from the interlocking politics and joint decision making. According to the Annan Plan, the constitution would have specified the powers and functions vested in the federal government and all other powers and functions rest with the constituent states. These were the bulk of the powers and included most matters affecting the day-to-day life

⁶⁷⁶ Ibid.

of citizens or requiring major budgetary expenditure. Powers and functions to be exercised within the territory of both the Greek and Turkish Cypriot state separately would have included, among other things, law and order and public safety; administration of justice at the constituent state level; tourism; protection of the environment; fisheries and agriculture; industry and commerce; zoning and planning; sports and education; health; social security and labour; family, company and criminal law. The powers and functions to be exercised by the federal government would have included external relations, relations with the EU; Central Bank functions, federal finances (including budget and all indirect taxation, including customs and excise, and federal economic and trade policy and so on.⁶⁷⁷ The federal government would have exercised authority over federal administration, federal elections and referenda, offences against federal laws, federal administration of justice, federal property and like powers too which were to be incidental to the specified powers of the federal government. As appropriate, the federal government would have delegated the implementation of its laws, including the collection of certain forms of taxes, to the constituent states. The federal government would have conferred upon the constituent states a portion of its revenue from indirect taxation as provided by special majority law. Indirect taxation would have been regulated at federal level but would have administered at constituent state level. The treaty-making power would have been centralized, although implementation would have followed the legislative competences as regards the subject matter of the treaty. The obligations of the UCR under international treaties were to be implemented by the federal government or the constituent state authority which would have enjoyed legislative competence in the subject matter to which the treaty pertains.

However, this particular arrangement was rejected by the Greek Cypriot leadership due to the idea that it would have contributed to disfunctionality of the system and irresponsible government.⁶⁷⁸ As Claire Palley and Papadopoulos stated, there is a need to have a more unified economic system in order to provide common standard that would help the system to function smoothly. On the other hand, for the Turkish Cypriot leadership under Denktas, this arrangement would not have given enough powers to constituent units to run their affairs since the EU would have been taken over many important policy areas (See chapter 3).

⁶⁷⁷ See the rest of them in the Appendix section.

⁶⁷⁸ Palley, Personal interview; Papadopoulos "Key notes" op.cit.

Initially, in order to bring the unfortunate hostile communities together, it is more sensible to introduce a less rigid dual type federal system than the one in the Plan, and then gradually to be able to transfer some of the policy areas to the centre. The problem in the dual type federal system is the necessity of the constituent states to have sufficient financial powers. This seems not the case under the Plan (Chapter 3).

Cooperation and Coordination

In the Annan Plan, the constituent states were to cooperate and coordinate with each other and with the federal government. Mechanisms for this would have included constitutional laws and cooperation agreements: cooperation agreements between the federal government and the Turkish Cypriot State; cooperation agreements between the federal government and the Greek Cypriot State; constitutional laws and cooperation agreements between the federal government and both constituent states; cooperation agreements and other coordination and harmonization acts between the two constituent states. Constitutional laws were to regulate legislative matters in a manner binding upon the federal government and the constituent states. These would have been subject to approval by the Federal Parliament and the Constituent State Parliaments. Cooperation Agreements would have been concluded between the constituent states and/or with the federal government in order to provide mechanisms ensuring cooperation on matters that fall within the sphere of competence of the parties. The Foundation Agreement would have included the following Constitutional Laws and Cooperation Agreements among all three parties: Constitutional Laws on the elaboration and adoption of constitutional laws; on police matters and composition and functions of the Joint Investigation Agency; on internal constituent state citizenship status and constituent state residency rights; Cooperation Agreement on external relations; on EU affairs; and on police matters.

The constituent states would have, where appropriate, strived to coordinate and harmonize their policy and legislation on a range of matters that fall within their competence, including, through agreements, common standards and consultation. The federal government would have supported, both financially and logistically, cooperative endeavors between the constituent states or between municipalities and villages in the respective constituent states.

According to the plan, the various levels of government would have needed to coordinate their stances in order to reach common positions to be represented at EU level. This is the

Belgian model of domestic coordination on EU matters which is based on the consensus principle whereby each participating entity would be able to potentially use its right of veto and thus block the coordination process. In case of non-agreement at the domestic level, Belgium is not represented in the EU Council of Ministers. Article 19(3) states that Cyprus would have been represented in the EU by the common state government in its areas of competence or where a matter predominantly concerns an area of its competence. Where a matter was to fall predominantly or exclusively into an area of competence of the constituent states, Cyprus would have been in a position to be represented either by a common state or constituent state representatives, provided the latter is able to commit Cyprus.⁶⁷⁹

It seems that the Plan is likely to reinforce division and thus, reduce the incentive for cooperation since it would not be able to enforce both communities to work for common ends through putting too much veto players to decide on this. Implying that cooperation would be difficult and even impossible due to historical experiences⁶⁸⁰ is just an excuse to unwillingly find a solution within a federal system. On the other hand, those who favour the Annan Plan believe that the EU would push both communities to cooperate. This is true but not enough for the proper functioning of a federal system (See Chapter 3). The accommodative culture, which is currently absent in Cyprus, should be developed in which the EU could play an important role. This is a process which should also be addressed by the institutional arrangements. The Plan is unfortunately highly limiting the development of a sound relationship between the two communities (Chapter 3). It would be ideal to start from a loose form of federalism, (Chapter 3) but at the same time, it should be remembered that the system is not confederal but federal where the absence of incentives for cooperation in many respects violates its operation.

Financial Arrangements

Fiscal federalism is an important indicator of the efficiency of politics. The organization of state matters and thus, how the functions of the state should be distributed to different levels of government in order to achieve an optimal division of public duties has been critical.

⁶⁷⁹ United Nations Secretary-General (2004), *The Comprehensive Settlement of the Cyprus Problem*, Fifth Version, <http://www.cyprus-unplan.org>

⁶⁸⁰ See the speeches of Denktas, Olgun, Papadopoulos, Palley in Chapter 3.

Federal systems necessitate equitable and legally binding financial arrangements for revenue-raising and revenue-sharing between central and provincial governments. If the governmental authorities in a federation are to co-ordinate with each other in practice as well as in law, it is essential that there should be available to each of them, under its own unfettered control, financial resources sufficient for the performance of the functions assigned to it under the constitution. It is no good allotting functions to the federal or to state authorities and devising legal safeguards so that each should be limited strictly to the performance of its respective functions, unless at the same time adequate provision has been made so that each authority can afford to do its job without appealing to the other for financial assistance. Both state and federal authorities in a federation must be given the power in the constitution each to have access to, and to control, its own financial resources. Each must have the power to tax and to borrow for the financing of its own services. There is a close interrelation of fiscal arrangements with the delivery of social services. In most federations, responsibility for delivering the main social services such as health, education, and social security has been in regional and local hands where government is closer to the particular needs and circumstances. However, federal financial services will be necessary once the large and ever-increasing costs of such services come into place. That is why in most federations, the provision of social services has been an area of co-responsibility. The issue of intergovernmental controversy appears when both federal and state governments face financial constraints and the need to reduce deficit, and when the federal government makes an effort to reduce financial assistance and off-load responsibilities. This form of a federal system would affect the area of intergovernmental fiscal relationships.

The success of each federal system depends upon the balance between cooperation and competition in its intergovernmental relations. The governments will use their powers to compete against one another on such matters and policy preferences need to be as enhancing their respective electoral chances to be successful. They also need to realise the significance of cooperation because there are many policy initiatives in a complex and interdependent world that can only be achieved through cooperation.

The Annan Plan envisioned a financially weak federal government. The federal government would not have been able to raise revenues. That is why the federal government's resources would have been limited. According to the Plan, the federal government would have had competence over indirect taxation and would have being

excluded from direct taxation and social security and insurance contributions. This is the opposite of the usual practice.⁶⁸¹

According to Article 2 of the Annan Plan, the constituent states would have had the competences for all matters that were not explicitly assigned to the federal government. Article 14 lists the specific competences of the federal government. The federal government was to be responsible for external political and economic relations, activities with large regional spillovers, certain judiciary affairs, antiquities and natural resources. Competencies for education, health, social security, and commercial and industrial regulation including the regulation of safety of the workplace, minimum work standards, and product safety are given to the constituent states. Federal competences would have been lacking for necessary financial regulation other than banking regulations. Article 19.5 was to call upon the federal government to take “necessary measures in lieu of the defaulting constituent state” if a constituent state was to fail to fulfill obligations of the UCR vis-à-vis the EU. The federal government would have been unable to implement policies for which a constituent state would be responsible. Art 14e was to assign the federal government competences for federal finances, including budgetary policy, indirect taxation, and federal economic and trade policy.

The federal government would have had the competence to maintain a federal administration to execute its tasks (Art. 14.2). It was called upon by Art 14.3 to delegate the implementation of its laws to constituent state authorities. This was to include the collection of federal taxes. The federal government would not have had the competence to develop and implement a common framework for state policies.

The Annan Plan was to assign to the federal government competence over all indirect taxation. The Federal government would have had no competence over direct taxes or social security and insurance contributions. However, it seems that there would have been an obvious tendency for the constituent states to appeal to the federal government for financial relief. The federal governments would be faced with strong demands to implement additional vertical transfers if much larger transfer of VAT revenues to the states. But since central government expenditures are small and the federal government might have a budget surplus, such demands could be met positively (See Chapter 3 of the thesis).⁶⁸² All these issues had to be discussed in detail in the Plan.

⁶⁸¹ Eichengreen, Faini, Hagen and Wyplosz, “Economic Aspects,” *op.cit.*, p.viii.

⁶⁸² *Ibid.*

In every federation, there is a need for financial transfers to correct the imbalances between revenue and expenditures. This will be an effort either to correct vertical imbalances or horizontal imbalances through sharing of specific tax proceeds and conditional and unconditional grants or general equalization transfers and/or grants in aid of specific programs to improve the capacity of the poorer units to provide their citizens with at least a minimum level of services.⁶⁸³ "Federal economic policy" mentioned in the Annan Plan would have given special attention to the harmonization of the economies of the two constituent states. The scope was to eradicate inequalities between the two economies. Such policies were to include a system of allocation of indirect taxes to the constituent states which would have resulted in a net transfer of resources from the Greek Cypriot to the Turkish Cypriot state until economic disparities between the two would have been disappeared. In other words, the Annan Plan was to propose that the Federal Government take over the management of the indirect tax systems of North and South Cyprus and finance its activities from these revenues, after which it redistributes the remaining revenues back to the constituent states, after paying the contribution to the EU. Attachment 7 Sect. 1.1. held that the federal government would have transferred at least one third of all revenue collected from indirect taxes to the constituent states in proportion to their population. Attachment 7 Sect. 1.2. held that each constituent state would have received one third of the VAT revenue collected in its territory that is not transferred to the EU. The EU would have owned the revenue from 0.5 percentage points of VAT. Attachment 7 section 1.3 would have mandated that at least five percent of the revenue from indirect taxes, not transferred to the EU, was to be spent on cooperative projects of the two constituent states or municipalities located in different constituent states. Economic harmonization would have been also assisted by the European Union structural funds and programmes, as well as a special fund for the Turkish Cypriot State. However, the Federal economic policy was not mentioned in any detailed or analytical way. This is one of the main weaknesses of the Plan since the operation of the federal system would be highly effected by it (See Chapter 3). The affluent Greek Cypriot constituent unit would have been likely to grow discontented with equalization payments to the poorer Turkish Cypriot province. The study of fiscal federalism in the Annan Plan shows that the fiscal powers which had been assigned to the regions, do not generate sufficient income. The result would have been that the own revenue of the regions would not at all have sufficed

⁶⁸³ Watts, "Contemporary Views," *op.cit.*, p. 18.

to cover regional expenditure. The discrepancy between regional revenue and expenditure is primarily removed with subsidies from the federal government. For their expenditure, regional states would have been therefore strongly dependent on the federal government. This would have provided the federal government with an important mechanism to control the regions and is thus not favourable for an autonomous exercise of the regional powers. The autonomy of the regional states is determined by the degree of financial autonomy. But if they cannot afford it there will be no point of having it.⁶⁸⁴

So, what might be an answer to this question is to introduce asymmetric arrangements especially for financial reasons.

The Analysis/Evaluation of the Annan Plan in Comparison to Existing Models of Federal Systems

The U.N. plan underlined that the agreement would have established a “new state of affairs” on the island and foreseen that Cyprus would have been an independent state in the form of an indissoluble partnership, with a common state government and two equal component states, one Greek Cypriot and one Turkish Cypriot. Where the organisation of the central federal institutions followed explicitly the Swiss model (Foundation Agreement Article 2. 1.), division of competencies, state powers and particularly the interface with the European Union were to be modeled explicitly on the Belgian experience. The Belgian model of federalism was to provide for extensive Constituent state competences. The plan provided that the constituent states sovereignly would have exercised all powers not vested in the federal government, organizing themselves freely under their own constitution consistent with the overall agreement, as well as providing, as in Belgium, for no hierarchy between federal and constituent state laws. The former was rejected by the Turkish Cypriot leadership since it asked for complete sovereignty in many respects which is against the principles of federation⁶⁸⁵ whereas the latter was unacceptable by the Greek Cypriot leadership since it meant confederation in its eyes.⁶⁸⁶ So, no compromise on the main principles of federalism predominated.

The Swiss model of governance adopted for Cyprus was to contain a weak federal administration and notably an executive branch in the form of Presidential Council. Switzerland is a federal country with a strong consociational tradition with the experience

⁶⁸⁴ Markides, Personal Interview.

⁶⁸⁵ Denktas, Personal interview.

⁶⁸⁶ See Chapter 3.

of decision-making through bargaining and accommodation. Switzerland has avoided the ethnic hostility associated with multi-ethnic, plural societies, by allotting substantial cultural and communal responsibilities to the cantons. The Swiss are able to accept equal rights for all three languages despite the fact that the German language is spoken by the majority.⁶⁸⁷ Cantons have great autonomy and significant participation rights in central government decision-making.⁶⁸⁸ The important mechanism of Switzerland modeled for Cyprus is the decision making process. In the Annan Plan, the Senators, like the members of the lower house, were to be elected by the voters on each side. This gives guaranteed say to the governments of the two ethnic groups in the working of the central institutions. As in Switzerland, in the UCR the decision making processes would have required the need for special and double majorities as well. However, in the Swiss system the legislature is a forum for the reconciliation of political parties, pressure groups as well as cantonal interests. In the proposed Cypriot Parliament there was at present one overriding division likely to persist for some time, namely that between the Greek Cypriots and the Turkish Cypriots.⁶⁸⁹ This constitutes main obstacles in dealing with ethnic conflict in Cyprus due to its strong bipolar nature.

In the UCR, in the Senate the seats would have been shared equally between Greek and Turkish Cypriots, not between the citizens of each constituent state. This was a sign of protection of a minority group being dominated by the majority. However, by doing this without any other supplementary arrangements to unite both communities, at least in some respects, it would have been unlikely to enable both communities to work for a common purpose (Chapter 3).

The executive presidential council is elected by the Swiss Parliament, which is another feature adopted in the Annan Plan. The Swiss governing coalition includes all major parties. However, there is no cantonal representation as such in the Federal Council, but unwritten proportionality rules specify that not more than one councilor should come from the same canton and that the college should contain at least two non-German speakers,

⁶⁸⁷ See for more information Thomas Fleiner-Gerster, "The Swiss experience of multiethnic society and federalism as a mean to solve multiethnic conflicts." Available at: <http://www.ecsanet.org/conferences/ecsaworld2/Fleiner-Gerster.htm>

⁶⁸⁸ Church and Dardanelli, "The Dynamics of Confederalism," op.cit., p.165

⁶⁸⁹ Clement Dodd, "Constitutional Features of the UN Plan for Cyprus and its Antecedents," *Turkish Studies*, Vol. 6, No. 1, 2005, p. 45.

one Protestant and one Catholic.⁶⁹⁰ The Annan plan proposed a collective Presidential Council with a rotating chair. The plan stated that the office of the head of state was to be vested collectively in Presidential Council of six equal members, four Greek Cypriots, and two Turkish Cypriots so again too much emphasise on ethnic factor due to lack of various communal political parties as in Switzerland. All members would have been equal and would be elected from a single list requiring the support of at least two fifths of the Senators from each constituent state. The decisions of the Presidential Council would have been taken by consensus, if possible, but otherwise by a single majority provided such a majority would have included at least one Greek Cypriot and one Turkish Cypriot. Again, the problem is that since there are no any bicomunal political parties to disperse the likelihood polarisation in the decision making, it would be likely to destabilize the functioning of these institutions.

In Switzerland, cantons have been given a great deal of influence on decisions at the federal level. Cantons have collective veto power over any shift of competences to the federal level because all amendments to the federal constitution are subject to the approval by a majority of cantons, as well as of the people, in a mandatory referendum.⁶⁹¹

Some of these issues were to be modeled for the UCR in order to establish a system based on equal partnership. These elements were aimed at satisfying Turkish Cypriots' demand of not being dominated by a Greek Cypriot majority. For example, the decision-making procedure of the Senate and the Council of Ministers would have given Turkish Cypriots members a sort of veto power over legislative decisions if they vote *en bloc*.

Switzerland is one of the most decentralised countries. This helps the country to deal with its linguistic problem. The cantons exercise all the powers of government, except those delegated exclusively to the federal government. The competencies given to the Confederation are usually restricted to the legislative powers. Implementation of the statutes is part of the residual power of the Cantons. The Annan Plan designed to establish highly decentralised system too but under the Belgian model. However, most of the entailing high expenditure activities would have remained in the domain of the Constituent States unlike the Belgian model. The functions conferred upon the Federal

⁶⁹⁰ The balancing act performed when composing the 7 member Swiss executive it is the result of "magic formula". With only 7 seats the executive manages to include 4 parties, at least 2 non Germanophone cantons including that of Vaud, and normally 4 Germanophone ministers, 2 Francophones, 1 Italophone, and 3 to 4 Protestants as well as Catholics.

⁶⁹¹ Under Art. 141 of the federal constitution a request by eight cantons can also trigger a referendum challenge to any federal law.

Government would not have been extensive and the task of coordination, where relevant, would not have involved serious expenses. This means that both constituent states would have had wide ranging autonomy and would have been able to make many political decisions. However, the important thing to enable the system to function smoothly is whether the constituent units would have been able to afford it. As Markides claimed "they cannot have a highly decentralised system and then demand more financial resources from the centre."⁶⁹² This is a very important issue and a problem in federal systems and should be examined very carefully. For example, in Canada both the federal and provincial governments have broad powers of taxation. The provinces have constitutional jurisdiction in areas that have become the most costly expenditure responsibilities but they also have access to considerable financial resources. When there are considerable differences in the size, population and economic wealth of the provinces that have resulted in horizontal fiscal imbalances there is a need for the development of two types of transfers from the federal government to the provinces: Conditional transfers and equalisation. This arrangement can be introduced in order to deal with the asymmetric nature of society in Cyprus. In the Annan Plan, economic issues had not been given enough consideration. Although the plan mentioned equalisation, it was not to involve conditional/unconditional transfers in a clear way. The constituent units had not been given sufficient broad taxation powers to be able to carry out their responsibilities.

In Switzerland, cantons and communes undertake most of the financing and implementation of federal laws and policies. In deeply divided societies like Cyprus, this arrangement would have been less likely to contribute to accommodation of diversity. At least for a while, there is a need to prevent both communities from confronting each other so often and enable both communities to start developing a culture of compromise and a tradition of accommodation.⁶⁹³

Cantons and communes spend more than the federation because most of the entailing high expenditure activities remain in the domain of the Constituent States. This is true for Cyprus under the Annan Plan with one exception that the central government would not have had regulative role. But while in Switzerland *solidarity* with the less developed regions is present and is one of the most important issues for any federal country for any

⁶⁹² Interview with Markides.

⁶⁹³ Papapetrou, Personal interview.

solution of ethnic conflicts, it is not likely to develop in the near future in Cyprus. This is also one of the problems in Belgium that makes system unstable from time to time.

Both Belgium and the UCR do not adopt the system of administrative (cooperative) federalism that is characteristic of German and Swiss federalism. In these models, there is relatively a clear separation of competencies between the levels of government, little concurrent federal legislation, formally prescribed joint action programmes or framework legislation in order to enable two hostile communities to disperse many problems and decisions in their sphere of competence. The reason for this is to deal with the bipolar nature of the two communities and this is a way of managing their ethnic problems.

The important problem found in both Germany and Switzerland is the fact that that type of federalism increases veto players and causes deadlock in the decision making process. In Switzerland, the division of competences between the three levels of government is primarily regulated through constitutional norms: federal norms regulate the relationship between canton and communes. So, there is a clear hierarchy of levels. The Swiss Constitution is based on the principle that 'the cantons are sovereign in so far as their sovereignty is not limited by the federal constitution'.⁶⁹⁴ This is not the case in either Belgium nor in the one proposed by the Annan Plan which indicates an absence of hierarchy between the laws of the constituent states and those of the central government. In the Annan Plan the federal government and the constituent states were to fully respect and not infringe upon the powers and functions of each other. There would have been no hierarchy between federal and constituent state laws. From the Greek Cypriot leadership's point of view this was not acceptable because it was to indicate a confederal rather than a federal arrangement.⁶⁹⁵ Theoretically, this is possible in federal systems. And in the case of deeply divided societies this might help two communities to deal with their problems without much interference from the central government.

Consensus-requiring constitutional structures granting virtual independence to minorities were proposed in the Annan Plan. But again, the strict form of participation was introduced in the Annan Plan, as in the 1960 Constitution. However, institutional protection of minorities does not necessarily require equality in every respect. As Durduran stated, equality, historically, for Turkish Cypriots means "two goats meet on the

⁶⁹⁴ Cantonal constitutions and legislation constraint the communes' margin of manoeuvre while the federal constitution and laws prevail over cantonal laws. Moreover, cantonal acts are subject to judicial review by the Federal Tribunal while federal acts are not and can only be challenged through referendum.

⁶⁹⁵ Dodd, "Constitutional Features of the UN Plan," p. 6.

bridge to fight".⁶⁹⁶ This would not help both communities to deal with their problems. Flexibility, to some extent, is important here. Since there is asymmetry in many respects between the two ethnic communities, there is a need to introduce asymmetric federalism as in Canada. This special kind of federalism keeps Canada together, despite its difficulties.

Swiss citizens do not need to have party representation on ethnic, linguistic or religious lines due to their role at any level of the political process. This may be one reason that parties in Switzerland did not develop along such lines, with the exception of the Catholic party.⁶⁹⁷ Although the Federal Assembly follows the rule of linguistic proportionality there is some flexibility in the system in that over- or under-representation is allowed but is compensated over time. This can be applied to Cyprus instead of a statement of equality in every respect.

In Belgium, community interests are taken care of through the bicomunal composition of the federal executive and the technique of special (double) majorities needed to change many constitutional provisions, including the catalogue of sub-national competences. These reduce the need for a strong federal second chamber whose representatives articulate regional interests in federal decision-making. There are several constitutional provisions that are significant for political accommodation in Belgium. They have been incorporated into Belgian legislation to protect minority groups or to prevent one community or region taking measures which conflict with the interest of the others. But still too much division is likely to destroy the balance between centrifugal and centripetal and give rise to secession. What is learned from the Belgian model is that the many institutions and consultative procedures which were built into the Constitution must guarantee overall coherence for the benefit of all. When they are abused by one or the other, centrifugal forces may take over and divergences become institutionalised. If this keeps going further, it is likely to lead to the end of the federal system that would have been likely if it had been accepted by both sides in the referendum in Cyprus in 2004.

The social and political purpose of federalizing Belgium and Cyprus was not to bring two long divided communities into closer interaction with one another, but rather to separate them further by creating large areas of competency in which they would be politically autonomous. That is why, both the federal system designed for Cyprus and the Belgian

⁶⁹⁶ Durduran, Personal interview.

⁶⁹⁷ Ibid.

federation have some strong confederal elements as a result of its bipolar nature. The Annan Plan envisaged a loose common state in which most powers would have been attributed to the constituent states, which would have coordinated policies in their spheres of competence. The only way to organize decision-making at the federal level is by finding consensus between the two language groups. With only two players the need for consensus means each player has a veto power. The two either move together or not move at all and feel blocked by the other. However, veto power does not constitute a big obstacle for the Belgian federation⁶⁹⁸ since the upper house does not represent regions and communities strongly. Elites feel obliged to play a bipolar consensus game because of the peculiar structure of the Belgian federation.

In the UCR, as in Belgium, there are no shared competences. They are either exclusive or mixed. Every conflict is automatically a conflict of competences, but unlike in the UCR, in Belgium there are various judicial and political mechanisms to resolve them. In Belgium, the elites have used a wide variety of techniques to avoid total gridlock too: agreeing to disagree, log-rolling, splitting the differences, waffle-iron policy, and asymmetrical constructions. The success rate of conflict management in Belgium by looking at the institutional context obliging the elites to rely on complex compromises for getting rid of mutual vetoes in a system where majoritarian decision-making is impossible and where ongoing confrontational tactics are counterproductive.

The bipolar logic of Belgian federalism strongly shapes the way in which financial arrangements and mechanisms of solidarity and redistribution are discussed. Moreover, the north and the south are economically divergent. Flanders has gradually become a very strong economic player. Federal money therefore comes to a large extent from Flanders, and redistribution, in effect, means money from Flanders going to the two other regions. These patterns are not strange in a federal state, but the bipolar logic of Belgium makes them much more difficult to deal with. If Flanders claims a larger degree of financial autonomy, the Francophones accuse Flanders of deliberately endangering the unity of Belgium. Flanders reacts by saying that Wallonia should conduct a policy that allows it to be less dependent on national (i.e. Flemish) solidarity. In Cyprus, as in Belgium, the north and south are economically divergent. With the bipolar logic of Cyprus, it would have been difficult to deal with that problem under the Annan Plan.

⁶⁹⁸ Hendrik Vos, "Belgium: Federal Engineering in the Heart of Europe," Conference by Cyprus Policy Centre, Eastern Mediterranean University, 7-8 May 2007.

The allocation of exclusive government competencies minimises the number of zero-sum negotiations between groups.⁶⁹⁹ The two Cypriot communities would have been given power in terms of competences and functions too. The former president of the Republic of Cyprus Vassiliou states, the federated states must be given the maximum degree of competences. Vassiliou also argues that the central authority should ensure that things work correctly for one state and from there on to implement them in practice. There is a need for correlation and co-responsibility in social services. Social services are a huge subject and it needs lots of money. So, maximum decentralization is needed but also coordination.”⁷⁰⁰ For Markides, at least for a period of time the central government should not have vital powers because of the risk of deadlock and deadlock affecting everyday life.⁷⁰¹ This is the idea that is also supported by the Turkish Cypriot leadership. However, the thing that is underestimated is the fact whether constituent states would be able to cooperate as well as compete with each other. If any of constituent units cannot afford to legislate and administer its responsibilities what is the point of having loose federal system. In these situations, highly decentralized fiscal federalism is likely to intensify conflict between the two communities.

In Belgium, the units maintain various competencies over different-issue areas, a mechanism intended to reduce the probability of conflict.⁷⁰² The regional councils possess significant powers and many community issues are debated in regional terms and have regional effects. The proposal must receive support of a two third majority in each chamber. However, this procedure does not involve the constituent units or even include references to linguistic groups. The legislative process as it relates to community issues offers more protection for the minority linguistic group than the amending formula of the constitution.⁷⁰³ When we look at the Annan Plan, it gives double majority rights to both ethnic communities to amend the constitution. It seems to protect the interest of each community at the central level too on the one hand, but on the other hand too many veto players that result in deadlock at the central government.

In both Belgium and the UCR, all residual powers belong to sub-units. This makes the centre weak and sub-units strong. However, by structuring so many interests in terms of the opposition between French-speaking Wallonia and Dutch-speaking Flanders on the

⁶⁹⁹ Ibid., 15.

⁷⁰⁰ Vassiliou, Personal interview.

⁷⁰¹ Markides, Personal interview.

⁷⁰² Ibid. 11.

⁷⁰³ Lecours, “Belgium,” *op.cit.*, p. 64.

one hand and possibly Turkish Cypriots and Greek Cypriots on the other hand has produced/would produce polarities that are typical of bicomunal systems, where they have both taken on a life of their own and overridden other potential polarities. The territorial structure has given ethno-regional significance to a variety of issues, including many that have nothing to do with language or culture. This is the outcome that would have been likely to develop in Cyprus under the Annan Plan and this is one of the weaknesses of the Belgian system. In the Annan Plan concerning competencies every attempt had been made to limit interaction between the communities and to weaken cross-cutting cleavages which seem to be a problem for the maintenance of a federal system.⁷⁰⁴ Federalism in Belgium has grown out of linguistic differences, but they have promoted even greater differentiation due to the system itself that encourages interregional comparison and provides limited possibilities for the development of cross-cutting cleavages. This is the situation, unlike Switzerland, but a likely situation to develop in a federal Cyprus.

Federalism in Belgium is complicated and bipolar. Two parts drifting away and totally split. The Belgian federation is centrifugal and the process towards more devolution is not likely to be completed. However, this system has been operating relatively smoothly because regional and federal party elites have been willing to cooperate and share the cake.⁷⁰⁵ Notwithstanding the devolution of powers to the Regions and Communities, the Belgian population at large has been more willing to identify with Belgium.⁷⁰⁶ This is an important condition for the maintenance of multi-ethnic federations. However, these are all absent in Cyprus.

The 'federalisation' of Belgium and the federal design for Cyprus are the products of considerable tensions and antagonism between the two major communities, the small number of federated entities and the bipolar nature of many of the central institutions that make actors often engage in a zero-sum game. In Belgium, regarding cooperation, Special tribunals and Concertation Committees designed to resolve disputes. In both Switzerland and Belgium, politicians are reluctant to transfer many issues to be dealt with to the

⁷⁰⁴ With the institutionalisation of a linguistically based federal structure, the comparative economic status of Flanders and Wallonia has taken on new significance. Now, practically every issue of economic aid to a particular industry, neighbourhood, commune, or province carries with it larger questions of interregional equity.

⁷⁰⁵ Wilfried Swenden, "What – if anything- can the European Union learn from Belgian federalism and vice versa?", *Regional and Federal Studies*, Vol.15, No.2, June 2005, p.192

⁷⁰⁶ *Ibid.*, 199.

Supreme Court.⁷⁰⁷ In Belgium, the Court of Arbitration for legislative acts (bills) and the Council of State for executive or administrative acts are in charge of dealing with conflicts of competence. Conflicts of interest between the federal state and the Communities and regions, or amongst themselves, are brought before the Consultative Committee in which national, regional and community ministers have seats. The Alarm Bell procedure is a last resort mechanism whereby a community with a three-quarters majority of its members can halt a legislative. The matter is then taken up at the Council of Ministers. If unresolved, the Prime Minister, as a matter of priority, prepares and sends a compromise law to the Parliament. If this fails as well, the Government has to resign and new elections are called. This threat acts as an incentive to all sides to try to resolve the issue and has had an encouraging effect. That kind of incentive has never been introduced for reunited federal Cyprus. The Greek Cypriot leadership argued that the deadlock resolving mechanism in the Annan Plan was humiliating. The Supreme Court would have resolved disputes between the constituent states or between one or both of them and the federal government, and resolve on an interim basis deadlock within federal institutions. However, although this was rejected by both communities, nobody found any alternative to it due to the fact that other solutions would require equal representation in that specific institution which would be likely to create deadlock from the beginning.⁷⁰⁸ Neither community has any great faith in the workings of a federal system because there is no tradition of accommodation in the history of the two groups, a feature essential for the proper management of the system.

In the Annan Plan, the constituent states would have participated in the formulation and implementation of policy in external relations and EU relations on matters within their sphere of competence, in accordance with Cooperation Agreements modelled on the Belgian example. The Belgian model received some attention, particularly from the Turkish Cypriot side. This model emphasises the independence and political equality of each side within the EU environment. There is a possibility that each sub-national government has representation in Brussels with regard to the functions it performed.⁷⁰⁹ Under the Annan Plan as in the case of Belgium, the implementation of EU laws and regulations would be shared out in accordance with the internal division of powers. As in Belgium, in a united Cyprus, the constituent states would be represented at the EU levels.

⁷⁰⁷ For more information see Thorlakson, "Comparing Federal Institutions," *op.cit.*

⁷⁰⁸ See Chapter 3.

⁷⁰⁹ Clement Dodd, "Constitutional Features of the UN Plan," *op.cit.*, p.4

However, unlike in Belgium, in a united Cyprus, the possibility of the constituent states being represented in the Council of Ministers is merely allowed by making it mandatory.⁷¹⁰ This indicates how the model envisaged in the Annan Plan for Cyprus departs from the Belgian model. The Turkish Cypriot leadership believes that while the Plan attributes many policy areas to the constituent states, they would be limited, in practice, at the EU level.⁷¹¹

The Belgian system is based on the notion of consensus-building which requires several consensus-building mechanisms such as special committees and working groups to facilitate reaching a consensus. The endless discussions between numerous Belgian actors at different levels of the decision-making process are the norm that would have been expected for a re-united Cyprus under the Plan, however, without the formulation of other conflict resolving mechanisms. In Belgium, the price-to be paid- for non-agreement is very high. Either there is a compromise that is acceptable to both communities, or there is no longer any government. But when the tension was really high and one of the actors wanted a constitutional reform, there was a quasi-obligation for the other to accept the negotiation and to try to find a solution. This arrangement can be introduced for Cyprus to make both communities to realize mutuality and reciprocity and then sustainability of the system.

Unlike in Belgium, in Canada the absence of an agreement on the constitutional changes requested by Quebec does not lead to a generalized policy paralysis. The leaders of the regional and federal governments can continue their business as usual.⁷¹²

Another important issue in the discussions is the issue of territoriality. Papadopoulos states that "the Annan Plan does not lead to the reunification of the two communities but promotes the permanent division with restrictions on movement, settlement, the right to acquire property, the exercise of political rights and other divisive elements. A separate economy was imposed at the end, which means no common monetary, fiscal policy and no investments by Greek Cypriot businesses shall be allowed in the Turkish Cypriot constituent state."⁷¹³ What the Greek Cypriot political elites do not see is the possibility that the policy of territorial overlap of languages kept the territories of the linguistic

⁷¹⁰ Nathalie Tocci, "EU Intervention in Ethno-political Conflicts: The Cases of Cyprus and Serbia-Montenegro," *European Foreign Affairs Review* Vol.9, No. 4, 2004.

⁷¹¹ Olgun, Personal interview.

⁷¹² Deschouwer, "And the Peace Goes On?" op.cit., p.905.

⁷¹³ Papadopoulos, "Keynotes", op.cit.

minorities open to penetration by the dominant language and led to conflicts. Belgium and Switzerland adopted the creation of rigid language borders in order to deal with ethnic conflict.⁷¹⁴ Ethnic conflicts can be lessened by a move towards solution of the dominant language that borders the lower ranking language but is separated from it by rigid boundaries; in other words, by some form of linguistic federalism.⁷¹⁵ This is one the most important issues feared by the Turkish Cypriots. They want to keep majority in their area. However, Greek Cypriot leadership resists the concept of territoriality. This is the case in Canada too.⁷¹⁶ There is also a possibility that where the minority group is concentrated geographically there are potential demands for autonomy or independence.⁷¹⁷ Canada, for example, faces movements for secession or autonomy by the principal minority groups. So introduction of monoethnic as well as multi-ethnic units are likely to deal with that problem as in Belgium and Switzerland in order to provide a balance between minority and majority. Despite the apparent difficulties faced by societies dominated by two main ethnic groups, it should not be assumed that they are inevitably ungovernable. Bicommunal societies such as Belgium and Canada have maintained relative political stability in the face of severe strain. Likewise, subnational bicommunal political systems can develop viable political processes and accommodations as illustrated by the case of New Brunswick, Canada.⁷¹⁸

So, one of the weaknesses of the Annan Plan was the one that designed such a system for only two units. The island has already faced difficulties due to its bi-ethnic character. The founders of the Canadian federal system predicted the potentially dangerous dynamics of a bipolar federation; namely zero-sum games and eventually deadlock through mutual veto power. The multipolar structure allowed Quebec occasional alliances with various Anglophone provinces on particular topics.⁷¹⁹ However, Quebec has still taken a different stance on many crucial topics. With the limited accommodation of French Canadians elsewhere in Canada, the existence of a Quebec provincial government would only institutionalise secessionist sentiment rather than pre-empt it. Canada's demographic makeup appears to rule out any coequal status at the federal level. The search for a formula will be likely a long and difficult one, severely hampered by the demography of

⁷¹⁴ Laponce, "Canada," *op.cit.*, p.30.

⁷¹⁵ *Ibid.*, 30-31.

⁷¹⁶ *Ibid.*

⁷¹⁷ Schmitt, "Problems of Accommodation," *op.cit.*, p. 9.

⁷¹⁸ *Ibid.*

⁷¹⁹ Watts, "Federalism and Diversity," *op.cit.*, p.42.

Canada's two linguistic groups.⁷²⁰ This is exactly the case in Cyprus. The accommodation of Quebec's distinctiveness within Canada called for a federal state with considerable asymmetrical elements. Canada's asymmetrical federalism appears to have been an effective device in managing conflicts within its multinational setting. Support among Quebecers for an outright secession of their province has decreased considerably. Asymmetric federalism can be thought as an alternative to symmetric federalism envisaged in Annan Plan.

The nature of federalism is a balance of centrifugal and centripetal forces, of diversity and unity, a complete erosion of the centre would be as threatening to a federal state's existence as excessive centralization. The Turkish Cypriot leadership never put any issue on the table to be allocated to the centre.⁷²¹ The Greek Cypriot leadership, on the other hand, pushed for a centralized federal system while underemphasizing shared-sovereignty. The Greek Cypriot president of the Republic of Cyprus Papadopoulos challenged the idea of shared sovereignty.⁷²² If the centre as a necessary point of reference of the constituent units in terms of *shared rule* successively disappears, this equilibrium is damaged because one component of federalism, "*self-rule and shared rule*", is missing. That would have been likely to develop under the system envisioned in the Annan Plan.

5.2 ACCOMMODATION BY CONSOCIATIONALISM

A consociational system is an important arrangement because of its power-sharing elements of governance in a multi-ethnic society and its conflict-regulation practices. In a consociational model, conflicts are avoided or resolved by granting autonomy and acknowledging separate group rights within federations or confederations of different ethnic groups that are territorially separated. Proportionality and consensus are required in all branches of the state to. Unlike federalism, which is territorial in nature and only indirectly addresses the problem of ethnic division, consociationalism addresses it directly by offering mechanisms by which ethnic interests and identities can be recognized and secured, either alone or in combination with federalism.⁷²³ John McGarry and Brendan O'Leary say that multi-ethnic federations are not doomed to fail, but federalism is usually not sufficient and the success of multi-ethnic federalism requires consociational practices,

⁷²⁰ Ibid., 31.

⁷²¹ Markides, Personal interview.

⁷²² See the speech addressed by Papadopoulos to the UN General Assembly, September 23, 2004 ;International Debate, March 2005, pp. 79-87.

⁷²³ Bahceli and Noel, "Imposed and Proposed Federations," op.cit., pp. 17-18.

particularly at the level of federal government. Consociational or power-sharing theorists put greater emphasis on political institutions and the role of politicians in attaining political stability or instability. For them, political instability results from the unwillingness or the inability of political elites to negotiate and maintain political compromise.

The Annan Plan offered a consociational model where the two deeply divided and territorially separated ethnic communities would have had a second attempt to create a new state based on power-sharing. In terms of decision rules, the Annan Plan provided proportional representation and consensus rule in two of the branches of power-executive and legislative- as well as for administrative decision-making. In addition, the two constituent states would have elected their own separate personnel for all political posts in the UCR, except the joint list for the Presidential Council. The plan called for a rotating presidency on the basis of two terms for Greek Cypriots and one for Turkish Cypriots. Segmental autonomy would be assured in a bizonal federation, as the two constituent states would retain a Greek Cypriot and Turkish Cypriot majority respectively.

The Analysis/Evaluation of the Annan Plan in Comparison to Existing Models of Consociational Systems

The Annan Plan aimed to contribute peaceful conflict resolution among two main ethnic communities through consociational system. In terms of its characteristics, the Plan had been influenced by and had adopted elements characteristic of Belgium and Switzerland, which are regarded in the literature as successful consociational democracies. Switzerland at the national level deals with the language problem through representation of three major groups in the federal cabinet. Consociational institutional arrangements let minorities live within their own culture inside the boundaries of their cantons. As cantons, the minorities have a political voice in the decision-making of central government. The members of the National Council are primarily seated in linguistic rather than partisan blocs. There are statutory rights for linguistic minorities. Linguistic minority rights are guaranteed by the principle of 'territoriality': the cantons are authorised or charged to guarantee the traditional language of their regions. The minority language groups are often even somewhat over-represented.⁷²⁴ All changes in the Swiss constitution must be approved in a referendum by a majority of all votes cast, and by a majority of cantons.

⁷²⁴ Steiner, "Switzerland and the European Union," *op.cit.*

This gives special protection and a sort of veto right to the smaller cantons and they can block any amendment if they are united.

The principle of linguistic proportionality is applied to all aspects of the Swiss political system. The rule that the linguistic minorities should have veto power in matters of vital interest to them is another element of consociationalism in Switzerland. The difficulty with this rule is that there may be disagreements among the political actors on whether an issue is really of vital interest to a linguistic minority. This, then, is a critical difficulty that can emerge in bipolar societies like Cyprus and Belgium. However, these various consociational elements contribute to the relative harmony at the national level. Elite behavior also could be conceived as conforming to consociational principles.

Belgium has a long tradition of conflict management through consociational bargaining. The two communities which were once linguistically based have gradually acquired territorial identities and interests. Although the formal constitutional transformation of Belgium into a federal state happened in 1993, the ground was laid. The rise of language politics, as a result of the Flemish movement, produced over time, a complex pattern of consociational accommodation between the Flemish and Francophone pillars overlain in turn by class, left-right and clerical-anti-clerical cleavages.⁷²⁵

The concept of power-sharing signifies governments encompassing broad coalitions of several parties representing a majority of the cleavage groups. In Belgium, there is the constitutional regulation of an equal number of Flemish and Walloons in government, while the structure of the party system requires coalitions which necessarily also include the different "spiritual families".⁷²⁶ The Senate ensures minority representation due to having the same members nominated by the assemblies of the three linguistic communities. The division into the three main traditional parties has defused many linguistic confrontations. The autonomy for minorities in areas of their interests is another feature. All the relevant competencies lie with the groups themselves while their votes count in the Senate. Furthermore, constitutional changes require the consent of the communities as well as a two-third majority.

The consociational system that effectively functioned in Switzerland and in Belgium became an important model for managing ethnic conflict in Cyprus too. Segmental

⁷²⁵ Michael Keating, "Asymmetrical Government," *op.cit.*, p. 82.

⁷²⁶ Florian Bieber, "Consociationalism-Prerequisite or Hurdle for Democratisation in Bosnia? The Case of Belgium as a Possible Example," *South-East European Review*, Vol.2, No.3, October 1993, p. 90.

autonomy as a means of avoiding interaction at the level of mass culture is important because the potential for hostile conflict and violence exists primarily at this level. So, the reduction of tension is ideally achieved through reducing interaction between social and political groups from the different societal segments and through the collaboration of the elites. Switzerland, in that sense does not fit to the consociational system because of direct democracy.

However, it seems that Cyprus would have had certain difficulties in managing ethnic conflicts with consociationalism. There are some factors, apart from the ones embedded in the constitution, which explain the successful management of ethnic division. When we look at these successful countries they both have relative equilibrium with regard to size. In Belgium, Flemings and Francophones have nearly the same numerical size and the small overall majority of the Flemish is counterbalanced by the fact that the Flemings are in a minority position in the Brussels region. In Switzerland, although the German-speaking population is in the majority, the absence of clear-cut religious and linguistic geographical boundaries contributes to integration. Cyprus is clearly dominated by the population of Greek Cypriots (80%) and there is no cross cutting cleavage situation to contribute to accommodation of diversity.

The lack of significant socio-economic difference helps to deal with ethnic problems. This is the case in Belgium now. Former inequalities between two groups ended and with the improvement of Flanders' economic situation in relation to Wallonia in the 1960's contributed to the Flemish community's cultural and political demands that resulted in different language laws and various constitutional reforms. This put the Flemings on an equal footing with the Francophones. Economic wealth and the relative equal distribution of this wealth among the language groups are among the favourable factors for religious and multicultural integration and linguistic harmony in Switzerland. If Switzerland had been economically less well off and if, there had been great economic inequality among the language groups, linguistic conflicts would have been more severe to begin with.⁷²⁷ In Cyprus significant disparities have remained. The Turkish population were disadvantaged in socio-economic aspects vis-à-vis the Greek majority. In a United Cyprus this problem will need to be urgently tackled. Federal economic policy in the Annan Plan would have given especial attention to the harmonization of the economies of the two constituent

⁷²⁷Steiner, "Switzerland and the European Union," *op.cit.*

states. The goal would have been to eradicate inequalities between the two economies. Such policies would included a system of allocation of indirect taxes to the constituent states which would have resulted in a net transfer of resources from the Greek Cypriot to the Turkish Cypriot state until economic disparities between the two have disappeared. Economic harmonization would have also been assisted by the EU structural funds and programmes, as well as a special fund for the Turkish Cypriot State. However, it seems that the Plan would have been less likely to result in economic parity since the poor Turkish side could not have competed with the rich Greek Cypriot side due to insufficient revenues (See Chapter 3).

The experiences of both Belgium and Switzerland suggest that groups are held together through a shared identity that does not exclude others. Neither Flemish nor the French-speakers serve as the core nation. This is also the case in Switzerland. By contrast, in Cyprus, such a notion of a shared identity never existed. Overarching regional identity could be developed over time through the establishment of bicommunal parties.

All these successful federal consociational countries also teach us that the existence of some cross-cutting cleavages that help to moderate ethnic conflict. Electoral behaviour can explain the cross-cutting cleavage. For Lijphart, Belgium is stable since the Flemish/Walloon division is supplemented by other cleavages (i.e. spiritual families and Bruxellesois).⁷²⁸ On the whole, linguistic and religious cleavages do not coincide with party preferences, although the split of the main parties that occurred diminishes the relevance of overlapping membership.⁷²⁹ Neither are there any national parties. Switzerland is a state with a society composed in almost every canton by overlapping minority groups. One of the important reasons for the impressive results achieved by Switzerland is the fact that it has never been a nation state, although the German-speaking population has been a substantial majority in the country. Thus, in Switzerland, the absence of clear-cut socio-economic, religious and linguistic geographical boundaries contribute to integration. This is one of the main reasons that 'ethnicity', as in Belgium, never played an important role in Switzerland and 'citizenship' is much more strongly developed.⁷³⁰ Most of the cultural groups have at the same time experienced being part of a minority, and this has been very important for the development of a culture of tolerance

⁷²⁸ Bieber, "Consociationalism-Prerequisite," *op.cit.*

⁷²⁹ Schneckener, "Making Power-Sharing Work," *op.cit.*, p. 213.

⁷³⁰ Romedi Arquint and Murezi Michael, "Democracy, Federalism and Multiculturalism-The example of Switzerland," Seminar by Federal Union of European Nationalities, July 2003. Available at: <http://www.fuen.org/pdfs/20030822RAMMgech.pdf>

and pluralism.⁷³¹ The Annan Plan established clear linguistic, religious and economic cleavages that would have coincided with the two constituent units. This would have probably resulted in secessionist movements from the Turkish side. Under the Annan Plan, the electoral behavior would not have been able to develop relevant cross cutting cleavages; instead, ethnic and political cleavages would have been likely to correspond closely.

All parties that are part of a power-sharing executive are interested in keeping the agreed status quo. Radical or separatist forces are in a significant minority position and do not have great influence over the daily work of the power-sharing system. This condition was met by Belgium despite the existence of right-wing Flemish separatists (Vlaams Block). The attempts to establish consociational federalism under the Annan Plan failed because on the one hand the Greek Cypriots did not want to give up their hegemonic position and, on the other hand, the Turkish Cypriots largely supported separatist opinions. Power-sharing has been seen as an insufficient protection or as a danger for their ethno-national identities.

Another important factor in facilitating conflict regulation in these countries is a tradition of accommodation among or between parties to a given conflict. Willingness and the ability of elites to engage in accommodative behavior is a crucial element. This can be seen in the historic experiences of conflict management, which could serve as reference points for today's actors. This is the case in Belgium. By contrast, in Cyprus, the two communities have seen each other as the enemy for a long time. The historical legacy of the conflict leads to no compromise and a continuation of distinct and opposing cultures of violence within the two communities.⁷³²

There is a need for comprehensive participation in power sharing arrangements. In Belgium and Switzerland, all language groups were always represented and consulted. The consociational as well as federal solutions was developed by the groups themselves and not forced upon them by external powers. This condition is obviously entirely met by Belgium and Switzerland but not in Cyprus..⁷³³ In Cyprus, such favourable conditions are absent. There are no prior traditions of elite accommodation; no cross-cutting cleavages

⁷³¹ There are French speaking Catholics and French speaking Protestants, German speaking Catholics and German speaking Protestants. (Italian speakers are nearly all Catholics.) Among socio-economically poor cantons, there are both German- and French-speaking states.

⁷³² See chapter 3 for more information.

⁷³³ Marios Constantinou, "Constitutional Learning for Cypriots in the Light of the Swiss and EU Experience: A Sociological Perspective," *Cyprus Review*, Vol.14, No.2, Fall 2002, p. 15.

across ethnic divisions; no overarching sense of loyalty to the whole or to the state. According to Nicos Peristianis “consensus politics was not practiced back in the 1960s and this lead to the collapse of consociational democracy” Elites play a crucial role in managing ethnic conflicts. They should keep a strong commitment to cooperation and the principles of shared rule and able to win internal support for compromises and agreements.⁷³⁴ He argues that consensus politics was not possible in a climate of intense ethnic strife and a ‘dialectic of intolerance’. The necessary culture of tolerance required for living in the fragile consociational house is required. Clement H. Dodd argues that “consociationalism has never really been possible in Cyprus where the elites did not really coalesce in former times under British rule, despite some degree of shared schooling, or where they put themselves at the head of nationalist groups. The only areas of cooperation and sympathy created between the two communities were those established in the labour unions by the very left wing labour union, AKEL.”⁷³⁵ Neither the 1960 constitution, nor the Annan Plan is designed to bring both communities together under a common Cypriot identity. Durduran states that Cypriots have a bad tradition of accommodation. “During the period of the Ottoman Empire, the division of a nationality concept remained very strong. It was not possible to form any bicomunal institutions like political parties. Only the communist party established in 1920s had a bicomunal character until 1970”. Alpay Durduran points out that “the Annan Plan is likely to prevent the establishment of bicomunal institutions. With the Plan, there is no opportunity to bring the two communities together”.⁷³⁶

It seems that political culture together with institutional arrangements determines whether the ethnic conflict in Cyprus is likely to be managed under the consociational as well as a federal model. The problems mentioned above should be considered carefully and sophisticated arrangements should be made to address them.

5.3 EFFECTIVENESS AND EFFICIENCY OF DECISION-MAKING

To achieve a successful federal system is to minimise the external risks without clogging the decision-making process. Political decentralisation and the strengthening of minority rights in parliament are likely to increase the transaction costs of policy making and

⁷³⁴ Ibid., 39.

⁷³⁵ Dodd, “Confederation, Federation,” op.cit., p. 25; Similar argument was pointed out by Alpay Durduran in interview conducted.

⁷³⁶ Alpay Durduran, Personal Interview.

reduce the speediness and efficiency of the law-making process.⁷³⁷ The constituent states' veto power is an important element in the functioning of federalism. As the number of veto players in a political system increases and where they have different ideological preferences, veto players become more effective in blocking policy. This is the case in Switzerland and Germany. In Germany the extent of divided government is quite large compared to other countries. This gives Germany too many veto points. However, in Belgium and Canada, there are relatively few veto players due to the system that tends more towards a dual character. This would have been likely the case if the Annan Plan had been supported by both communities. Institutions of federalism mentioned in the Annan Plan would open up channels for subnational veto players to block centralization and slow down policy change. This is not surprising. This is the case in federal systems and federal and consociational systems acknowledge this. The requirement for a double majority of constituent states and people for constitutional amendments, a special majority needed to make decisions in federal Parliament, implementation of some federal legislature by the constituent state increase the number of veto points and grant the constituent states a strong veto power position. One of the primary issues in the eyes of the Greek Cypriot leadership was the inefficiency of the decision making process in the Annan Plan. Because the Plan was based on deep distrust between the two communities and bipolar nature of the established institutions, this would have been likely to create a deadlock. Both leaderships also never believed that that they could avoid deadlocks.⁷³⁸ So, the Plan transferred this problem to the Supreme Court. This can be seen a good arrangement because it might force both sides to reach a compromise.⁷³⁹ However, there would be a high possibility that the system would result in deadlock since many decisions would be transferred to the Court to deal with.⁷⁴⁰ The Plan would have been less likely to encourage both communities themselves as in the successful multi-ethnic federal countries to find common ground but likely to discourage and avoid the development of the tradition of cooperation and compromise.

In the Annan Plan, there were important veto points. One came from the consociational system itself that can be called 'consociational veto points' which lead to power sharing in

⁷³⁷ Saalfeld and Becker, "Cohesion, Veto Players and Agenda Control," *op.cit.*

⁷³⁸ Denktas and Olgun, Personal interview; speech of Papadopoulos in Chapter 3.

⁷³⁹ Olgun and Tselepis, Personal interview

⁷⁴⁰ See Chapter 3.

the executive and are intended to foster consensual decisions. The other one came from the Parliament that can be referred to as 'legislative veto points'. The existence and strength of a second chamber and the extent to which the government and/or parliamentary majority controls the parliamentary agenda can produce two sets of legislative veto points. Under the Annan Plan, the decision-making procedures of the Senate were to ensure that decisions enjoy substantial support from both constituent states. Although minority-blocking powers were not envisioned in the Plan, at either the executive or the legislative level, for specified matters a two-fifths majority of both Greek and Turkish Cypriots Senators - in addition to a simple majority - would be required. Ordinary decisions of Parliament would have required the approval of both chambers by simple majority, including one quarter of voting Senators from each constituent state. For specific matters, a special majority of two-fifths of sitting senators from each constituent state was to be required.⁷⁴¹ The Turkish Cypriot members of Parliament would have had veto power over legislative decisions if they vote *en bloc*. The plan was to propose that the decisions of the Presidential Council would be taken by consensus, if possible, and otherwise by single majority provided such a majority included at least one Greek Cypriot and one Turkish Cypriot (An affirmative vote). If the Turkish Cypriot members of the Council have been voted *en bloc* they would have a veto within the Presidential Council too. In the Annan Plan, the effective functionality of the government was deemed to be ensured through provisions that remove the possibility of a decision being vetoed with a single member from either constituent state.⁷⁴² Powers necessary to resolve on an interim basis deadlocks within federal institutions were to be given to the Supreme Court which was simultaneously entrusted with the power to uphold the constitution. Actually this is against the neutrality of the Supreme Court in the federal systems.⁷⁴³ In a system without legal hierarchy between the federal and the constituent state level of government, the Supreme Court is the only institution which can ultimately guarantee the harmonious functioning of the state. No vetoes were to be included, but a special majority would have been required with only 40% from each side.

The workability of the system designed in the Annan Plan was the one that was highly sceptical of the Greek Cypriot leadership. However, it was not given enough attention or ignored by the Turkish Cypriot leadership. What the Turkish Cypriot leadership

⁷⁴¹ See Appendix for more information.

⁷⁴² See Chapter 3 of the thesis and mainly the interview with Mehmet Ali Talat.

⁷⁴³ Tselepis, Personal interview.

demanding was to achieve as much power as possible, regardless of the cost.⁷⁴⁴ The Turkish Cypriot leadership under Denktas strongly believed that the system would not be functional if the Plan tried to solve the problem of demography in this way. So, for him, in any shape federal systems would not workable but a two state solution.⁷⁴⁵ Still, there are different power-sharing arrangements which can deal with the problem of demography (i.e. Asymmetric federalism in Canada).

The Greek Cypriot leadership had seen the Annan Plan as involving ineffective decision-making procedures and damaging deadlock-resolving machinery. Both sides mainly the Greek Cypriot leadership, opposed foreign judges because their inclusion was seen as an insult to a country now considered incapable of deciding for itself.⁷⁴⁶ It would have been likely that intensification of ethnic lines of division would have persisted and so final decisions on so many issues would have been taken by the foreign judges. It was mainly believed that this was the negative side of the Plan which is not consistent with the separation of powers.⁷⁴⁷ It had/has never been suggested the establishment of committees to deal with that problem because in the committees there is a need for equal representation. This was believed to bring deadlock and prevent a solution.⁷⁴⁸ Those who criticize the provision of deadlock resolution mechanisms did not raise this issue in strong terms and nobody suggested anything better.⁷⁴⁹ For the pro-Annan leaders on both sides, this mechanism could have been used as a temporary basis because, with a solution under the EU, confidence between the two communities would have been built up and the priorities of both communities would not have been based on national criteria but rather on ideology.⁷⁵⁰ In federal systems, the Supreme Court is needed to be independent from both the federal and the provincial government and should stand sublimely above both. This was not the case in the Plan and it would have been likely not to function.⁷⁵¹

Consensus requirements are meant to overcome the problem of members of one group not being subjected to being ruled by the members of the other group by providing that nothing can be done without the participation of all representatives of all groups. However, this kind of structure accepts the possibility that nothing may be done. In a

⁷⁴⁴ See Chapter 3.

⁷⁴⁵ See Chapter 3 and interview with Denktas.

⁷⁴⁶ Markides, Personal Interview.

⁷⁴⁷ Tselepis and Palley, Personal Interview.

⁷⁴⁸ Ibid.

⁷⁴⁹ Markides and Tselepis, Personal interview.

⁷⁵⁰ Papapetrou, Personal interview.

⁷⁵¹ See Chapter 3.

consensus system, the risk that decision-making will be blocked is more acceptable than the risk that decisions may be taken by the members of one group against the interests of the members of another group. Thus, a consensus system puts the protection of minority rights ahead of ensuring that a government actually has the power to govern. Given a third party the power to break a stalemate in Cyprus under the Plan, as provided by the presence of the non-citizen judges the principles of the very system it purports to maintain, as decisions may then be taken without the participation that is supposed to be ensured by the requirement of consensus. However, this arrangement would have been likely to remote both communities from each other. So, instead of putting too much veto players at the central level and then taking them back (i.e. in EU relations) it is more sensible to enabling federal and provincial governments locked into an ongoing process of intergovernmental contracting that takes place primarily outside of central government institutions, as in Canada.

Consensus-requiring constitutional structures granting virtual independence to minorities were proposed in the Annan Plan. The plan proposed a weak union of two self-governing component states, with a common central government having responsibility mainly for foreign affairs, a presidency of two co-presidents (one Turk, one Greek), to be followed by a collective presidency of six members with a requirement of proportional representation of the two communities and a principle of rotation of the positions of president and vice-president, a parliament with requirements of proportional representation of the two communities and some requirements for agreement by members of each for legislation to pass, and a supreme court composed of six Cyprus citizens and three non-citizens of Cyprus. That type of institutional arrangement is less likely to work since the Greek Cypriot leadership has never accepted multi-ethnic federalism. Markides states that the advantage of the executive council is these six members had to be elected together on a common ticket and would release political affiliates, having a similar outlook and set of aspirations and thus the minimum risk of being divided on ethnic grounds.⁷⁵² This is true to some extent but it had to be supplemented by ethnic based representation as well. So the mixture of both is required as in Belgium.

One way of dealing with decisional inefficiency and ineffectiveness in deeply divided societies is to allocate exclusive competences to both tiers of government in order to avoid confrontation. This is the case found in Belgium, Canada and the UCR which express a

⁷⁵² Markides, Personal interview.

divided (dual) rather than a shared model of federalism, including watertight compartments for the division of powers and independent taxing authority for both orders of governments. Unlike in the UCR, in Canada provincial representation is weak at the centre. The German model of federalism creates the condition where both order of government occupy the same arena of competition.⁷⁵³ Functional responsibilities in many policy fields are not precisely separated but are shared between the federal and the state level of government. The Lander government is represented in the Bundesrat, and can veto legislation that affects Lander interests.⁷⁵⁴ In Canada, the decisive element, a crucial role for sub-national governments in federal policy-making, is absent.⁷⁵⁵ This makes the Canadian federal system function more efficiently in terms of veto points than the German federation. So, the Canadian or Belgian experiment would in Cyprus be a better option than the latter since the communities have a deep mistrust of each other and a long history of mutual animosity.

Divided government in the Bundestag and Bundesrat has been criticized for leading political deadlock in Germany. In Germany the extent of divided government is quite large compared to other countries. This gives Germany too many veto points. However, in Canada, there are few veto players due to a system that has tendency towards a dual character.

In the UCR, unlike in Canada, the people of the Greek Cypriot State and the people of the Turkish Cypriot State would have had effective representation in all the federal institutions and effective participation in decision-making processes at the federal level. It is true that federal systems, especially cooperative ones, increase the cost of decision-making but on the other hand reduce the external risks. The latter one is an important issue for the countries divided ethnically. But this system would be less likely to work in Cyprus with lack of bicomunal political parties. Every dispute would be likely to turn to ethnic conflict.

Another notable feature of Canada's original constitution is the dual character of the division of competences. Rare among federal systems, the federal character of Canada's constitution is focused almost entirely on the exclusive jurisdiction of the national and provincial governments. Here, the most intergovernmental relations take place between

⁷⁵³ Lori Thorlakson "Comparing Federal Institutions," op.cit., p.16.

⁷⁵⁴ Fritz Scharpf, "Federal Arrangements and the Multi-Party Systems," *Australian Journal of Political Science*, 30, 1995, p.27.

⁷⁵⁵ *Ibid.*, 17-18.

governments rather than within a body like a senate.⁷⁵⁶ This might be a model for Cyprus as well in order to disperse conflict outside the central government for the purpose of efficient decision making. Since the efficiency of decision-making is a prerequisite for the maintenance of federal system, this model might help both communities to deal with their problems.

Another important thing apart from the decision making process that is likely to give rise to deadlock is the possibility of two units to be resulted in deadlock. Neither community has paid any attention to this issue. Federal systems composed of only two units seem to generate sharp bipolarizing tendencies that often produce inefficiency in decision-making and eventually instability. Although Greek Cypriot political actors had realized it as an objective difficulty in the Annan Plan they do not try to explore alternative possibilities.⁷⁵⁷

“Deadlock resolution mechanisms are always a problem but in Cyprus the problem is even more serious because of the two communities and the two regions and because of the history of the problem”.⁷⁵⁸ The Greek Cypriot leadership states the failure of federations that is more likely with two-unit federations, consisting of units in which different ethnic groups were concentrated, and which were unequal in numbers and in economic power.⁷⁵⁹

“Asymmetry of ethnic populations, concentrated in units, and efforts to create ‘ethnically pure’ areas, lead to a further problem in the federal decision-making processes. The Turkish Cypriots will fear and reject majority decision-making, while the Greek Cypriots considers this to be a democratic right, perceiving an equal composition of all State organs and an equal say by the smaller group in all decisions, as being unjust. As a compromise, large groups would agree on power-sharing and participation by proportional representation in government organs and a considerable amount of equality in significant federal organs and policy decision-making processes. However, when the device of power-sharing has added to it a requirement of consensus, or of positive support, or even of unanimity, it may be viewed as being conducive to blocking functional federal government, or, at the very least, that this is likely”.⁷⁶⁰ So, concentrating too much veto players at the central level will cause deadlock many times.

⁷⁵⁶ Gerald Baier, “The EU’s Constitutional Treaty: Federalism and Intergovernmental Relations – Lessons from Canada,” *Regional and Federal Studies* Vol.15, No.2, June 2005, p.206

⁷⁵⁷ Markides and Tselepis, Personal interview.

⁷⁵⁸ Tselepis, Personal interview.

⁷⁵⁹ Papadopoulos, “Keynote,” op.cit.

⁷⁶⁰ Ibid.

It can be concluded that Canada's increasingly loose, extremely decentralized and non-coordinated form of federalism has served its citizens well rather than the increasingly complex, coordinated form of federalism operating in Germany, which clearly has costs in terms of efficiency and democratic accountability. Moreover, the existence of a default option as a result of no agreement is likely to prevent decisional deadlock and likely to enable the system to function smoothly. This situation is particularly important for deeply divided and asymmetric societies like Cyprus.

SUMMARY EVALUATION OF THE ANNAN PLAN

The Annan Plan was designed in a way to reflect both communities who lived apart for several decades and who developed their own political cultures and who were not used to sharing their daily affairs with another ethnic group. The limited competences given to the federal government, the checks and balances ruling out any domination by either side reflects the existing situation of both communities. Many provisions of the Plan were influenced by the fears of the minority, which, based on past experience, feared domination and discrimination by the majority. However, the Plan insisted solely on separating both communities in many respects and providing a lack opportunity to help both communities to develop a common sense of statehood.⁷⁶¹

On the table, there were two visions for the future of Cyprus: A Greek Cypriot vision of strong federal government and a Turkish Cypriot vision of loose confederation. These two incompatible visions were clearly articulated in the allocation of authority. The plan follows the method of splitting differences. The Plan aimed at solving the problem of distrust through allocating residual powers and many policy areas to both communities and excluding deadlocks by introducing foreigners to decide on political as well as legal issues. Although this is against the principle of the separation of powers and federalism, it could encourage conflicting sides to avoid allowing this situation to appear.⁷⁶² However, still this was based on assumptions. Both communities needed more than assumptions in order to manage their problems. They should feel secure about the Plan. Forcing both sides to agree on a federal solution will not help. It could be likely that every issue would be transferred to the Court to be dealt with so both sides would be reluctant to show an effort to reach an agreement. This would create deadlock something that would paralyse

⁷⁶¹ See Chapter 3 and interview with Alpay Durduran.

⁷⁶² Chapter 3

the society. It would also be likely to prevent the emergence and development of an accommodative culture which is a very important aspect for the functioning of federal systems.

The Annan Plan envisaged a federal model with consociational elements. Under the Constitution, co-decision making mechanisms at the federal level require the consent of both communities on critical issues. The federal government was to be limited, where two constituent states would have had wide powers and autonomy. All federal institutions conformed to a strict ethnic proportionality rule on membership and voting, which aimed to protect the political equality of the Turkish Cypriot community but at the same time to likely to discourage the development of common interests and a common identity.⁷⁶³ For the purpose of not leading to a deadlock on the constitution, the constitution was not to permit any single person to vote any decision and no separate majorities from either constituent state were to be required for any decision, except those decisions on the amendment of the constitution.

The organization of the central federal institutions in the Plan followed the Swiss model whereas division of competences, state powers and the interface with the EU were modeled on the Belgium one. Although both countries have been able to manage their problems under the federal arrangement, when they come to be modeled, there would be high possibility that they would work differently in Cyprus. It might even exacerbate the situation. This is not only because of the lack of certain preconditions (i.e. common interests, tradition of accommodation and elite skills) and the two main communities that exist in Cyprus but also because of the institutional arrangement that is designed for only two units.⁷⁶⁴ For example, the executive branch would have been likely to be prone to gridlock because, unlike the one in Switzerland and Belgium, it would have been divided along sartorial (Turkish-Greek) lines⁷⁶⁵ rather than ideological ones because neither in the history of the island nor in the Plan has there been a tendency to develop such things. For example, in Belgium, there is a constitutional regulation for an equal number of Flemish and Walloons in government, while the structure of the party system requires coalitions which necessarily also include the different "spiritual families".⁷⁶⁶ The division into the three main traditional parties has defused many linguistic confrontations. Thus, not all

⁷⁶³ See Chapter 3.

⁷⁶⁴ Speech of Papadopoulos and interview with Tselepis and Markides

⁷⁶⁵ Palley, Personal Interview.

⁷⁶⁶ Bieber, "Consociationalism-Prerequisite or Hurdle," *op.cit.*, p. 90.

issues of parliamentary debate have been surrounded by the interests of separate linguistic groups, but other groups defined by class and religiosity that could cooperate outside linguistic distinction. However, one of the destabilising factors today in Belgium is the absence of broad national parties that would hold the country together. Due to an overall distrust towards consensual politics at the centre, both groups expand their exclusive competences. Thus, in Cyprus, under the conditions of mutual distrust and lack of prior elite accommodation, it would be highly unlikely that this model would function successfully. As Durduran stated, the model in the Plan did not necessitate both communities working together.⁷⁶⁷ So the designed plan had to be likely to provide possibilities which would enforce both communities to come together and eventually develop a sense of mutuality, a set of common interests that would eventually lead to an efficient system.

Another weakness of the Plan was that the last version of the Annan Plan was shaped in a very short period of time and some issues not agreed by both sides were filled in by the judgment of the Secretary General. This shows us that there would be a high possibility that, if it was to come into force in the near future, either side might protest some of its provisions leading to a possible complete breakdown. This is the fundamental problem of any federal design - the institutions are subject to bargaining, renegotiation and reinterpretation. If there is no institutionalized constraint in the bargaining process, many rules and institutions will be subject to negotiation and change. Political stability would be in danger too when an institutional superstructure is not agreed upon.⁷⁶⁸ Both communities should believe that the gains from federation are fairly distributed. If the Plan was to be accepted, the bargaining process would have failed to achieve a resolution that preserves the federation.

What can be suggested here is to disperse polarization between the two communities, as in Belgium, or cut across ethnic factors as seen in Switzerland in order to manage ethnic conflict. The latter is not easy since it requires time to cross cut cleavages. With only two communities, establishing only two regions will intensify the conflict, since two communities naturally leads to polarization because of historical, social and economic factors. Dividing the federation into multiple units, including units that mix Turkish Cypriot and Greek Cypriot populations can be a viable solution. Watts argues that those

⁷⁶⁷ Durduran, Personal interview.

⁷⁶⁸ Filippov, Ordeshook and Shvetsova, *op.cit.*, p.79.

composed of only two units seem to generate sharp bipolarizing tendencies that often produce instability. Where there are substantial disparities in population among constituent units, these may become sources of dissension over the relative influence of particular regions in federal policy-making. The possible option is the one that includes asymmetrical arrangements.

If decisions are made to form a federation that consists of antagonistic groups, it is important to have a central government with minimal scope in order to avoid confrontation.⁷⁶⁹ This becomes necessary because in ethnically divided countries the adoption of discriminatory measures to prevent non-local ethnic groups from overstressing the states' resources is likely.⁷⁷⁰ "The idea is to allow the domain of the national government to develop incrementally and slowly so that whatever coordination a constitution can provide develops its own roots so that.... a spirit of constitutionalism is allowed to mature without requiring that it resolve problems that otherwise seem irresolvable. This, it seems, is part of the logic behind allowing the European Union to expand its authority only incrementally."⁷⁷¹

Apart from limiting federal government responsibilities as an institutional device, others include giving one or all groups a veto over the federal government actions, introducing a collegial executive and erecting quotas so that minorities are assured a representation that would act as a barrier to conflict. Ethnic quotas serve to enhance representation of ethnic groups in Belgium and Switzerland. In order to avoid a zero-sum game and blocking decision-making, the scope of vital issues of each group (subject to approval of each group) should be relatively limited. However, these alternatives are likely to be inefficient to deal with many problems if the society tends to strictly identify everything in terms of ethnicity.⁷⁷² Fixed quotas should be especially avoided. This was the main problem and the deficiency of the 1960 Constitution. The thinking is to find a balance through over – or under-representation of groups in some areas and compensating them in other areas. This is the method used by both Switzerland and Belgium. These devices and policies are also likely to serve the purpose if they are fashioned with an eye to facilitating broad elite coalitions such as those that characterize a system of integrated parties.⁷⁷³ Under this

⁷⁶⁹ Markides and Papapetrou, Personal Interview.

⁷⁷⁰ Eghosa Osaghae, "Interstate Relations in Nigeria," *Publius*, Vol.24, No.4, 1994, pp.83-99.

⁷⁷¹ Filippov, Ordeshook and Shvetsova, op.cit., p.265. See also chapter 3 interview with Markides and Papapetrou in chapter 3

⁷⁷² Palley, Personal Interview.

⁷⁷³ Filippov, Ordeshook and Shvetsova, op.cit., pp. 266.

condition, what might be necessary is to change political elite incentives through inventive electoral design. What is learned from this study is the critical role of political elites to engage in ethnic conflicts. It is expected that they will show a willingness and ability to engage in accommodative behavior. The Cyprus conflict is a non-cooperative game with incomplete information – a deadlock game. It is true that the ability of international mediators to move the two sides away from a deadlock strategy and engage them in a Prisoners' Dilemma game will not be easy. The success of any federal model will depend on the cooperation of the Greek and Turkish Cypriot elites. What is necessary and lacking in the Annan Plan is/was that it does/did not provide a sense that Cyprus is a multi-ethnic society that enables both communities to have this shared vision through cross-community arrangements.⁷⁷⁴ So, power-sharing mechanisms require support by other mechanisms that would unite rather than separate both communities. Cross ethnic collaboration and cross voting would be necessary for the emergence of the coalition of two communities.⁷⁷⁵

The effects of the EU membership on the governmental institutions, political process and foreign relations of Cyprus would be high if the island became a member of the EU as a united state envisaged under the Annan Plan. For example, legislative power would shift both upward to Brussels and downward to the constituent states hollowing out the powers of the central government. This will leave both communities with little to disagree about at the federal level. This is also seen in the operation of the Belgian federation as well.⁷⁷⁶

According to the Annan Plan, residual power was to left to the constituent states although 'relations with the EU' a in the hands of the federal government. However, within the EU dimension, competences would have become blurred. A blurring of the lines would have been evident in large aspects of commerce, fisheries, energy, insurance, and environmental protection which would have been subject to extensive and at times exclusive Union competences. This could have been likely to create many problems since these powers were already given to the constituent units in the Plan. And since the system would have been based on two communities and two regions it would have been likely that every constitutional conflict could have turned into ethnic conflict. Actually this is the major challenge that any ethnic federalism has to face. It is true that a highly decentralized

⁷⁷⁴ See Chapter 3.

⁷⁷⁵ Durduran, Personal interview.

⁷⁷⁶ Sid Noel, "The Implications of the EU Membership for Governmental Institution, Political Processes, and Foreign Relations," Tove Malloy and Tankut Soykan, Cyprus Settlement Initiative Project ECMI Report No.52, 2004.

federal constitution is likely to generate sharp constraints on policy change, encouraging constitutional instability and occasional violence but it is necessary at least for a while, for the initial years.⁷⁷⁷ So, the design of central institutions should be constructed carefully in order to compensate this. For example, there would be a need to encourage incentives for cross-ethnic cooperation through coalitions between different ethnic and political groups.⁷⁷⁸ This was absent in the Annan Plan.

Federal systems specify which level of government maintains jurisdiction over which political rights and obligations. The two primary areas of coordination between central and provincial governments are taxation and fiscal transfers. A province with greater tax authority is often better equipped to provide for its population. Many states also transfer additional funds from the central government to the provincial governments. These transfers can provide stability for less-developed provinces. The Plan focused primarily on the political and institutional aspects of a federal solution and contains only some provisions as regards the economic aspects of the implementation of Plan.⁷⁷⁹ Most of the entailing high expenditure activities were to remain in the domain of the constituent states. However, this could have resulted in significant deficits especially on the Turkish side because it is less developed. The level of fiscal decentralization is likely to shape conflict under the condition of interregional inequalities. Poor regions would have greater fiscal needs and a harder time raising revenue to meet those needs. Central government is responsible for addressing deep regional inequalities through interregional redistribution. However, this depends on the willingness of the majority. In fiscally decentralized settings, subnational governments tend to serve as important veto players at the national level. This can become problematic in establishing extensive redistributive policies by the national government. It is likely that relatively wealthy regions block legislation aimed at reallocating societal resources from wealthy to poor regions.⁷⁸⁰

Many constitutions require the central government and provincial governments to harmonize legislation on specific issues. This harmonization is usually undertaken in order to ensure a basic level of services for all citizens and to coordinate economic development. The Annan Plan stated that federal economic policy was to give especial attention to the harmonization of the economies of the two constituent states. The scope

⁷⁷⁷ Papapetrou and Markides, Personal interview.

⁷⁷⁸ Durduran, Personal interview.

⁷⁷⁹ Ergun, Personal interview.

⁷⁸⁰ Bakke and Wibbels, *op.cit.*, p. 17.

would be to eradicate inequalities between the two economies. Such policies included a system of allocation of indirect taxes to the constituent states which would result in a net transfer of resources from the Greek Cypriot to the Turkish Cypriot state until economic disparities between the two would disappear. Economic harmonization would also be assisted by the European Union structural funds and programmes, as well as a special fund for the Turkish Cypriot State. In order to succeed, each level of government must have adequate resources to carryout its responsibilities. Poor provincial governments depend on the central government for financial support. In these instances, the central government usually has the authority to redistribute revenues or equalize fiscal policy among the provinces usually through either direct transfers of funds or grants.

However, the Cyprus settlement under the Annan Plan envisaged membership with the EU, which would have changed many things in an economic as well as a political sense (See chapter 3 of the thesis). It is true that under the EU, the Turkish side would reach a certain economic level. But the thought is that the EU would not subsidize everything.⁷⁸¹ Still the fiscal relationship would be predetermined internally. It is likely that North-South fiscal transfers in Cyprus weaken intercommunal solidarity.⁷⁸² Thus constituent states need more access to more financial resources.⁷⁸³ However, as Markides points out that the loose federal system is viable if the constituent units are able to afford to legislate and administer many aspects.⁷⁸⁴ But what if they cannot? This would create another major obstacle in operating a federal system. But Turkish Cypriot realised the possibility of this situation and demanded a two state solution instead of developing an arrangement that would be likely to deal with that problem (see chapter 3 of the thesis). So, it would be necessary to pay extra attention to the equalisation methods.

In post-conflict states, in particular, a clear division of power may prevent future disputes over political authority. The creation of specific mechanisms encourages and facilitates cooperation between the central and provincial governments. It is important that each level of government has sufficient resources and authority to carry out its respective responsibilities and obligations. It seems that none of these issues are clearly mentioned in the Annan Plan. Although residual powers were given to both communities, in practice within the EU, this would not work as intended. The Plan had no explicit list of shared

⁷⁸¹ Palley, Personal interview.

⁷⁸² See chapter 3.

⁷⁸³ Vassiliou, Denktas and Olgun, Personal interview.

⁷⁸⁴ Markides, Personal interview.

responsibilities. There would be a possibility that through Constitutional Laws and Cooperation Agreements this could be achieved. Since these required approval by the federal and constituent state legislatures and since each constituent state parliament was given veto power over cooperative arrangements, the scope for sharing responsibilities under these arrangements seems rather small.⁷⁸⁵ Thus, under the Plan, it could have been less likely to make both communities cooperate one another.

Conclusion

The Annan Plan contained very important consociational and federal principles and institutions in order to manage diversity. They were all modelled on countries where a federal system has worked successfully. However, it can be argued that if the Plan had been approved by both communities in separate referenda, it would have been likely throw Cyprus into a deep and destabilizing chaos. It is true that the adoption of the Plan with the accession to the European Union would change the context, to some extent, but this would not be enough for a peaceful and stable reunification of the island in the future under the federal system. It is also true that many problems may go away because of the EU. The EU might reduce the risk of conflict⁷⁸⁶ too but relying only outside would not be enough.⁷⁸⁷ Local actors play more important roles here. They should learn how to deal with their problems as well. What is learned from the experience of many multi-ethnic countries analysed in this thesis is that ethnic federalism cannot be applied to Cyprus under its current and peculiar conditions and under the model envisaged in the Annan Plan.

This chapter argues that institutions or institutional designs to manage ethnic conflict are not enough for the maintenance of federal systems. In Cyprus, the workability of power sharing arrangements depends on the achievement of certain conditions. What is learned from this study is that in order to form and maintain a durable and stable federal system, federal political institutions should supplement certain conditions. The countries studied here have tried to deal with their problems through a loose form of federalism. Asymmetric federalism also helps Canada and Belgium to accommodate their differences. The existence of multi-unit federalism is likely to play an important role in the efficiency of the system in Canada and Belgium. The important preconditions also exist to help the

⁷⁸⁵ Bakke, and Wibbels, *op.cit.*, p. 12.

⁷⁸⁶ Costas, Erel, Papapetrou and Ergun, Personal interview.

⁷⁸⁷ See Chapter 3.

system sustain itself: cross-cutting cleavage, a tradition of compromise and at least a minimum degree of trust and common interests. It seems that a successful federal system in Cyprus will depend on the existence of these conditions.

CHAPTER 6

CONCLUSION

The concluding chapter summarises the findings and theoretical contribution of this study. The quality of the first hand information that came from interviews with the elites makes this study unique in its contribution to the literature in political science.

This thesis concentrates on the solution proposed by the United Nations - the Annan Plan-for Cyprus. Although the Plan itself is comprehensive and detailed, this thesis focuses on the limited but highly significant federal issues such as the representation of constituent states, the distribution of powers and responsibilities, and fiscal relations. The question is whether the federal system envisaged in the Annan Plan is capable of bringing and holding both communities in Cyprus together. The main focus is whether federalism envisaged in the Plan is likely to ameliorate or exacerbate regional and ethnic cleavages. It seems clear that institutional arrangements alone do not provide a convincing answer. For successful institutional design, there is a need to have a deep knowledge of the societies the institutions are meant to govern. The conditions under which federalism diminishes ethnic conflict depend on the interaction between federal institutions, regional inequality, and ethnic diversity in a society. The design of federal system itself matter in terms of how powers are redistributed, the strength of intrastate mechanisms and mechanisms of intergovernmental relations. However, for federal stability, political will based on a spirit of mutuality and reciprocity, a broad acceptance of the political culture and values of federalism, the need to protect diversity and developing mutual respect, a sense of shared rule and community, respect for constitutional norms, and tolerance and compromise⁷⁸⁸ are necessary preconditions too. Neither federalism nor consociationalism is a solution for deeply divided societies like Cyprus unless these factors are present to support a political process of accommodation and compromise.

This thesis aims at examining two important issues in federations; namely the management of ethno-political conflict and regime performance (decisional efficiency), which are crucial factors in the case of Cyprus. The research is based on the extent of autonomy (i.e. how power is managed at different levels) and separation of power (i.e. how the decision-making process is organised at both a national and sub-national level). So examining a given constitution gives us a great deal of information both on conflict resolution and efficiency and performance issues in federations. The question is whether it

⁷⁸⁸ Burgess, "What is to be done?" op.cit.

is the constitution that makes the difference if other factors such as economic, social and cleavage structure, and historical patterns, hold constant. It seems that it is not only the institutions but their interaction with the underlying features of the societies should be studied carefully.

The thesis assesses the importance of the ethnic composition and the level of wealth in engaging ethnic conflict in Cyprus and the way they are reflected in the institutions envisioned in the Annan Plan. These two factors have been chosen because they are likely to shape the likelihood of conflict in federal societies (See Chapter 2, 3 and 4). The work employs a number of "comparative case studies" to assess real-world experiences with different models and elements of federalism that have evidently influenced the constitutional design in the Annan Plan, using the relevant findings of decades of research on federal systems as a "benchmark" for the evaluation of the Annan Plan. The emphasis is to be on the ability of federal institutions to manage ethnic conflict and on the efficiency of ethnically-based federalism. The variables are division of powers, the degree of autonomy of constituent units, the form of "joint decision-making" and fiscal federalism.

Against the background of theoretical and empirical findings in the literature on comparative federalism, this thesis discusses the Annan Plan. This analysis is informed by secondary literature, the analysis of primary documents and interviews with politicians on both sides of the divided island. All of these help us to understand the reasons for the failure of the federal design envisioned in the Annan Plan and maps out some key conditions that will need to be fulfilled, if the establishment of a federation is to be successful.

At first glance, the chances for a successful federal solution to the Cyprus problem are slim, both in terms of conflict management and efficiency of the federation as a decision-making system. This argument based on the key findings of the thesis: First, when interregional inequality is high, increased decentralization envisioned in the Plan increases the likelihood of ethnic conflict in Cyprus (See Chapter 2,3,4 of the thesis). Increased fiscal decentralization appears to have no clear mitigating effect in countries characterized by low interregional inequality as in Switzerland. Solidarity, a political culture, with the regions less developed is one of the most important issues for any federal country for any solution to ethnic conflicts as in Switzerland. Disparities in wealth among regional units making it difficult for citizens to receive comparable services can have a corrosive effect

on solidarity within a federation. This is the reason that many federations have sought to find some form of financial equalisation.⁷⁸⁹ The level of fiscal decentralization is likely to shape conflict under the condition of interregional inequalities.⁷⁹⁰ Poor regions would have greater fiscal needs and a harder time raising revenue to meet those needs. Central government is responsible for addressing deep regional inequalities through interregional redistribution. Although the Cyprus settlement under the Annan Plan envisages membership of the EU, which would change many things in political and especially in an economic sense⁷⁹¹, the belief is that the EU would not subsidize everything and the fiscal relationship would be predetermined internally.⁷⁹² It is likely that South-North fiscal transfers in Cyprus weaken intercommunal solidarity as there is no other concrete measure in the Annan Plan to deal with this problem.⁷⁹³ Thus, economic conditions seem to shape the effects of federalism in dramatic ways.⁷⁹⁴ Though federalism may decrease the likelihood of ethnic conflict at a general level the interaction of high inequality with ethnic heterogeneity dramatically increases the likelihood of conflict. Inequality within a country may not be so crucial but it may become important if regions are divided and dominated by each diversified group. That is why constituent states need more access to more financial resources. The success of federal systems depends upon the balance between cooperation and competition in its intergovernmental relations. Inter-jurisdictional competition would function properly if financial resources for the performance of the functions are available to each of the governmental authorities. In order to succeed, each level of government must have adequate resources to carryout its responsibilities (See Chapter 2) especially if they are exclusive. This does not seem likely in the Annan Plan. One of the weaknesses of the Plan is the economic relations that lack detail. It does not contain necessary the measures on how to achieve relative parity between two units.⁷⁹⁵ It is more likely that there will be a huge gap between the two units. As Watts says redistributive asymmetrical financial intergovernmental transfers have been employed to make the fiscal capacities of the member states more symmetrical⁷⁹⁶ and this

⁷⁸⁹ Saunders, "Constitutional Arrangements," *op.cit.*

⁷⁹⁰ Bakke and Wibbels, *op.cit.*

⁷⁹¹ See Chapter 3 of the thesis.

⁷⁹² Palley, Personal interview.

⁷⁹³ Chapter 3.

⁷⁹⁴ Bruno Coppieters and Jean-Claude Scholsem, "Federalism, Conflict Prevention and Settlement," Position Paper for the Working Group Sub-theme 1.3.

⁷⁹⁵ Chapter 3.

⁷⁹⁶ Watts, "The Distribution of Powers, Responsibilities," *op.cit.*, p. 464.

arrangement might help Cyprus to deal with its diversities. Otherwise, as extensive literature on fiscal federalism has noted, where there has been a symmetrical constitutional allocation of taxing powers and financial resources, sharp variations in the wealth and fiscal capacities of member states have led to significant disparities in the services they are able to provide to their citizens⁷⁹⁷ and likely to contribute the conflict. A form of asymmetrical federalism may be introduced in order to deal with many problems in Cyprus. Asymmetrical federalism can be thought of as an analytical tool for the purpose of problem solving in pursuit of federal political stability and as a normative or prescriptive predisposition reflecting particular values, beliefs and interests.⁷⁹⁸ Asymmetrical relations have been applied in some countries including Canada and Belgium, and they have been successful in terms of legitimacy and maintenance of the system.⁷⁹⁹ For example, Canada's asymmetrical federalism, which was primarily designed to accommodate the distinctiveness of Québec, appears to have been an effective device in managing conflicts. Cyprus has considerable asymmetries in population, area and wealth between the two communities which may endanger stability easily if it is not supported by proper institutional design. The legitimacy of multi-ethnic polity is likely to be effected by political cultures and traditions, social cleavages, territoriality, socio-economic factors, and demographic patterns, which also constitute the preconditions of asymmetry.⁸⁰⁰ All these factors will alter how separate constituent state units are treated under the law. The operation of federations is highly affected by the number and relative area, population and wealth of the constituent units in relation to each other within a federation. In symmetrical federation envisaged in the Plan with significant socioeconomic as well as cultural and demographic differences, the institutions are likely to destabilize (See Chapter 5). That is why it is less likely that these symmetric arrangements would be able to contribute to conflict resolution and regime performance in Cyprus. It is the case that federations may discriminate among constituent units on grounds of population and among regions on the basis of economic conditions.⁸⁰¹ Gurr finds that minority group discrimination does contribute to conflict.⁸⁰² Where there are

⁷⁹⁷ Ibid.

⁷⁹⁸ Burgess, *Comparative Federalism*, pp. 225.

⁷⁹⁹ Ibid., 222.

⁸⁰⁰ Ibid., 215-217.

⁸⁰¹ John McGarry, "Socio-cultural Identities and Asymmetrical Federalism," Asymmetrical Federalism and the Plurinational State, paper for the 3rd International conference on Federalism, Brussels, 3-5 March 2005.

⁸⁰² See for more information Ted Robert Gurr, *Why Men Rebel* (Princeton: Princeton University Press, 1970).

substantial disparities in population among constituent units, these may become sources of dissension over the relative influence of particular regions in federal policy-making. Thus, the symmetrical allocation of authority in the Annan Plan is likely to intensify ethnic conflict in deeply divided Cyprus is the second finding. As mentioned above, the Plan follows the method of splitting differences between the communities through exclusive competences. The allocation of political authority is an important issue especially for those states emerging from violent conflict. The UCR comprises two separate "entities," which have equal authority and responsibilities but where also one of them -Turkish Cypriots – mostly desires independence. Watts states that "...there may be cases where constitutional asymmetry is the only way to resolve sharp differences when much greater impulses for non-centralisation exist in some regions than in others within a federal system".⁸⁰³ My own studies of federalism have drawn the same conclusion. The issue of asymmetrical federalism arises, invariably, in nationally diverse states.⁸⁰⁴ The Greek and Turkish Cypriot leadership can learn more from the asymmetric federal system for their future. Otherwise, Turkish Cypriot leaders would keep calling for either recognition of their nationhood or greater symmetry among the state's nations whereas the Greek Cypriots leadership would only accept either a unitary system or a federalism based on majoritarian democracy. The attempts to solve the problem partly through symmetric arrangements seem to fail.

Third, when concurrent powers allocated to the levels of governments are few and clearly indicated, it is less likely to have frequent blocking of decision making (See Chapter 5). In post-conflict states, in particular, a clear division of power may prevent future disputes over political authority. The relations between different groups are very fragile. The creation of specific mechanisms is needed in order to encourage and facilitate balanced cooperation and competition between the central and provincial governments. Exclusive competencies and jurisdictional division of labour are likely to keep conflict low (Belgium and Canada). Regarding the efficiency of the system, the nature and number of veto players/points come to affect the procedural efficiency of the legislative process. This will also be affected by the way the power is divided. When there is a functional division of power among different levels of governments as seen in Germany and Switzerland (cooperative federalism), the two levels of government need constant coordination,

⁸⁰³ Watts, "Model of Federal", *op.cit.*, p. 29.

⁸⁰⁴ McGarry, "Socio-cultural Identities," *op.cit.*

collaboration, cooperation and consent. This gives rise to too many veto players and therefore likely to increase situations of frequent deadlock (See chapter 4 of this thesis). This might not be so crucial for those states that are either relatively homogenous or manage their differences peacefully. But it is likely that this can create a stalemate more often in those countries where certain preconditions are absent like deep mistrust, cross cutting cleavages, prior elite accommodation, as well as where the institutions make groups identify themselves mainly according to their ethnic identity (See Chapter 3, 4 and 5). When the ethnic issue were added to this arrangement it would be very hard for a federal government to make even simple decisions. The dual federalism that is seen in Canada and Belgium would seem to be a better model for Cyprus and this is the case in the Annan Plan (See Chapter 4 and 5 of this thesis) and this is the strength of the Plan. The risk of frequent deadlock is likely to be reduced through exclusive competences given to subunits.⁸⁰⁵ A clear division of power is likely to prevent any future disputes over political authority. In Belgium there is a list of clear and extensive powers of communities and regions. This would make clear which government is accountable for policy in that area, and so likely to prevent conflict. Separating differences seem to deal with antagonistic relations between the two communities. In dual federal systems, the important thing for the constituent states is to have sufficient resources to exercise their competences without the financial intervention of the central government. In cooperative systems, it is likely that the clear distinction and division of power between federal and subunits is blurred. The formal division of competences become less clear-cut. However, this situation seems less appropriate, at least initially, for post-conflict situations or deeply divided societies like Cyprus. For instance, a clear separation of competences is introduced in the Annan Plan, as in Belgium too, to deal with the bipolar nature of two communities. The social and political purpose of federalising Cyprus is not to bring long divided communities into closer interaction with one another, but rather to separate them further by creating large areas of competency in which they would be politically autonomous. The allocation of exclusive competences aims at minimising the number of zero sum negotiations between representatives from both sides. Great autonomy given to constituent units is likely to withdraw many potentially explosive ethnic conflicts from the federal level. In the Annan Plan concerning competencies every attempt has been made to

⁸⁰⁵ Liesbet Hooghe, "From Regionalism to Federalism," in John Coakley, *The Territorial Management of Ethnic Conflict* (London: Frank Cass, 2003), pp. 94-95.

limit interaction between the communities and to weaken cross-cutting cleavages. The comparative case study data and interviews suggest that in order to avoid confrontation between two antagonistic groups, it is important to have a central government with minimal scope and to allow the domain of the national government to develop incrementally and slowly (See Chapter 3 and 4). The Plan aimed at solving the problem of distrust through allocating residual powers and many policy areas to both communities and excluding deadlocks by allowing non-Cypriot judges to decide on political as well as legal issues. Although this is against the principle of separation of powers and federalism, it could encourage conflicting sides to avoid this situation.⁸⁰⁶ However, it could be likely that every issue would be transferred to the Court to be dealt with so both sides would be reluctant to show an effort to reach an agreement. This would create a deadlock likely to paralyse the society. However, many of these alternatives are likely to be inefficient to deal with many problems if the institutions tend to strictly identify many things in terms of ethnicity (See Chapter 3). The thinking is to establish flexible arrangements in order to find a balance through over- or under-representation of groups in some areas and compensating them in other areas.

The Annan Plan perpetuated separateness of both communities by setting up structures and institutions to represent Greek and Turkish Cypriot interests instead of a unified Cypriot interest. So, it is far from attempting to bring the two communities together. The Plan prevented both communities in developing the necessary bonds that would help them function as a unified Cyprus. The loyalty to the respective ethnic community and not to the Cypriot state was seen as 'the healthy expression' of the national identity.⁸⁰⁷ It creates a central government with 'too' few powers, functions and relationships that overlapped, interact together to provide the basis for reinforcing and connecting the two communities in an overarching sense of national state unity.

Federalism in Belgium has promoted great differentiation due to the system itself that encourages interregional comparison and provides limited possibilities for the development of cross-cutting cleavages. In Belgium with such a fractured distribution of powers, a large number of policy areas require the adoption of cooperative agreements. So, special tribunals designed to resolve disputes involving cooperative agreements. The "Concertation Committee" is equally divided between French and Dutch speakers and its

⁸⁰⁶ This view goes back to theories of "bargaining in the shadow of hierarchy". See, Fritz Scharpf, *Games Real Actors Play* (Boulder: Westview Press, 1997).

⁸⁰⁷ Kizilyurek, "Historical grounds of Federal State," op.cit.

role is to solve any "conflict of interest". Institutional decentralization—the constitutional entrenchment of rights of subnational communities in the determination of central policy—will often increase the number of veto players by giving sub-national actors vetoes. This is not the case in the Annan Plan. The Plan transfers the deadlock to the Court. If the ethnicity persists, three non-Cypriot judges would decide. This indicated how deep trust between two communities reflected in the institutions. It can be sensible to say that deadlocks may be prevented through shifting more competencies to constituent units (Belgium, Canada and the United Republic of Cyprus).⁸⁰⁸ However, that is not enough. The emphasis should be given to mechanisms for reconciliation; that is, the impact of rules, procedures and time frames when the two chambers have to come to an agreement, in order to resolve deadlocks.⁸⁰⁹ This is not given particular attention by the Annan Plan. The structuring of watertight compartments by strengthening the role of the sub-state entities reflects the lack of trust between the two communities in Cyprus. However, in these situations, there is a need to establish some institutions in order to defuse ethnic confrontation too. Otherwise these societies are likely to divide further. So, what is required is to clearly define both the concurrent and exclusive powers in order to avoid future conflicts and construct some mechanisms involving both communities. The Plan divides the two communities in many important respects including the decision-making process and deadlock resolution mechanisms (See Chapter 3). It prevents both communities from dealing with their problems by themselves in a way that eventually would promote mutuality, reciprocity and inter-dependence and would give rise to the development of common interests. For example, the institutional design in the Annan Plan is set up in a way that is likely to be prone to gridlock because, it would be likely to be divided along sectorial (Turkish-Greek) lines rather than ideological ones because neither in the history of the island nor in the Plan there paid attention to develop such things. Under the conditions of lack of trust and lack of prior elite accommodation between elites from both sides are likely to keep this model from functioning properly. It is possible that the importance of ethnicity would diminish as soon as both communities cooperate with each other and start sharing many competencies, thus developing trust and confidence (See Chapter 3). However, this scenario is not likely, at least in the near future since no institutional arrangements have been introduced in order to encourage conflictual groups

⁸⁰⁸ Ibid. 11.

⁸⁰⁹ Tsebelis and Money, *Bicameralism*, op.cit.

to cooperate for a common interest. The common interests shared by the two communities, and the mutual benefits that could result from a negotiated settlement, had not been sufficiently emphasized conceptually, practically or organizationally during the intercommunal dialogue.⁸¹⁰ Confidence Building Measures should be introduced as soon as possible in order to bring both communities to find an acceptable solution.

What is learned from this study is that two units and two ethnic groups are less likely to contribute to ethnic accommodation. This is the fourth finding. In addition to institutional arrangements and the character of a bi-national society, the two-unit federal system as proposed in the Plan constitutes another particular problem (See Chapter 3 of the thesis). As Ronald Watts argues, two-unit federations generally have a tendency towards parity between the two units in all matters which usually results in deadlock because of the lack of opportunity for shifting alliances and coalitions among the constituent units or their representatives varying with different issues, processes which are among the ways issues are often resolved in multi-unit federations.⁸¹¹ In a two-unit federation every policy issue becomes a zero-sum game. This bipolarity leads to intractable negotiations between the Turkish and Greek Cypriot leadership. One of the most important reason is a lack of operation of cross-cutting pressures which is effective where group associations are not merely ethnic but pluralistic, that is, where they are voluntary, multiple and overlapping. The presence of cross-cutting pressures through multiple associations can be a viable solution to ethnic disharmony in multi-ethnic societies (i.e. Social Capital). In the Cyprus case there are reinforcing rather than cross-cutting cleavages, and this is one of the important roots of the ethnic conflict. Despite four centuries of coexistence, the two communities remained separate, distinct, and self-contained ethnic groups divided along linguistic, religious, and cultural lines. The lack of cross-cutting ethnic, social, or political ties prevented the development of a common political culture and overarching loyalties among different groups in a society and this is what happened among Turkish Cypriots and Greek Cypriots in Cyprus. The ethnic cleavage was reinforced by political division, and the attachment of the two groups to their 'motherlands'. The federal institutions designed in the Plan conform to a strict ethnic proportionality rule on membership and voting, which aims to protect the political equality of the Turkish Cypriot community. This, in theory, seems to be perfect in the eyes of the Turkish Cypriots but in practice it is

⁸¹⁰ Michael, *op.cit.*, p. 590.

⁸¹¹ Watts, "Multinational federations," *op.cit.*, p. 233.

likely to result in inefficiency. The situation is intensified because of the huge economic disparity between the two communities, the problem of population numbers and the arrangement of symmetrical allocation of authority between two constituent units. What is required for the maintenance of a federal system is to encourage the system to establish mechanisms that would likely give rise to a sense of common nationality (i.e. political parties) rather than separate them in many respects (See Chapter 3). Cross voting can be a good solution. Dispersing polarization between the two communities, as is seen in Belgium (See Chapter 5) or cutting across ethnic factors as seen in Switzerland (See Chapter 5), help to mitigate ethnic conflict. With only two communities, establishing just two regions is more likely to intensify the conflict, since two communities naturally leads to polarization due to historical, social and economic factors (See Chapter 3). Dividing the federation into multiple units, as is the case in Belgium, can be a viable solution (See Chapter 4).

In order to explain the reasons for the failure of the Annan Plan one must look not only at the federal model envisaged in the Plan but also to restudy the prerequisites of federation. Federalism in its original application was not intended as a device for managing ethnic conflict. This thesis demonstrates that there is a need to construct general theories of federalism as a way of ethnic accommodation, because many discussions about the origins, formation and maintenance of federation have been dominated by the American experience, which differs fundamentally from federal models intended to manage ethnic-based federal differences. There are prerequisites of federal government apart from institutional design including the desire for a common political existence, the desire for a separate political existence, and the capacity to form a union.⁸¹² Sources of such a desire include a sense of military insecurity and the need for a common defence; independence from foreign powers; future economic advantage; some prior political association; geographical neighbourhood; and similarity of political institutions. The factors that produce a desire for federation also tend to strengthen the capacity to do so.⁸¹³ Some believe the absence of a positive political or ideological commitment to the primary goal of federation as an end in itself as the one consistent factor in failed federations.⁸¹⁴ My findings show that a federal desire and the capacity to form or maintain federation seem lacking. Future economic advantage can be relevant for the Turkish Cypriots, geographic

⁸¹² Wheare, op.cit., p. 36.

⁸¹³ Ibid., 49.

⁸¹⁴ Thomas Franck, et al., *Why Federations Fail* (New York: New York University Press, 1968), p.173.

neighbourhood and similarity of political institutions to some extent can be seen as common features. The other factors are either weak or absent. Favourable conditions for the success of consociationalism are also absent. The political leaders from both sides have never shown any positive desire for consociationalism or for an engagement in cooperative efforts that might encourage a future willingness to share power (See Chapter 3). The Annan Plan contains very important consociational and federal principles and institutions in order to manage diversity. Under the Annan Plan, both communities are given great autonomy and significant participation rights in central government decision-making. Various consociational elements are likely to contribute to the relative harmony at the national level. Consociational devices and policies are also likely to serve the purpose if they are fashioned with an eye to facilitating broad elite coalitions such as those that characterize a system of integrated parties.⁸¹⁵ What is also learned from the theory and the case studies like Belgium, Switzerland and Canada, in this thesis is the critical role that political elites play in ethnic conflicts. They are expected to show a willingness and ability to engage in accommodative behavior. The problem is likely to occur if communal division does not wither away, its entrenchment can only subject consociational arrangements to ever-greater centrifugal pressures, as in Belgium.⁸¹⁶ What is also necessary and lacking in the Annan Plan is a way to provide the sense that Cyprus is a multi - ethnic society that enables both communities to have a shared vision through cross-community arrangements. The design of central institutions should be constructed carefully in order to compensate for this. For example, there would be a need to encourage incentives for cross-ethnic cooperation through coalitions between different ethnic and political groups (See Chapter 3). Stability is most likely in countries where decentralized, country-wide parties dominate the political system.

The existence of the preconditions does not guarantee the functionality of the consociational model but also the skill and motivation of political leadership is highly crucial. The political leaders are able to 'shape' a country's path. As we know from history, actors can and do break historical patterns, despite the strong influence of long term factors. (See Chapter 3). Federal bargaining, the motives of political elites and agreement between elites, understanding what they are bargaining about, voluntary union, and sufficient qualities of political leadership to make a federal constitution work are

⁸¹⁵ Filippov, Ordeshook, Shvetsova, op.cit., p. 266.

⁸¹⁶ Ibid.

crucial. The last version of the Annan Plan was shaped in a very short period of time and some issues not agreed by both sides were filled in by the Secretary General. This shows us that there is a high possibility that, if it were put into force, in the near future both sides would likely change the provisions that could destroy the operation. This is the fundamental problem of federal design - the institutions are subject to a bargaining renegotiation and reinterpretation. If there is no institutionalized constraint in the bargaining process, many rules and institutions will be subject to negotiation and change. Political stability would be in danger when the institutional superstructure is not agreed upon.⁸¹⁷ Both communities should believe that the gains from federation are fairly distributed. In the eyes of many Greek Cypriots, Turkish Cypriots gained increased autonomy and policy-making authority whereas in the eyes of some Turkish Cypriots the plan reduced them to a minority position (See Chapter 3). Federation was hardly a compromise between both the leadership of Papadopoulos or Denktas (See Chapter 3). Each party felt a sense of loss rather than a desire to make accommodations addressing mutual needs.⁸¹⁸ Typical of most minority groups, the Turkish Cypriots were inclined to focus on communal rather than common interests.⁸¹⁹ This resulted in the pursuit of autonomy and self-determination that embodied in the often-stated preference for confederation or loose federation- a position that exacerbated Greek Cypriots suspicions about the extent of their commitment to a unified Cyprus. If the Plan had been accepted, the bargaining process would have failed to achieve a resolution that preserves the federation. Actually it was hardly a bargaining process since neither side took it seriously not was it agreed upon by either leader (See Chapter 3). The conclusion that can be drawn from here is that seriousness about the nature of the process of finding a solution is half way to the solution. It tells us whether the federal system will function or not. This is the fifth finding.

Once established, federal systems seem to be maintained through a combination of several factors: institutional, sociological, political, and economic.⁸²⁰ Certainly, it is difficult to maintain a multi-ethnic federal system. As Burgess says, historical legacies, ideological predispositions, and vested interests constitute serious obstacles to federal construction

⁸¹⁷ Ibid., 79.

⁸¹⁸ Maria Trigeorgis and Lenos Trigeorgis, op.cit., p. 346.

⁸¹⁹ John Burton, *Conflict: Resolution and Prevention* (London: Macmillan, 1990), 142-145.

⁸²⁰ Burgess, *Comparative Federalism*, p.101.

and reconstruction.⁸²¹ What is found from theoretical and empirical studies is that in order to form and maintain a federal system, federal political institutions must be supported by certain preconditions. The legitimacy of the multi-ethnic polity normally depends on the maintenance of these factors: Weak central government and gradual expansion of national government authority; elite skills and motivation; cross-ethnic cooperation and coordination; effective regional autonomy; the existence of cross-cutting pressures to moderate political attitudes and facilitate compromise: overlapping socio-economic, language and religious differences; support of political compromise; some association before union; communication; sufficient number of federating units; lack of single dominant majority; asymmetrical arrangements for those who have a great disparity in size and influence of the different constituent units; clearly defined separation of competences; social capital; the absence of large socio-economic inequalities among the ethnic groups; a shared identity i.e. bicomunal parties; united/national party system; stable, institutionalized bargaining - partial adjustments and renegotiation of particular issues allowed within a broader fixed institutional context; power sharing arrangements; accommodative political culture; balance between cooperation and competition in intergovernmental relations (See chapters 2, 3, 4, 5,). It becomes difficult to bring together the two distinct communities in Cyprus since many of these conditions are absent in the society and in the institutional design envisioned in the Annan Plan. What is learned from the experience of many multi-ethnic countries such as Switzerland, Belgium and Canada analyzed in this thesis is that federalism cannot be applied to Cyprus under its current and peculiar conditions and under the model envisaged in the Annan Plan. Federalism and federation are more than a power-sharing arrangement, they are also a way of life. This thesis shows that a federal solution under the Plan seems not likely to manage diversity in Cyprus (See Chapter 3 and 5). This is due to the asymmetrical nature of the society that should have been given greater attention when the institutional arrangement was designed. Those who favour reunification do so because of the EU factor (See Chapter 3). They do not believe that if it should be left to the respective community leaders to deal with the problem, arguing that they would not succeed because the political culture that operates within the history of the problem would make it impossible. The EU might reduce the risk of conflict and the context is likely to change. However, relying only on them would not be enough. The negotiating process demonstrates that the conflict in Cyprus is not simply

⁸²¹ Ibid., 110.

a conflict of substantive issues but mostly a conflict of mistrust, fear and suspicions. So, institutional agreements alone would not be enough to achieve maintenance of peace between the two communities. One of the main obstacles has been that the vast majority of people on the island do not identify themselves as Cypriots. In the absence of such support, the Cypriot state did not survive and perhaps will not survive in the future.⁸²² If a Cypriot identity is to be generated, the first step towards that end should be overcoming the existing psychological barriers between the communities and developing a certain degree of inter-ethnic friendship. That is the main reason for the stalemate in the negotiation process. Imposing any proposal on both communities is likely to risk any future solution. A new type of federal arrangement of an unprecedented kind might be forged from an essentially fragile political will that insists upon the 'separateness' of the distinct identities rather than upon their 'unity'. The clash between conflicting conceptions of the polity- federalists stalemate of Greek Cypriots and confederalists of Turkish Cypriot- might be broken if a new dynamic could be introduced into this uncompromising zero-sum game, like the EU, as many pro Annan political actors interviewed in this thesis believe. The EU's values constitute today a new possibility for the multi-level entries into the Cypriot conflict system, so as to gradually transform it into a peace building system in which mutual trust, communication and dialogue will prevail.⁸²³ "Membership of the EU does change the dynamic of the conflict but it cannot facilitate a ready-made solution. Integration into the EU may ameliorate some tensions, especially economic disparities, but domestic social policy may still be a source of contention."⁸²⁴ The external actors like the EU themselves are not enough to enable hostile groups to accommodate their differences but the institutions and the role of leaders play an important role. But still, it can be argued that it is likely to help both antagonistic communities to deal with many problems through introducing the tradition of compromise.

Success in the process of hard bargaining and negotiation before leaderships are likely to have the substance of an agreement determines the workability of the designed system. One of the important elements in a successful negotiation process is the motivation of political leadership to gradually reduce the level of conflict and bring it under effective

⁸²² Yilmaz, op.cit., p.43.

⁸²³ 364.

⁸²⁴ See for more information David E. Schmitt, "Problems of Accommodation in Bicomunal Societies," *Conflict Quarterly*, Vol.11, No.4, Fall 1991.

control. However, the political leaders have merely pursued their separate objectives and have consistently refused to compromise (Chapter 3).

Instead of urgently solving the problem, transforming the problem through the creation and construction of new identities and interests might help. The creation of a new identity and collective action is likely to emerge as is advocated by the constructivists. So, identities, interests and eventually choices and context are changeable during negotiations. This will depend on the role of the elite. However, the opportunity to reunify the island will not present itself either easily or soon. The ethno-nationalist lines that divide Cyprus seem to have been reinforced rather than mitigated by the ongoing negotiation process and the many efforts at mediation from the outside (Chapter 3).

To sum up, it is not enough to apply such arrangements just towards managing conflict resolution but they must also apply to decisional efficiency. Since the system would be based on two communities with two regions, it is less likely to result in regime efficiency. Nor does the Plan provide necessary measures for healthy competition and cooperation. The federal model envisaged in the Plan is not suitable for Cyprus, not merely because of the lack of preconditions but also because of the designed institutions in the Plan that do not support the social, economic and political characteristics of the island. Creating and maintaining a multi-ethnic federal system depends on context, on the motivations of the parties involved, and in the details of the autonomy arrangements. The institutional factors can provide the proper context for federalism to work of course but they seem unavailable in the Plan. What is drawn from the primary sources is that Greek and Turkish Cypriot leaders do not share a common interest in reuniting Cyprus and they are not ready for this (See Chapter 3). The impact of federal institutions is not independent of the underlying features of the societies in which those institutions operate. As Filippov, Ordeshook, Shvetsovastate point out, scholars can identify the key institutional parameters on which federations vary, but the impact of those institutions is likely to vary with several other non-institutional features of polities.⁸²⁵ This also depends on the elites: If elites become enthusiastic about learning more about federation and federalism and their implications and more moderate leaders from both sides are elected to carry on this task, it is more likely that a federal system could be established. (See Chapter 3) Political actors/elites must focus on assessing how and when the legacies of a violent past provide a forum for

⁸²⁵ Filippov, Ordeshook, Shvetsovastate, *op.cit.*, p. 5.

positive political learning and when they do not. They will always affect the origins and maintenance of a culture open to compromise.

The institutions are likely to play important roles in achieving an integrated Cypriot society. A process of political learning may take place in which elites and citizens come to realize the traumatic implications of their past intransigence and become more cooperative as a result. The Cyprus problem is mostly a conflict of mistrust, fear and suspicions. So, maintenance of peace between the two communities might not be achieved by institutional arrangements alone. Communication and trust-building are significant factors in peace-building.⁸²⁶ The citizens of a federal state must have both "the desire for national unity and the determination to maintain the independence of each man's separate state".⁸²⁷ Many Cypriots have possessed one or the other of these two feelings but not both. If or when federalism is viewed as a political and economic expedient with almost no moral content, it is an institutional arrangement that divides powers between national and local governments but makes no attempt to develop a common way of life among all citizens.

Imposing any proposal on both communities is likely to risk any future solution. The capacity to force hostile and unwilling communities into cooperative political arrangements seems limited. Although the UN has been relatively successful in keeping the conflict calm by deploying peacekeeping forces for over four decades and keeping the door open for negotiations between the Cypriot leaderships, very few initiatives to promote inter-communal understanding and to create a Cypriot identity eventually have so far taken place. The future peace efforts would depend on this.

Third parties such as the United Nations may sometimes serve an important role but they cannot impose accommodation and order where elites and mass publics do not want to cooperate. Where motivation for settlement and compromise exist, these bodies may serve as temporary facilitators or separators, but they cannot impose trust and rationality. Even where political leaders in both communities want to achieve accommodation, potential difficulties will be alarming. Political leaders seeking accommodation need to be unusually adept at calming resentment and persuading compatriots of the reasonableness of their position. The critical goal is to develop policies that will give other politicians and succeeding leaders' incentives to maximize accommodation.⁸²⁸

⁸²⁶ Hadjipavlou, op.cit., p. 360.

⁸²⁷ Albert V. Dicey, *Introduction to the Study of the Law*, pp. 142-143.

⁸²⁸ Ibid.

The conditions for successful federalism mentioned above are not absolute requirements, and the prospect for success in deeply divided Cyprus would be possible. There is no point of saying simply that federalism can not be done without them⁸²⁹ but how to make it likely to succeed. Many of them might be subject to change whether through developments in the larger society and economy or through determined effective leadership. In the meantime, there is a need to build the conditions for a more confident use of federal structures and spirit rather than finding another inappropriate constitutional arrangement.

⁸²⁹ See Denktas and Olgun, Personal interview, and Papadopoulos, "Ketnotes," op.cit., in Chapter 3.

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Ali Erel (the former head of Chamber of Commerce of 'TRNC'), Personal interview, 13 August 2007.

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Mehmet Ali Talat (president of TRNC), Personal interview, 18 August 2007.

Michael Papapetrou (former spokesman to former Greek Cypriot president Clerides), Personal interview, 30 August 2007.

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Necdet Ergun (member of the negotiating group of TRNC), Personal interview, 6 August 2007.

Rauf Denktas (former president of TRNC), Personal interview, 30 July 2007

Toumazos Iselepis (member of the negotiating group of Mr Papadopoulos from AKEL Party), 31 August 2007.

APPENDIX

INTERVIEW QUESTIONS

- 1- In your opinion, can federalism envisaged in the Annan Plan contribute to avoiding ethnic conflict in Cyprus? Is federalism strong enough glue to hold Cyprus together?
- 2- How likely is this proposal to contribute to a resolution and good governance at the same time?
- 3- What would be your argument about achieving efficiency and effectiveness in the decision making since double/special majorities are involved in the Plan? Does this necessarily result in deadlock?
- 4- To avoid deadlocks, the Plan introduces a deadlock resolution mechanism through foreign judges. This provision is not palatable for many people. Is there any other effective solution in case of disagreement in a federal country consisting of only two communities?
- 5- What are the strengths and weaknesses of such a federal system envisaged in the Annan Plan?
- 6- To what extent do you believe the Plan would correct previous injustices and prevent new ones?
- 7- The Annan Plan envisages a loose common state. Most powers would be attributed to the constituent states, which would coordinate policies in their spheres of competence. Do you think that the way the competences were divided in the Plan would be likely to help the system function smoothly since two conflicting sides would not confront with each other often?
- 8- Under the Annan Plan, delivering the main social services including health, education, and social security has been given to the constituent states. However, federal financial services will be necessary ones the large and ever increasing costs of such services come into place. That is why, in most federations, the provision of social services has been an area of co-responsibility. This is not the case in the Plan. In your view, may this create some problem when Turkish Cypriots are concerned? Would they be able to implement or to afford these policies in their own state (tax power) or would it depend on central government which means end of federalism?
- 9- To what extent the division of competences and co-decision process in the Plan establish a workable federal state?
- 10- The economic efficiency is an important indicator of the successful federal systems. In your view, does the Plan contain necessary arrangements to make it possible? In other words, how would the Plan design to soften regional economic disparities? What are these measures? Are they enough to achieve economic promotion?
- 11- In your view, would the solution result in immediate benefits to the Turkish Cypriot economy?

- 12- To what extent the Plan contribute toward achieving parity between the two constituent units? Do you believe that the tax system envisaged in the Plan would reduce inequality between the component states in the long run?
- 13- What might be the possible costs and benefits of the way of allocating fiscal authority envisaged in the Plan?

ANNAN PLAN FOR CYPRUS SETTLEMENT

Article 1 The new state of affairs

1. This Agreement establishes a new state of affairs in Cyprus.
2. The treaties listed in this Agreement bind Cyprus and the attached legislation shall apply upon entry into force of this Agreement.
3. The Treaty of Establishment, the Treaty of Guarantee, and the Treaty of Alliance remain in force and shall apply *mutatis mutandis* to the new state of affairs. Upon entry into force of this Agreement, Cyprus shall sign a Treaty with Greece, Turkey and the United Kingdom on matters related to the new state of affairs in Cyprus, along with additional protocols to the Treaties of Establishment, Guarantee and Alliance.
4. Cyprus shall be a full member of the European Union as of 1 May 2004.
5. Cyprus shall maintain special ties of friendship with Greece and Turkey, respecting the balance in Cyprus established by the Treaty of Guarantee and the Treaty of Alliance and this Agreement, and as a European Union member state shall support the accession of Turkey to the Union.
6. Any unilateral change to the state of affairs established by this Agreement, in particular union of Cyprus in whole or in part with any other country or any form of partition or secession, is prohibited. Nothing in this Agreement shall in any way be construed as contravening this prohibition.

Article 2 The United Cyprus Republic, its federal government, and its constituent states

1. The status and relationship of the United Cyprus Republic, its federal government, and its constituent states, is modeled on the status and relationship of Switzerland, its federal government, and its cantons. Accordingly:
 - a. The United Cyprus Republic is an independent state in the form of an indissoluble partnership, with a federal government and two equal constituent states, the Greek Cypriot State and the Turkish Cypriot State. Cyprus is a member of the United Nations and has a single international legal personality and sovereignty. The United Cyprus Republic is organised under its Constitution in accordance with the basic principles of rule of law,

democracy, representative republican government, political equality, bi-zonality, and the equal status of the constituent states.

b. The federal government sovereignly exercises the powers specified in the Constitution, which shall ensure that Cyprus can speak and act with one voice internationally and in the European Union, fulfill its obligations as a European Union member state, and protect its integrity, borders, resources and ancient heritage.

c. The constituent states are of equal status. Within the limits of the Constitution, they sovereignly exercise all powers not vested by the Constitution in the federal government, organising themselves freely under their own Constitutions.

2. The constituent states shall cooperate and co-ordinate with each other and with the federal government, including through Cooperation Agreements, as well as through Constitutional Laws approved by the federal Parliament and both constituent state legislatures. In particular, the constituent states shall participate in the formulation and implementation of policy in external relations and European Union affairs on matters within their sphere of competence, in accordance with Cooperation Agreements modeled on the Belgian example. The constituent states may have commercial and cultural relations with the outside world in conformity with the Constitution.

3. The federal government and the constituent states shall fully respect and not infringe upon the powers and functions of each other. There shall be no hierarchy between federal and constituent state laws. Any act in contravention of the Constitution shall be null and void.

4. The Constitution of the United Cyprus Republic may be amended by separate majority of the voters of each constituent state in accordance with the specific provisions of the Constitution.

Article 3 Citizenship, residency and identity

1. There is a single Cypriot citizenship. Special majority federal law shall regulate eligibility for Cypriot citizenship.

2. All Cypriot citizens shall also enjoy internal constituent state citizenship status. This status shall complement and not replace Cypriot citizenship.

3. Other than in elections of Senators, which shall be elected by Greek Cypriots and Turkish Cypriots separately, political rights at the federal level shall be exercised based on internal constituent state citizenship status. Political rights at the constituent state and local level shall be exercised at the place of permanent residency.

4. To preserve its identity, Cyprus may adopt specified non-discriminatory safeguard measures in conformity with the *acquis communautaire* in respect of immigration of Greek and Turkish nationals.

5. In addition, for a transitional period of 19 years or until Turkey's accession to the European Union, whichever is earlier, Cyprus may limit the right of Greek nationals to

reside in Cyprus if their number has reached 5% of the number of resident Cypriot citizens holding Greek Cypriot internal constituent state citizenship status, or the right of Turkish nationals to reside in Cyprus if their number has reached 5% of the number of resident Cypriot citizens holding Turkish Cypriot internal constituent state citizenship status.

6. To preserve its identity, a constituent state may adopt specified non-discriminatory safeguard measures, in conformity with the *acquis communautaire*, in respect of the establishment of residence by persons not holding its internal constituent state citizenship status.

7. In addition, for a transitional period a constituent state may, pursuant to Constitutional Law, limit the establishment of residence by persons hailing from the other constituent state. To this effect, it may establish a moratorium until the end of the fifth year after entry into force of the Foundation Agreement, after which limitations are permissible if the number of residents hailing from the other constituent state has reached 6% of the population of a village or municipality between the 6th and 9th years and 12% between the 10th and 14th years and 18% of the population of the relevant constituent state thereafter, until the 19th year or Turkey's accession to the European Union, whichever is earlier. After the second year, no such limitations shall apply to former inhabitants over the age of 65 accompanied by a spouse or sibling, nor to former inhabitants of specified villages.

Article 5 The federal government

1. The federal Parliament composed of two chambers, the Senate and the Chamber of Deputies, shall exercise the legislative power:

a. Each Chamber shall have 48 members. The Senate shall be composed of an equal number of Greek Cypriots and Turkish Cypriots. The Chamber of Deputies shall be composed in proportion to persons holding internal constituent state citizenship status of each constituent state, provided that each constituent state shall be attributed no less than one quarter of seats.

b. Decisions of Parliament shall require the approval of both Chambers by simple majority, including one quarter of voting Senators from each constituent state. For specified matters, a special majority of two-fifths of sitting Senators from each constituent state shall be required.

2. The Office of Head of State is vested in the Presidential Council, which shall exercise the executive power:

a. The Presidential Council shall be elected on a single list by special majority in the Senate and approved by majority in the Chamber of Deputies for a five year term. It shall comprise six voting members, and additional non-voting members should Parliament so decide. The composition of the Presidential Council shall be proportional to the number of persons holding the internal constituent state citizenship status of each constituent state, though no less than one-third of the voting members and one-third of any non-voting members of the Council must come from each constituent state.

b. The Presidential Council shall strive to reach decisions by consensus. Where it fails to reach consensus, it shall, unless otherwise specified, take decisions by simple majority of members present and voting, provided this comprises at least one member from each constituent state.

c. Notwithstanding voting rights, the members of the Council shall be equal. The Council shall decide on the attribution of Departments among its members. The heads of the Departments of Foreign Affairs and European Union Affairs shall not come from the same constituent state.

d. Unless the Presidential Council decides otherwise, it shall elect two of its members not hailing from the same constituent state to rotate every twenty months in the offices of President and Vice-President of the Council. The member hailing from the more populous constituent state shall be the first President in each term. The President, and in his absence or temporary incapacity, the Vice-President, shall represent the Council as Head of State and Head of Government. The Vice-President shall accompany the President to meetings of the European Council. The President and Vice-President shall not enjoy a casting vote or otherwise increased powers within the Council.

e. The heads of government of the constituent states shall be invited to participate without a vote in all meetings of the Council in the first ten years after entry into force of the Agreement, and thereafter on a periodical basis.

3. The Central Bank of Cyprus, the Office of the Attorney-General and the Office of the Auditor-General shall be independent.

Article 6 The Supreme Court

1. The Supreme Court shall uphold the Constitution and ensure its full respect.

2. It shall comprise an equal number of judges from each constituent state, and three non-Cypriot judges until otherwise provided by law.

3. The Supreme Court shall, *inter alia*, resolve disputes between the constituent states or between one or both of them and the federal government, and resolve on an interim basis deadlocks within federal institutions if this is indispensable to the proper functioning of the federal government.

Part IV: THE FEDERAL GOVERNMENT AND THE CONSTITUENT STATES

Article 14 Competences and functions of the federal government

1. The federal government shall, in accordance with this Constitution, sovereignly exercise legislative and executive competences in the following matters:

a. External relations, including conclusion of international treaties and defence policy;⁷

b. Relations with the European Union;

- c. Central Bank functions, including issuance of currency, monetary policy and banking regulations;
 - d. Federal finances, including budget and all indirect taxation (including customs and excise), and federal economic and trade policy;
 - e. Natural resources, including water resources;
 - f. Meteorology, aviation, international navigation and the continental shelf and territorial waters of the United Cyprus Republic;
 - g. Communications (including postal, electronic and telecommunications);
 - h. Cypriot citizenship (including issuance of passports) and immigration (including asylum, deportation and extradition of aliens);
 - i. Combating terrorism, drug trafficking, money laundering and organised crime;
 - j. Pardons and amnesties (other than for crimes concerning only one constituent state);
 - k. Intellectual property and weights and measures; and
 - l. Antiquities.
2. Incidental to the above competences and to other provisions of this Constitution, the federal government shall exercise legislative and executive competences over federal administration (including public service, federal police, as well as its independent institutions and officers); federal elections and referenda; offences against federal laws; federal administration of justice; federal property, including public works for federal facilities and expropriation; and like matters which are clearly incidental to the specified powers of the federal government.
 3. The federal government shall, as appropriate, entrust the implementation of its laws, including the collection of certain forms of taxes, to constituent state authorities.
 4. Obligations of the United Cyprus Republic under international treaties shall be implemented by the federal government or constituent state authority which enjoys legislative competence in the subject matter to which the treaty pertains.
 5. The federal government shall confer upon the constituent states a portion of its revenue from indirect taxation as provided for by special majority law.

Article 15 Competences and functions of the constituent states

1. The constituent states shall, within the limits of this Constitution, sovereignly exercise within their territorial boundaries all competences and functions not vested by this Constitution in the federal government.
2. The constituent states shall have primary criminal jurisdiction over offences against federal laws, unless such jurisdiction is reserved for the Supreme Court of Cyprus by federal legislation.

3. The police of a constituent state shall be stationed and operate exclusively within that constituent state and shall be responsible for the protection and enforcement of law and order and public safety within that constituent state, including offences against federal laws, without prejudice to the functions of the federal police and the Joint Investigation Agency. A Constitutional Law shall regulate the strength and equipment of constituent state police and a Cooperation Agreement between the federal government and the constituent states shall provide for cooperation on police matters.

Article 16 Cooperation and coordination

1. Where expressly provided for in this Constitution, legislative matters may be regulated in a manner binding upon the federal government and the constituent states, through Constitutional Laws. Such laws shall be approved by the federal Parliament and both constituent state legislatures in accordance with procedures set down in a Constitutional Law and shall have precedence over any other federal or constituent state laws.

2. The constituent states may conclude agreements with each other or with the federal government. Such agreements may create common organisations and institutions on matters within the competence of the parties. Such agreements shall have the same legal standing as Constitutional Laws, provided they have been approved by the federal Parliament and both constituent state legislatures.

3. The constituent states shall strive to coordinate or harmonise their policy and legislation, including through agreements, common standards and consultations wherever appropriate, in particular on the following matters:

- a. Tourism;
- b. Protection of the environment and use and conservation of energy;
- c. Fisheries and agriculture;
- d. Industry and commerce, including insurance, consumer protection, professions and professional associations;
- e. Zoning and planning, including for overland transport;
- f. Sports and education;
- g. Health, including regulation of tobacco, alcohol and drugs, and veterinary matters;
- h. Social security and labour;
- i. Family, company and criminal law; and
- j. Acceptance of validity of documents.

4. Either constituent state or any branch of the federal government may initiate the coordination or harmonisation process.

5. Agreements on such coordination or harmonisation shall be approved by the competent branch of the constituent state governments and, if federal participation is required, by the competent branch of the federal government.

6. The federal government shall support, both financially and logistically, cooperative endeavours between the constituent states or between municipalities and villages located in different constituent states.

7. The federal government and the constituent states shall accept valid documents issued by government authorities and educational, medical and other public service institutions.

Article 17 Joint Investigation Agency

There shall be a Joint Investigation Agency, comprising federal and constituent state police personnel and reporting to the federal Attorney-General. Its composition and functions, as well as the strength and equipment of the federal and constituent state police, shall be regulated by Constitutional Law.

Article 18 External relations

1. Cyprus shall maintain special ties of friendship with Greece and Turkey, respecting the balance established by the Treaty of Guarantee and the Treaty of Alliance and the Foundation Agreement, and shall by agreement on appropriate terms accord them most favoured-nation treatment to the extent that this is compatible with its obligations as a member of the European Union and under the Treaty of Establishment.

2. The constituent states shall be consulted on federal decisions on external relations that affect their competences.

3. The constituent states may appoint representatives on commercial and cultural who shall be accredited as part of diplomatic missions of Cyprus.

4. The constituent states may also conclude agreements on commercial and cultural matters with authorities of States that have relations with the United Cyprus Republic, provided that such agreements do not cause prejudice to the United Cyprus Republic, the authority of the federal government, or the other constituent state, and are compatible with the European Union membership of Cyprus.

5. In the exercise of the powers conferred by paragraphs 3 and 4 of this Article, the following procedures shall be observed:

a. The constituent states shall use the channel of the federal ministry of foreign affairs for contacts at a political level with foreign governments; and

b. The constituent states may have direct contacts with constituent- or sub-entities or subordinate authorities of other states. In this case they shall inform the federal ministry of foreign affairs upon starting negotiations on any agreement with such authorities and continue to advise on the progress and outcome of such negotiations.

6. A Cooperation Agreement between the federal government and the constituent states on external relations shall regulate the implementation of this Article.

Article 19 Cyprus as a member of the European Union

1. The United Cyprus Republic shall be a member of the European Union.

2. The governments of the constituent states shall participate in the formulation of the policy of Cyprus in the European Union.

3. Cyprus shall be represented in the European Union by the federal government in its areas of competence or where a matter predominantly concerns an area of its competence. Where a matter falls predominantly or exclusively into an area of competence of the constituent states, Cyprus may be represented either by a federal government or a constituent state representative, provided the latter is able to commit Cyprus.

4. Obligations of the United Cyprus Republic arising out of European Union membership shall be implemented by the federal or constituent state authority which enjoys legislative competence for the subject matter to which an obligation pertains. Where the *acquis communautaire* prescribes the creation of single national administrative structures, such structures and the necessary regulations will be established at federal government level. Where the *acquis communautaire* prescribes the creation of coordination or cooperation bodies, such bodies shall be established by Cooperation Agreements. The establishment of other administrative structures necessary for the implementation of the *acquis communautaire* will be decided on the basis of efficiency requirements.

5. If a constituent state fails to fulfil obligations of the United Cyprus Republic vis-à-vis the European Union within its area of competence and the United Cyprus Republic may be held responsible by the Union, the federal government shall, after notification of no less than 90 days (or a shorter period if indispensable according to European Union requirements), take necessary measures in lieu of the defaulting constituent state, to be in force until such time as that constituent state discharges its responsibilities.

6. Paragraphs 2-5 of this Article shall be the subject of a Cooperation Agreement between the federal government and the constituent states.

7. Any new treaty or agreement on the European Union and amendments to the treaties on which the European Union is founded or acts of accession of any applicant states to the European Union, or any agreement entered into by the European Union together with its member states, shall be ratified by Cyprus unless this is opposed by the federal Parliament and both constituent state legislatures. The President or the Vice-President of the Presidential Council shall be entitled to sign the respective instrument of ratification and thereby bind the United Cyprus Republic.

8. No provision of this Constitution shall invalidate laws, acts or measures by the federal government or the constituent states required by the obligations of European Union membership, or prevent laws, acts or measures by the European Union, or institutions thereof, from having the force of law throughout Cyprus.

Part V: FEDERAL INSTITUTIONS

Section A: The Legislature

Article 22 Composition and election of Parliament

1. The federal Parliament shall be composed of two Chambers: the Senate and the Chamber of Deputies.
2. Each Chamber shall have 48 members, elected for five years on the basis of proportional representation. The constituent states shall serve as electoral precincts unless special majority law provides otherwise, in which case each precinct may have no less than ten seats.
3. The Senate shall be composed of an equal number of Greek Cypriot and Turkish Cypriot senators. They shall be elected on a proportional basis by the citizens of Cyprus, voting separately as Greek Cypriots and Turkish Cypriots, in accordance with the law.
4. The Chamber of Deputies shall be composed of deputies from both constituent states, with seats attributed on the basis of the number of persons holding internal constituent state citizenship status of each constituent state; provided that each constituent state shall be attributed a minimum of one quarter of the seats.
5. The Maronite, Latin and Armenian minorities shall each be represented by no less than one deputy. Members of such minorities shall be entitled to vote for the election of such deputies irrespective of their internal constituent state citizenship status. Such deputies shall be counted against the quota of the constituent state where the majority of the members of the respective minority reside.

Article 23 Organisation

1. The law shall regulate the time and duration of the ordinary sessions of the federal Parliament. At any time, the Presidential Council or one quarter of sitting members of either Chamber may convene Parliament for an extraordinary session.
2. Each Chamber shall elect a President and two Vice-Presidents, one from each constituent state, for a period of five years. The Presidents of the two Chambers shall not come from the same constituent state, nor shall two consecutive Presidents of either Chamber. The Vice President who does not come from the same constituent state as the President of the relevant Chamber shall be the First Vice-President of that Chamber.
3. Each Chamber shall organise its own committees in accordance with the law.
4. Each Chamber shall require the presence of a majority of sitting members in order to take decisions.
5. The law shall regulate the obligation of members of Parliament to attend meetings and the consequences of failure to do so without authorisation.

Article 24 Powers

1. Parliament shall legislate and take decisions.
2. Parliament shall approve international treaties for ratification, except where it has delegated that power to the Presidential Council.
3. Parliament shall elect and oversee the functioning of the Presidential Council.
4. Parliament may by special majority refer to the Supreme Court allegations of impeachment regarding the members of the Presidential Council and of organs of the independent institutions, and independent officers, for grave violations of their duties or serious crimes.
5. Parliament shall adopt the federal budget.

Article 25 Procedure

1. Unless otherwise specified in this Constitution, decisions of Parliament need the approval of both Chambers with simple majority of members present and voting, including one quarter of senators present and voting from each constituent state.
2. A special majority comprising at least two fifths of sitting senators from each constituent state, in addition to a simple majority of deputies present and voting, shall be required for:
 - a. Ratification of international agreements on matters which fall within the legislative competence of the constituent states;
 - b. Ratification of treaties and adoption of laws and regulations concerning the airspace, continental shelf and territorial waters of the United Cyprus Republic, including the exclusive economic zone and the contiguous zone;
 - c. Adoption of laws and regulations concerning citizenship, immigration, water resources and taxation;
 - d. Approval of the federal budget;
 - e. Election of the Presidential Council; and
 - f. Other matters which specifically require special majority approval pursuant to other provisions of this Constitution.
3. The law shall provide for a conciliation mechanism between the Chambers of Parliament.

Section B: The Executive

Article 26 The Presidential Council

1. The Office of Head of State is vested in a Presidential Council, which shall exercise the executive power. The Council shall have six voting members. Parliament may elect additional, non-voting members. Unless it decides otherwise by special majority, it shall elect three non-voting members.
2. All members of the Presidential Council shall be elected by Parliament for a fixed five-year term on a single list by special majority. The list shall specify the voting members.
3. Members of the Presidential Council shall not hold any other public office or private position.
4. The members of the Presidential Council shall continue to exercise their functions after expiry of their term in office until a new Council has been elected.
5. In the event of a vacancy in the Council, a replacement shall be elected by Parliament by special majority for the remainder of the term of office.
6. The composition of the Presidential Council shall be proportional to the numbers of persons holding the internal constituent state citizenship status of each constituent state, though at least one third of voting members and one third of non-voting members must hail from each constituent state.
7. The Presidential Council shall strive to reach all decisions by consensus. Where it fails to reach consensus, it shall make decisions by simple majority of members present and voting unless otherwise stated in this Constitution. Such majority must in all cases comprise at least one member from each constituent state. In case of absence, a voting member may delegate his/her voting right to a non-voting member.
8. Notwithstanding voting rights, the members of the Presidential Council shall be equal. Any member of the Council shall be able to place an item on the agenda of the Council.
9. The Presidential Council may, where appropriate, invite the heads of government of the constituent states to participate without a vote in its meetings.
10. The Presidential Council shall suggest candidates or appoint members for European Union and international bodies.

Article 27 The President and the Vice-President of the Council

1. The Council shall decide on the rotation of the offices of the President and Vice-President among its members. Unless the voting members of the Council unanimously decide otherwise, the following arrangements shall apply:
 - a. Two members of the Council, not hailing from the same constituent state, shall be elected by the Council on a single list; and
 - b. They shall rotate in the exercise of the offices of the President and Vice-President of the Council every twenty calendar months. The first President of the Council in each term shall be the member hailing from the more populous constituent state.

2. The Vice-President of the Council shall assume the duties of the President in the absence or temporary incapacity of the President.
3. The President of the Council shall convene and chair the meetings of the Presidential Council.
4. Neither the President nor the Vice President of the Council shall have a casting vote.

Article 28 The Departments

1. The Presidential Council shall attribute the departments among its members. It may decide that some members shall be without portfolio.
2. Where the Council is unable to reach a decision on the attribution of departments, the choice shall be in order of strength of party representation in the Senate.
3. The heads of the Departments of Foreign Affairs and European Union Affairs shall not hail from the same constituent state.
4. The heads of department shall prepare and execute decisions of the Presidential Council relating to their departments.

Article 29 Representation of the Presidential Council

1. The President of the Council shall represent the Presidential Council as Head of State.
2. In representing the Presidential Council as Head of State, the President shall attend official functions, sign and receive credentials of diplomatic envoys, and confer the honours of the United Cyprus Republic.
3. The President of the Council shall represent the United Cyprus Republic at meetings of heads of government.
4. The President of the Council, when representing Cyprus at meetings of the European Council, shall be accompanied by the Vice-President.
5. The heads of the relevant Departments shall represent the United Cyprus Republic at meetings of government ministers unless otherwise provided for by law or by agreement between the federal government and the constituent states.
6. Where an international meeting is likely to address vital interests of a constituent state, and the Council representative to that meeting hails from the other constituent state, the Council shall, upon special request of a majority of Council members from the interested constituent state, appoint a member from that constituent state to accompany the Council representative, provided delegations to such meetings may comprise more than one person.
7. Any representative of the United Cyprus Republic at international meetings shall be bound by decisions of the Presidential Council. Where the Council has appointed one of

its members to accompany its representative in accordance with paragraph 5 of this Article, the representative of Cyprus shall exercise any discretion in concord with such member.

Article 30 Federal administration

1. A Public Service Commission composed of men and women hailing in equal numbers from each constituent state shall have authority to appoint and promote federal public servants. It shall take its decisions in accordance with the law.
2. The composition of the public service shall, where not otherwise specified in this Constitution or special majority law, be proportional to the population of the constituent states, though at least one-third of the public servants at every level of the administration must hail from each constituent state.
3. A federal public servant may not simultaneously serve as a public servant of a constituent state.

Section D: The Judiciary

Article 36 The Supreme Court of Cyprus

1. The Supreme Court of Cyprus shall count an equal number of judges from each constituent state among its members. The Presidential Council shall appoint the judges, for a non-renewable term of nine years, in accordance with criteria and procedures stipulated in a special majority law which shall also fix the number of judges.
2. The Supreme Court shall have exclusive jurisdiction over disputes between the constituent states, between one or both constituent states and the federal government and between organs of the federal government.
3. The Supreme Court shall have exclusive jurisdiction to determine the validity of any federal or constituent state law under this Constitution or any question that may arise from the precedence of Constitutional laws. Upon request of constituent state courts or other federal or constituent state authorities it may do so in the form of a binding opinion.
4. The Supreme Court shall be the appeals court in all other disputes on matters which involve the interpretation or an alleged violation of the Foundation Agreement, this Constitution, federal laws (including federal administrative decisions), or treaties binding upon the United Cyprus Republic.
5. The Supreme Court shall have primary jurisdiction over violations of federal law where provided by federal legislation.
6. If a deadlock arises in one of the federal institutions preventing the taking of a decision without which the federal government or its institutions could not properly function, or the absence of which would result in a substantial default on the obligations of the United Cyprus Republic as a member of the European Union, the Supreme Court may, upon

application of a member of the Presidential Council, the President or Vice-President of either Chamber of Parliament, or the Attorney-General or the Deputy Attorney-General, take an ad interim decision on the matter, to remain in force until such time as a decision on the matter is taken by the institution in question. In so acting, the Supreme Court shall exercise appropriate restraint. The Law on the Central Bank may exempt the Central Bank from this provision.

7. The Supreme Court of Cyprus shall sit as a Constitutional Court or as a Court of Primary Federal Jurisdiction. Judges shall be appointed to serve either on the Constitutional Court or the Court of Primary Federal Jurisdiction. The law shall regulate the number of judges serving in each court, the attribution of competence to each court, the division of the two courts into chambers, and any right of appeal within either court or from the Court of Primary Federal Jurisdiction to the Constitutional Court.

8. The Supreme Court shall strive to reach its decisions by consensus and issue joint judgments of the Court. However, all decisions of the Supreme Court may be taken by simple majority as specified by law.

Part VI: AMENDMENTS OF THIS CONSTITUTION

Article 37 Amendments of this Constitution

1. Amendments of this Constitution, including the attachments which are an integral part of it, shall be considered and adopted by the federal Parliament after consultation with the constituent state governments and interested sectors of society.

2. The Basic Articles of this Constitution cannot be amended.

3. After adoption by both Chambers of Parliament, proposed amendments shall be submitted to referendum for approval by separate majority of the people in each constituent state.

4. Amendments shall enter into force 90 days after their approval, unless the amendment otherwise provides.

