

Federalism, Conflict Resolution, Democratisation and State Reconstruction: The cases of Bosnia and Herzegovina and Myanmar

Abstract

There has been a growing use of federalism and other forms of territorial autonomy as strategies to end violent conflict. However, its success to contribute to conflict resolution, and subsequently democratization, has been increasingly questioned. Focusing on the examples of Bosnia and Herzegovina and Myanmar, this paper discusses the conditions under which federalism might work as a tool to end violence, and what challenges might prevent federal structures from contributing to efficient democratization and good governance. Comparing the imposed federal system in Bosnia and Herzegovina with the federal debate in Myanmar, which has – despite a more than 80-year long federal discussion, never been organized federally, allows for insights into the use of federalism as a tool of conflict resolution and a mechanism to support democratization in post-conflict societies.

Paul Anderson is Senior Lecturer in Politics at Liverpool John Moores University, UK. His research interests are in comparative territorial politics, specifically majority and minority nationalisms, intergovernmental relations and federalism and conflict resolution. He is the author of Territorial politics in Catalonia and Scotland: Nations in flux (Manchester University Press, 2024).

Soeren Keil is the Academic Head of the International Research and Consulting Centre at the Institute of Federalism, University of Fribourg, Switzerland. His research focuses on new federal models, power-sharing and different institutional solutions to ongoing violent conflicts. He has written, edited and co-edited more than 10 books, most recently Power-sharing in the Global South (Palgrave MacMillan, 2024, co-edited with Eduardo Aboultouf and Allison McCulloch).

Introduction

In recent decades, there has been an identifiable and growing trend to view federalism as a potential tool for conflict resolution. In our increasingly diverse world, the nature of warfare has gradually shifted from interstate wars (that is, state to state) to intrastate conflicts. Rooted in and shaped by a number of factors including cultural, ethnic, linguistic and/or religious diversity as well as economic and/or social injustices, intrastate conflicts now constitute the majority of current wars.¹ The smaller, more localised and somewhat less intense nature of these conflicts present particular challenges for processes of conflict resolution, not least their tendency to be more protracted, longer and thus more difficult to solve. As a result, the management, prevention and resolution of intrastate conflicts has become a prominent concern for states and the international community alike.

This was most manifest in the aftermath of World War Two and the decolonisation of Europe's empires, and following the end of the Cold War in which the processes of democratisation taking root in Central and Eastern Europe increased interest in the viable institutional strategies available in the constitutional toolkit to stabilise, consolidate and protect these emerging heterogeneous democracies.² Moreover, innovation in institutional design has been vigorously promoted as a leading strategy to manage and resolve intractable violent conflicts, including

¹ Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era*. Cambridge: Polity, 2012.

² Soeren Keil and Sabine Kropp, *Emerging Federal Structures in the Post-Cold War Era*. London: Palgrave Macmillan, 2022.

some of the world's seemingly "solution-proof conflicts".³ The fact that territorial arrangements—including federalism, decentralisation and power-sharing mechanisms—feature prominently in peace agreements underlines the validity of this point.⁴ From Bosnia and Herzegovina to Ethiopia, Iraq to Nepal, territorial mechanisms have been institutionalised in states around the world to temper the heating up of territorial tensions, bring an end to (violent) conflict and precipitate the required restructuring of the state's constitutional and territorial architecture.

The objective of this paper is to contribute to the ongoing debate on federalism as a tool of conflict resolution and democratisation. We argue that federalism does indeed provide answers to some of the big questions of the twenty-first century vis-à-vis conflict resolution and democratisation, albeit make clear that there is no one size fits all approach to conflict resolution. To do so, we examine the theoretical debate on federalism and conflict resolution, with specific focus on the current state of affairs and some of the core issues in the study of federalism as a tool of conflict resolution. Building on this, we discuss two empirical case studies: Bosnia and Herzegovina and Myanmar. While federalism was introduced in Bosnia and Herzegovina in 1995 to contribute to a wider package of peace-building measures to end the ongoing war in the country, elites in Myanmar have so far not been able to agree on a model of federal power-sharing, despite an ongoing federal debate that has spanned more than 60 years.

Federalism and Conflict Resolution

The growing prevalence of autonomy arrangements as potential conflict-calming solutions has increased scholarly interest in this field of study. Gurr, for instance, argues that the "recent historical track record shows that, on balance, autonomy arrangements can be an effective means for managing regional conflicts".⁵ McGarry and O'Leary posit a similar line of argumentation, considering processes of federalisation as a "macro-method of managing differences".⁶ Rothchild and Hartzell concur and consider autonomy arrangements helpful "to lay the foundations for a stable and accommodative politics". Other scholars are equally optimistic about the specific use of federalism.⁷ Lake and Rothchild underline the potential conflict resolution attributes of federalism, noting that federal structures "can play a role in managing political conflicts. By enabling local and regional authorities to wield a degree of autonomous power, elites at the political centre can promote confidence among local leaders".⁸ Bermeo stresses the "peace preserving" function of federalism, concluding that "federal

³ Stefan Wolff, "Managing Ethnic Conflict: The Merits and Perils of Territorial Accommodation", *The Global Review of Ethnopolitics*, 1:1, 2011: 163.

⁴ Felix Schulte, *Peace Through Self-Determination: Success and Failure of Territorial Autonomy*. Cham: Palgrave Macmillan, 2020; Dawn Walsh, *Territorial Self-Government as a Conflict Management Tool*. Cham: Palgrave Macmillan, 2018.

⁵ Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts*. Washington: United States Institute of Peace Press, 1993, 301.

⁶ John McGarry and Brendan O'Leary, "Introduction: the macro-political regulation of ethnic conflict" in *The Politics of Ethnic Conflict Regulation*, ed, John McGarry and Brendan O'Leary, London: Routledge, 1993, 4.

⁷ Donald Rothchild and Caroline Hartzell, "Security in Deeply Divided Societies: The Role of Territorial Autonomy" in *Identity and Territorial Autonomy in Plural Societies*, ed, William Safran and Ramón Máiz, Portland: Frank Cass Publishers, 2000, 269.

⁸ David Lake and Donald Rothchild, "Containing Fear: The Origins and Management of Ethnic Conflict" in *The International Spread of Ethnic Conflict: Fear, Diffusion and Escalation*, ed, David Lake and Donald Rothchild, Princeton: Princeton University Press, 1998, 211.

institutions promote successful accommodation”⁹ while Saideman et al found that “federalism reduces the level of ethnic violence”.¹⁰ Burgess points out that while the institutionalisation of federal structures cannot guarantee peace and stability, “it is hard to see any form of successful accommodation of multiple nations within a single state that does not include some form of federal arrangement”.¹¹

Federalism, with its commitment to celebrating diversity, fostering mutual respect and providing structures to manage the often-intractable dynamics of multi-national, multi-linguistic and multi-faith states, has become the recognised conflict resolution strategy, *par excellence*. The flexible framework of political accommodation and organisation offered by federalism is equipped to meet—at least to a certain extent—the political aspirations and demands of both minority and majority groups.¹² In this vein, federal structures serve “as a shield for minorities” and their territorial interests, providing some form of autonomy to ensure the protection and guaranteed representation of their cultural, economic, political and social affairs.¹³ At the same time, for the majority community federalism can work to weaken secessionist claims from independence-seeking territorial units and thus ensures the territorial integrity of existing states remain unchanged.¹⁴

It would be unwise, however, to promote federalism as a panacea. It is a truism that in the face of sustained bloody conflict, federalism is often the only democratically acceptable plausible alternative,¹⁵ but the debate on the accommodating, conflict-resolving and secessionist-preventing attributes of federal structures “remains inconclusive”.¹⁶ The Janus-faced nature of federalism has been astutely examined in the academic literature, but consensus remains indeterminate.¹⁷ As Anderson notes, “the very same institutions that appear to be able to calm secession, reduce or eliminate the possibility of conflict and manage diversity, might actually work in the opposite intended direction”.¹⁸ While developments in Iraqi Kurdistan¹⁹ and Catalonia in Spain²⁰ might give empirical strengths to Anderson’s claim, other authors are more cautious, pointing to the lack of empirical evidence of sustained secessionist movements and

⁹ Nancy Bermeo, “The Import of Institutions”, *Journal of Democracy*, 13:2, 2002, 108; 97.

¹⁰ Stephen Saideman, David Lanoue, Michael Campenni and Samuel Stanton, “Democratization, Political Institutions and Ethnic Conflict: A Pooled, Cross-Sectional Time Series Analysis from 1985-1998”, *Comparative Political Studies*, 35:1, 2002, 118.

¹¹ Michael Burgess, *Comparative Federalism: Theory and Practice*. London: Routledge, 2006, 131.

¹² Soeren Keil and Paul Anderson, “Decentralisation as a tool of conflict resolution” in *Handbook of Territorial Politics*, ed, Klaus Detterbeck and Eve Hepburn, Cheltenham: Edward Elgar, 2018, 93.

¹³ Alain-G Gagnon, “The Political Uses of Federalism” in *Comparative Federalism and Federation: Competing Traditions and Future Directions*, ed, Michael Burgess and Alain-G Gagnon, London: Harvester Wheatsheaf, 1993, 21.

¹⁴ Paul Anderson and Soeren Keil “Territorial autonomy, ethnic conflict and secession: between a rock and a hard place? In *Handbook on Decentralization, Devolution and the State*, ed. Ignacio Lago, Cheltenham: Edward Elgar, 2021.

¹⁵ John McGarry and Brendan O’Leary, “Introduction: the macro-political regulation of ethnic conflict” in *The Politics of Ethnic Conflict Regulation*, ed, John McGarry and Brendan O’Leary, London: Routledge, 1993, 4.

¹⁶ Soeren Keil and Paul Anderson, “Decentralisation as a tool of conflict resolution” in *Handbook of Territorial Politics*, ed, Klaus Detterbeck and Eve Hepburn, Cheltenham: Edward Elgar, 2018, 101.

¹⁷ Jan Erk and Lawrence Anderson, “The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?”, *Regional & Federal Studies*, 19:2, 2009, 191-202.

¹⁸ Lawrence M Anderson, “Towards a Resolution of the Paradox of Federalism” in *New Directions in Federalism Studies*, ed, Jan Erk and Wilfried Swenden, London/New York: Routledge, 2010, 131.

¹⁹ Eva Maria Belser, “A Failure of State Transformation Rather than a Failure of Federalism? The Case of Iraq”, *Ethnopolitics*, 19:4, 2020, 383-401.

²⁰ Paul Anderson, “Decentralisation at a Crossroads: Spain, Catalonia and the Territorial Crisis”, *Ethnopolitics*, 19:4, 2020, 342-355.

territories in countries that are considered mature (meaning fully functional) federal democracies.²¹ Keeping in mind this ongoing debate about the strengths and perils of federalism, it is nevertheless important to point out that institutional design – in the shape of federalism, but also other strategies including power-sharing and non-territorial autonomy – continue to be mooted as an important and useful tool in conflict management.²²

The federal idea has been revitalised in recent decades, notably since the end of the Cold War. As Burgess notes, “The last decade of the twentieth century and the first decade of the new millennium have witnessed a marked tendency for both existing and new states formally to adopt federal constitutions that signify a particular unity in diversity.”²³ In the twenty-first century, the relevance of the federal idea remains just as prominent; federal debates continue in countries around the world, including in Myanmar, the Philippines, Syria and Ukraine, amongst many other cases. Notably, in many of these cases, federalism is discussed under the auspices of conflict resolution, to calm tensions, temper political polarisation and ultimately forestall further violence. The contemporary significance of these debates illuminates the importance to better understand how federalism can be used as a tool of conflict resolution, democratisation and state reconstruction.

Conflict resolution is a term that is often bandied around by politicians, practitioners and scholars.²⁴ Its meaning, however, has mutated over time and has taken on new significance in dealing with intractable conflicts throughout the decades, from the end of the Apartheid regime in South Africa in the 1980s, to dealing with genocide in Bosnia and Rwanda in the 1990s. In the aftermath of the Cold War, conflict resolution continued to gain increasing traction in order to manage fundamental shifts in the nature of the international system and has “ushered in new thinking with respect to approaches to conflict resolution”.²⁵ In the academic literature, debate on a concrete definition of conflict resolution remains ongoing, notwithstanding the interchangeable approach by some academics on terms such as “conflict resolution”, “conflict management” and “dispute settlement”.²⁶ It is not our intention to rehearse these debates here, but a brief discussion on what conflict resolution means is necessary.

One of the challenging aspects in the definition of conflict resolution is the above-mentioned changing nature of conflict and war itself. While conflict has traditionally been discussed as “the interaction of interdependent people who perceive opposition of goals, aims, and values and who see the other party as potentially interfering with the realization of these goals”,²⁷ other scholars have emphasised that conflict refers to “a social situation involving perceived incompatibilities in goals or values between two or more parties”.²⁸ The notion of incompatible

²¹ Soeren Keil, “Federalism as a Tool of Conflict Resolution” in *A Research Agenda for Federalism Studies*, ed, John Kincaid, Cheltenham: Edward Elgar, 151-161.

²² Paul Anderson, “Power-Sharing as a Tool of Conflict Management: The Experience of Northern Ireland and South Tyrol” in *Comparative Federalism: A Pluralist Exploration*, ed, Felix Mathieu, Dave Guenette and Alain-G Gagnon, London, Palgrave Macmillan, 2024.

²³ Michael Burgess, *In Search of the Federal Spirit*, Oxford: Oxford University Press, 2012.

²⁴ Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution: The prevention, management and transformation of deadly conflicts*, Cambridge/Malden: Polity Press, 2011, 4.

²⁵ Eva Sobotka, “Multilateral frameworks for conflict resolution” in *The Routledge Handbook of Ethnic Conflict*, ed, Karl Cordell and Stefan Wolff, 2016, 191.

²⁶ Ho-Won Jeong, *Conflict Management and Resolution: An introduction*, London/New York: Routledge, 1999.

²⁷ Linda Putnam and Marshall Scott Poole, “Conflict and negotiation” in *Handbook of organizational communication: An interdisciplinary perspective*, ed, Frederic Jablin, Linda Putnam, Karlene Roberts and Lyman Porter, Thousand Oaks: SAGE Publications, 1987, 552.

²⁸ Ronald J Fisher, *The social psychology of intergroup and international conflict resolution*. New York: Springer, 1990, 6.

goals has also been highlighted by Ramsbotham, Woodhouse and Miall,²⁹ though these authors emphasise a wider dimension, including the interdependent nature of conflict and the fact that it can be real (based on concrete issues such as fighting over land or resources) or imagined (conflict over history or certain values and beliefs).

Federalism, as a governance system, is also conflict-prone due to the need for multiple levels of government to work together. Issues arise when incompatible goals, beliefs and values transform into “physical force or power, threatened or actual, [...], that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation” – i.e. when violence is used.³⁰ Many of the ‘New Wars’ described above have ethnonational and separatist tendencies, in which violence is used by a combination of state and non-state actors. Wolff³¹ argues that ethnic conflicts are characterised by at least one party in the conflict defining its goals, values and beliefs in exclusively ethnic terms, while Ross and Rothman point out that in ethnic conflicts “the nature of the state is at issue. Central to these conflicts are the basic interests and competing interpretations of the parties concerning the norms, institutions and practices of the political community.”³² Resolving these conflicts, therefore, has to address the underlying contested nature of the state, and the relationship of different groups towards the state (and towards each other). Here, federalism offers an important way to bring different groups together and ensure these groups have a stake in the organisation of the state. With its normative focus on inclusion and diversity protection on the one side, and its institutional architecture that allows for autonomy, participation in central decision-making and territorial integrity on the other side, it is easy to see how federalism can help address the challenges to the nature of the state highlighted above.

In situations where conflicts have become deeply entrenched and in which the different conflicting parties are willing to negotiate and find a common solution, federalism can be a key prerogative for an inclusive peace settlement.³³ Indeed, Caspersen found in her analysis of ethnic, separatist conflicts that territorial autonomy, including provisions for federalism, is one of the key factors that explains the success of certain settlements.³⁴ Federalism cannot only provide an incentive for the end of violence and the start of peace talks, it can also lay the foundations for a substantial change of attitudes, in which a return to violence becomes impossible – i.e. a transformation from negative peace to positive peace. Miall has identified a number of key elements that explain the transformation of conflicts towards peace, amongst them he identified a focus on democracy and human rights, as well as the need to design inclusive and adaptive institutions.³⁵ In line with his perspective on conflict resolution and transformation, it can be argued that federalism provides both a normative set of beliefs and values that can foster cooperation, consensus and mutuality, while at the same time ensuring institutional structures that protect group identities and encourage working together and finding

²⁹ Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution: The prevention, management and transformation of deadly conflicts*, Cambridge/Malden: Polity Press, 2011.

³⁰ Etienne Krug, James Mercy, Linda Dahlberg and Anthony Zwi, *World Report on Violence and Health*. Geneva: World Health Organization, 2002, 5.

³¹ Stefan Wolff, *Ethnic Conflict – A global Perspective*. Oxford/New York: Oxford University Press, 2007, 2.

³² Marc Howard Ross and Jay Rothman, “Issues of Theory and Practice in Ethnic Conflict Management” in *Theory and Practice in Ethnic Conflict Management – Theorizing Success and Failure*, ed, Marc Howard Ross and Jay Rothman, Basingstoke/New York: Palgrave, 4.

³³ John Campbell, *Successful Negotiation*, Princeton: Princeton University Press, 1976; I William Zartman, “The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moment”, *The Global Review of Ethnopolitics*, 1:1, 2001, 8-18.

³⁴ Nina Caspersen, *Peace Agreements*. Cambridge/Malden: Polity, 2017.

³⁵ Hugh Miall, *Emergent Conflict and Peaceful Change*. Basingstoke/New York: Palgrave MacMillan, 2007.

common positions.³⁶ In this respect, federalism cannot only help transform violent ethnic conflicts into more peaceful situations,³⁷ but it can provide a long-term framework to develop and maintain more cooperative patterns of behaviour between groups with previously opposing goals, values and beliefs.³⁸ These two dimensions of federalism—as a tool of peace-making and providing the framework for the transformation from war to peace, and secondly as a key institutional framework through the application of federal government, which protects peace and encourages peaceful conflict resolution and inter-group cooperation—are at the centre of this paper. As stated above, we do not believe that federalism is a panacea for every conflict in the world, but we do argue that the relationship of federalism and conflict resolution is understudied and deserves further academic evaluation. To assess the application of federalism as a tool of conflict resolution, we shall now focus on the cases of Bosnia and Herzegovina and Myanmar.

Bosnia and Herzegovina – A Case of Successful Conflict Resolution?

Nearly 30 years after the end of the hostilities in Bosnia and Herzegovina and the signing of the Dayton Peace Agreement in 1995,³⁹ the country remains at peace, and nobody has died in recent decades as a result of ethnic violence and conflict. Indeed, Bosnia's peace, while still in parts fragile, has been a success story, taking into account that peace agreements fail about 50 per cent of the time.⁴⁰

Federalism became part of the peace agreement – which was an international treaty negotiated between Croatia, Serbia (the Republic of Yugoslavia) and Bosnia and Herzegovina under the international mediation of the United States and several European powers.⁴¹ While major Bosnian actors, such as the leaders of the Bosnian Serbs and the Bosnian Croats, never per se agreed to the constitutional set-up—and the federal arrangement as part of it—it was nevertheless implemented with the help of both NATO peacekeepers and international oversight through the office of the High Representative.⁴² As the Constitution for Bosnia and Herzegovina, which is Annex IV of the Dayton Peace Agreement, was mainly written by Americans, federalism became part of the solution to what was seen as a conflict over who controls what territory. In contrast with the US model, the federal arrangement in Bosnia is complicated through its asymmetry and linkages to ethnic criteria.⁴³ Moreover, the federal system was combined with

³⁶ Michael Burgess, *In Search of the Federal Spirit*, Oxford: Oxford University Press, 2012.

³⁷ Dawn Brancati, *Peace by Design: Managing Intrastate Conflict through Decentralization*. Oxford/New York: Oxford University Press, 2008.

³⁸ John McGarry and Brendan O'Leary, "Must Pluri-national Federations Fail?", *Ethnopolitics*, 8:1, 5-25.

³⁹ The full name of the peace agreement is General Framework Agreement for Peace in Bosnia and Herzegovina. The Agreement and all its Annexes are available here: <https://www.ohr.int/dayton-peace-agreement/>

⁴⁰ Jasmine-Kim Westendorf, *Why Peace Processes Fail: Negotiating Insecurity After Civil War*. Boulder: Lynne Rienner Publishers, 2015.

Peter White, "The Perils of Peace: Civil War Peace Agreements and Military Coups" *The Journal of Politics*, 82:1, 2020, 104-118.

⁴¹ Richard Holbrooke, *To End a War*. Modern Library: New York. 1996.

⁴² The Office of the High Representative is the civilian body overseeing the implementation of the peace agreement. In 1997, the powers of the High Representative were substantially expanded to include the right to impose laws and dismiss officials if they obstruct the implementation of the peace agreement.

⁴³ Soeren Keil, *Multinational Federalism in Bosnia and Herzegovina*. London and New York: Routledge, 2013.

strong consociational power-sharing features, requiring the elites of the three main groups—Bosniaks, Serbs and Croats—to work together in central institutions.⁴⁴

While it is beyond the scope of this paper to analyse Bosnia's federal system in detail, it is worth linking it to the theoretical debates outlined earlier. First, federalism was seen as a tool to provide territorial autonomy to the three main groups. Serbs, Croats and Bosniaks had been fighting each other in different constellations throughout the war from 1992 to 1995. While neighbouring Croatia and Serbia played a major role in arming and directly supporting their kin groups, the relationship between the different groups within Bosnia was heavily affected by the fighting, and particularly by the associated violence, war crimes and ethnic cleansing.⁴⁵ In light of this, it is no surprise that the agreement of 1995 more or less froze the existing territorial lines and created amongst the ceasefire lines new territorial units. Taking into account that these units were created as a result of violent conflict and political negotiations, there was little to no regard for historical or economic criteria in the design of the new internal borders, and where territorial boundary making did not quite match already existing population patterns, forms of ethnic cleansing continued even after the end of the war – as was the case in Eastern Sarajevo.⁴⁶

While ethnic separation and the creation of territorial units seemed to be an important element of getting political elites to agree to a cease fire and a comprehensive peace treaty, it later turned into a legitimisation of ethnic cleansing and associated war crimes. It also substantially prevented refugee return, and limited the possibility of inter-group cooperation and exchanges. However, in 1995, and in light of continued violence and severe human rights violations and war crimes as seen in Srebrenica in July 1995, coming to a framework for peace seemed more important than thinking about the long-term impact of a solution. Consequently, it is not surprising that Bosnia's two federal units (known as entities) are structured very differently, with the Republika Srpska – home to the vast majority of Serbs in Bosnia, relatively centralised. The Federation of Bosnia and Herzegovina, the second entity, is organised into ten cantons, five with a Bosniak majority, three with a Croat majority and two mixed cantons.⁴⁷ The city of Brcko became an autonomous district as a result of an international arbitration ruling in 1999.⁴⁸ This complex asymmetrical nature has resulted in some observers referring to Bosnia as “a federation like no other”.⁴⁹

However, the territorial dimension is not the only unique feature of federalism in Bosnia. A key feature of Bosnia's federal arrangement is the distribution of competences, which according to Article III: Responsibilities of and Relations between the Institutions of Bosnia and Herzegovina and the Entities (a-j) lists only ten competences for central state institutions. Indeed Article III. 3.a clarifies that “All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the

⁴⁴ Adis Merdzanovic, “‘Imposed consociationalism’: external intervention and power sharing in Bosnia and Herzegovina”, *Peacebuilding*, 5:1, 2017, 22-35.

⁴⁵ Gerard Toal and Carl T Dahlman,). *Bosnia Remade – Ethnic Cleansing and its Reversal*. Oxford University Press: Oxford and New York, 2011.

⁴⁶ Louis Sell, “The Serb Flight from Sarajevo: Dayton's First Failure”, *East European Politics and Societies*, Vol. 14:1, 1999, 179-202.

⁴⁷ Soeren Keil, “Building a Federation Within a Federation – The Case of the Federation of Bosnia and Herzegovina”, *Le Europe En Formation*, 369, 2013, 114-125.

⁴⁸ The full text of the ruling is available here: https://www.ohr.int/ohr_archive/brcko-arbitral-tribunal-for-dispute-over-the-inter-entity-boundary-in-brcko-area-award/

⁴⁹ Aleksandra Zdeb, “A Federation like no other: The Case of Bosnia-Herzegovina”, *50 Shades of Federalism*, 2018. Available at: <http://50shadesoffederalism.com/case-studies/federation-like-no-case-bosnia-herzegovina/>

Entities” – thereby laying the groundwork of what can today be considered as one of the most decentralized federations in the world.⁵⁰ While some centralisation, mainly as a result of external pressure and imposition by the High Representative has taken place since 1995,⁵¹ Bosnia remains nevertheless heavily decentralised.⁵² This decentralisation is coupled with a complex power-sharing architecture, requiring Bosniak, Serb and Croat elites to work together in all institutions of the central state, including the government, the Presidency, the two chambers of parliament and the Constitutional Court.⁵³

While, the federal model in Bosnia is celebrated as an “accommodative territorial model” that has “brought an end to violence”, the combination of decentralisation and strict power-sharing has also had several negative consequences in Bosnia.⁵⁴ On the one side, it has resulted in policy immobilism and continued disagreements amongst the elites of the three main groups.⁵⁵ Bosnia remains a laggard in EU integration, major decisions in relation to agriculture, economic development and human rights provisions have been stuck in parliament in recent years, and power-sharing has been part of the problem in Bosnia.⁵⁶ The lack of agreement at central level is combined with the dominance of ethnic parties at entity and cantonal level – allowing major parties to capture key political (and economic) institutions and thereby contribute substantially to a worrying trend of sub-national authoritarianism.⁵⁷ This has also spurred further discussion on secession – a policy promoted particularly by the political leadership in Republika Srpska in recent years. Both Serbian and particularly Russian support for the Republika Srpska have enabled its elites to maintain an agenda, which has undermined the central state on the one hand, and promoted further detachment of the entity from Bosnia on the other. Without a clear position of the European Union (EU) or the United States, Bosnia risks becoming a playing field of global powers once again – raising clearly memories of the early 20th century.⁵⁸

The lessons that can be learnt from Bosnia are therefore threefold. First, while the federal system has contributed to peace by ensuring that each of the major groups has its “own” territory and is involved in policy-making at the central level, it has so far failed to transform the country from a post-conflict state to a functioning democracy. Second, issues that resulted

⁵⁰ Soeren Keil, “Föderalismus in Bosnien und Herzegovina” in *Das Politische System Bosnien Herzegowinas*. Ed, Tobias Flessenkemper and Nicolas Moll, Wiesbaden: Springer, 2018, 77-90.

⁵¹ Gerrit Dijkstra and Jos Raadschelders, “The High Representative in Bosnia-Herzegovina: The Unusual Institutional Arrangement of a Non-Authoritarian, Yet Controlled, Democracy”, *World Affairs*, 185:2, 2022, 285-311.

⁵² The Office of the High Representative is the civilian body overseeing the implementation of the peace agreement. In 1997, the powers of the High Representative were substantially expanded to include the right to impose laws and dismiss officials if they obstruct the implementation of the peace agreement.

⁵³ Florian Bieber, *Post-War Bosnia Ethnicity, Inequality and Public Sector Governance*, Routledge: London and New York, 2006.

⁵⁴ Paul Anderson and Soeren Keil “Territorial autonomy, ethnic conflict and secession: between a rock and a hard place? In *Handbook on Decentralization, Devolution and the State*, ed. Ignacio Lago, Cheltenham: Edward Elgar, 2021, 251.

⁵⁵ Soeren Keil and Paul Anderson, “Bosnia and Herzegovina: Constitutional Politics in a ‘State of Minorities’”, in *Constitutional Politics in Multinational Democracies*, ed, Andre Lecours, Nikola Brassard-Dio, Guy Laforest, Montreal and Kingston, McGill-Queens University Press, 2021.

⁵⁶ John Hulsey and Soeren Keil, “Power-Sharing and Party Politics in the Western Balkans” in *Power-Sharing in Europe*, ed, Soeren Keil and Alison McCulloch, Palgrave MacMillian: Cham, 2021, 115- 140.

⁵⁷ Damir Kapidzic “Subnational competitive authoritarianism and power-sharing in Bosnia and Herzegovina”, *Southeast European and Black Sea Studies*, 20:1, 2019, 81-101.

⁵⁸ Soeren Keil and Bernhard Stahl, ed. *A New Eastern Question? Great Powers and the Post-Yugoslav States*, Ibidem: Stuttgart, 2022.

in the conflict in the first place, will remain salient even after the conflict has been finished. In 2023 and 2024, Bosnia's political discussions are dominated by continued questions over the equality of the three constituent peoples, its relationship with neighbouring countries, and the future of Bosnia's integration into the EU. Replace the EU discourse with Yugoslavia, and the same political themes were relevant in the early 1990s before war broke out. Finally, peace-makers need to think short- and long-term. While making peace is incredibly important in situations where people die as a result of conflict, when severe human rights violations are committed and when ethnic cleansing and war crimes are a daily occurrence, whatever peace settlement is agreed upon needs to stand the test of time. Dayton was a good peace agreement to end the violence, but its usefulness as a tool to bring the groups together, to reintegrate the state and to contribute to democratization has been severely questioned.⁵⁹

Myanmar – The Prospect of Federalism as a Tool of Conflict Resolution

Unlike Bosnia and Herzegovina, Myanmar has yet to become a federal country, though federalism has been high on the agenda of peace-makers and constitutional negotiators in the country since independence in 1948. Indeed, even before independence, the leaders of the newly formed Burmese Government, and representatives of different ethnic groups (Shan, Kachin, Chin) held a historic meeting—the Panglong Conference—whose final Agreement agreed “Full autonomy in internal administration for the Frontier Areas is accepted in principle.”⁶⁰ However, the Constitution of 1948 did not fully ensure this autonomy, though it did foresee the participation of the ethnic territories in central decision-making. Yet, the rise of a Communist insurgency, as well as continued dominance by leading military figures meant that federalism remained off the agenda in the post-independence period. New discussions on the topic in the early 1960s, driven particularly by representatives of the Shan States, contributed to the military coup of General Ne Win in 1962—resulting in a dictatorship that lasted for several decades.⁶¹ During this period, federalism remained a key demand of many ethnic groups, though the Shan and the Kachin also explored the option of independence in light of continued oppression by the Tatmadaw (the Burmese military).⁶² For the military, however, federalism was understood as a recipe for state disintegration. In the word of Ne Win, “Federalism is impossible, it will destroy the Union”.⁶³

What emerged in the years after 1962, and particularly after the large-scale protests of 1988 and the rise of the National League of Democracy (NLD) as the most prominent Burmese democratic party, was a double call for transition. While the NLD, led by Nobel Peace Prize winner Aung San Suu Kyi focused on ending military rule and free and fair elections,⁶⁴ ethnic leaders started a violent resistance against military rule and the associated policies of

⁵⁹ Soeren Keil and Asya Kudlenko, “Bosnia and Herzegovina 20 Years after Dayton: Complexity Born of Paradoxes”, *International Peacekeeping*, 22:5, 2015, 471-489; Soeren Keil, “The Emergence of Complex Federal Political Systems in the Western Balkans” in *Emerging Federal Structures in the Post-Cold War Era*, ed, Soeren Keil and Sabine Kropp, Cham: Palgrave MacMillan, 2022, 115-140.

⁶⁰ The whole text of the Panglong Agreement is available at:

https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_470212_Panglong%20Agreement.pdf

⁶¹ Robert Taylor, *General Ne Win - A Political Biography*. ISEAS Publishing, 2015.

⁶² David Steinberg, “Burma Under the Military: Towards a Chronology”, *Contemporary Southeast Asia*, 3:3, 1981 244-285

⁶³ Martin Smith, “Obituary: General Ne Win”, *The Guardian*, 6 December 2002.

⁶⁴ Nick Cheesman, Nicholas Farrelly and Trevor Wilson, *Debating Democratization in Myanmar*. ISEAS Publication: Singapore, 2014.

Burmaisation, while also developing clearer plans on the need for a federal political system to accommodate the different ethnic groups in the country.⁶⁵

A window of opportunity opened from 2008 onwards in the aftermath of the 2008 military-imposed Constitution and the subsequent elections in 2010. The promulgation of the 2008 Constitution was dogged by debate over its legitimacy, largely a result of “the authoritarian circumstances of its drafting” and the “dubious circumstances of the referendum” to ratify the Constitution held just seven days after Cyclone Nargis which devastated parts of the country.⁶⁶ The Constitution defines Myanmar as a “disciplined” democracy (Article 7) “constituted by the Union system” (Article 8) composed of seven Regions and seven States (Article 9).⁶⁷ In reality, however, Myanmar remains a highly centralised political system in which the States and Regions have little decision-making autonomy and very limited financial resources. In the run-up to the 2010 elections, discussions on democratisation and federalism gathered apace, framed as the two fundamental conditions to end not only decades of military rule, but also to pave the way to what had become by then the longest civil war in the world.⁶⁸ The first elected President of the country, Thein Sein (formerly General Thein Sein) surprisingly started extended peace talks with numerous ethnic armed organisations (EAOs), as well as a process of normalisation and reconciliation with Aung San Suu Kyi and her NLD party. These processes resulted in a Nationwide Ceasefire Agreement (NCA) in 2015, in which eight EAOs agreed to end their resistance against the government in exchange for a peace process that would commit the main political actors, including the still politically involved Tatmadaw, to lasting reforms. Indeed, the NCA states that one of its objectives is to “Establish a union based on the principles of democracy and federalism in accordance with the outcomes of political dialogue and in the spirit of Panglong, that fully guarantees democratic rights, national equality and the right to self-determination on the basis of liberty, equality and justice while upholding the principles of non-disintegration of the union, non-disintegration of national solidarity and perpetuation of national sovereignty.”⁶⁹

Domestic actors, including the new NLD-led government, the Tatmadaw and different EAOs engaged in a series of negotiations between 2015 and 2020 – known as the Union Peace Conference – Panglong for the 21st Century. As part of the negotiations, a transitional framework to a federal democracy was to be agreed, as well as a timeframe for the complete removal of the Tatmadaw from all political positions, and the full democratisation of the country, including comprehensive security sector reform.⁷⁰ A key challenge that emerged during the different rounds of negotiations was the different agendas of the two main reform drivers: While the NLD-government focused substantially on constitutional changes that would limit, and eventually eliminate, the role of the Tatmadaw in the political affairs of the country, EAO representatives were particularly focused on the implementation of a federal system. They

⁶⁵ David C Williams and Lian H Sakhong, *Designing Federalism in Burma*. UNLD Press: Chiang Mai, 2005.

⁶⁶ Melissa Crouch, *The Constitution of Myanmar: A Contextual Analysis*, Oxford: Hart PUBLISHING, 2019, 2.

⁶⁷ For the full text of the 2008 Myanmar constitution, see: <https://myanmar-law-library.org/law-library/laws-and-regulations/constitutions/2008-constitution.html>

⁶⁸ Kristian Stokke, Klo Kwe Moo Kham, Nang K.L. Nge and Silje, Hvilsom Kvanvik, “Illiberal peacebuilding in a hybrid regime. Authoritarian strategies for conflict containment in Myanmar”, *Political Geography*, 93, 2022, 1-14.

⁶⁹ The full text of the 2015 Nationwide Ceasefire Agreement is available at https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_151510_NCAAgreement.pdf

⁷⁰ N. Ganesan, “Taking Stock of Myanmar’s Ethnic Peace Process and the Third Twenty-First Century Panglong Conference”, *Asian Journal of Peacebuilding*, 6:2, 2018, 379-392.

argued for more autonomy for the states and regions, a new agreement on fiscal issues, a fairer sharing of the wealth of natural resources, and more inclusion at the central level.⁷¹

In February 2021, the military staged another coup and ousted the NLD government, arresting senior figures including Aung San Suu Kyi, and ending major reform efforts. Whilst the Tatmadaw faced unexpected resistance from a variety of actors since their coup, any concrete reforms towards a new federal state model have been stopped.⁷² Within the opposition forces, a National Unity Government was established to lead in preparing the country for a post-military rule era by promoting federalism and engaging in coalition building with EAOs (rebranded as EROs – Ethnic Revolutionary Organisations). While federalism remains high on the agenda, different models have been emerging,⁷³ including those that demand a loser union based on confederal principles.⁷⁴ Violent resistance is growing in the country, and currently, several states are holding constitutional assemblies and discussions on the post-war order. Federalism remains high on the agenda.

Like Bosnia and Herzegovina, important lessons can be learnt from the federal debates in Myanmar. First, while federalism has been on the political agenda since before the independence of the country from British rule, it has never been implemented because of the dominance of the Tatmadaw in politics, but also because of the lack of a common vision on what a federal system in the country should look like.⁷⁵ Second, federalism remains highly contested between the majority and the minority population. Since the Bamar make-up more than two thirds of the population, any future federal arrangement will need their approval – and commitment. Yet, there are still strong sentiments against federalism amongst the majority population – and not only in circles supporting the Tatmadaw, including arguments that it will lead to the disintegration of the state and that it will bring disadvantages to the majority population. Unless all democracy actors can find a common ground and agree on a sustainable model of what a federal democracy could look like, it is unlikely that any reform agenda towards federalism will succeed.⁷⁶ This is also why a common vision of federalism is desperately needed between the National Unity Government and the main Ethnic Revolutionary Organisations that are currently resisting military rule in the country. Finally, Myanmar is an interesting case for a country, in which it has been shown again and again that for federalism to succeed, it needs committed federalists. This is not only true for the NLD as the majority party, which has never been fully convinced by the federal agenda (and which never presented a federal proposal itself), but it is also true for many ethnic leaders who have called for federalism, but promoted and demanded it mainly to enhance their own agenda on gaining influence in regional or national politics. Without committed federalists, and constitutionalists more generally, without a clear recognition that fundamental principles, values and structures within a state need to be respected, properly implemented and filled with

⁷¹ Nehginpao Kipgen, “The Quest for Federalism in Myanmar”, *Strategic Analysis*, 42:6, 2018,. 612-626.

⁷² Ashley South, “Towards ‘Emergent Federalism’ in Post-coup Myanmar”, *Contemporary Southeast Asia*, 43:3, 2021, 439-460.

⁷³ Aung Kaung Myat, Roman David and Ian Holliday, “Two Concepts of Federalism in Myanmar: How the 2021 Military Coup Reshaped Political Discourse and Opposition Institutions”, *Publius – The Journal of Federalism*, 53:2, 2023, 378-400.

⁷⁴ Kelvin “Federalism in Myanmar Practical Application of Federalism as a Modern Confederation”, *Institute of Federalism Working Paper No. 32*, 2023, available at: https://www.unifr.ch/federalism/fr/assets/public/files/Working%20Paper%20online/32_Kelvin.pdf

⁷⁵ Michael Siegner, *In Search of the Panglong Spirit*, Yangon: Hanns Seidel Stiftung, 2019, available online at: <https://view.publitas.com/hanns-seidel-foundation-myanmar/in-search-of-the-panglong-spirit-the-role-of-federalism-in-myanmars-peace-discourse/page/1>

⁷⁶ Michael Breen, “The Origins of Holding-Together Federalism: Nepal, Myanmar, and Sri Lanka”, *Publius – the Journal of Federalism*, 48:1, 2017, 28-40.

life, it is difficult to see how any reform efforts will have enough traction to lead to major changes in the country.

Conclusion

In our ever increasingly diverse world, there has been a substantial increase in the number of violent conflicts fought within the borders of existing states. These intra-state, group-based struggles are often characterised by conflict over political power, necessitating attention to be paid to institutional design in the creation of peace agreements and post-conflict political structures. As we have discussed in this paper, federalism is oft-promoted as a viable strategy to institutionalise democracy, accommodate majority and minority ethnonational groups and ultimately bring an end to violent conflict. It is by no means a panacea, but offers hope as both a long- and short-term solution to manage differences via political rather than violent means.

In the case of Bosnia, we argue that the record of federalism as a tool of conflict resolution is largely successful, particularly putting an end to violent conflict. At the same time, however, politics in post-war Bosnia continue to be dominated by political conflict between its three constituent peoples and their divergent perspectives on the state and their relationship with it. Further, Bosnia may be a democratic state, but democratic consolidation has been hindered by ongoing political disputes and weak institutions in which a federal culture of cooperation and compromise has yet to materialise.⁷⁷ In the case of Myanmar, despite decades of debate on the federal idea, there has been only limited progress on federalisation. Akin to Bosnia, diverging perspectives by ethnic minority and majority groups within the state, as well as other actors such as the military, have effectively hampered any process of federalisation and thus its potential to address areas of conflict. In the context of the new military dictatorship after the 2021 coup debate on federalism may have been halted in official institutions, but the federal idea has gained increased prominence among both ethnic minorities and the Bamar majority as a potential route to democratisation, state reconstruction and ethnonational accommodation.⁷⁸

Across the globe, states face specific challenges in the context of intra-state conflict triggered and conditioned by, inter alia, authoritarian trends, corrupt regimes, ethnonational diversity, poverty and resource competition. In periods of post-conflict state reconstruction, these contexts must be taken into account to design and implement a political system that forestalls violence and alleviates tensions and divisions. As we have seen in this paper, federalism is not a cure-all remedy, but it remains a potential medicine in address some ills within diverse and divided societies.

⁷⁷ Soeren Keil, "The Emergence of Complex Federal Political Systems in the Western Balkans" in *Emerging Federal Structures in the Post-Cold War Era*, ed, Soeren Keil and Sabine Kropp, Cham: Palgrave MacMillan, 2022, 115-140.

⁷⁸ Aung Kaung Myat, Roman David and Ian Holliday, "Two Concepts of Federalism in Myanmar: How the 2021 Military Coup Reshaped Political Discourse and Opposition Institutions", *Publius – The Journal of Federalism*, 53:2, 2023, 378-400.