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The idea of autonomy or other forms of sovereign devolution has been pro­posed as a viable compromise model in the resolution of claims to separatism. This chapter will consider the meaning and method of application of autonomy or other sub-state political models, and assess whether a semi-independent status can adequately address separatist claims. It will consider the formation of post-colonial states, the failure of many such states to adequately represent ethnic minorities, and the so-called third wave of nationalism in which national or proto-national groupings seek territorial sovereignty. The chapter draws on case studies from Indonesia’s Aceh and Papua provinces, Sri Lanka’s Eelam and the Philippines’ Bangsamoro, and the failure of the autonomy option in East Timor.

The idea of autonomy has been available to sub-state entities since before the period of Westphalian states, and can be seen as having its origins in the allocation of devolved local rule in empires, or points of local political organization within a wider and overarching political constellation. In the post-Westphalian world of sovereign states, autonomy has generally been allowed to accommodate sub-national or ethnically distinct geopolitical entities that, for strategic reasons, have been obliged to accept incorporation into larger states. That is to say, the idea of autonomy is neither new nor
novel, and has been accepted as a viable method of securing regional strategic interests while at the same time encouraging state loyalty via a degree of political "looseness" on one hand while confirming a rationale for state cohesion on the other.

Where a state has been established without due regard for internally differentiated constituent parts, as in the case of many unitary and centrally administered post-colonial states, a devolution of centralized state authority to a variety of sub-state models may be undertaken through a process of mediation. Such mediation applies to both the process by which such a devolved sub-state outcome is achieved, and to the outcome which locates the devolved sub-state entity between the polarities of absolute self-determination and absolute state sovereignty.

This mediated compromise, usually around autonomy or a similar form of local self-government, has been proposed as a viable model for the resolution of claims to separatism, sometimes in its own right and sometimes as a step along the path to full independence.\(^1\) The terminology that has gained recent currency in such a process is "earned sovereignty". Earned sovereignty is an attempt to construct a standardized model for conflict resolution of separatist disputes, although implying a number of criteria that are not always necessary and which may not assist in achieving the desired outcome. Moreover, the meaning of the term is problematic. A more useful term, if one not yet current in the literature, is "mediated constitutionality".

This underlying proposal of mediated constitutionality is based on the assumption that actions in order to achieve or oppose separatism are either unresolvable and/or create more harm than they resolve. That is, while there might be strong grounds for separatist claims or for opposing separatist claims, the conflict that can arise in support of or opposition to such claims can outweigh the benefit any such claims or opposition to it might propose to bring. Hence, addressing the first principle causes of conflict might be possible other than through the creation of a separate state.

In particular, the idea of autonomy or related forms of sub-state devolution of authority are generally intended not just as a compromise between competing or mutually incompatible positions, but also as attempts to redress some of the fundamental failures of a pre-existing state in its role as the institutionalized representative of its citizens. The state has, or should have, a series of civic responsibilities towards its citizens which might be regarded as first principle reasons for its existence. Such responsibilities include, or should include, equal and consistent rule of law (\textit{lex} as the origin of legitimacy) guaranteeing freedom with domination.\(^2\)
Within the context of self-identifying groups, where legitimacy is not established in either normative or positive terms, or where legitimacy is held to have been lost or to not apply in relation to a specific people or a specific territory, such people will tend to seek remedial action. For a given people or territory, the mandate for such remedial action might become more compelling when an alternative source of legitimacy is identified and acknowledged. This is, often, the case with self-identifying groups within a reasonably geographically coherent area that do not acknowledge the legitimacy of a ruler from a separate location over the claimed area, or amongst whom that sense of legitimacy as legal inclusion has never been adequately established or has since been lost.

The people of post-colonial states usually have high expectations of independence prior to independence being granted. Yet most post-colonial states usually do not have the capacity to meet pre-independence expectations, and in many cases, capacity is actually lower than under the colonial regime, following the withdrawal of skilled administration and capital, and often (although not universally) due to the destruction resulting from attritional wars of liberation. In the face of rising popular frustration and limited institutional capacity to respond to it, many post-colonial states begin to limit political space, resorting to authoritarian or dictatorial political practices.

Where the limitation of political space takes the form of a patron-client relationship with ethnic majorities, ethnic minorities can feel alienated (victimized, even) and thus retreat to the ethnically and geographically specific. It is but a short step from geo-specific ethnic identification to claims to alternative nationhood and, from there on, to the claim for a state as its geo-institutional manifestation. Separation as a solution to this civic shortfall frequently becomes a goal in its own right, in which the end of the process justifies the means by which it gets there. This may mean that the separatist movement loses sight of the reasons that gave rise to it in the first place. Regarding the case studies, they each conform to a more broad or general type of failure of the post-colonial state to adequately, evenly and consistently address the concerns and interests of a specific minority of its citizens (Kingsbury 2008).

However, if it is the intention of such separatist or sub-state actors to redress what might be termed a civic shortfall of the state, then the focus may shift from separatism as a goal in its own right towards addressing the shortfall that has originally motivated the separatist claim. This might be termed a return to first principles of conflict resolution, a logic that was
brought to bear in the resolution of the Aceh conflict in 2005 (see Kingsbury 2006, pp. 20, 121–22), and has since been viewed by some as constituting a basis for a model to be applied in other conflict contexts: “the tremendous achievement of the Helsinki process is plain to see. Aceh has become a possible model for resolving conflicts in other parts of the world” (Aspinall 2006, p. 4).

**AUTONOMY AS A SUB-STATE MODEL**

The idea of autonomy has an ambiguous or variable meaning. This was noted in the Aceh peace talks, when Finnish mediator Martti Ahtisaari inadvertently used the Finnish term that translated directly as “self-government” (erityisitsehallinto) when intending to mean “autonomy” (erityisautonomia). Even the term “self-government”, which was subsequently adopted by the Free Aceh Movement during the talks as the basis for its negotiable claim, was vague enough for both Indonesian negotiators and Acehnese to ask what it meant, prompting the quip that the meaning of “self-government” would be defined by the outcome of those negotiations.

Etymologically, autonomy derives from the Ancient Greek for “self” (auto) and “law” (nomos), and implies not independence in a geo-strategic sense, or other forms of absolute separation from another political community, but the ability to make laws (in practice, self-rule) for one’s own community. In a more practical sense, the meaning of autonomy is that which is given to it via any mediated process. The specific content of autonomy is thus not fixed (autonomy can come in degrees), and is usually derived as a consequence of negotiation which, other than in distinctly unequal contexts, implies compromise and the consequent loss of elements of the competing claims, e.g. independence on one hand and absolute sovereignty on the other.

In Indonesia, where the principle of granting autonomy (lit. otonomi khusus, or “special autonomy”) was applied in the cases of Aceh and West Papua from 2001, the term implied a constrained form of local administration, primarily in relation to the allocation of a promised increase in revenues. Autonomy was likely granted to the Bangsamoro homeland region of the southern Philippines but, similarly to Indonesia, has little substantive content and was undermined in practice. In Sri Lanka, autonomy has been suggested as a model for resolving separatist conflict and was promised under the 1987 Indo-Lanka Accord. However, it was not implemented and more recent models now fall short of the claim of
complete independence by the Liberation Tigers of Tamil Eelam (LTTE, or Tamil Tigers). 5

Accepting in a practical sense that, as a mediated political arrangement, autonomy means whatever the content of any agreement as to its implementation states it to mean, the next question is whether autonomy can adequately address the types of political claims that inspire separatism. Very often in order to promote their claims, separatist movements adopt absolutist rhetoric, such as “separatism/victory/freedom or death” and an ideology around sacrifice (consider, for example, the LTTE Black Tiger suicide battalion and the institutionally endorsed cult within the LTTE of suicide upon capture). This is necessary in order to establish a position from which to prosecute initial political claims. Very often, a nationalist ideology is built up around such claims, or is concomitant with them. 6

Given the commitment of separatist movements to independence, then, there remains the question as to whether a lesser status such as autonomy or self-government can provide an acceptable mediated outcome. Moreover, questions arise as to whether acceptance of such a mediated outcome can be understood by separatist movements as just a step on a longer journey towards full independence, as per Finland’s conversion of autonomy to independence from imperial Russia in 1920, and whether or not autonomy can be a ploy by central governments to buy off separatist claims and pacify a restive population on one hand while undermining both the substance and the spirit of any mediated promises on the other. This can be seen to have been the case in Bangsamoro under the agreement between the Government of the Philippines and the Moro National Liberation Front in 1996, and by the government of Indonesia in Aceh and West Papua in 2001. Similarly, autonomy was understood to be code for “integration” in the case of East Timor in 1999 7 and was rejected in favour of the alternative position of full independence. Governments may also not accept settlements aimed at producing autonomy, particularly if they might lose direct and complete control over vital strategic or economic factors. Beyond the political commitment of movements towards particular goals, and the bad faith that can accompany and undermine mediated compromise agreements, there is also doubt as to whether compromise solutions can adequately address the claims which give rise to separatism in the first place.

The claim of a self-identifying bonded political group in turn raises the question of “nation”, while geo-institutional claims of such a nation constitute claims to statehood. Within the context of an established state, the claim is thus to one of separation and reconstitution under a distinct and
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separate state identity. There are three broad views on claims to nationhood. The first is primordialist; that particular nations have always existed and that they constitute an essentially unchanging social bond. The second, "modernist", view is that nations are relatively recent constructions either of industrial necessity (Gelner 1983), explicit state programmes (Hobsbawm 1983, 2004), or technologically induced cultural unity (Anderson 1991). A third view is that nations are "ethno-symbolic" unities that cohere around symbolic representations of common identification, including civic values (Smith 1998, 2003).

Most states are internally defined by how their social groups are organized, if with varying degrees of dynamism, as constituent parts. Post-colonial states in particular tend to exhibit vertical or regionally based group tendencies, especially where they are constructed from multiple pre-existing ethnicities. That is, ethnic groups that existed prior to the colonial experience and which may have not enjoyed close or comfortable relations with other groups often found themselves conjoined in colonial entities which transformed, in the post-colonial era, as multi-ethnic states.

Few such multi-ethnic colonies have made a fully successful transition to becoming voluntary states (states in which an overwhelming majority of its members freely choose to be citizens); in most cases there has been an element of compulsion in accordance with an overt "nation-building" project. Where this nation-building project has been predicated upon a higher degree of compulsion, and especially where there has been a dominant ethnic group among less dominant groups, this has tended to produce a reaction, often by way of assertion of a separate identity equally but differently conceived as "nation". This then raises two questions, the first being what it is that constitutes a nation, and, relatively, how claims to nationhood can be assessed. The second question concerns issues of legitimacy, voluntarism and compulsion.

National identity as the basis for the assertion of nationalist claims can be characterized in two broad streams. The most common quality of national identity is, as noted, based on ethnicity (Smith 1986b, pp. 22-46). A common language is the principal mediator through which individuals who may not know each other but actually or potentially communicate across distance and hence perceive themselves as having a common interest (Anderson 1991). However, basing the national project solely on culture, without extending that to include wider civic values, raises the prospect of reifying a mythical "glorious past" (Smith 1986b, pp. 174-208). In reifying itself, ethnicity becomes inwardly focused, exclusivist and reactionary.
Nations have traditionally tended to exist in relation to a specific and usually contiguous and relatively demarcated or delineated territory. The territorial reach of nations, or proto-nations, has historically shifted, especially prior to the advent of Westphalian sovereignty, and populations were often fluid. A key quality necessary for continuing success in sustaining national identity is based on concordance around normative shared values or the positive codification of plural civil values. This extended idea of nationalism comprises what has been termed "civic nationalism", or "civic nationality" (Smith 1998, pp. 210-13). This concept corresponds to a more voluntary, inclusive, participatory and open political society (for example, liberal democracy). In this, national identity and citizenship are ascribed on the basis of commitment to core civic values rather than ethnic origin, thus returning to the original meaning of the term "legitimacy" (see Seymour 2000; Habermas 2001a, 2001b). Such societies are the ones in which voluntarism and legitimacy are joined.

However, where ethnic bonds are historically weak in relation to the state and civic bonds are not evident, states tend to compel "national" membership, following, rather than preceding, the creation of the state. Such compulsion tends to preclude civic values. That is, not being able to allow the full expression of social plurality, the state rules by (often oppressive) law, thus denying justice.

The association of a people with a territory is most likely to be successful in being able to assert a claim to that territory if it is relatively compact and largely contiguous (Gellner 1983, p. 46). A dispersed territory is, relative to population, less easily able to be controlled and hence claimed. Territory is identified as a source of livelihood and a site of mutual defence, overlapping in the analysis of nationalism by Hobsbawm (Hobsbawm 2004, chap. 4; Gellner 1983, chap. 3; Smith 1998, pp. 79-82). The centralized and externally focused nature of industrial organization and the standardization of language it requires can thus be seen as contributing or strengthening both the development of a national identity and providing a basis for subsequent statehood (Hobsbawn 1983, 1990). That being said, there have been instances, however, where the formation of nations and national identities has occurred in numerous pre or non-industrial circumstances.9

If "nation" implies some formalization of group identity around a particular programme, then defence and security systems of the state can contribute significantly to this formalization. The group is starkly delineated, while membership is often explicitly reconfirmed, and the group goes through a relatively high degree of social organization under a coherent
executive leadership. In this, grievance by members of a particularly identified group which elicits a violent state response may itself be the catalyst for nation formation where previously a less formal group identity existed. The importance of this feature cannot be overstated, as where outsiders may argue that a “nation” has not historically existed, in the face of threat or challenge it can come into being relatively quickly and with a high degree of both coherence and commitment in cases of mutual preservation. What is important, however, is if a sufficient majority of members of a group that reflects a number of key characteristics claim for themselves a national identity, and, in particular, if they are prepared to fight for it, then the claim is ultimately their own to make.

**SELF-DETERMINATION**

The claim of self-determination assumes that the bonded political community of a nation has no prior capacity to determine its own affairs, but should do so. This is, at one level, a normative claim arising, in the first instance, out of the Wilsonian-Leninist reorganization of Europe into nations that had previously been subsumed under greater empires at the end of the First World War. The logic of this process flowed into the post-World War II period, in which Europe's overseas colonies sought independence. However, as many post-colonial states were based on colonies that did not necessarily reflect the unity or distinction of pre-existing ethnic identities, and that many such states at best had difficulty in establishing a non-ethnic (i.e. civic) form of national identity, there have continued to be numerous unresolved claims to separate national identity.

This, then, leads to a potential for competition between the nation as a bonded political group, and the state (Griffiths 2003). A "state" may be confluent with, but is analytically distinct from, "nation". The state, as it is generally understood in the contemporary sense, refers to a specific and delineated area (Smith 1986b, p. 235) in which a government embeds institutionalized political and judicial authority (Evans 1995) and claims a monopoly over the legitimate use of force within its sovereign territory (Krader 1976, p. 13). States regard themselves, _prima facie_, as legitimate. Hence, any claim against the state is in their view, _ipso facto_, illegitimate. Claims against the state from within deny the state's implicit claim to representation on the basis of legitimacy. As defining and protecting territorial sovereignty is integral to their being, states, therefore, logically reject separatist claims. Further, while assertions of national self-determination
may be supported in principle in international law and appear to reflect the claims of civil and political rights (in relation to self-determination), they are not explicitly supported. There is no international legal mechanism for redress of separatist claims, and if there was it would probably have little binding capacity given the relative weakness of international political institutions (for example, the United Nations) when compared to the specifically located power of states (Packer 1998, 1999, 2000a, 2000b). That is, as a reflection of real politik, claims to separation from the state are only as strong as their capacity to be asserted.

**MEDIATED SOLUTIONS**

Mediated solutions are therefore intended to act as a “compromise between self-determination and the sanctity of borders” (Graham 2000). In that mediated solutions based on political compromise have been proposed as a method for resolving separatist conflicts, they have increasingly come to take shape around a core set of ideas, commonly referred to as “earned sovereignty”. Key characteristics of such mediated outcomes generally include:

1. a multi-stage process of implementation
2. the sharing of sovereignty, or constitutional authority, where the state (or, an international organization) and the sub-state entity may, each, exercise some sovereign or constitutional authority and functions over the territory in question
   (a) the conditional devolution of sovereignty or constitutional authority in a given territory through the phasing out of preceding sovereign authority and the phasing in of a local authority. This is intended to allow the ceding state both the opportunity for adjustment and to help provide surety around the intentions and capacities of the aspiring state. The second type of limit or conditionality placed on any arrangement constitutes conditional sovereignty, where the aspiring state is required to meet certain benchmarks such as human rights enforcement, respect for minority rights and so on before it may acquire increased sovereignty.
   (b) conditionalities placed upon the sovereign reach of the central government, and the extent of local powers. This implies limitations on the extent of the autonomous authority and some of the functions of the autonomous region.
   (c) constrained or limited sovereignty which may manifest as autonomy, federalism or confederation
3. the necessity of building new institutions or adapting existing institutions prior to the determination of the final status of political devolution, often with the assistance of the international community, by which a state is able to manifest its organizational capacity

4. a mechanism for the determination of the final status of the territory in question, where the relationship between the existing state and the aspiring state is articulated, usually by a vote of the aspiring state's population and with the consent and under the supervision of the international community (Williams and Pecci 2004, p. 4; Hooper and Williams 2004; Scharf 2004).

At its most basic, the "earned sovereignty" model entails the conditional and progressive devolution of sovereign powers and authority from a "parent" state to a sub-state entity under international, preferably multinational, supervision. This is generally made available through a peace process as a multi-stage approach to address the issue of the final political status of the sub-state entity, or as a peaceful recognition of the legitimacy of a claim to test sub-state desire for separate status. The case of East Timor reflects a number of elements of such a process.

While mediated solutions such as "earned sovereignty" are legitimate attempts to work past some of the problems of the state-secessionist dichotomy, it also has a number of negative features. These include it being reliant on international goodwill (which may be undermined by disinterest or "realist" strategic self-interest) and being reliant on the agreement of the sovereign state to cede authority. Very often, such an agreement is also reliant upon the majority peoples of the state to accept such an outcome. A further difficulty is the common and usually unresolved issue of minorities within the proposed new state. And, not least, there is the problem of a mediated outcome not being the preferred method of achieving a resolution to competing claims as opposed to a settlement by force of arms.

The role of the mediator in the establishment of autonomy is also critical. A mediator may also have a role in seeking the participation of agreement monitors or peacekeepers, without who, breaches of agreements are possible and, in most cases, probable. Organizations providing such monitors or peacekeepers must be willing to commit them for an extended period, commonly of not less than two years. Mediators or peacekeepers can derive from a unilateral source but, given the potential for a conflict of interest, generally derive from a wider range of sources. The Norwegian role in the Sri Lanka Monitoring Mission was buttressed by monitors from other E.U.
states, while the Aceh Monitoring mission was an E.U. initiative, comprising monitors from most E.U. states but also from other ASEAN states. Similarly, Interfet in East Timor was led by Australian forces, but comprised forces from twenty-three states.

The UN as a source of peacekeepers in particular has been regarded as ideal on one hand, representing the global community rather than potentially narrow state interest. However, it has also had three key drawbacks; willingness of specific states to provide resources for such a mission, the often constrained rules under which the UN operates, and a more or less universal UN tendency towards bureaucratic inefficiency and, very often, incapacity. Potential contributor states may be unwilling to participate in UN-led missions, or may be unwilling to sustain commitment to such missions for an extended period (Guehenno 2008).

With the possible exception of strategic interest, the claim of a dominant constituent group has no rational prior claim to the territory occupied by another group. Should it assert such a claim, it then undermines the basis of its own claim to territory, and manifestation as a state. That is, if the idea of sovereignty is to assert authority over a specific territory in pursuit of the commonly identified interests of a politically bonded group of people then, short of strategic interest, a state should have little concern over whether or not a geographically specific, differentiated politically bonded group within its claimed territory seeks its own territorially based self-determination. Where claims against this are made, they generally reflect the above noted strategic interest, often combined with economic interest and concerns about the protection of minorities within the claimed territory, as has occurred in Sri Lanka, Aceh, West Papua and Mindanao.

While the case study countries formally recognize ethnic minorities, each has dominant ethnic majorities: Javanese in Indonesia, Sinhalese in Sri Lanka and Christians in the Philippines. Where that civic national identity building project fails (e.g. Indonesia prior to 2004), or fails to maintain its earlier promise (e.g. Sri Lanka, Philippines), in so far as a national identity is constructed, it can in a functional sense tend to be ethnically or normatively exclusivist, and hence alienate minority ethnic groups from the national project.

By way of illustration, as noted by Miller in this volume, expectations within Aceh upon Indonesia's independence were that the post-colonial independent state would attain a high level of autonomy within a loose federal framework, so as to functionally determine its own affairs. However, Aceh's loss of provincial status and Indonesia's reorganization as a unitary state was
regarded as betrayal, leading to rebellion (Reid 2004; Kell 1995). The failure of the “special administrative” status of Aceh intended to resolve this conflict led to the Free Aceh Movement (1976–2005) (see Miller in this volume).

The situation was somewhat different in West Papua, as a later inclusion into the state (functionally 1963, formally 1969) (see Singh in this volume). In this case, initial aspirations were oriented towards complete independence, rather than being subsumed into Indonesia (GoN 1961, pp. 10–14). Thus, the aspirations of independence were replaced by what many in West Papua viewed as a further form of colonialism. Similar was the situation of East Timor, which proclaimed independence on 27 November 1975, in the hope of achieving international recognition to deter an imminent Indonesian invasion. On 7 December 1975, however, Indonesia formally invaded East Timor, ushering in a new era of colonialism, until 20 September 1999 (after which there was an interim UN administration until 2002) (see Soares in this volume). In Sri Lanka, initial hopes for post-independence development were in significant part met by a democratic government presiding over relatively high levels of human development. However, an assertion of Sinhalese majority rights at the expense of the Tamil minority quickly alienated much of the Tamil population, leading to communal discord and violence (see Uyangoda and Sahadevan in this volume).

In East Timor, the UN mediator monitored and, following a UN-supervised ballot (and brief forced withdrawal), oversaw peacemaking, peacekeeping and institution building. Alternatives to this general model generally focus on other than complete independence, including types of partial devolution, including localized decision-making (Sri Lanka under the 1987 Indo-Sri Lanka Accord), regional autonomy (Aceh, Hong Kong and Bangsamoro), federation (proposed by both the Government of Sri Lanka and the LTTE in March 2003 (RNMFA 2003) and confederation (as mooted by the LTTE until November 2007). The main difficulties with these alternatives, in particular with localized decision making and regional autonomy is that the devolved powers may be easily subverted in practice, meaning that the form but not necessarily the substance of separatist claims is addressed. A further implication of this is that separatist claims may continue or resurface.

In Aceh, international pressure for a resolution to that conflict quickly developed following the 2004 tsunami that left around 200,000 people dead or missing and destroyed much of its infrastructure. The Indonesian government had been seeking a resolution to the Aceh conflict under the terms
of its "special autonomy" package, and sought mediation by the Helsinki-based Crisis Management Initiative. On 22 December 2004, GAM agreed to CMI mediated talks. The tsunami struck two days later, and while it was not the reason for the talks, it did act as a catalyzer and compeller. GAM accepted a more genuine autonomy under the term "self-government", including greater local democratization, with the government agreeing to external monitoring of the eventual agreement by an E.U.-led Aceh Monitoring Mission (Ahtissari 2006).

In West Papua, the Indonesian government has said it would talk with separatist leaders, but only within Indonesia and without international mediation. These two criteria were rejected by West Papuan separatist leaders. In principle, however, negotiations had been agreed to. In Sri Lanka, however, negotiations had at best achieved a ceasefire (2002–January 2008) but, unlike the 2005 Aceh resolution, without attempting to address, substantively, the underlying causes of the separatist conflict. As a consequence, this ceasefire only entrenched existing positions and, when circumstances changed around the agreement, the agreement itself began to unravel. In this respect, peace agreements, regardless of whether they contain measures to address substantive claims, only succeed in so far as the parties to the agreement honour both the letter and the spirit of the agreement. If the agreement does not address substantive issues and there is no clearly identified mechanism by which the aspect is envisioned to proceed, it is commonly only a matter of time before the ceasefire collapses.

Other factors that also play a critical role in separatist conflict resolution include the capacity of the mediation party, the extent of the "parent" state government to negotiate sovereignty, the extent to which causal issues underlining separatist claims are addressed, international guarantees and sanctions, agreement monitoring, the capacity for extended multilateral peacekeeping operations, and the extent of commitment to institution and capacity building measures. It is also imperative that representative parties to the talks have the capacity to legitimately represent their constituencies, and are able to compel compliance with their decisions among potential or actual dissenters.

In summary, autonomy or other mediated solutions to separatist conflict appear to take a number of increasingly conventional features of negotiation processes intended to assist resolving separatist conflict. This idea has problematic features, these include a prima facie assumption that the complete or partial sovereignty for the autonomous region is a legitimate condition. While many and perhaps most separatist movements have some
legitimacy to their claims, based on ethnicity, territory and a sense of lack of belonging to the “parent” state, the assumption that the parent state will negotiate away elements of its sovereignty contradict the conventional sense of state sovereignty. Few states are willing to do this, and most that do only do so through a lack of options. That is, mediated outcomes that reduce state sovereignty are implicitly pro-separatist in its outlook, which may be a legitimate perspective but is unlikely to earn the trust of guardians of parent states. To this end, autonomy proposals must be neutrally balanced to allow parent states to engage in negotiation without understanding that, to paraphrase Oscar Wilde, the status of the claimant state has been established, and they are only haggling over the terms.

The mediated model also aspires to a universality of application, especially in its “earned sovereignty” guise, which demonstrates both the strength and the weakness of the legal academics who have tended to dominate discussion of the idea. Attempts to codify a conflict mediation model appear to be intended to serve as a kind of statute for the resolution of separatist conflicts. Yet, while many and perhaps most of the abstract underlying features of such conflicts are common enough, short of a lack of self-determination being given the status of a crime against humanity, there is no global legal mechanism which could impose such a statute. Nor, in a world that to a large degree remains based on both the legal and practical inviolability of sovereign states, are states likely to recognize such a statute. As a consequence, one of the realities of conflict negotiation that remains intact, is that the negotiating table is the place where the rules of the game are made as the game progresses and are, in large part, determined by the respective capacities of the bargaining parties. In reality, a state in a relatively weaker position will concede more, and a state in a relatively stronger position will concede less (Habeeb 1988).

Finally, given that sovereignty is the principal reason for the being of the state, placing it on the table as a prima facie point of negotiation is likely to lead to automatic state rejection. It may be in practice that any negotiation, which implies compromise, will lead to a practical reduction in the extent of state sovereignty. But this need not be posited as an implied outcome in order to achieve a successful resolution. What is more of concern, and relevance, is that any negotiated agreement be codified in ways that are consistent and mutually agreeable and, so far as is able, enshrined. The principal method of achieving this enshrinement is through constitutional amendment or rewriting. Employing “constitutionality” rather than “sovereignty” then sidesteps the issue of sovereignty while at the same time formalizing and, in legal terms, guaranteeing the negotiated agreement.
This then brings the process of negotiation back to first principle issues; what does each party claim, why do they claim it, and can the underlying concerns that inform their claim be met by an alternative arrangement. In most cases of separatism, the claim for a new state is based on the failure of the existing state to adequately address the legitimate concerns of a territorially specific ethnic group. This is usually as a consequence of the failure of the state to regard, both, its citizens as equal and their concerns as equally important. This then raises the question of the origins and nature of the state, and whether this can be changed to accommodate the legitimate grievances of separatist claimants, whether there is sufficient capacity to change or trust in such change, or whether the conflict has become so bitterly entrenched that the only option is for a degree of separation or divorce. Assuming no or little capacity for state change, or a lack of trust in state change, then partial sovereignty, autonomy, federation or confederation may be acceptable solutions. In each of these circumstances, a return to and reliance upon law as the basis for legitimacy appears as a necessary precondition. This implies a focus on constitutionality as the primary guarantor of political arrangements, rather than the more blunt claims of sovereignty or its diminution. The proposal put here, then, is that separatist conflict can be resolved through a mediated approach intended to institute or re-institute state or sub-state rule of law. The outcome of such a process will, therefore, be what could be referred to as "mediated constitutionality".

Notes


The claims of the LTTE have shifted at different times according to changing circumstances, and have included federalism, confederation and absolute independence.

By way of illustration of the local meaning of autonomy, the local military organized “pro-autonomy” militias referred to themselves, overall, as the *Pasukan Perjuang Integrasi* (Integration Fighting Force).

A similar claim can also be made for multi-ethnic states that are compelled through a variety of circumstances to come together as political unities, Bosnia-Herzegovina being a case in point.

Payne (1969), for example, refers extensively to the post-revolutionary but pre-industrial nation of France.

This refers to both further minorities as well as residual elements of the original majority, e.g. Sinhalese and Muslims in the claimed Tamil Eelam and Gayo, Alas and transmigrant (predominantly Javanese) minorities in Aceh and similar transmigrant and economic migrant minorities in West Papua.

Indonesian forces had engaged in cross-border incursion for the previous ten weeks.

As defined by the Human Development Index.

Bangsamoro in the southern Philippines was, at the time of writing, being negotiated between the Government of the Philippines and the Moro Islamic Liberation Front, with agreement on the concept of an autonomous administrative region, but talks stalling over technical details, including seabed boundaries and division of economic resources.

This position was confirmed a number of times but, most uniformly, at a meeting of leaders of separatist groups at a secret location in September 2007, at which the author was present.

References


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