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## CREATION OF CONSTITUENT UNITS IN FEDERAL SYSTEMS

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# CREATION OF CONSTITUENT UNITS IN FEDERAL SYSTEMS

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## Executive Summary

Federal and devolved systems of government are based on a territorial delimitation into political states, provinces or regions (constituent units: CUs). When previously unitary countries enter into a constitutional transition to federalism, delimiting the new CUs can be politically controversial and even an obstacle to achieving federalism. Several countries have confronted this issue recently or are currently engaged in doing so. Their success has varied considerably. This paper looks at the experiences of over 20 federal and quasi-federal countries in defining new CUs. It examines both the issues around CU definition during a period of constitutional transition as well as the rules that have been developed for the incremental creation of new CUs once a federal constitution has been adopted. Some lessons are drawn regarding approaches to timing of CU definition, criteria, decision-making processes during transitions and longer-term rules that may be appropriate in different contexts.

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## 1. Introduction: The Issue

The territorial division of a country into constituent units (CUs) with some constitutional autonomy is perhaps the most striking feature of federal regimes.<sup>1</sup> The configuration of CUs within a federation—their number, relative sizes, different demographic and economic characteristics—are fundamental to the operation of the political regime. Despite this, the voluminous literature on federalism has paid relatively little attention to how federal political maps have been drawn and revised and there is no synthetic comparative study available. This Working Paper seeks to address this important lacuna.

This question is timely because there have been several recent cases of federations dealing with the issue, while a number of transitional regimes are currently struggling with how to define their federal map. In the past few years, the Democratic Republic of Congo, Ethiopia, Iraq, Kenya, Nigeria, Somalia, South Africa, and Spain<sup>2</sup> have been going through constitutional transitions towards federal or devolved arrangements including the creation of new CUs. CU definition is currently a contentious issue in Libya, Myanmar, Nepal, Somalia, and Yemen. These are cases of major constitutional transitions dealing with demands for devolved governance, whether federal or of some other form. Some have been successful—whether quite easily or after considerable political stress—but others have found that defining new CUs has proven a stumbling block that may prevent agreement on a new constitution or at least be a major piece of unfinished business after the new constitution, nominally federal or devolutionary, has been approved.

Even federations that have long since resolved their major constitutional issues may face demands for new regional units or boundary adjustments. India is perhaps the most striking case where the whole map of the states has been fundamentally redrawn within an established regime, while Nigeria did a fundamental

redrawing of its map, though in a non-constitutional manner. There have also been less wholesale adjustments in which established federations have created new political units through division or amalgamation of existing states or the creation of new states out of formerly federal territory. Finally, a few federations have made boundary revisions between existing states.

The politics of defining territorial units or of modifying borders is rarely easy and it can be extremely high stakes and difficult, even for quite limited changes. Moreover, the processes, rules and criteria for a wholesale drawing or redrawing of a federal map can be quite distinct for those appropriate for more limited exercises in which the most current states are not affected—as with the amalgamation of two states, carving a new state out of one or more existing states or out of a federally administered territory, or simply redrawing a boundary between two units.

This Working Paper examines experiences in several countries around these issues and concludes with some reflections and lessons learned. A short manual will be prepared to assist those who might be dealing with such issues, especially in countries going through constitutional transitions.

## 2. Fundamental redrawing of a political map

### 2.1 ALTERNATIVE TIMINGS FOR MAJOR REDRAWING OF POLITICAL MAPS

The “classic” federations—the United States, Switzerland, Canada, and Australia—came into existence largely through the coming together of previously separate units that were maintained under the new federal constitution. (Canada is a minor exception in that the united province of Canada was divided into Ontario and Quebec, which had existed 27 years before.) Thus the CUs were a given in these cases. By contrast in more recent cases of forming federations, it has been necessary to draw a new political map at the time of the transition to federalism, or some years after the transition. In some cases, federalism was established in the new constitution without resolving the establishment of at least some CUs. And there are countries currently engaged in

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<sup>1</sup> This Working Paper will use the language of federalism and federal regimes broadly. Some of the regimes discussed do not describe themselves as federal, though in many cases they are treated as such by political scientists. The analysis includes a few cases that might better be described as “devolutionary” than federal, but there seems little need to make this distinction for our purposes.

<sup>2</sup> Annex One contains brief case histories of twenty countries discussed in this Working Paper.

potential federal transitions where the political map is an issue.

### 2.1.1 Drawing a new political map in the transition to federalism.

For a federation to be fully functioning, there are clear advantages to resolving the federal map from the outset. This was the experience in South Africa, Spain, Ethiopia and Kenya as well as in Germany and Bosnia-Herzegovina (though both with minor exceptions). The Democratic Republic of Congo adopted a new map but failed to implement it.

*South Africa* adopted a centralized form of federalism in the 1990s largely as a concession by the African National Congress to the Inkatha Freedom Party and the National and other parties supported by the white community. It had to redraw the map because the preceding regime of four provinces in what had been predominantly white areas and eight bantustans in what had been “native” areas was inappropriate for an integrated regime. It now has 9 provinces.

*Spain* adopted federalism in the 1970s and 1980s largely in response to demands from the “historic nationalities”—the Catalans, Basques and Galicians. Its 50 administrative units called provinces were considered too many for a devolved political regime and in several cases neighboring provinces had a natural affinity. After restructuring, it now has 17 “autonomous communities”.

*Ethiopia* had been politically centralized both under the Imperial regime of Selassie and the strongly authoritarian Derg, which replaced it. The Derg was defeated by a coalition of rebel forces each of which was based on a major ethnic group. The new regime, under Meles Zenawi, moved quickly to create a structure of 13 regional states (and two national cities), though this was reduced to 9 when five states were strongly encouraged to form the Southern Nations, Nationalities and Peoples’ Regional State.

*Kenya*, which is not strictly federal but has adopted a formally devolved regime, is a case of a unitary regime that devolved by reverting to a map dating from 1992 of 47 administrative districts, which were renamed counties. Kenya had had about 76 districts since at least 2000, so the needed mergers meant that many tribal groups again became minorities in larger areas.

*Germany* adopted federalism in 1948 as part of its transition from rule by the Western Allies. The initial federation had 11 *länder* based on the units determined by the Allied powers who had redrawn the country’s internal boundaries. Some of these were based on earlier states of the Weimar regime, while others were created out of the old Prussia and other states. A central concern of the Allies was to avoid any one land being too large and dominating the federation as Prussia had in the old Empire. There was one piece of unfinished business when the new Basic Law or constitution came into effect: the Allies had reconfigured the two previous units of Baden and Württemberg into three *länder* and the new constitution provided for an advisory referendum on their possible merger; a vote was held in 1952 and the three were merged in 1953.

*The Democratic Republic of Congo* adopted a new constitution in 2005, which provided for a new semi-federal structure of 26 provinces based on district divisions within the existing 11 provinces. While the issue appeared resolved and was to be implemented within 36 months, nothing was done and the future of this arrangement appears very doubtful given the political difficulties there.

### 2.1.2 Redrawing a political map a few years after adopting federalism

*India* is a rare case of a country embarking on a federal constitution based on what was widely recognized to be an interim political map, with the longer-term map to be settled later. At independence in 1948, the initial federal structure was fashioned out of what had been nine provinces under direct British rule, 19 states (in two classes) and some 560 princely states. The new arrangement amalgamated some princely states with provinces and others into new clusters. There were three categories of states with varying degrees of autonomy. It was recognized that this was an interim set-up, but the issue of a new political map was put off, partly because the country had just been through the trauma of partition from Pakistan. To facilitate state reorganization, the Constitution gave Parliament the authority to act on its own, through a simple majority. In 1953 the first new state, Andhra, was defined on linguistic grounds. A major process of state reorganization was then undertaken to redraw the map systematically. This resulted in 14 states and 5 union territories in 1956.

Two more states were carved out later in the 1960s. In 1972 and then again in 1987 the political map of the Assam, in the northeast, was radically redrawn, resulting in six states and one union territory out of what had been one state. A third round saw three more states created in India in the 2000. In February 2014 the Indian Parliament approved the creation of a 29<sup>th</sup> state, Telegana, came into existence in June 2014. There are also seven union territories, which have less autonomy than states.

When *Nigeria* became independent, it was a federation based on three units inherited from the imperial era, each dominated by a major ethnic group. This arrangement (which became four states in 1963) exacerbated political divisions, so in 1967, General Gowon, who had come to power through a coup within a coup, created a 12-state federation. In the following years, his military successors created progressively more states, so that by 1996 there was a total of 36. The demand for new state creation has been very high since the return to civilian rule in 1999.

India and Nigeria are the only cases in which a federal map was given a root-and-branch rewrite over time. In both cases, there was a complete map of CUs when the federation was set up and this permitted the federation to function. However, the territorial structure was unsatisfactory in both cases, which led to the fundamental changes in due course.

### 2.1.3 Adopting a “federal” constitution without resolving the political map.

The experiences in Iraq and Somalia have been quite different. In these countries the constitutional process led to an agreement on federalizing, but without resolving what the ultimate CUs would be and without even an interim map of CUs covering the entire territory. This has necessarily limited the extent to which the federations have become fully operational.

*Iraq’s* Constitution of 2005 was written in a context where the Kurdish region, made up largely of three historic governorates, was already a fully functioning government, while other regions had no experience of devolved government. The form of federalism—and federalism itself—was very much contested. The Constitution provided for the possible creation of “regions” through the transformation of existing governorates (there are 15 outside Kurdistan) or their amalgamation, but so far none have amalgamated or

been transformed into regions, so the federal structure is highly asymmetric in practice. There are also deep differences between Kurdistan and the federal government over “disputed territories” which remain unresolved.

*Somalia’s* Constitution of 2012 was endorsed by an unelected parliament at a time when the government had little presence in most of the country, which was occupied by hostile Al-Shabaab forces or under regional governments that had grown up in the political vacuum. The country had 18 regions in 1991 (and three of these and parts of two others are in break-away Somaliland). The Constitution provides that the new regional states shall be composed of two or more of these regions amalgamating. However, the de facto regional governments do not correspond to such boundaries and much of the country is still under rebel control. In practice, the governmental regime is highly asymmetric, with Somaliland effectively independent, Puntland highly autonomous, and an ongoing process of state formation in parts of the rest of the country.

### 2.1.4 Unsettled cases

Several countries currently engaged in constitutional transitions are debating the extent of their future devolution as well as the CUs that would be part of the new regime. The issue of defining the CUs can be a major stumbling block.

*Nepal* reached a comprehensive peace agreement in 2005 and in 2007 it elected a new legislature that was also a constituent assembly. A weak consensus developed around adopting a federal structure, but there were deep divisions over ethnic versus territorial federalism, which the constituent assembly was unable to resolve, despite two extensions to its two-year mandate. In late 2013, a new legislature was elected with a very different partisan composition than its predecessor, so it remains to be seen if it will adopt a federal constitution and, if so, based on what map.

The Republic of *Yemen* was formed in 1990 out of what had been two independent Yemeni republics. The new country became highly centralized. The uprising of the Arab Spring overthrew the regime, which was succeeded by an interim government and a participatory process to draft a new constitution. A key challenge in this has been finding a formula that will reconcile the old South, where secessionist

sentiment is strong, with the North. The constitutional process reached a weak consensus on federalism and early in 2014 a committee named by the President approved the division of the country into six regions (each made up of some of the existing 21 governorates), a national capital district and a city with special status. This is still not formally ratified and it may prove controversial.

*Libya* had a weak federal arrangement of three provinces from 1951 until 1963, when the federal structure was abandoned and 10 governorates were created. Some form of devolution is being discussed as part of the country's constitutional process, but there are strongly opposed views on the territorial structure of the state because of the many tribal and ethnic groups as well as the regional concentration of petroleum resources.

There is strong pressure for federalism in *Myanmar*, which the President has endorsed as an objective, but it will be highly contentious to determine the number and boundaries of states as the constitutional process progresses.

## 2.2 PROCESSES FOR MAJOR REDRAWINGS OF POLITICAL MAPS

There is a major difference between processes for major redrawing of a country's political map and incremental changes to such a map. Major redrawings vary greatly, notably in the extent to which they are participatory and consensual, as well as in their use of advisory commissions or external actors.

### 2.2.1 Centrally determined, weakly consultative processes

In *Ethiopia* the decisions regarding CU boundaries were essentially made within the ruling coalition, which had not been elected at that stage but which represented the militias of the major ethnic groups. The process had minimal openness and very limited public consultation. This is paradoxical, in that the Ethiopian Constitution provides for "every nation, nationality and people living in a contiguous territory" to have an "unconditional right to self-determination". It was in recognition of this that thirteen largely ethnically defined regional states were created; however, this was reduced to nine, when five states in the south were strongly induced to merge into one very heterogeneous state. The Constitution extended the

right of self-determination to qualifying nationalities or peoples within the states in that they could opt for an enhanced form of local government: some 30 special governments were created, but the ruling party then shut the process down, despite many outstanding claims.

In *Nigeria*, the major exercises of state creation were conducted by the military regimes using decrees rather than following the procedures set out in the constitution. The first major exercise (going from 4 to 12 states in 1967) was conducted without input from an advisory group, but after that the ruling generals established advisory committees of different kinds that conducted consultations. Though their recommendations were not followed closely the ruling generals showed some sensitivity to political pressures. General Babangida created eleven new states and then General Abacha created a further six.

In *Yemen*, the nine month National Dialogue process was unable to reach a consensus on the new regions, so after it ended the President named a commission of fifteen members representing the major political parties and forces (but not the separatists of the South) to make a recommendation. The commission did not have public hearings and received only limited technical advice. It quickly decided on six regions, which was the President's preference after consultation with key political leaders. This is to be the basis on which the new constitution is drafted; the final steps for the adoption of the constitution have not been decided: in principle, there is to be a national referendum but it is not determined what majority would be required for approval.

*Sri Lanka* is a case where the national government reached an agreement with an outside power on internal political arrangements. The Sri Lankan and Indian governments negotiated a settlement relating to the Tamils after India's intervention in the civil war. It provided for constitutional changes to establish elected councils for what had been the administrative provinces of Sri Lanka. While the definition of the CUs was not an issue for most of the country, there was to be an elected council for a merged North-Eastern province, which would have a Tamil-speaking majority. The population of the Eastern province, whose support for the merger was very uncertain, was to have the opportunity to vote on it within a year, but no vote was ever held. The new arrangement failed politically and the North-Eastern council was dissolved. The current councils are based on the old provinces, with the North



and East separate, and the devolution of political powers is severely limited.

### 2.2.2 Centrally determined, strongly consultative processes

In contrast with such top-down processes, two federations have made extensive revisions to their political maps through processes that involved significant consultations, even if the final decision was made by the central authorities.

*India's* States Reorganization Commission in the 1950s held extensive hearings and received thousands of submissions over a two-year period: its recommendations for the major restructuring were largely accepted by Parliament, which had the authority to decide such matters by simple majority vote: Over time, there were a number of separate exercises to address demands for new states and fourteen new states were created. These typically involved extensive consultations including the consent of the legislature of any state whose territory was reduced as well as the active involvement of Parliament; in the case of Nagaland, its creation resulted from a peace negotiation with the rebels. In early 2014 the Parliament voted to create Telegana over the objections of the parent state, but this reflected strong support from the population in the area of Telegana.

The *South African* process was agreed in 1993 as part of the larger constitutional negotiations: a fifteen-member commission, representing the various political forces in the country, was established with a mandate to recommend the number and boundaries of new provinces, subject to several criteria. The commission held hearings and received submissions. It reported within six months and its recommendation to create nine provinces—based largely on existing “development areas”—proved very controversial but was eventually largely accepted, with some minor adjustments, in a deal amongst the major political parties. Provincial governments were then elected (at the same time as the new national government) on the basis of the interim Constitution. The new national Parliament, including the upper house composed of members representing the provincial legislatures, then ratified the new Constitution (with some changes, but not affecting provincial boundaries).

*Kenya*, while not federal, also had a consultative approach to deciding on the new map of counties. This was done initially through the constitutional commissions holding hearings and receiving submissions and subsequently by the involvement of all parties in ratifying the draft constitution in Parliament before it was submitted to national referendum.

### 2.2.3 Regional decision subject to central rules and criteria

Three countries, Spain, Somalia and Iraq, have had processes for determining CUs in which the decision is essentially made at the regional level, subject to certain criteria set down by the central government or constitution. The Spanish criteria are the most constraining. In all three cases, the formation of CUs is to be based on existing units (alone or in combination) rather than on new boundaries being drawn.

*Spain* had a very creative process, which permitted local decision-making on the creation of the new “autonomous communities”, which in most cases were to be made up of combinations of the existing 50 provinces. Elected municipal representatives in each province were to decide, subject to nationally established criteria, what they wished to do about their province’s future regional status. Decisions required the consent of two-thirds of the municipalities representing at least 50 per cent of the population (there were no elected officials at the provincial level). Provinces also had the option, which a few exercised, of holding a referendum on their decision. Provinces that had not decided to become or join a region within six months would remain as administrative units for at least five years, before they could consider the issue again: thus there was a strong incentive to decide. The mechanism was effective in getting timely decisions in all cases and 17 autonomous communities were created out of the 50 provinces.

The procedure in *Somalia's* interim constitution appears similar to Spain’s in that there is to be a process for two or more of the existing 18 regions to combine voluntarily into a member state of the federation. The constraining criterion is that a member state must be formed of at least two regions. At the same time, a yet to be established National Boundaries and Federalism Commission is to

recommend the number and boundaries of member states to the House of the People, which would make a final determination. In practice, there are developments on the ground that appear to run counter to the constitutional provisions, notably in potentially dividing one or two regions between member states and in giving the capital, Mogadishu, separate status, perhaps with additional territory. In the North, there is a popular movement for a new state that has no recognition as yet. And there is considerable confusion regarding possible state arrangements in the area claimed by both Somalia and the breakaway Somaliland. Thus it appears some flexibility may be needed in the rules for forming new member states out of combinations of existing regions. Of course, the security situation has made it impossible to proceed very far with the implementation of these procedures. Currently Puntland is the only region with a fully functioning government. There has been progress in discussions in the Southern region (where there are competing proposals for states made of three and six regions) and in the middle of the country.

Finally, in *Iraq*, regional populations or representatives are to decide on creating new regions subject only to the constraint that regions are to be based on existing governorates, singly or in combination. The *Iraqi* Constitution of 2005 provided for the federal territorial structure to be based on regions, which would have significantly more autonomy than the 18 governorates. It recognized Kurdistan as a region composed of three former governorates and provided for other governorates to opt for regional status, singly or in combination, through a referendum vote, which could be initiated either by a third of the members of the federal lower house from the proposed region or by a petition of one-tenth of the voters in each of the governorates. In the event, no such referendums have been held and no new regions have been created because of the hostility of the federal government to federalism.

#### 2.2.4 International Arbitration

International arbitration or mediation can play a vital role in brokering settlements to civil conflicts and the can include helping to resolve issues relating to internal boundaries.

The Dayton peace accord of 1995 on *Bosnia-Herzegovina* included highly detailed maps regarding

the internal division of the country; these largely recognized the ethnic distribution of the population following mass displacements. One unresolved issue at the time of the accord was the Inter-Entity Boundary Line through the district of Brcko, which divided the two parts of the Republic of Srpska. The district was placed in temporary custody of the Republic of Srpska, subject to some oversight and obligations regarding minorities and displaced populations. The division of the district was to be settled within a year, but this proved impossible. The Republic of Srpska's conduct of its custody was unacceptable, so in 1997 the arbitration tribunal placed Brcko under international supervision and eventually, in 1999, it established the Brcko district as a multi-ethnic and democratic unit of self-governance, but under international supervision. It also abolished the notional boundary line through the district. In 2012, the supervision was suspended, subject to various safeguards. Thus what had started as an exercise in boundary delimitation ended with the creation of a new political unit.

Even before the passage of *Iraq's* federal Constitution in 2005, the Transitional Authority had provided for arbitration to revise the administrative boundaries of the "dispute territories" between the Kurdish and Arab parts of Iraq, including Kirkuk. This has been a politically volatile issue in defining a federal map for Iraq. The Constitution built on the transitional provisions and required a census and referendum in the disputed territories so as to achieve a permanent resolution by 2007. Neither a census nor a referendum has been held and the dispute is unresolved. The United Nations, while not a formal arbiter, brought forward alternative approaches, based on detailed studies of 15 areas in terms of history, geography, natural resources, past-Arabization, wars, and demographic shifts. Its options included Kirkuk remaining a governorate, its being under shared administration of Baghdad and Irbil, and its being a "special status" governorate or region. For other areas, it recommended various forms of power-sharing. The report was not acted upon.

There have been extensive diplomatic efforts to find a constitutional solution for a united *Cyprus* since the island's violent partition in 1974. An agreement was reached amongst the parties in 2004 for a bi-zonal federation, which was to be very devolved with strong elements of power sharing in national institutions. The identity of the two CUs was never in question, but a

major issue was the delimitation of the boundary between them. The process of drawing alternative new maps was led by a UN representative, who applied a number of criteria. After consultation with the parties (but not the locally affected populations), the UN Secretary General made the final choice. This was included in the whole package of the settlement, which was then put to a referendum in which the Greek population voted against the agreement, which then failed.

### 2.2.5 Processes compared

The contexts of the cases reviewed above were very different and this has been reflected in the processes adopted. It is striking, however, that few cases had processes for drawing a political map where local inputs were determining. The processes tended to be top down, with varying degrees of consultation and political sensitivity. The final decision was sometimes made by the government or governing party alone or the central legislature; occasionally outside actors played a key role either as direct parties to negotiations or as arbitrators or mediators. The most notable exception to the top down approach was in Spain, where the decision was delegated to provinces, which could decide on merger, subject to various very limiting criteria set by the central government.

Decision rules have usually been quite permissive for centrally determined processes in that they did not require very high super-majorities and there were relatively few “veto” holders. This is in strong contrast with the procedures, discussed below, that apply for incremental creation of CUs in many federations once a new constitution is in place and longer-term rules are established. In the Ethiopian and Nigerian cases, the ultimate decision lay with the country’s leader or a small coterie around him; the decisions were not made subject to constraining constitutional rules—indeed not made subject to a constitution at all. The major Indian state reorganization in the 1950s, while constitutional, was by simple majority votes within the two houses of the Parliament, without the consent of either the states that were being abolished or the consent of the populations affected (though there were extensive consultations). The drafters of the Indian Constitution of 1950 deliberately created a facilitative decision-rule for state reorganization.

The South African reorganization was also done subject to a relatively easy decision-rule: the

Constituent Assembly basically operated on consensus amongst the two dominant groups in determining the draft constitution, which was eventually ratified by simple majority votes in the two houses of the new Parliament.

The centrally determined cases did not provide for public consultation by referendum on a new political map as such. At most, as in Cyprus, Kenya and potentially Yemen, the population could vote to ratify a new constitution including the defined constituent units. There are strong reasons for the absence of national referendums on a new political map. An overall majority in favor could be contested if certain parts of the country rejected the map. If one unit voted no and it could throw into doubt the proposed arrangements with contiguous CUs. Thus, referendums are more appropriate for a national vote to ratify a constitution in its entirety than for seeking public consent to the details a new political map. Such a lesson may be important in Nepal and eventually Myanmar.

Spain stands out as the exception in successfully providing a role for local voice in deciding the constituent units. However, this was only possible by narrowing the possible choices of local populations to merger partners but not to modification of existing provincial boundaries. In principle, Iraq has provided for similar local voice, but in practice the process of creating regions has been put on hold.

Given the usual absence of referendums to establish local views when a new political map is being prepared, the use of advisory commissions can be helpful, especially if they can receive submissions, conduct hearings and make public recommendations. If such commissions are established with relatively clear criteria and staffed with professionally qualified individuals, they can help steer the issue away from partisan politics and find approaches that may win broader support. This has characterized the Indian experience in most cases, as well as that of South Africa. It was even used at different points by the military leaders of Nigeria. India, South Africa and Spain all had democratic political institutions with a relatively high level of legitimacy that oversaw the mapping exercise.

Finally, the use of international arbitration in the Bosnian case did eventually produce a resolution, but this was only possible given the exceptional authority of the international community through the High

Representative and the Tribunal. The case of Iraq's disputed territories underlines the limitations of a paper commitment to arbitration when there is no real enforcement mechanism. Cyprus and Sri Lanka also illustrate the potential and the limitations of international intervention.

### 3. Procedures for incremental state creation in federations

While some federations have confronted the need to draw a political map at the time of their founding and very occasionally—India and Nigeria—federations may do a major redrawing of their map at a later point in their history, it is more common in established federations to have more limited exercises on an incremental basis resulting in the possible creation of new CUs, the merger of old ones, or simply boundary adjustment without undertaking a fundamental redrawing of the political map. This was especially true in the “settler” federations of the Americas and Australia, which early in their history had large and thinly populated territories that were under federal direct administration; new CUs would be created out of these territories as they became populated. Typically the rules for such incremental CU creation are embedded in the constitution. The criteria for CU creation may be similar whether for a major redrawing of the political map or for incremental changes. Moreover, the distinction between major restructurings and more marginal exercises can blur on occasion. India has added 15 states since it was restructured into the original 14; the 15 new states have been created individually or in small groups. The most radical restructuring has been in Assam, where 6 of India's 14 new states were created between 1963 and 1987. Nigeria has grown to 36 states from the 12 that existed after its initial restructuring, but this was done by military decree, outside of the constitutional rules.

Some “settler” federations have added CUs over time. The United States has grown to 50 states from its original 13, largely reflecting the country's progressive westward expansion. Only 3 new states were carved directly out of the original thirteen (though several original states lost Western territory to the federal government in the early days of the Union); all the rest were created out of federal territories or admitted directly as states when they came into the Union.

Similarly Canada created its three Prairie provinces out of federal territory (and added federal territory to other provinces) and nine of Argentina's 23 provinces were created out of “national territories” between 1951 and 1990. Creating new CUs out of federal territories does not require a restructuring of existing states.

Whereas a major redrawing of the political map poses significant issues of timing notably in relation to constitutional transitions, incremental CU creations and boundary revisions more typically reflect changing circumstances, whether political or demographic, to which the system had to respond. Constitutional rules relating to CU creation can be considered along two axes: the first considers *which actors* are empowered to play a role (national legislature, state legislatures, affected populations); the second, *what level of consent* must be obtained (high, medium, low).

#### 3.1 NATIONAL LEGISLATURE ALONE

India and Kenya permit the national legislature alone to decide these issues. *India* has the lowest legal threshold for the creation of new CUs or modifying boundaries. Articles 2 and 3 of the Constitution were drafted in full expectation that there would need to be a major state reorganization. They permit the creation of new states or modification of boundaries by simple majority vote in the two houses of Parliament, though before Parliament may act the legislatures of the affected states should have the opportunity to “express themselves”. In practice, the right of affected states to express themselves has proven politically potent: all new state creations after the major reorganization of 1953 until 2000 were done with explicit approval of the affected states. In some cases, originally proposed state boundaries were changed because of objections by affected states: thus the original proposal that the new state of Jharkhand be carved out of four existing states was rejected because three states opposed any loss of their territory and so a reduced Jharkhand was created out of Bihar alone, which had consented. However, this deference to the states was not observed in the decision of India's Parliament in February 2014, to create a new state of Telangana over the objections of the affected state of Andhra Pradesh.

*Kenya's* Constitution of 2010 provides that decisions on boundaries of counties be made only to give effect to a resolution recommended by an independent commission named by Parliament; such decisions require a two-thirds majority in both houses of Parliament (the upper house is based on direct

elections with no representation of county governments or legislatures). Such a commission has not been established yet because the new arrangements are very young.

In the *United States*, Article 4 of the Constitution gives Congress the authority to admit new states to the Union by simple majority vote in the two houses and this has applied to new state creations that did not affect existing states. Under the Northwest Ordinance of 1787 territorial governments were to be set up at the initiative of Congress and once a territory achieved a population of 60,000 free inhabitants it was eligible for statehood. Congress frequently adjusted territorial borders, often based on scant information, and a few states were expanded after their admission. Under the Missouri Compromise of 1820, however, the admission of new states was to maintain the balance between slave and non-slave states and slavery was not to be permitted in the former Louisiana Territory north of 36.30 degrees; this was effectively repealed in 1854 when the Kansas and Nebraska territories were given the right to determine the issue by “popular sovereignty”—a decision that led to the creation of the Republican Party and accelerated the drift towards civil war. Only two states have been admitted since 1950: Alaska held a referendum on statehood in 1946 but despite a 60 per cent majority it was not granted statehood until 1959; Hawaii had a referendum in 1959 *after* it had been granted statehood. Neither referendum had any legal effect.

*Belgium* is something of a unique case in that boundaries could be altered or new federal units created by votes within its federal Parliament alone, but the voting procedure effectively requires the consent of the two linguistic communities in that it requires a two-thirds majority of both the Dutch-speaking and French-speaking members of the legislatures plus an overall majority of all members. Thus the legislatures of the linguistic communities play no role, but the procedure is designed to achieve the same effect. Belgian politics has been deeply riven by disputes around even quite minor adjustments to the boundaries of the linguistic communities as well as around the treatment of an electoral district that straddled the Brussels Capital region and Flanders. Both the institutions of government and the political party system have been realigned on linguistic lines and the country has frequently had governmental crises around boundary issues. While there was no question of creating any new CUs, the Belgian case

shows how difficult highly symbolic boundary issues may be. The high decision threshold of paired two-thirds majorities protects the minority, but has created huge frustrations in both communities over issues that can fester for years.

### 3.2 NATIONAL LEGISLATURE PLUS AFFECTED CU OR CUS

Australia, Pakistan, Somalia, Spain and the United States all have rules that envisage both the national legislature and the affected CUs deciding on the creation of new CUs.

*Australia's* threshold is low: under Article 124 a new state may be formed by the separation of territory from a state with the consent of the Parliament of the affected state. Under Article 121 the federal Parliament may, by simple majority vote, admit or establish new states and determine their representation in both houses of Parliament. A movement to create a new state of New England out of New South Wales led to a state sponsored referendum in 1967, which fell just short of a majority; the Premier's decision to include a city that was opposed to division proved critical. The referendum was not legally required.

*Pakistan* has a higher threshold, in that a two-thirds majority is required in both houses of the federal Parliament as well as a two-thirds majority in the provincial assembly of a province to be divided. While there is some agitation for new provinces, the major parties typically oppose having the provinces that are their power bases divided so there is little prospect of change in the near term.

As described above, *Spain* had a complex procedure for determining its autonomous communities, based on the consent of municipal councilors representing two-thirds of the municipalities and a majority of the population in the province. In addition, their choice must meet nationally established criteria and approval (by simple majority vote in the Cortes). These provisions, which were used for the initial creation of ACs, are still in the Constitution so they may apply should there be an attempt to create a new AC.

While the *United States* Constitution permits Congress to admit new states to the Union, any change to the boundaries of existing states requires their consent. Thus new states created in whole or in part out of

existing states require the approval of the affected states. Vermont was admitted in 1791 after a border dispute with New York was resolved. Maine, which had been a non-contiguous part of Massachusetts, was admitted in 1820, after a positive vote in a referendum in Maine that Massachusetts required for its consent. West Virginia was admitted in 1861 in an irregular way as a breakaway part of rebellious Virginia, which did not consent; after the war Virginia sought the return of two counties on the grounds that it had not agreed, but the Supreme Court found in West Virginia's favor.

Similarly, *Somalia* envisages a procedure where to be recognized as a member state two or more existing regions must agree to combine, subject to federal approval. The provisional Constitution envisages a Boundaries and Federalism Commission established by the federal Parliament. This commission would make recommendations on the final boundaries of states, which would then be considered for final decision by the Parliament. In principle, states must be formed out of the coming together of at least two current regions.

### 3.3 NATIONAL LEGISLATURE PLUS LEGISLATURES OF AFFECTED CU OR CUS AND SOME MAJORITY OF ALL CUS

In *South Africa* a change in the boundaries of a province or in the number of provinces would constitute a constitutional amendment that would require a two-thirds majority in the lower house and 6 of 9 provinces approving through the upper house. In addition, any province whose territory would be directly affected would need to consent by a majority vote in its legislature. There have been three boundary adjustments affecting seven provinces since 1996 but no new provinces created.

*Canada* has a very high threshold for the creation of new provinces, including out of territorial lands (or the extension of existing provinces into the northern territories). The provincial creations in the 19<sup>th</sup> and early 20<sup>th</sup> century were done by the federal Parliament alone. However, since the adoption of the new Constitution in 1982, Article 42 requires the consent of the federal Parliament plus two thirds of the provincial legislatures representing at least 50 per cent of the population for the creation of any new province. Furthermore, any change to a province's territory would require its consent, which would apply should a

new province be created in whole or in part out of one or more existing provinces. (By contrast, the creation of new territories out of existing territories is strictly within federal competence. In 1982, the federal government held a referendum in the Northwest Territories on its possible division into two territories. The overall result was positive, but the Western half voted against. However, in due course the NWT legislature approved the split and the creation of the new territory of Nunavut in the East Arctic was approved by 79 per cent of those voting there in a referendum in 1992.)

### 3.4 REFERENDUM-BASED PROCEDURES

Ethiopia, Germany, Iraq, Nigeria and Switzerland all have procedures for creating new CUs that involve referendums (and in some cases a right of initiative). However, the thresholds for approval vary greatly as do the rules regarding the procedure for initiating a referendum. In addition to attaining a specified majority in a referendum, the creation of a new CU may require approval by any affected CU(s) or by some number of all CUs, as well as the national legislature.

*Ethiopia* is unique amongst federations in proclaiming a constitutional right to self determination for all its nations and nationalities. While the process of creating new states in the 1990s was very top-down, the Constitution has a formal procedure that would permit states, by a two-thirds majority of their legislature, to seek a referendum on independence, that would pass if fifty per cent voted in favor. The Constitution also declares that "nationalities" have the right to institutions for common self-administration within the territory they inhabit; however, the procedure for exercising this right is not set out (and in practice it has been constrained), nor is it clear what procedure would apply to the creation of a new state out of existing states.

*Iraq* has a procedure under Article 119 of the federal Constitution whereby one or more governorates shall have the right to organize into a region (the main federal unit) and that one third of the council members of each governorate intending to form a region or one-tenth of the voters shall have the right to initiate the request for a referendum to achieve this; the procedures governing this were to be elaborated by law. In practice, these provisions have not been

respected, despite the clear wish of some governorates to become regions.

*Germany's* Constitution provides for possible revisions to the division of the territory to ensure that each Land is of a size and capacity to be effective. This may be initiated by the federal Parliament or by petition of ten per cent of the voters in a contiguous area (in one or more Länder) of at least one million people. In either case, the federal government may present a law that would create a new Land (or in response to a petition it might present two alternatives in a referendum). In a vote on creating a new land, it shall pass if it achieves a majority in both the area of the new Land and the remaining areas of the affected Land or Länder. If rejected by a majority in an affected Land, it shall pass if it achieves a two-thirds majority in the territory of the proposed new Land while not be rejected by more than two-thirds of voters in the affected Land. This provision, introduced in 1979, reflected the experience of a referendum in 1952 on the unification of Württemberg-Hohenzollern, Württemberg-Baden and Baden into Baden-Württemberg : the two former voted strongly in favor, while Baden voted 52 per cent against. However, a separate, southern Baden was a creation of the Allied occupation and voters in what was the original Land of Baden (including Württemberg-Baden) voted 51 per cent in favor of unification. The total vote in favor was 70 per cent. On this basis the merger proceeded. A referendum was held in 1995 on the unification of Berlin and Brandenburg into a single Land: Berlin voted yes (though split between East and West) while Brandenburg voted 63 per cent no, so under article 29 the merger did not proceed.

*Switzerland's* Constitution (Art. 53) provides that any change in the number of Cantons requires the consent of both of the Cantons concerned together with the consent of a majority of voters and of Cantons in a national referendum. In 1974 a referendum was held in seven Jura districts, which were largely French speaking, of the Canton of Bern asking whether voters wished to form their own Canton; a slim majority voted yes. A second referendum was held in 1975 in which three Catholic districts voted to form the new Canton of Jura, but four districts voted to remain with Bern. In 1977 the population of the new Canton approved the cantonal Constitution by referendum and then the population of Switzerland voted positively to accept the creation of the new Canton, which required a majority of those voting and a majority in a majority

of cantons. In November 2013 there was a referendum in the four districts of Bernese Jura on whether they wished to join Jura. While the overall vote was clearly negative, one district voted 55 per cent yes, so there is now consideration whether that district alone may join Jura. Under Art. 53, such a change would require the approval of the people of the two Cantons and of the federal Parliament (but not of a federal referendum).

*Nigeria* has what are the most stringent rules of any federation regarding the formation of new states. Under Article 8 of the Constitution, a request to establish a new state can be considered by the National Assembly only if it has the written support of at least two-thirds of the members of the proposed area of the new state who sit in the national and state legislatures and local government councils. The request would lead to a referendum in which a two-thirds majority would be required for approval. The result of a positive referendum vote would then need to be approved by a simple majority of all state legislatures and a two-thirds majority of both houses of the National Assembly. To date, no proposal has reached even the point of a duly certified request at step one, though there are scores of demands for new states, based heavily on ethnic or tribal rationales.

### 3.5 PROCEDURES COMPARED

Once federations are established, it is the exception, rather than the rule, that new CUs should be created in whole or in part out of existing CUs. This exceptional nature should be borne in mind because only six of the federations under review have created new CUs in whole or in part out of existing CUs *following constitutional processes*. India is the one federation where incremental state creation has been a repeat phenomenon that seems likely to continue. The United States created three states in whole or in part out of existing states in its first eighty years, Germany created one Land through merger in 1952, Nigeria one state in 1963, Switzerland one new canton in 1977 and Russia has consolidated eleven former subjects into five. All other incremental CU creations were either through turning federal territories into CUs, the accession of new CUs entering the federation with new territories, or non-constitutional procedures as in Nigeria.

The formal rules governing the incremental creation of new CUs may have a low threshold (India's simple majority in Parliament) to very high thresholds (Nigeria's multiple steps and super-majorities; Canada's required consent of 7 of 10 provinces representing 50 per cent of the population). India's system has been well designed for a federation with such a vast and diverse population, where occasional new state creation has responded to clear needs. Nigeria, by contrast, has excessive demands for new states, which federal politicians might not be able to manage were the rules more permissive. So it may have been well served by its very high threshold.

Perhaps the most striking difference is in the role of CUs whose territory has may be reduced by the creation of a new CU. *Most federations require the consent of the legislature of an affected CU if it is to lose territory*, but Ethiopia, Germany, India, Kenya, Nigeria, and Somalia (apparently) do not. Germany is unique in having a procedure whereby the majority of the population in the remaining part of an affected Land can prevent a secession, but can be overridden by a sufficiently high (two thirds) vote in the seceding territory. Federations that do not require the consent of a CU losing territory, clearly see limits on the "sovereign" right of CU legislatures to protect the territorial integrity of the CU.

The other issue is the use of referendums. While it is unusual to use referendums when undertaking major redrawing of political maps (except for the ratification of the whole constitution, which may include description of the CUs) referendums are quite commonly used for incremental changes. Iraq, Germany and Nigeria all provide for referendums in the territory of a potential new CU, while Germany extends this to the residual area of the affected Land as well. (It is not clear how Ethiopia would deal with this, though the Silte people were granted a referendum that led to representation in the House of Regions and a special administrative district. Since then, similar demands have been forcefully rejected. The constitution does provide for referendums on secession from the country.) Switzerland has no constitutional requirement for a referendum at the local level for the creation of a new canton (though multiple referendums were used in Jura), but it does require a national referendum to confirm such a creation.

## 4. Criteria for drawing a federal map or new state creation

Whether a country is engaged in a major redrawing of its political map or simply in some incremental changes, there are usually some criteria about the desired characteristics of CUs that shape the process. These may be set out constitutionally, as in Spain, or simply as terms of reference for a state formation commission. The South African Commission to recommend new provinces was given ten criteria, which it found too many so they were clustered into four broad headings: economic aspects (financial and other costs; inconvenience to the public; limit dislocation of public services; development potential), institutional capacity (availability of infrastructure and points of service; rationalization of existing structures), geographic coherence (past boundaries; physical infrastructure) and socio-cultural issues (demographic, linguistic and cultural). Criteria similar to these recur in other countries. In addition, some countries have been concerned about the overall political geometry of the federation (number, sizes and balance of units), including how to limit the risk of secession. Public opinion can also be a criterion, which can influence commissions having hearings as well as politicians.

The constitutional provisions about new state creation within settled federations are usually heavily focused on the process of initiating and deciding on new state creation, with relatively little regarding the criteria (Germany is perhaps the most significant exception in this regard). However, the support or opposition to proposals for new state creation on an incremental basis inevitably involves debate around the criteria that should be used.

### 4.1 ECONOMIC AND CAPACITY CRITERIA

Economic criteria can include governmental efficiency and effectiveness on the one hand, and economic development on the other. Efficiency is often an argument for limiting the number of regional governments and ensuring each has a minimum size because of the cost of overheads. While there can be a case for avoiding very small CUs, the sizes of units within federations can vary by one hundred-fold or more, so it is not necessary to try to equalize their sizes. However, there can be concern that some regions do not have the human or administrative



resources to manage an effective government. This is more likely to be an issue in poor developing countries, e.g. it may explain why the Democratic Republic of Congo abandoned its plan to create many new provinces and it lies behind Somalia's concern to have larger member states, created through the amalgamation of existing regions. The core of the federalism debate in Nepal has been over the name, number and boundaries of provinces in which different groups give different weights to capacity (favoring fewer provinces) versus identity (favoring more).

There can also be concerns about development potential and economic coherence—as in South Africa's adoption of economic development areas as the basis for its political map. This criterion can be particularly important in countries where some regions are resource rich and others resource poor though a regime of fiscal transfers from the central can help limit disparities amongst CUs.

## 4.2 GEOGRAPHIC CRITERIA AND HISTORIC BOUNDARIES

There is often an attempt to have CUs that have a certain geographic coherence, which may refer to natural boundaries, such as rivers and mountains. However, very often the most important "geographic" consideration is the boundaries of historic units (political or administrative) that were recognized as some point in the past. In a number of cases (Iraq, Somalia, Spain, Russia and Yemen) the definition of new CUs was based on previously existing units alone or in combination. In South Africa, the new map was largely based on previous economic regions, while in Kenya it was based on a reversion to the old districts. In India, many of the new states closely mimicked historic units. In Switzerland, the referendums in the Jura were based on the vote within existing districts.

In Kenya's case, the country had evolved to over 200 districts and almost half of these had existed since 2000. It was recognized that these were far too many for a major devolution, but the alternative of working from the existing regions (to between 8 and 13 units) was rejected for ethnic regions. So the choice fell on reverting to the 1992 map of districts on the basis that all subsequent creations were illegal. In Spain, the criteria included the right of island provinces to become autonomous communities, while on the mainland new autonomous communities were based

on combinations of existing provinces or on existing individual provinces that were home to "historic nationalities" or the capital, Madrid; however, there was no modification of provincial boundaries even in cases where there may have been a case for a part of a province being transferred. In Iraq, Somalia and Yemen, none of which has successfully achieved a federal restructuring, the new units have been envisaged as emerging from existing or historic regions or governorates (though Somalia appears to allow for some modification of boundaries).

The absence of historic regions can itself make federalizing more difficult: thus in Nepal, there have never been administrative districts that had much standing so the debate made little reference to historic boundaries (with the exception of the Congress Party's advocacy for the development regions that had existed).

Even if they are in some ways arbitrary, past boundaries often provide a useful reference point in trying to reach an agreement. They limit the choices and avoid the need for disputes that can arise if boundaries are to be drawn on the basis of a micro-analysis of population characteristics or regional economies.

## 4.3 SOCIO-CULTURAL CRITERIA

Socio-cultural issues are the most politically powerful and sensitive factor in defining new CUs in many countries. Drawing new boundaries can be difficult in any circumstances, but especially when the objective is to achieve "ethnic" federalism as opposed to "territorial" federalism because the stakes of being in the "right" CU seem so much higher. This distinction has been at the center of Nepal's unresolved federal debate, with the Maoists championing ethnic federalism and the other major parties advocating a more territorial federalism. Ethnic federalism tries to draw boundaries based on where certain nationalities, tribes or groups live (or in some cases, where they lived historically) and that region is somehow seen as belonging to the dominant population, which means that minorities within the region are at some kind of disadvantage, perhaps with lesser rights and a kind of second-class citizenship. Territorial federalism, by contrast, may have regional units in which a particular group forms the majority, but all citizens are meant to

have equal rights, as difficult as that may prove in practice.

Ethiopia is unusual in explicitly adopting “ethnic federalism” and proclaiming that each nationality has the right to self-determination; however, it found that it was impossible to structure all the states on this basis, especially because there was a need to limit the number of states. Nigeria has never had a formal policy of ethnic federalism, but its successive state reorganizations have been based on traditional tribal and religious areas (which may be disputed). There is a constitutional distinction made between those who are “indigenes” in a state and others, with the former having privileges in areas such as public employment and education. This is part of what has incited many demands for new states in Nigeria, though none has been created since the return to civilian rule in 1999.

The federal map of *Bosnia-Herzegovina* was essentially based on where ethnic populations were located after three years of war. This in turn reflected battle lines and areas controlled by the different armies. There were some minor modifications made at the bargaining table to achieve a 51-49 per cent territory split. The final status of the district Brcko was referred to arbitration.

The State Reorganization Commission in *India* was essentially mandated to draw new state boundaries on linguistic lines, but it was concerned about the implications of this and introduced other criteria such as administrative efficiency and efficacy and historic boundaries, which meant that boundaries were not purely linguistic. There was a decision actually to create two bilingual states in the initial round of state reorganization, though they were subsequently split. India’s state creations have emphasized different criteria at different times: linguistic in the 1950s and 1960s, minority communities in Assam from the 1960s to 1980s, and more political considerations in the 1990s. Similarly, *South Africa* avoided a strongly ethnic approach to boundary lines, though in practice most provinces have a majority of a particular ethnicity, but these ethnicities are also present in neighboring provinces, where they are minorities.

Symbols can be important in such matters: in Pakistan, the change in name of the Northwest Frontier Province to Khyber-Pakhtunkhwa was very controversial because it referred to particular populations; this led to demands by one minority in the province for separation with their own province. In

Nepal, the federalism debate has centered on the balance between capacity and identity: there is a consensus that the new arrangements must take both into account and most seem to reject a strong version of ethnic federalism. Given this background, the naming of provinces in the new federation has been very controversial: some advocated naming each province after the largest ethnic group, but other objected that this would create the sense that a province would “belong” to the named group (which typically would not form an absolute majority). An alternative was to give each province a double-barreled name, after the two largest groups, but the Constituent Assembly settled on the compromise of leaving the naming of provinces to the new legislatures, once elected. Issues regarding the treatment of ethnic groups can arise even when “territorial” federalism is the official ideology notably around language policy, which can affect the access of different groups to government services, jobs and even the political debate. There are practical limits to how inclusive language policy can be, but any discriminatory effects on minorities because of this are different in kind from legal impediments based on identity, as happens against “settlers” in Nigeria who do not have the same rights as “indigenes”.

#### 4.4 POLITICAL GEOMETRY

Economic and capacity issues can influence the number and sizes of units, but so too can more purely political considerations. In *Nigeria*, the restructuring was designed to break out of the dysfunctional arrangement of only three or four states, one of which had over half the population: it was felt that more states would bring a more positive and fluid dynamic to the country’s politics. However, as the number of states was increased the main ethnic groups were concerned to maintain the ratio of states between them, e.g. the south and north and within the south. In *Yemen*, the South wanted a two-unit federation on the grounds that it had come into the united Yemen on that basis and such an arrangement would ensure that it would be treated as an equal. However, the North wanted multiple states, including a division of the South, so as to make secession more unlikely. It is generally true that federations function better with at least five or six CUs and without one CU having a majority of the population.

The famous Missouri Compromise in the *United States* ensured that as new states were created there would be an equal number of new slave to non-slave states and this operated from 1820 until 1854. The issue was important because neither side wished to become a minority in the Senate, where there was a balance between Senators representing slave and non-slave states.

Advocates of more, rather than fewer, provinces in Nepal have seen this as necessary to break the hold of the upper caste elites on political life.

#### 4.5 PARTISAN CONSIDERATIONS

The configuration of states within a federation are an important part of the power structure. Major political parties often have particular strengths (or weaknesses) in certain states or regions. Many federations also have regional parties. Thus, however high-minded the criteria that might be invoked in relation to redrawing a political map or creating new states, an important part of the real agenda will often be the competing interests of political parties. Thus the one constitutional division of a state in Nigeria, the creation of a new state in the mid-west out the Western region in 1963, was imposed by the ruling parties, which were able to marshal the necessary two-thirds majorities in both houses of the parliament as well as the consent of the two states they controlled when Nigeria had only three at the time. Their motivation was to destroy the main opposition party. In India, party political considerations were important in the new state creations in 2000 and they are particularly clear in the recent decision, on the eve of national elections, to create the state of Telegana, though in all cases there were other reasons for acceding to the demand for new states, e.g. the idea of a state of Telegana had been debated for decades. While Pakistan has so far not created any new provinces, it is striking that the political parties all support creating new provinces out of the provinces controlled by their opponents.

## 5. Conclusions and Possible Lessons

A first conclusion from this review is that the sharp difference between exercises to effect a wholesale drawing or redrawing of a political map and those to

make limited incremental changes within an existing federation. The former present much greater challenges than the latter, those they may be guided by some similar criteria regarding the rationale for CU creation. A total redrawing of a political map, with boundary changes, is necessarily largely centrally determined, though there may be extensive consultations and a role for ratification of the final configuration, especially as part of ratifying a new constitution.

The process for conducting a wholesale drawing of a political map will depend on the power-structure at the time, the phase of constitutional development and the level of consensus in the society about the new territorial structure. Three countries, Spain, South Africa, and India, have effected a wholesale redrawing of their political maps by constitutional means. Spain and South Africa conducted their exercises during their constitutional transition to democracy, but within a structure of legal continuity with the former regime. India conducted its first major exercise a few years after approving its new constitution. In all cases, the rules for deciding on new CU creation were relatively permissive: majorities in their respective parliaments or constitutional assembly plus, in Spain's case, agreement at the provincial level (where there were strong incentives to decide quickly). These were orderly and legal constitutional transitions. In Spain and India there was a strong consensus at the center on the desired direction for structuring CUs. The consensus in South Africa was weaker, in part because of the divergent interests of the key negotiating parties—something that did not arise in Spain or India. The Spanish model gave provinces the right to make a decision within a narrow band of possibilities, while the Indian model reserved the final decision to Parliament, but based on extensive study, consultations and recommendations by a commission. Kenya proved incapable of coming up with a consensus on a new political map, so it reverted to an old one.

By contrast, Ethiopia and Nigeria, the other two cases of writing new political maps for the country, both made their decisions in contexts of broken legal continuity and authoritarian government. In Ethiopia a revolutionary coalition had won a civil war and was able to impose its views with very limited public engagement, while in Nigeria the ruling general of the day decided on state formation (with varying degrees of consultative and advisory input). It is highly questionable whether either country could ever have

agreed on its new CU configuration through a consensual and participatory process.

After nine months in which a highly participatory National Dialogue failed to produce any consensus on the CU structure of a new Yemeni federation, the President created a commission that quickly recommended his favored option of six regions. This succeeded because of the exceptional context of constitutional transition (in which there is a little acknowledged break in legal continuity and no fixed decision rules) and the very lack of consensus opened the space for him to impose an outcome. While the new structure is serving as the basis for the drafting of a new constitution, it is too soon to say that the issue is settled.

Iraq and Somalia postponed the issue of CU creation when they approved their new constitutions (interim in Somalia's case). They both adopted rules for new CU creation that were put into the constitution, but in neither case have they seen this through—in Iraq's case because the government is opposed, while in Somalia's because much of the country is still not secure. As a consequence, they are not yet truly federal. The rules that they have adopted in both cases base new CU creation on existing units, either individually or in combination, but the absence of political consensus makes resolving the issue much more difficult using such rules than it was in Spain.

The most vexing case currently is Nepal. While there is a weak consensus on federalism, there is no consensus on the relative weight to be assigned to identity versus capacity criteria in forming new CUs and there are no existing or past units that have much viability as reference points for going forward. It will be interesting to see whether the recent election, which substantially changed the power structure within the parliamentary constituent assembly makes it possible to find the necessary level of agreement. Libya and Myanmar may face similar challenges.

Where public opinion is a factor and the major decisions are to be made centrally, the use of advisory commissions can help develop consensus and avoid excessive partisanship. India and South Africa are the two most striking examples of where this worked well, but even the advisory structures in Nigeria—whose recommendations were not followed closely—provided some measure of legitimacy for the eventual decisions. Such commissions may be staffed by neutral persons or by representatives representing a balance of

different factions and they should have technical staff in support. They are more likely to succeed if their internal rules for making a recommendation are not too constraining

Clearly it is preferable to have a complete political mapping of a country as it makes the transition to federalism. Indeed, a country cannot claim to be fully federal until it has completed the political mapping of its CUs. However, India addressed this through the expedient of an interim state structure. In Nigeria, the original, highly dysfunctional, state structure was not viewed as interim, but it did permit the country to function as a federation from the outset. This is in marked contrast to Iraq (where only Kurdistan is a true federal unit) and Somalia. In principle, Iraq and Somalia have mechanisms that may permit them to stage the implementation of federalism.

Incremental CU creation or modification within established federations obviously poses quite different issue from total redrawing of political maps. Typically such changes are conducted within a functioning constitution, which should have clear rules dealing with the necessary procedures. Because of their limited scope, incremental changes provide an easier opportunity for "local voice", especially through referendums, than is normally possible when root-and-branch redrawing is at issue. Australia, Germany, Russia and Switzerland have all used *local* referendums in considering new state creation (as did Canada in the creation of the new territory of Nunavut). Germany, Iraq, Nigeria and Russia constitutionally require such local referendums.

Even so, the rules for the incremental creation of new CUs vary from relatively easy to extremely difficult so new CU creation is not necessarily easier than some of the processes that have been adopted for a major redrawing. Indeed, Nigeria's rules for the creation of new states are exceptionally stringent—reflecting a view that new state creation should be discouraged by having tough rules—a strong contrast to the ease with which various military rules created new states by fiat. Canada's threshold for new provinces is also very high, even for the creation of provinces out of territories. By contrast, the procedure for new state creation in India requires only a majority in each of the two houses of the national Parliament.

A major issue in new CU creation is whether CUs affected by a potential loss of territory have a veto over such loss. Many federations provide for such a

veto—Australia, Canada, Pakistan, South Africa, Switzerland, the United States—but several do not—Ethiopia, Germany, India, Iraq, Kenya, Nigeria, Spain. In the former countries, member states have “sovereign” protection of their territory, while in the latter, ultimate sovereignty on such questions rests either with the national institutions or the people in some fashion. In India, the Union government normally sought the consent of affected states when creating new ones, but this was not legally required and has recently not been observed. Germany gives the population (not the legislature) of the residual part of a Land a role in approving the Land’s partition, though this can be overridden if the seceding part of the Land has a strong enough majority. In Kenya and Nigeria the CUs collectively have a determining role to play in approving new CU creation even if an affected CU alone does not have a veto so that politically an affected state would normally expect support from other states. The merger of previous units into CUs, as in Spain and Germany (and potentially Somalia and Iraq) may be easier to deal with than the partition of states, but this too can be controversial (as in Yemen, where the proposed map has been centrally determined).

Whatever the rules for approving the incremental creation of new CUs, there is the question of how the process of such creation may be initiated. There can be procedures whereby elected representatives or citizens from a region may be able to initiate a formal demand for a new CU, as in Ethiopia, Germany, Iraq and Nigeria. While such rules have a certain democratic attractiveness, they may prove hard to handle if the threshold of initiation is too low. Some constitutions, e.g. Australia and Switzerland, effectively permit the legislatures of existing CUs to initiate a process of dividing themselves in two or more units.

Each federation must consider what rules regarding incremental CU creation or boundary changes would best suit it. In most mature federations, this is a non-issue in that there are no active or latent demands for boundary change or new states so rules around this possibility are of largely academic interest. But there are some federations that have not reached a stable political equilibrium where the issue remains alive. A very large, complex federation may consider that it needs relatively accommodating rules for change (as in India), whereas another federation may conclude that it needs stringent rules “to keep the lid on”. One

factor bearing on such decisions might be the potential volatility of opening the door to new state creation. Peaceful, long established democracies such as Germany and Switzerland, might be able to deal with this issue more easily than democracies with sharp ethnic, linguistic or religious tensions, such as Nigeria. Nigeria’s high threshold for new state creation is probably appropriate given the scores of demands for new states in a federation already having 36 states. By contrast, the sheer size of India and of its largest states—Uttar Pradesh is now over 200 million people, three other states are around 100 million—as well as the complex character of its society is an argument for openness to further state creation in a federation of 29 states.

The criteria used for determining the number and boundaries of CUs include economic costs, capacity, natural geographic features, communications routes and infrastructure, historic associations and affinities and most have proven relatively uncontroversial. It is striking how often CU definition is facilitated by some recourse to previous boundaries of some kind: this obviates the need for potentially controversial examinations of the ethnic or other composition of populations within an area as part of boundary delimitation. Clearly, the more difficult criteria in CU creation are ethnic, linguistic and religious, where there can be strong emotions about inclusion or exclusion as well as traditional lands. Even a long-established democracy such as Belgium can display extremely dysfunctional politics around what to an outsider appear to be minor issues of boundary delimitation between the two linguistic communities. Conflict over CU creation or boundaries is likely to be more heated the more groups assess the importance of being assigned to one CU or another. For example, if groups feel that they will be well treated regardless of whether they are in a CU where they are part of the majority or of a minority they will be less likely to take extreme positions on boundary delimitation. This is one reason why policies on such issues as language rights and public sector employment can be so important. The political push to adopt “identity” boundaries can be very strong. There are lessons that might be applied to drawing “identity” boundaries from experiences in Belgium, Ethiopia, India, Nigeria, South Africa and other countries:

1. Avoid making language or ethnicity the only criterion: other features such as historic borders,

- natural geographic features, infrastructure can dilute the risk of purely ethnic states;
2. Limit the stakes for those populations that end up on the “wrong” side of the line: this essentially means adopting a common standard of citizenship and rights for all those normally resident in the state; it can extend to certain minority services such as schools teaching in minority languages, the provision of minority language services and minority representation in the civil service, as well as fiscal arrangements so that boundaries don’t make some states big winners (e.g. from resource revenues) and others losers;
  3. Avoid ethnic names for states, especially when a state has significant minorities: names and other symbols (flags, coats of arms) can also be important;
  4. Avoid regular processes for automatic boundary revision: This keeps the boundary issue alive as a potential issue of continuing debate (as it did in Belgium).

This Working Paper has tried to draw out significant lessons to be learned from the experiences of countries that have had to develop entirely new territorial maps delimiting CUs to go along with federalization or devolution, as well as from the more limited exercises of partial revisions to the map, through the creation of new CUs. Each country must consider how to apply these lessons to its own particular context.

## ANNEX 1: CASE HISTORIES OF STATE CREATION AND BOUNDARY DEFINITION

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### Introduction

This document is the first of two Annexes to a primary Working Paper, entitled "Creation of Constituent Units in Federal Systems".

This Annex contains the case histories of state creation and boundary definition in the countries referred to in the primary Working Paper. The country case studies included in this Annex are the following:

Australia  
 Belgium  
 Bosnia-Herzegovina  
 Canada  
 Cyprus  
 Democratic Republic of Congo  
 Ethiopia  
 Germany  
 India  
 Iraq  
 Kenya  
 Nepal  
 Nigeria  
 Pakistan  
 Russia  
 Somalia  
 South Africa  
 Spain  
 Sri Lanka  
 Switzerland  
 United States  
 Yemen

### Australia: New England State Movement

Article 124 of the Australian constitution provides that a new state may be formed by the separation of territory from a state with the consent of the Parliament of the parent state. Article 121 provides that the federal Parliament may admit or establish new states and determine their representation in both houses of Parliament. This is a much lower threshold than for other constitutional amendments in Australia.

There have been a number of proposals for new states, none of which has transpired. The most serious was in the rural New England region of New South Wales, where agitation started late in the First World War and eventually led, in 1922, to a formal request by the NSW lower house to establish a new state. The Commonwealth government responded by creating a royal commission, which recommended against. The movement resurged in the early 1930s, leading to another royal commission, which this time recommended in favor. However, the issue receded during the Depression only to recover after World War II. In 1953, 21 local councils defied the state government and held a referendum that voted overwhelmingly for a new state. Eventually, in 1967, the state government held a referendum in a broadly defined area, including Newcastle and its environs, which could form the state. The Premier deliberately included the Newcastle area to lessen the likelihood of a vote for secession. While the vote was positive in the core areas agitating for statehood, the overall vote was 54% no, largely because of the opposition in and around Newcastle. The issue largely died after that. This case shows both the potential volatility over time of opinion around state creation as well as the importance of the boundaries set for a referendum, which may be subject to political manipulation.

## Belgium: Defining Linguistic Frontiers

Belgium is a federation with a unique structure: in addition to a federal government, it has three geographic regions (Flanders, Wallonia, and Brussels) as well as three cultural communities (Flemish, Francophone and Germanophone) that divide the territory differently for “regional” versus “cultural” matters; each of these has the right to a separate government. In practice, the region of Flanders and the Flemish community combined their political structures, so there are now five sub-national governments above the municipal level. The country was unitary until it started a process of progressive federalization in 1970. At the founding of the Belgian state in 1830, French was the only official language and Dutch has almost no legal standing. The politics of language became important from the late Nineteenth century and the status of Dutch was progressively enhanced until it achieved full equality.

Borders and border revisions have been important in Belgium. A critical step came in 1932 when the still unitary country moved towards territorial unilingualism in Flanders and Wallonia and bilingualism in Brussels and areas with significant linguistic minorities. Linguistic boundaries were to be adjusted after each language census: border communities where 50% now claimed the language of the other linguistic territory were to be transferred and those where the minority achieved 30% status were to be given special status in terms of some public facilities in their language within the otherwise unilingual territory. Because of the war, a census was held only in 1947. Its results were so politically sensitive that they were not revealed until 1954.

One very difficult case was that of Voeren (Fourons-le Comté), a community of 4,000 to 5,000 people in six villages in the French-speaking province of Liège. The 1930 census showed 81% of the population as Dutch-speaking, so under the 1932 law Voeren was made unilingually Dutch. However, the 1947 census showed 57% French speakers, which should have caused the communities to become French-speaking with Dutch facilities. Similarly, the census showed French progressing around Brussels, where six communities now had francophone majorities and another nine had crossed the 30% threshold.

What to do about these developments became an inflammatory issue at the heart of Belgian politics. In the end, the national parliament passed laws in 1962 and 1963 that transferred three communities to bilingual Brussels and gave French-language facilities to four others. Two very small Dutch-speaking minorities were awarded language facilities. The six communities of Voeren remained Dutch-speaking, but with facilities for Francophones. Moreover, parliament determined that Voeren should be transferred from the French-speaking province of Liège to Dutch-speaking Limburg. These laws were imposed by the Dutch-speaking majority and did not respect the law of 1932 and they were strongly contested by Francophones. The dispute over Voeren remained at the center of national politics: after the six villages were amalgamated, a majority in favor of a return to Liège won a majority in the new town council and put forward a unilingual francophone for mayor, who was elected. However, he was dismissed for refusing to take a language test and then appealed in a case that dragged on for years, eventually causing the Belgian government to fall in 1987. The situation finally stabilized after EU nationals were given the right to vote in local elections in 1999; this enfranchised a large number of resident Dutch nationals, whose votes swung the majority in the municipal council back to Dutch-speakers.

The laws dealing with these communities in 1962 and 1963 were voted by the Flemish majority against the francophone minority, which saw them as violating the law of 1932 and favoring Flemish interests. Tensions around these language issues contributed to the major restructuring of the political party system in Belgium, with all the old parties splitting along linguistic lines and new nationalist parties appearing. By 1970, the Belgium government declared the unitary regime “obsolete” and the country started on its series of major reforms to decentralize and restructure the state. The country was officially declared “federal” in 1988. While these reforms were deep, with extensive devolution combined with co-decision rules on sensitive issues within the federal government, they did not affect the issue of linguistic boundaries, which remained frozen.

The federalization of the country gave rise to a further border issue. Historically, Belgium had been composed of nine provinces, one of which, Brabant, crossed the linguistic frontier and included Brussels as its capital. The 1993 reform included an agreement on the



division of Brabant into two provinces (Flemish Brabant and Walloon Brabant), which were assigned to Flanders and Wallonia, as well as the region of Brussels-Capital. However, this division led to an anomaly relating to electoral districts, one of which, Brussels-Halle-Vilvoorde, now straddled both Brussels-Capital region and Flanders. This led to an exceptionally protracted and sensitive dispute, in which Flemish politicians claimed the arrangement disadvantaged Flemish voters. Without entering into its complex details, we can observe that this seemingly minor issue became a major political *cause célèbre*, with all of the Flemish parties demanding in the election of 2004 that the district be split. Despite months of negotiations, no agreement could be reached as part of the formation of a government in 2005 and again after the elections of 2007. Failure to resolve the issue led to the premature election of 2010; finally, in 2011, there was a tentative agreement as part of the deal forming the government. As part of Belgium's federalization, the constitution had procedures requiring a majority of the representatives of both the language communities on issues deemed to be fundamental to their cultural interests. So in contrast with 1962 and 1963, the Flemish members could not impose a solution. Eventually, in 2012, the national chamber of representatives voted by over a two-thirds majority and a majority of each language group's representatives to split the district subject to very complex provisions, which reflected a compromise by the two language communities.

The Belgian history shows how boundary issues can take on a symbolic importance all out of proportion to the small numbers of individuals directly affected by the issue at hand. The country first tried a formulaic approach, then a kind of rough politics in which the majority imposed its view, and finally a painful and disruptive debate within co-decision rules that required a compromise, which took years to emerge.

## Bosnia-Herzegovina

The current federation of Bosnia-Herzegovina (BiH) is the product of intense negotiations in 1995 to end the three years of war and ethnic cleansing in Bosnia. The former Yugoslav republic of BiH had a population of Serbs, Muslims and Croats, some living in mixed areas and others in areas dominated by their ethnic group.

However, with the breakup of Yugoslavia, the government of BiH held a referendum on independence that was boycotted by Serbs. The Bosnian declaration of independence, which Serbs saw as violating the Yugoslav constitution, led to the outbreak of war. Bosnian Serb leaders formed the ambition of creating an ethnically homogenous Republic of Srpska within BiH that might eventually join Serbia. The war was characterized by dreadful "ethnic cleansing" through murder and the forced displacement of populations. As the war progressed, there were a number of high-level diplomatic attempts to find a solution. While the international community long resisted the idea of a peace based on ethnic partition, in the end that was the basis for the accord reached in Dayton Ohio in 1995. The international contact group, led by the Americans, managed the negotiations in which the Presidents of Serbia and Croatia were assumed to represent the interests of their communities in Bosnia, though this proved problematic at the stage of implementation.

The accord created a unique governance structure, whose main elements were a very weak central government, presided over by a three-member joint Presidency with a rotating chair, and two main constituent Entities (the RS and the Federation of BiH). The Federation of BiH had a mixed Bosniak and Croat population in ten cantons, most of which had a clear dominant ethnicity, while in mixed areas, such as Mostar, there were internal dividing lines between the communities. A High Representative of the international community oversaw the implementation of the agreement and had considerable powers of intervention added in 1997 because of the difficulties in making the accord function. The accord, which is effectively both an international treaty and a constitutional agreement, has highly detailed provisions around the responsibilities and operations of the various orders of government.

The peace deal was brokered on the basis of the Inter-Entity Boundary Line (IEBL), which divided territory between the two Entities and three communities that would compose the new BiH. There had already been an assumption regarding the respective shares of territory, but the actual negotiations required some important adjustments in both directions. These decisions involved the local actors, the neighboring states and the international community. The process required many very detailed decisions and was greatly aided by high-powered digital mapping technology.

The most difficult boundary issue that was not resolved at Dayton concerned Brcko, a district of 95,000 that had been historically largely Bosniak and Croat, but was occupied by Serbian forces after ethnic cleansing. Its importance was that it lay between the two wings of the RS so that without it the RS would not form a contiguous territory. The Dayton accord placed Brcko in temporary custody of the Republic of Srpska, but subject to some oversight and to obligations regarding the resettlement of displaced populations. Annex 2, Article V, of the Dayton Accord provided for an arbitration procedure to settle the boundary within this district within a year. This proved politically impossible but the Tribunal's concerns with the RS's action were such that in 1997 its first award left the boundary where it had been but put Brcko under international supervision, with a Deputy High Representative as Supervisor. The Tribunal's final award in 1999, which reflected continuing strong dissatisfaction with RS actions, established the Brcko District under the exclusive sovereignty of BiH as a multi-ethnic and democratic unit of local self-governance. It also abolished the notional IEBL within the district. The new district exercises the powers previously exercised by the two Entities and former three municipal governments and the Entities have no power within the district. The Tribunal was to retain jurisdiction until the Supervisor notified it that the Entities have fully complied with their obligations and the district institutions are functioning effectively. In 2012 the Supervisor suspended supervision, which effectively transferred all the responsibilities to the district authorities, subject to various safeguards. While the district is not a full federal Entity—and its citizens can choose in which Entity election they will vote—it has all the local powers of an entity. Thus, the ultimate conclusion of this boundary dispute was not to draw a line through the disputed territory, but to create a new political unit out of the whole of the disputed territory.

## Canada: Creation of Nunavut

In the 1970s the Canadian Government adopted a policy of negotiating “comprehensive claims settlements” with those aboriginal populations that had never agreed to treaties. The Inuit of the Northwest Territories (NWT), a vast expanse of Northern Canada, were recognized as having a legitimate claim. There had for some years been inconclusive discussions about the division of the NWT in recognition of the

huge area, the patterns of communication and the concentration of the Inuit in the Eastern Arctic with a more mixed population in the Western Arctic. When the federal government accepted the Inuit claim to negotiate a settlement, it agreed to entertain the possibility of division.

In 1982, a referendum was held throughout the NWT asking: “Do you think the Northwest Territories should be divided?” The 19,000 voters (a turnout of 52%) divided between 56% yes and 43% no, but the turnout in the Eastern Arctic was very high and support for division there was around 80%. The territorial legislature recognized the strong desire of the Inuit to separate and accepted the result. The Federal government approved the principle of division so long as it had continued support from the electorate, that all parties would agree on a new boundary, and the division would be part of a settlement of land claims. A Constitution Alliance was created of members of the NWT legislature, plus representatives of the native groups to try to agree on a boundary for the division. After 5 years, it was concluded that no agreement would be possible, so the federal government appointed a commissioner to prepare a proposed boundary, which took careful account of traditional use and occupancy patterns. In 1992, the federal and territorial governments with the Inuit representatives agreed on a settlement, including the recommended boundary, and the whole settlement was then put to a vote by the population of the Eastern Arctic: there was an 80% turnout, with 79% voting yes. While the referendum was not legally binding, this strong vote gave legitimacy to the settlement. After seven years of preparation, Nunavut, with a population of 21,000 in an area the size of Western Europe, came into existence as a territorial government with the powers agreed in the settlement.

## Cyprus: Territorial Adjustment in a Peace Agreement

At the time of independence in 1960, Cyprus's Greek and Turkish communities represented respectively 75% and 18% of the population (with 4% other minorities) and both communities were distributed throughout the island. The country was to be governed by a highly complex arrangement giving extensive veto powers to both communities, which led to a crisis of governance and, within three years, the

outbreak of inter-communal conflict. Many in the Turkish community concentrated in enclaves for security. The international community became engaged in unsuccessful efforts to find a solution and the United Nations sent a peacekeeping force. Then in 1974 a coup sponsored by the military regime in Greece brought to power in Nicosia a government that advocated union with Greece. Turkey, invoking its claimed rights as a guarantor of the independence arrangements, invaded the island, eventually taking control of 37% of its territory. This led to a massive exodus of some 195,000 Greek Cypriots from the Turkish-controlled zone and a smaller counter-flow of some 42,000 Turks in the other direction. Over time, Turkey encouraged substantial migration of mainland Turks to the island and they now constitute an estimated 20-30% of the population of the Turkish zone. The border between the two halves of the country was closed and watched over by United Nations peacekeepers.

The island has been governed in the south by the internationally recognized government of the Republic of Cyprus and in the north by a government recognized only by Turkey. Both sides have substantial interest in finding a long-term settlement. Over the years, there were many diplomatic efforts that failed to find a resolution. Finally, Kofi Annan of the United Nations led negotiations that resulted in 2004 in a complex plan for a bi-zonal federation, which failed when the Greek population voted against it in a referendum (while the Turkish population voted for it). The process of reaching the agreement had been very “top down”, with little involvement by the Cypriot public; the Turkish government played a strong role as did the UN and European Union mediators.

A key issue in shaping the plan was arrangements for territorial adjustments between what would be the two constituent states of the federation. The plan included a final boundary between the two constituent states, which involved significant changes from the status quo, notably in the transfer of territory to the Greek zone which reduced the Turkish zone from the 37% occupied since the Turkish invasion to 29% of the island’s territory. The process of drawing the new map was led by a UN representative, whose main criteria included minimizing the number of Turkish Cypriots to be displaced by the boundary and avoiding the transfer to the Greek zone of villages with a historically significant Turkish population. After consultations with the parties, Secretary General Annan made the final

choice amongst alternative maps. The result was a twisting border, not a straight line.

The transfer of land was to be in six phases over 42 months. Such an arrangement was only possible because of guarantees of assistance for those in the transferred areas who may wish to relocate; a UN chaired Relocation Board was to develop a comprehensive relocation plan. The constitution provided that the Greek and Turkish minorities in the two zones would have certain minority cultural, religious and educational rights. There was to be a UN chaired boundary commission that would have some limited flexibility in making adjustments from the stipulated boundary. Finally, those who had owned property from which they had been alienated because of the population movements were to have rights to compensation for loss and partial reoccupation of properties if they so chose. Thus the boundary adjustment proposed in the Annan plan must be seen in the context of other measures that would have made it politically acceptable.

## Democratic Republic of Congo

Article 2 of the new Constitution of the DRC, which came into effect in 2006, provided for a semi-federal structure in which there were to be 26 provinces created out of the current 11 within 36 months. For the most part, the boundaries would be based on those of districts within the current provinces. A Minister for Decentralization was named and he presented a bill for decentralization, but this led to a debate about several issues including the need to amend others laws, the time required to create capacity in the new provinces, the fiscal arrangements, central government oversight and the division of responsibilities. The draft law was withdrawn and in 2010 the ruling coalition considered revising Article 226 of the constitution so as to permit more time for the transition. In 2011 the post of Minister of Decentralization was abolished and the future of the new provincial regime is very much in doubt.

## Ethiopia: Ethnic Federalism

Ethiopia, the only African state not to have been colonized during the scramble for Africa, has very

ancient roots, but it largely took its current geographic form in the late 19<sup>th</sup> century during the reign of Emperor Menelik II, who, operating from the Amharic homeland, conquered the previously semi-autonomous peripheral peoples of the Ethiopian Empire, which became the modern, extremely diverse state. Close to two-thirds of the current population belong to three major ethnic groups, but the entire population includes more than eighty ethnicities. During the imperial period—up to the end of Haile Selassie’s long reign in 1974—the country was highly centralized under an Amharic elite that tried to impose a uniform national identity. The Derg regime, which succeeded it, was even more repressive until its overthrow by a coalition of ethnic liberation fronts under the leadership of the Tigrayan Meles Zenawi.

The victorious forces quickly established a transitional government of ethnic parties and set about writing a constitution based on a strong version of “ethnic federalism”. The constitution provided that the states of the federation should reflect the “settlement patterns, language, identity and consent of the people concerned”. While there were some participatory events around the debate over the new constitution, the process of defining the new states was essentially internal to the governing coalition: initially there were 14 regional states, but this was reduced to 9 when, after consultation with party leaders in the region, five states were brought together into the Southern Nations, Nationalities and Peoples Regional State. The sole explicit criterion establishing these states was nationality, but in the end only five states were characterized by strong ethnic homogeneity. Indeed, the smallest state, Harari, was created in recognition that it was the historic homeland of the Harari people, even though they are now only a small minority in the state. While ethnic considerations may have been part of the motivation for amalgamating the southern states into one, this was also done to create a government capable of addressing the huge development challenges of the area—and in this it has been quite successful in that it has penetrated rural Ethiopia far more than any previous government. Indeed, the development ideology of the Meles regime countered in important ways the strong emphasis on ethnicity.

The Ethiopian constitution is unusual in that it provides every nation, nationality and people, defined as a population have a common culture, language, identity and living in a contiguous territory, as having the

“unconditional right to self-determination, including the right to secession” (Art. 39). This principle informed not only the creation of the states, but also the territorial organization within states. Where an ethnic community can establish that it meets the criteria of Article 39, it has the right to a local government with special powers, including, in principle, the right to secession. Some thirty of these special local governments have been created but the ruling coalition became concerned with the proliferation of demands and has rejected calls for more of them. This resistance is partly because of “efficiency” concerns (which are not mentioned in the constitution), but also because of tensions over the special powers of the ethnic communities and their right, once recognized, to representation in the upper house of Parliament.

In practice, the ruling party (EPDRF) controls all governments in Ethiopia so ethnic politics plays out largely within the party and subject to severe constraints. That said, the structure of the Ethiopian federation facilitates political mobilization on an ethnic basis—as shown in the fact that 73 of the 81 registered parties are ethnically based. However, the dominant characteristic of the current regime is that it follows a development model that is national but centrally controlled. The EPDRF has more than six million member and has penetrated rural Ethiopia more than any government in history. Thus the government’s development ideology and grass roots mass party counter in important ways the ethnically based constitutional structures that appear fragmented. The nominally open-ended commitment to local self-government—and even to secession—have little political reality given the character of the governing party.

## Federal Republic of Germany: Merging Länder

The Basic Law of the new federal republic was written when the occupying forces were still present in Germany. Under the Weimar republic, Württemberg and Baden had been separate länder, but the occupying forces had broken both Württemberg and Baden in two and reconfigured them as three units, namely Württemberg-Hohenzollern, Württemberg-Baden, and Baden. While these three units entered the new federal republic, each as a separate land, the

constitution's drafters foresaw their possible unification into a single land and so Art. 118 provided for the possibility of an "advisory referendum" on their unification. The tabulation of the result of the referendum of December 1952 was based on the original two units of Württemberg and of Baden. There were strong majorities in favor in both of these, but South Baden (then a land) voted 62% against while all of Baden voted 51% in favor. The total vote was 70% in favor. On this basis, the merger of the three units was approved, despite South Baden's negative vote. However, supporters of a separate Baden contested this and won a judgment of the Constitutional Court in 1956 that the population of Baden could vote on whether it wished to remain in Baden-Württemberg. The referendum was eventually held in 1970 and 82% voted to remain in the unified land.

A similar issue arose after unification with East Germany, when there was a question whether Berlin should be reunited with its historic land of Brandenburg, which surrounded it. This possibility had been provided for in the treaty of reunification and in Art 118a of the revised Basic Law. The parliaments of both länder voted in favor of unification in 1995, expecting significant savings as well as other advantages. However, the campaign in 1996 led to strong resistance, especially in Brandenburg where there was a fear of being swamped by Berlin's large population and burdened by its debts, as well as resentment that had grown up around the population's treatment in the unified country. Brandenburg voted 63% against on a heavy turnout, while Berlin was split, with West Berlin voting 58% yes and East Berlin voting 55% no. The merger did not proceed.

## India: Redrawing State Boundaries

At the time of independence in 1948 India inherited what had been nine provinces under direct British rule and some 550 princely units that had been under indirect rule. This was reconfigured into 27 states in three classes, each with different powers, as well as one Union Territory. This partition made little sense, but the issue of internal reorganization was put off because of the trauma of partition with Pakistan and ambivalence within the ruling Congress party over redrawing the internal map on linguistic lines, which some felt would endanger Nehru's nation-building project. However, in recognition of the need to

address this issue, Articles 2 and 3 of the constitution provided for the admission of new states and gave Parliament the power to create new states out of the territory of existing states by simple majority votes in the two houses, though before Parliament could act the legislatures of affected states should have the opportunity to express themselves. Within a year, there was an internal recommendation within the Congress party for the creation of a linguistically based state of Andhra, which finally occurred, after extensive demonstrations and a fast-unto-death, in 1953. This opened the floodgates of demands for other linguistically based states. In response, the Union government created a three-man States Reorganization Commission (SRC), which held extensive hearings and received thousands of submissions over a two-year period.

The Commission's report essentially acceded to the idea of states organized largely in recognition of the country's main linguistic communities, but it emphasized that no single criterion could be used; it expressed reservations about the implications of linguistic division for national unity and it also stressed the need for administrative efficiency and efficacy. It recommended the wholesale redrawing of state boundaries in a much consolidated structure, with only one class of states and a few Union territories. Parliament largely accepted these recommendations and in 1956 passed the *State Reorganization Act*, which created 14 states and 4 Union territories. Two of these states (Bombay and Punjab) were effectively bilingual and, after much agitation, were subsequently divided (in 1960 and 1966 respectively).

The state of Assam in northeastern India was home to many tribal and linguistic communities, which had a long history of conflict. It had been neglected during the colonial period and its special character relative to the rest of India was recognized by the Constituent Assembly in the Sixth Schedule of the Constitution, which established Autonomous District Councils with special powers for the hill tribes within Assam. The state's particular issues were not addressed by the SRC in the mid-1950s. After independence there were on-going violent disturbances with some Naga tribes, but eventually a large group entered a peace agreement with the Nehru government in exchange for the creation of a state of Nagaland in 1963. This sparked demands from other groups for their own states, so in 1972 two new states (both former princely regimes) and two Union territories were

created out of Assam—and by 1987 the two Union territories had become states. (One objective of the Union government in these changes was to strengthen India's position over these border areas, given Chinese claims and brief occupation of some of them.)

A third round of state creation, which started in the 1990s, eventually saw in 2000 three more states created for the first time in the Hindi heartland of mainland India. Party political considerations were important in this, though the configuration of interests was very different in backward Jharkhand and Chhattisgarh as opposed to the hill areas of Uttaranchal with a large upper-caste population. The proponents for Jharkhand had wanted it to be created out of the contiguous parts of four states, but three of these refused, so its territory was carved out of Bihar alone.

The most recent chapter is the creation of the state of Telegana out of Andhra Pradesh, which was approved by both houses of Parliament in February this year and will take effect in June, 2014. This is a concession to a very long-standing demand that had been considered by the SRC in the 1953. Many considered it fully justified, but its timing was very much tied to partisan considerations related to the elections for the Union Parliament. While the Union Government honored its constitutional obligation to consult the state affected by the loss of territory, it proceeded despite the strong objections Andhra Pradesh, thus breaking an informal practice that had been respected since the 1950s. There are many more demands for new state creation, e.g. the huge state of Uttar Pradesh has voted that it wants to be divided into four states. This has led to proposals for a new state reorganization commission to bring some order to the criteria and method of proceeding. With its population of well over 1 billion, many of India's 28 (soon to be 29) states have the population of large countries so there is a strong case for further division.

## Iraq: Disputed Territory at the Heart of an Asymmetric Federation

Iraq adopted a federal structure in the wake of the invasion that brought down Saddam. In part this was recognition of "facts on the ground": Kurdistan had a functioning government that had existed for several years under the protection of the no-fly zone and it

was not going to give this up. However, as Article 3 of the constitution came to acknowledge, Iraq is a "country of multiple nationalities, religions and sects", so there was a logic to a more devolved form of government. There had been no democracy under Saddam, but administratively the country was divided into 18 administrative governorates (including 3 fully in Kurdistan). The new constitution adopted a federal form of government with "regions" as the key federal unit. It recognized Kurdistan as a region and provided that further regions were to be composed of one or more governorates following a procedure, including a referendum, to be set out in a federal law. Such a referendum could be initiated by a third of the members of the federal lower house from the proposed region or by a request (a petition) of one-tenth of the voters in each of the governorates. The constitution also provided for governorates that were not incorporated in a region: these would have elected councils and governors, but fewer powers than regions. Baghdad was to remain a governorate. In practice, the law on creating regions, which was passed in 2006 but has never been applied and no new regions have been created. The Shia-dominated government of Prime Minister Maliki opposes federalism, but some Arab Iraqis, notably the Sunnis, are chaffing under the violence they are subject to by the security forces. In practice, the current structure is highly asymmetric, with Kurdistan having semi-independence and the Arab governorates little political autonomy.

A recent development has been a move to create new governorates. In June 2013 the Kurdish Regional Government recognized Halabja as a new governorate but this has not been ratified at the federal level and it is unclear whether it will be. In January 2014, the federal cabinet approved in principle making Tal Afar a governorate (out of Nineveh) and Tuz Khurmatu a governorate (out of Saladin). It is not clear what process led to this: the Tuz Khurmatu town council expressed surprise and called for a meeting with the governorate authorities. Both of the proposed new governorates are in the disputed territories between the Kurdish and Arab parts of the country and some see the initiatives as motivated by the electoral objectives of the governing party in the federal government.

The so-called disputed territories between the largely Arab and Kurdish parts of the country were long considered a dangerous flash point, but in fact they

have been relatively peaceful since 2003. The Transitional Administration Law of the US occupation referred to the “injustice caused by the previous regime’s practice in altering the demographic character of certain regions” through mass movement of populations and called for various measures to facilitate the return of affected populations. It also provided for arbitration to revise administrative boundaries that had been manipulated for “political ends” and required a permanent resolution of disputed territories, including Kirkuk. Article 140 of the Constitution in 2005 built on these provisions and set a deadline of 2007 for this, including a census and a referendum. To date, neither a census nor a referendum has been conducted and the territorial dispute is unresolved. Both the federal and Kurdish governments have their own armed forces and there have been minor clashes over the disputed territories.

The Iraqi case is important as an example of a deep territorial dispute within a federalizing country. The failure to make progress has been attributed to the linkages between the territorial issue and the broader questions of Kurdish independence within Iraq, to divisions amongst the Kurds on strategy, and to the misconceived character of Article 140 in being too retrospective in trying to restore the status quo ante of 1968 (and thus very favorable to the Kurds) despite major changes in the country, not all manipulated, since then. The United Nations made what was the most ambitious attempt to redefine the issue and bring forward alternative approaches to a solution. It did detailed studies of 15 areas, in terms of history, geography, natural resources, the impact of past-Arabization (and some Kurdization) and of wars, demographic shifts, and so on. It looked at election results and socio-economic conditions and consulted local councils as well as leaders at all levels. It found that minority ethnic or religious communities (e.g. Yezidis, Chaldo-Assyrians) along the fault line preferred some form of their own autonomy “to avoid a zero-sum game between Irbil and Baghdad”.

The UN presented four options for Kirkuk, including its retention as a governorate, its being under shared administration of Baghdad and Irbil, and its being a “special status” governorate or region. For other areas, it recommended a transitional security mechanism and some form of power-sharing. The report was not acted on and the disputed areas remain unresolved.

## Kenya: Devolution in 2010

While Kenya had popularly elected provincial governments for a brief period after independence, these were soon abolished and the country adopted a highly centralized system of government in which the provinces were simply administrative units, headed by a commissioner responsible to the President. The country became autocratic, but slowly returned to elected democracy in the late 1990s. A key issue was the development of a new constitution, but it proved difficult to agree on one. The election of 2007 was deeply flawed and led to serious inter-communal violence. An international mediation effort produced an agreement on a period of a government of national unity, one of whose major objectives was the development of a new constitution. In the major constitutional review, devolution was one of the most contested issues, and eventually a form of devolution short of federalism was agreed. In terms of the constituent units for the new, devolved regime, some favored relatively few units (more than the eight provinces then existing, but fewer than 20), but the objection to this was that it would lead to a problematic ethnic balance of power. Others favored making the district level the principle unit of devolution because districts were seen as closer to and more responsive to the population and more likely to protect minorities (and less likely to promote ethnic politics). The country had been divided into 46 districts plus Nairobi in 1992 and this division largely reflected the 41 districts established by a commission of British officials and a few Kenyans in 1963; the criteria at the time particularly favored districts with a high level of tribal homogeneity. The number of districts proliferated starting in 2007, when they were raised to 70 and fairly rapidly increased to over 250. A High Court judgment in 2009 found that all district creations subsequent to 1992 were illegal. This provided the basis for a decision to revert to the 1992 map of 47 districts, which were renamed counties for the new devolutionary scheme. However, the re-merger of all of these units posed its own difficulties and some groups again found themselves minorities in larger areas. The counties varied in population from over 3 million to around 100,000.

The new Kenyan constitution sets out the powers of the counties, but all of these are concurrent, which means that the central government can legislate (and prevail) on the same subjects. This relatively weak

allocation of powers to the counties has lowered the stakes of defining the counties relative to a regime with very powerful regions. Article 188 provides that the boundaries of the counties may be altered only by a resolution recommended by an independent commission named by Parliament for the purpose and then passed by a two-thirds majority in each of the houses of Parliament. No such commission has been named. The criteria for changes may include: population and demographic trends, physical and human infrastructure, historical and cultural ties, costs of administration, views of the communities, and geographical features. Kenya's new system is still in the relatively early stages of implementation.

## Nepal: Deep Disagreements over Federalism

Nepal is a very poor country that was ruled by an autocratic king until the mid 1990s. It had a major Maoist insurrection that was ended in 2006 by a peace agreement that led to the election of a Constituent Assembly and the formation multi-party governments, whose composition changed from time to time. A central issue in the constitutional debate was whether the country should become federal, and if so, on what basis. The country has over 100 caste and ethnic groups, many of whom are quite isolated given the mountain terrain, but has traditionally been governed by the upper-caste hill groups who have promoted a monolithic identity for the country. The Maoists emerged as the largest party in the 2008 elections and they, along with some smaller parties, were strong advocates of "ethnic federalism", which was seen as a way to empower the marginalized groups in the country. At the same time there was a strong and sometimes violent movement in the populous Terai region by the Madhesi people, many of whom were of Indian origin, for greater autonomy. The Congress and Marxist-Leninist parties opposed identity-based federalism, though they were prepared to consider a form of territorial federalism. While a consensus emerged in 2008 around adopting some form of federalism, there was no shared view as to the criteria for determining provinces or on what their number and boundaries should be. The task of defining provinces has been more difficult because of the lack of traditional sub-national units of any political significance that could serve as elements of

restructuring and because of the overlapping of different ethnic groups in most parts of the country. The national parliament elected in 2008 was also to be a constituent assembly with the responsibility of drafting a new constitution within two years. It failed to meet the deadline and was given extensions.

In 2010 the parties made a first attempt to agree on the number and boundaries of provinces. The parties strongly favoring identity-based federalism proposed 14 states, while a minority who emphasized the need for provinces to have a critical economic capacity called for 6 states, drawn on a completely different basis. A commission was then appointed and it recommended 10 states (plus a "non-territorial state" for the severely marginalized Dalits). Senior party leaders had focused on other, largely non-constitutional issues, and finally engaged one another seriously on the federal issue only in 2012. In April, they agreed on five criteria for defining states (geography, ethnicity, population, language and culture) and had an informal agreement on 6 to 8 states, whose names would refer to more than one ethnicity (so that they would not be strictly "ethnic"). However, a month later these leaders reached an entirely different agreement that would have 11 states, whose names would be determined later by the new provincial assemblies. This led to a severe backlash within the parties favoring ethnic federalism and the agreement fell apart.

In due course, the Supreme Court ruled that there could be no further extension of the mandate of the constituent assembly, which had failed to agree on a constitution in the allowed time, and it should be dissolved. In elections at the end of 2013, two parties that had opposed the stronger form of ethnic federalism won a majority, but they remain committed to federalism that will balance considerations of identity and language. The constitutional process has been slow to restart and the issue of new provinces is still unresolved.

## Nigeria: Restructuring the Federation

Nigeria is unique amongst federations in the extent to which the issue of new state creation has been a continuing feature of its political evolution and debate.



During the colonial period in Nigeria, the British adopted an indirect rule system based on ethnicity. This was reinforced by the successive colonial constitutions, which saw all political parties with clear ethnic and tribal bases. The colonial state became federal in form with 3 regions, each dominated by a major ethnic group. This gave rise to concerns amongst minorities that were examined by the Willink Commission of 1957, which rejected the creation of new states, particularly because of the problem of creating fresh minorities. Thus the independence constitution in 1960 preserved three states and provided minorities with a guarantee of their rights. The dynamics of this federal structure were difficult from the outset. In 1963, a new state was created in the mid-west out of the Western region. This was done under Article 4(3) of the 1960 Constitution, which required a two-thirds majority in both houses of Parliament plus the consent of a majority of the states. The ruling federal parties were able to marshal these votes and were motivated by a desire to destroy the main opposition party in its home region. At the same time, they refused to create new states in their own home regions.

In January 1966 there was a military coup led by Igbo officers that was quickly overthrown by a bloody counter-coup in July led by Northern officers. The new head of state, General Gowon enunciated principles for the creation of new states: no dominant state in the federation; geographical compactness; administrative convenience and the wishes of the people; and effective capacity. He created by decree a 12 state federation in May 1967, partly in response to secessionist actions in Biafra, which was politically weakened by the prospect of the division of the Eastern Region.. Despite this, the country went through a terrible civil war. While the Gowon reform was designed to address major structural flaws in the federal design, it generated its own resentments and demands for new states, both amongst the majorities who felt they should have as many states as the minorities and amongst minorities within the new states.

Gowon was overthrown in 1975 and his successor, General Mohammed, established the Irikefe Panel, chaired by a Supreme Court Justice, to review some 32 demands for new states. The panel was skeptical of new state creation, which it saw as heavily driven by the desire to share "booty", but in the end recommended a nineteen-state structure in recognition

of political pressures and the need for greater political stability. The government largely adopted these recommendations, though some of its nineteen-states differed from those recommended. Despite the government's wish that the new arrangements would be permanent, there was strong opposition from important interests.

General Obasanjo, who succeeded the assassinated Mohammed, established a Constituent Assembly to draft a new constitution to prepare for a return to civilian rule. It approved a new Article 8, which established a very high threshold for the creation of new states. To be considered by the National Assembly, a request to establish a new state would require the written support of at least two-thirds of the members of the proposed area of the new state in the national and state legislatures and the local government councils; this would lead to a referendum that would require at least two-thirds support. The result of the referendum could then be approved by a simple majority of all the states of the federation as expressed by their legislatures. Finally, the proposal would require a two-thirds majority in each house of the National Assembly. This clause reflected General Obasanjo's hostility to new state creation. It was approved in spite of strong support for new states by a large majority of delegates to the Assembly.

The return to civilian rule in the Second Republic in 1979 lasted only four years. During that time new state creation was a central political issue, but no new states were created, in part because of the very restrictive constitutional rules but also because the leading parties had contradictory proposals for the creation of many new states.

The Buhari junta, which took over in 1983, immediately foreclosed consideration of new states. However, when General Babangida became President in 1985, established a seventeen-member Political Bureau to consider the country's future, including the creation of new states. While recognizing the "dominant view" that a few more states should be created, the bureau was divided on the number and presented options. In response, the federal government created two new states in 1987 and Babangida said no more states would be created. But in 1991, he created a further nine states in response to strong political pressures but little clear rationale.

If anything, this stoked demands for further state creations, under Babangida's successor, General

Abacha. These were prominent at the 1994-5 constitutional conference so in late 1995 Abacha formed a committee on new states, local government and boundary adjustment, which received requests for 85 new states; its recommendations were not published. In 1996, Abacha created six more states, bring the total to 36, plus the federal capital territory. None of the states created under military rule were done so constitutionally.

Nigeria returned to civilian rule in 1999 and Article 8 of the 1976 constitution was repeated in the 1999 constitution, with the addition of similarly difficult provisions for the creation of new local governments (of which Nigeria has 774). Agitation for new states remains strong. No proposal since 1999 has even reached the point of a duly certified request at step one, though the Senate recently considered some 61 requests, which it found to be inadequate under Article 8. The dynamic of demands for new states minorities wanting their own states (22 states are dominated by the three largest ethnic groups), a desire to balance the creation of new states amongst the countries main zones, a fiscal regime that provides strong incentives for new state creation, and elites seeking to capture the benefits of new political and bureaucratic offices. There has been some countervailing agitation to consolidate into a six state structure. The high threshold for new state creation (which applies equally to consolidations) has so far stopped any happening, but the politics in favor remain powerful.

## Pakistan: New Provinces Debate

Pakistan has a population of some 190 million, but only 4 provinces, one of which, Punjab, has 55% of the population. The question of creating more provinces has been debated for many years, but it gained salience with the renaming of the North-West Frontier Province as Khyber-Pakhtunkhwa in the 18<sup>th</sup> Amendment to the Constitution in 2010. This name was deemed to recognize two ethnic groups within the province and its proposal led to a reaction in the Hazarad division of K-P for a separate province for that population. Prime Minister Gilani, a Seraiki-speaker, declared himself in favor of a Seraiki province being created out of Punjab. (There has also been some agitation for a restoration of Bahawalpur province, a former princely state that lost provincial status in 1955 when West Pakistan became a single unit and did not

have it restored when the new federal structure was created in 1970.) In 2011 the Muttahida Qaumi Movement, based in Karachi, tabled a proposed constitutional amendment that new provinces be created in both Punjab and K-P. In the federal election in 2013, the Pakistan Muslim League (N), whose base is in Punjab, won and it favors new provinces that would be based on administrative, not ethnic criteria, though it appears not to be giving this a priority. While all major parties have advocated new provinces at some point, typically they favor splitting provinces outside their own power bases. There is also concern that moving to a more ethnically defined map could lead to violence and a proliferation of demands for new provinces. In any case, the Constitution establishes a high hurdle for creating new provinces: Article 239 requires two-thirds majorities in each house of the federal parliament as well as a two-thirds majority in the provincial assembly of the province to be divided. Given the high legal threshold and divided political views, new provinces appear unlikely at any time soon.

## Russia

Russia's federal constitution of 1993 had 89 "subjects of the federation", which were the various federal units called republics, krays, oblasts, cities of federal significance and okrugs, which are the constituent units of the federation. These vary greatly in population and physical size. The Russian federation has far more constituent units than any other federation: the next closest is the United States with 50. President Putin encouraged greater centralization of powers in Moscow, the clustering of the subjects into regions under centrally appointed governors, and the merger of subjects. Between 2005 and 2008 there were 5 mergers, which reduced the number of subjects to 83. In all cases, the mergers were encouraged by the federal government but approved by popular votes in referendums. There are no current plans for further mergers, but a long-term objective of 40 to 50 subjects was once mentioned by President Putin. The stated purpose of the mergers was to promote the economic status of needy areas, but it has been argued that the main objective has been to merge what were ethnically defined subjects with non-ethnically defined subjects so as to diminish the status of some ethnic minorities.

## Somalia: Attempts to Determine States of the Federation

The former British Somaliland and Italian Somaliland were both divided into administrative regions. When the two colonies were united at independence in 1960, there were 12 regions. Over time some of these were amalgamated so that by 1968 there were 8 provinces. This structure was maintained until 1982 when the country was reorganized into 16 regions; then two more regions were created in 1984 and this remains the legal structure. (Three of these regions and parts of two others, Sanaag and Sool, are in breakaway Somaliland).

While there has been consensus on federalizing Somalia, the issue of defining the member states has been amongst the most difficult. The constitution of 2012 provides (Art. 48) that no single region can form a member state and until a region merges with another or others, it shall be directly administered. The number and boundaries of the member states are to be determined by the House of the People, based on recommendations of a National Commission. Boundaries are to be based on those of the administrative regions as of 1991. Two or more regions may voluntarily merge to form a member state. (Art. 49) Mogadishu is to be the capital city and its status is to be determined as part of the constitutional review (Art. 9).

These provisions seem partly inspired for nostalgia for the 8 provinces of the earlier regime. There is no particular logic to prohibiting individual regions (especially populous ones) from becoming member states. The attachment to existing boundaries is to avoid disputes over redrawing them. In practice, the future, including the attachment to restructuring the country based on regional boundaries is uncertain. Puntland became an effectively autonomous region during the period of no central government and it has returned little sovereignty to the national government. Its southern boundary is likely to bifurcate the region of Mudug. A dissident group in the North claims that Cayn should be a member state. Two or three regions are disputed between Somaliland and Somalia. Galmudug is emerging as a potential state, but its boundaries cross those of regions. In Jubaland in the south, there have been extensive discussions about alternative ways of forming a member state or states, whether from three or six regions. The boundaries of

Mogadishu (and the two neighboring regions) may be modified.

Thus it may be difficult to follow the formula of combining regions to form states. The interim constitution provides for a boundaries commission that would appear to have some margin for recommending changes to boundaries, but it has not yet been established. In practice, key leaders of clans will play a central role in the deal making.

The political and security situations make agreeing on and implementing arrangements very difficult. At some stage, such political developments on the ground will presumably have to be reconciled with the process set out in the constitution (and the latter may need to be modified). During the interim period, existing member states (which are not identified and there is some ambiguity about who they are) "shall retain and exercise the powers set out in their constitutions". Thus during this period some of the country will in principle be governed on a fully centralized basis from Mogadishu, some regions with existing or nascent governments (notably Puntland) will have different degrees of autonomy—all in a climate where parts of the country are under no effective government. There is no constitutional provision for the progressive transfer of responsibilities during the interim period, whether to the federal government or to the new member states. The situation is further complicated by the effective secession of Somaliland and the extensive territories claimed by both it and Puntland.

## South Africa: Creation of the Republic

The current territory of the Republic of South Africa resulted from the amalgamation in 1910 of four British colonies (two of which had been conquered in the Boer War) into a unitary regime. The colonies became the four provinces of the new Union: they had elected legislatures with limited powers but their executive was headed by an appointee of the national government. Over time, special territories were carved out of the provinces as black homelands, so that at the end of apartheid there were eight "bantustans" as well as the four provinces making up the territory of the country. A major issue in the transition to democratic rule was the debate over a unitary versus federal regime: the African National

Congress strongly favored the former, while the National Party and Inkatha Freedom Party wanted strong sub-national units. The compromise was a centralized federation, though the term federal is not used.

This required a process of provincial demarcation. While constitutional negotiations were proceeding, the multi-party negotiating forum established in 1993 a fifteen-member, multiparty commission to make recommendations, which it did within 6 months. The members of the commission were widely representative of the negotiating parties; it was co-chaired by an economist named by the ANC and a university head, named by the NP. While the ANC and NP appointed most commissioners, the Democratic Party and the Pan-Africanist Congress also made appointments. Ethnic and linguistically organized groups were represented, and one commissioner was close to business interests. The commissioners then nominated a technical committee, which was also broadly representative. Its members were largely political scientists, sociologists and economists with technical expertise. The commission operated on the basis of "sufficient consensus", which permitted a small majority to carry a decision.

The commission was given ten criteria, which it clustered into four broad headings: economic aspects (financial and other costs; inconvenience to public, minimize dislocation of service, development potential); geographic coherence (past boundaries and infrastructure); institutional capacity (availability of infrastructure and points for service, rationalization of existing structures); and socio-cultural issues (demographic, cultural and linguistic). The commission sought to balance these criteria, while trying to avoid setting up negative forms of competition between regions, notably around ethnic cleavages. The technical committee used a map of economic regions, prepared by the Development Bank of South Africa, as their starting point because it reflected economic criteria without regard to politics, existing borders or identity. A major concern was the capacity of these regions for self-government, which involved considerable discussion with outside experts. In the absence of good census data, the committee had to find demographic information from varied sources.

The commission also invited public input and it organized hearing around the country which representatives of the technical committee attended.

Once the hearing were over, the technical committee prepared a summary of proposals and issues. Some of the most difficult deliberations related to ethnic and linguistic matters (including the demand of some Afrikaners for a separate volkstaat where they would be a majority). The decision to have contiguous provinces eliminated many linguistically-based proposals. The committee had only a few weeks to prepare its proposal, which called for eight provinces largely based on the existing economic regions. The proposal proved highly contentious and the commission had heated discussions about whether to split the proposed Eastern Cape province, which it eventually and narrowly concluded to recommend. Some reports suggest that there were important negotiations off stage, especially to win the support of the ANC, which may have won some other concessions for agreeing. Thirteen commissioners signed the report while two dissented.

Thus the commission proposed nine provinces. The Multi-Party Negotiating Forum accepted the report but identified eight sensitive areas, where they asked the commission to do further work. This led to a new round of hearings and submissions. The revised report of the commission did not alter the proposed number or boundaries of the provinces. The MPNF then brokered a number of compromises and published its conclusions. There proved to be significant public resistance in some areas, notably with populations that considered that their area should be in the next-door province. The ANC was anxious to avoid any delay in elections and so encouraged such groups to wait for adjustments later, but it did agree to a few adjustments. As elections approached there were strong protests in a couple of areas, but they did not succeed.

In practice, all but two of the provinces have a majority of one ethnic group, but the boundaries were deliberately not adjusted to bring ethnic groups into largely homogenous provinces, so minorities are present in all provinces. These new provinces came into being with elected governments under the 1993 Interim Constitution. They remained unchanged in the Constitution adopted by the Constitutional Assembly in 1996. The Constitution provided a procedure, but not substantive criteria, for future revisions to provincial boundaries: revisions to provincial boundaries require a 2/3<sup>rd</sup> majority in the lower house and 6 of 9 provinces approving in the second house. There have

been three revisions of provincial boundaries affecting seven provinces.

The South African constitution also creates the municipal level of government and it establishes an independent commission to demarcate municipal boundaries, subject to guidance regarding largely functional criteria set out in a national law. The independence of the commission is intended to minimize the politicization of the process. The number of municipalities has been reduced from over 2000 in 1994 to 278 in 2011.

## Spain: Federalization

Spain achieved its current limits within the Iberian peninsula at the beginning of the 16<sup>th</sup> century out of the amalgamation of various kingdoms and other jurisdictions, some of which had distinct languages and laws. The Spanish monarchy pursued centralizing, nation-building during the 19th century, but this had limited success given the historic privileges of certain regions and the power of local elites. The short-lived federal republic in 1873 was never fully established and ended in civil war. In 1914 a limited form of devolution to Catalonia was introduced, only to be terminated under Primo de Rivera's dictatorship in the 1920s. The second republic in 1930s favored special autonomy arrangements for the historic nationalities of the Basque Country, Catalonia and Galicia, but only Catalonia implemented fully them as the civil war took hold (1936-39). Franco's victory in the war brought the return not only of strong centralization but also of repressive policies designed to snuff out languages and identities other than Castilian Spanish. This created deep resentments so one of the first issues after Franco's death was the devolution of powers within a democratic Spain. A first step was to restore the Catalan executive and create an assembly of Catalan deputies elected to the Spanish Cortes, with some executive powers for the interim period. A further twelve regions adopted pre-autonomy regimes before the constitution was adopted. It provided a framework for creating and empowering autonomous communities (ACs) throughout the country, whereby each AC would have its own autonomy agreement. Although at the beginning of the devolution process there was substantial asymmetry in the powers of the ACs, over time the arrangements became largely symmetrical.

During the Franco era, Spain was organized into 50 administrative units called provinces that dated back to the 1830s. It was decided that these were not appropriate as the principal unit of devolution, so the constitution (Art. 143) established criteria for the creation of an AC. These were: bordering provinces with common historic, cultural and economic characteristics; insular communities; and provinces with historic regional status. (It allowed for the exceptional possibility of single provinces that were not historic regions or even areas that were not provinces to become ACs if the Spanish parliament (Cortes Generales) agreed, and this was invoked to make Madrid as separate AC.) Municipal representatives within each province (two-thirds of all representatives accounting for at least a majority of the province's population) were then given the initiative to decide, subject to these criteria, on the amalgamation of their province with other provinces into a new AC. In some cases, there was a referendum. The decisions at the provincial level were reviewed by the Cortes in Madrid to ensure that they met the criteria. Any province that did not decide to join a region within a set timetable (six months) would lose the opportunity to become part of an AC for five years and remain under central administration during that period. This gave provinces a strong incentive to join together and in the end no province failed to become part of a new region. In the end, 17 ACs were created, with populations varying from 8.3 million to just over 300 thousand.

The provinces now have the dual role of a supramunicipal forum, indirectly elected by local governments to coordinate certain activities amongst the municipalities, and if territorial administrative units for the field operations of the central government. The ACs have not direct power over provinces or municipalities which are dependent on the central government and functions with national framework legislation on local government. The constitution also recognizes the municipalities and guarantees their independence without being specific re their powers.

## Sri Lanka: Tamil Homeland

A central issue of Sri Lankan politics since before independence in 1948 has been the constitutional place of the Tamil population, who represent the overwhelming majority of the population in the Northern Province (which includes the Tamil cultural

heartland of the Jaffna peninsula) and a substantial part of the population in the Eastern Province. The Sri Lankan Tamils, who speak their own language and are overwhelmingly Hindu, represent about 11 per cent of Sri Lanka's population, which is 75 per cent Sinhalese and Buddhist. There are Tamil-speaking Muslims, constituting 9 per cent of the population, many in the Eastern Province, where they and the Tamils are the two largest communities, alongside a smaller Sinhalese population. The third group of Tamil-speakers, about 4 per cent of the population, are the "Indian Tamils" who came to work in the plantations in the center of the country.

During the colonial period, some Tamil politicians advocated a centralized regime for the country with political equality between Tamils and Sinhalese, but after 1949 the favored option became the federalization of Sri Lanka, which would give significant local powers to the Sri Lankan Tamils in the Northern and Eastern Provinces. Sri Lanka had inherited nine administrative provinces from the British, but these never had elected governments or any political autonomy. Federalism never found significant favor in the Sinhalese community and it was clearly rejected in 1972 when Sri Lanka adopted a new constitution, which reflected a strong Sinhalese nationalism.

This rebuff led to a shift in Tamil claims from federalism to separatism and the emergence of the militant Liberation Tigers of Tamil Eelam (LTTE) and the outbreak of civil war in 1983. Since the 1970s, Tamil nationalists defined Tamil Eelam as the 'Tamil traditional homeland' within the island and this territorial claim encompassed the existing Northern and Eastern Provinces. India, with its own very large Tamil population, was drawn into Sri Lanka's political crisis in support of various Tamil groups and this eventually led to the Indo-Lanka Accord of 1987. The Accord envisaged interim arrangements aimed at ending military hostilities as well as more permanent constitutional changes aimed at devolving power to the Tamil people of the Northern and Eastern Provinces within the framework of a united Sri Lanka. It provided for the establishment of elected Provincial Councils with defined but limited powers throughout the country. In order to address the Tamil territorial claim, the Accord called for devolution for the Tamils' 'areas of historic habitation' rather than their 'traditional homeland', a concept unacceptable to the Sinhalese. Accordingly, it provided for the immediate

merger of the Northern and Eastern Provinces, subject to the proviso that there would be a referendum on this in the ethnically mixed Eastern Province within one year. These arrangements were institutionalized in the Thirteenth Amendment to the Constitution and supplementary legislation, which took effect in 1988.

The Indo-Lanka Accord was between the governments of the two countries, not the factions within Sri Lanka. Most of the Tamil groups accepted it, but it was rejected by the LTTE, which renewed its war. However, the Provincial Council for the merged North-Eastern Province, which had a non-LTTE Tamil leadership, was established. In practice, it had no normalcy and its relations with the central government eventually broke down when the provincial council threatened a unilateral declaration of independence if various demands were not met. The national government took over direct rule of the north-east in 1991.

The unification of the Northern and Eastern Provinces was extremely contentious. As the Thirteenth Amendment was processing through Parliament, there were legal challenges in the courts on the grounds that this should require a national referendum, not just one in the Eastern Province. A narrow majority of the Supreme Court upheld the arrangement on the grounds that the Thirteenth Amendment did not undermine the unitary nature of Sri Lanka (an argument that was not designed to win Tamil support for the amendment, but rather to assuage Sinhalese fears of devolution as a stepping-stone to secession). In a subsequent case in 2006, however, the Court did agree that the original act of merger was unconstitutional, leading to the de-merger of the two Provinces. The referendum in the Eastern Province was never held as successive Presidents found various excuses to postpone it.

As the war progressed, the LTTE at various times controlled large parts of the Northern and Eastern Provinces, but it was largely cleared from the Eastern Province in 2007. The government wanted a showcase for the restoration of democracy so it arranged for the election in 2008 of a Provincial Council in the Eastern Province.

The LTTE was finally defeated in 2009. A Northern Provincial Council was restored after elections in 2013, with Tamil nationalists winning a strong majority. While Tamil politicians still use the rhetoric of

merger with the Eastern Province, their post-war focus has been on issues in the Northern Province such as continuing militarization. Thus for the foreseeable future, Sri Lanka has a weak form of devolution based on the provinces inherited from the colonial period. Structural weaknesses of the devolution framework are compounded by pervasive non-implementation of the constitutional provisions by the central government. If a re-merger were to occur in the future, it would depend on the consent of the Muslims and Sinhalese in the Eastern Province, which appears unlikely.

## Switzerland: Creation of the Canton of Jura

The Jura, a small, francophone area in central Switzerland, had been a separate jurisdiction under a prince-bishop in the Holy Roman Empire and independent from 1648 until it was absorbed into France during the French Revolution. It was assigned to Switzerland at the Congress of Vienna in 1815 and attached to the canton of Bern, to compensate the latter for the loss of other territories. After Switzerland federalized in 1848, Jura remained part of Bern and there were various societies that worked to preserve its francophone character. The first initiative for a separate canton came in 1917. In 1969 the canton of Bern approved a constitutional amendment that prescribed the procedures for the separation of a part of it.

In 1974, after considerable political agitation and some violence, a referendum was held in the seven Jura districts asking whether voters wished to form their own canton and a slim majority voted yes. A second referendum was held in 1975 in which the three Catholic districts voted to form a new canton, while the three protestant districts and the one German-speaking district voted to remain with Bern. In 1977 the population of the new canton voted to approve the cantonal constitution and then the population of Switzerland voted to accept the creation of the new canton.

These changes did not finally settle the question. The village of Vellerat was still in Bern but it could only be reached through Jura: the village declared itself “free” and successfully campaigned to join Jura. Separatist sentiment remained strong in the Moutier district that

had voted in 1975 to remain with Bern, so another referendum was held in 1998, which confirmed affiliation with Bern. While the boundaries seemed settled, there remained concern that the Jura was broken into two parts. This was partly addressed by the innovation of a regional council, bringing together representatives from the two cantons, but eventually in November 2013 there was yet another referendum to determine whether Bernese Jura wished to join Jura. The vote was clearly negative, but 55% in Moutier voted “yes”, so there is now consideration whether Moutier alone should join Jura, perhaps after yet another referendum.

## United States of America

The United States’ growth from the original thirteen states to fifty is a long and complicated history. From the outset, the territory of the United States included extensive lands West to the Mississippi, so of which were outside any state, while others were claimed by various states. One of the terms of federation in 1789 was that certain states ceded their claims to western lands. In due course, the US added territories all the way to the Pacific as well as Alaska and Hawaii. There are a few key points that might be highlighted in this history. The first new state created after 1789 was Vermont, which had declared itself an independent republic in 1777: it had a long-standing territorial dispute with New York, which prevented its admission to the union as a state in 1789. Article 4 of the US Constitution provides that new states may be admitted by the Congress but no new states may be formed from the territory of existing states without the consent of the states concerned. Vermont’s admission was foreseen in 1789 but was conditional on settling some disputes with New York, which happened in 1790 and New York consented to its admission as a state in 1791. Maine was a physically separate part of Massachusetts and as early as 1807 Maine representatives forced a vote in the state assembly on their right to secede; that vote failed, but in 1819 Massachusetts agreed to permit secession if voters in Maine approved, which they did in a referendum in 1820. The state was admitted that year along with Missouri as part of the Missouri Compromise, which was designed to maintain the balance of slave and non-slave states. West Virginia emerged in the context of the Civil War, when the northwest of the state strongly opposed secession in a statewide

referendum: advocates of a separate West Virginia then held a referendum of their own in the western part of the state and a constitutional convention then defined the new state's boundaries to include some parts of Virginia that had favored the Confederacy. After the war, Virginia contested West Virginia's status in that its agreement under Article 4 was never obtained and sought the return of two counties, but eventually the Supreme Court found in West Virginia's favor.

Texas and California were admitted directly as states, but all other new states emerged at the discretion of Congress from territorial status in the various lands that the US acquired as it progressed to its physical limits at the end of the Nineteenth century. Under the Northwest Ordinance of 1787 territorial governments were to be set up at the initiative of Congress and frontier settlers after the population in an area attained 5,000 free inhabitants. Once a territory achieved a population of 60,000 free inhabitants it was eligible for statehood. Congress frequently adjusted borders, often based on scant information, when creating new states out of territories. Some new states West of the original states could only be admitted once the original states had agreed to the mutual boundary. A few states (Ohio, Nevada, Missouri) were expanded after their admission to the union by the addition of land from what had been territories. Congress could receive petitions from settlers about boundaries and on occasion it imposed solutions that were disputed by neighboring states and territories. In some cases, commissioners were appointed to sort out precise boundaries, but their work usually had little political significance. Two states were admitted in the latter half of the Twentieth Century. As early as 1946 Alaskans voted 60% for statehood in a referendum, but Congress granted this status only effective January 1959. Later that year, Congress voted to admit Hawaii as the 50<sup>th</sup> state. Even though it was now a state, the Hawaiian government held a referendum later that year on statehood or remaining a territory: statehood was approved by over 90% voting.

## Yemen

The current Republic of Yemen was formed in 1990 out of the merger of the former independent countries of north and south Yemen. While the two Yemens had a common sense of national identity and shared

language, they had very different histories and had not been under one ruler for almost two hundred years. Their marriage was hastily arranged between two autocrats. While the South Yemenis thought they were entering a partnership of equals (despite having less than 20% of the combined population) they quickly found themselves in a subordinate role, which led to major disaffection and a revolt in 1994. This was brutally suppressed by Northern forces and from that point forward the South was quite brazenly exploited by the regime of President Saleh. Over time the regime faced serious opposition in parts of the North as well as the South. The Arab Spring provided the occasion for resentment against the regime to boil over into massive street demonstrations that eventually resulted in the President's resignation and the creation of an interim government and other transitional arrangements. The regime change was overseen by the Gulf Cooperation Council and other international actors, including the United Nations. The UN suggested the need for a major national dialogue as a step towards reconciliation and defining a new direction for the country. This was initiated in March 2013 and from the outset it was agreed that dealing with the South was the most important issue.

The South by this time had developed strongly separatist sentiments so that it was difficult to get fully representative participation in the dialogue. However, as the dialogue progressed even hardline northerners recognized that greater empowerment of the south would be necessary to respond to southern sentiment. While a consensus gradually developed around "federalism", there was no shared view of what it meant. The major stumbling block was the number of units: southerners tended to favor a two-unit federation with much shared decision-making at the center, but many northerners worried that this would be a way-station to separation. The dialogue ended without resolving this, but the President immediately set up a committee to resolve the issue of the number and boundaries of the new regions, within a range of 2 to 6, before the Constitutional Drafting Committee could start. The criteria considered by the committee included economic and administrative factors as well as questions of regional identities and cohesion.

The committee quickly decided on six regions plus a special district for Sanaa, the national capital. This structure was the strong preference of northerners (and the President) who wanted to avoid a united south and two-unit federation (though there were



some strong concerns within the North, particularly by the Houthis from the northern governorate of Sadaa, about the actual delimitation of the new regions). The new regions are to be formed out of the amalgamation of the existing 20 governorates with no boundary changes. An agreement was signed by all members of the committee except the Houthi representatives on February 9; the Socialists, who have historically been strong in the south signed, but with reservations. The southern Hirak movement, which was not at the table, has said it is not bound by the agreement. The agreement stipulates the regional structure will be

reviewed after one electoral cycle (five years). In early 2014, a group of Shiite Houthis from the north have been engaged in pitched battles in Amran governorate, partly to counter Salafists but also to seize territory they want included in the new region where they will have the majority. The President subsequently established a Constitutional Drafting Committee, whose mandate is to respect the six region decision.

## ANNEX 2: CONSTITUTIONAL PROVISIONS RELATING TO STATE CREATION AND BOUNDARY CHANGES IN SELECTED FEDERATIONS

### Introduction

This is the second of two Annexes to a primary Working Paper, entitled "Creation of Constituent Units in Federal Systems".

This Annex contains summaries of relevant constitutional provisions relating to state creation and boundary changes in selected federations referred to in the primary Working Paper.

### Australia

Art 124 provides that a new state may be formed by the separation of territory from a state with the consent of the Parliament of the parent state. Art 121 provides that the federal Parliament may admit or establish new states and determine their representation in both houses of Parliament.

### Belgium

Art 4 requires a majority of representatives of each language community for any change to the boundaries of the linguistic regions as well as a 2/3 majority of those voting. Art 5 provides that a law can exclude certain territories from division into provinces and bring these directly under federal executive authority and a special statute: decisions on such a law require the approvals set out in Art 4.

### Canada

Art 42 requires that the creation of new provinces or the extension of existing provinces into the territories shall require the approval of the federal Parliament and the legislatures of at least two-thirds of the provinces representing at least 50 percent of the total population. Art 43 requires that provincial legislatures

and the federal Parliament must consent to any change in provincial boundaries.

### Ethiopia

Art 46 provides that the federation is comprised of states, which shall be structured on the basis of settlement patterns, language, identity and consent of the people. Art 47 lists the nine states, as well as the over forty nations, nationalities and peoples of the Southern Peoples' State. Art 48 provides that where a border dispute arises, it shall be settled by agreement between the states concerned or, failing that, by the Council of the Federation (composed of representatives elected by the state legislatures) within two years.

Art 39 provides that every nation, nationality or people shall have the unrestricted right to self determination up to secession. This right to secession may be exercised when approved by two-thirds of the legislature of the nation concerned, whereupon the Federal government shall organize within three years a referendum for that nation and a simple majority votes in favor. Every nationality in Ethiopia shall have, on the basis of the free choice of its people, the right to establish government institutions for common self-administration within the territory it inhabits. A nationality means a people with a common culture reflecting a considerable uniformity and a similarity of custom, a common language or (minority) languages of communications, a belief in a common bond and identity, the majority of whom live in a common territory.

### Germany

Art 29 provides that the division of the territory into Länder may be revised to ensure that each Land is of size and capacity to perform its functions effectively; this shall be done with due regard to regional, historical and cultural ties, economic efficiency and the requirements of local and regional planning. Such a

revision shall be by federal law that must be approved by referendum. The referendum shall be held in the affected Länder and shall take effect if approved by a majority in both the future territory of the new Land and in the affected Land or Länder or, if rejected a majority in an affected Land, it shall take effect if approved by a two-thirds majority in the future territory unless rejected by a two-thirds majority in an affected Land as a whole.

Art 29 also has a procedure whereby ten percent of the voters in a contiguous area with a population of at least one million and in two or more Länder may petition for the creation of a new Land. Within two years, a federal law would either provide for a new Land, subject to the procedure above, or present not more than two proposals for consideration by voters in an advisory referendum. If a proposal is approved in such a referendum by the procedures above, a federal law may proceed without a further referendum. Alternatively, if a majority of those voting approved the change (but not the special majorities required above) a federal law shall be prepared for a vote subject to the special majorities requirement.

Finally, Art 29 provides for revisions of boundaries between Länder for territories with no more than 50,000 inhabitants with the consent of the Länder concerned and a federal law approved by the Bundesrat (of representatives of the Länder), subject to the affected municipalities and counties having the right to be heard.

## India

Articles 2 and 3 provide for the admission of new states and give Parliament the power to create new states out of existing states, though before Parliaments shall act the legislatures of the affected states shall have the opportunity to express themselves.

## Iraq

Art 3 of Iraq's federal constitutions declares Iraq to be a country of "multiple nationalities, religions and sects". Art 119 provides that one or more governorates shall have the right to organize into a region and that one third of the council members of each governorate intending to form a region or one-

tenth of the voters shall have the right to initiate the request for a referendum. The procedures governing this were to be elaborated by law.

Article 140 built on the provisions of the Transitional Administrative Law of the US occupation, which provided for arbitration to revise administrative boundaries of disputed territories (between Kurdistan and the rest of Iraq) including Kirkuk. It provided for a census and a referendum in Kirkuk and other disputed territories by 31 December 2007.

## Kenya

Art 188 provides that the boundaries of counties may be altered only pursuant to a resolution recommended by an independent commission named by Parliament for the purpose and the passed by two-thirds majorities in both houses of Parliament.

## Nigeria

Art 8 establishes procedures for creating new states. To be considered by the National Assembly a request to establish a new state would require the written support of at least two-thirds of the members of the proposed area of the new states in the national and state legislatures and the local government councils. This would lead to a referendum that would require at least a two-thirds majority. The result of the referendum could then be approved by a simple majority of all the states of the federation as expressed by their legislatures and by a two-thirds majority in each house of the National Assembly.

## Pakistan

Art 239 requires two-thirds majorities in each house of the federal Parliament as well as a two-thirds majority in the provincial assembly of a province to be divided for the creation of a new province.

## Russia

Art. 65 provides that the creation of new subjects of the Russian federation shall be carried out by the rules established by the federal constitutional law. Art. 66 provides that the status of a subject may be change upon mutual agreement of the Federation and the subject according to the federal constitutional law. Art. 67 provides that the borders between subject may be changed upon their mutual consent. Art. 71 establishes the federal structure and the territory of the federation as matters of federal jurisdiction. The practice has been to hold referendums on the merger of subjects of the federation.

## Somalia

Art 48 provides that no single region may form a member state and until a region merges with another or others it shall be directly administered. The number and boundaries of the member states shall be determined by the House of the People based on recommendations of a national commission.

## Spain

The creation of Spain's autonomous communities was done pursuant to Sect 143, whereby bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status could accede to this status. For those cases where two or more provinces were to combine, for each province two-thirds of the municipalities representing a majority of the population would have to approve. The national Cortes has the right "in the national interest" to grant a Statute of Autonomy to territories that do not exceed the territory of a province, i.e. which correspond to such a territory or part of it.

## South Africa

Article 74 provides that revisions to provincial boundaries (including the creation of new provinces) requires that any constitutional amendment to change the boundaries of a province or provinces requires the

consent of the province or provinces concerned plus a two-thirds majority in the lower house and 6 of 9 provinces approving through the upper house of the national Parliament. Art 118(1) requires that a provincial legislature facilitates public involvement when consider whether or not to approve the alteration of their province's boundaries.

## Switzerland

Article 53 provides that any change in the number of cantons requires the consent of both of the cantons concerned together with the consent of a majority of voters and of cantons in a national referendum.

## United States

Article 4 provides that Congress may admit or create new states but no new states may be formed from the territory of existing states with the consent of the states concerned.