

POLITICAL DEVOLUTION

INTRODUCTION

This chapter identifies the core elements of mechanisms states use to distribute power between their central and regional governments through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to political devolution and provides sample language parties may wish to consider when drafting political devolution provisions in a peace agreement.

Elements that states may consider when devolving power include: (1) the structure and organization of the allocation of power; (2) the fiscal relationship between the central and provincial governments;¹ (3) judicial review and dispute resolution relating to the allocation of powers; (4) mechanisms for coordination between the central and provincial governments, among provincial governments themselves, and between provinces and other entities; and (5) methods for the modification of structures once they have been established.

State practice indicates that states have been able to devolve substantial power in unitary and federal states, as well as confederations and unions. States may devolve power through peace agreements, political arrangements, or amendments to a state's constitution. This devolution may be symmetrical to all provinces, or it may be asymmetrical to one or more provinces. Powers devolved to provinces frequently include taxation, transportation, police powers, and matters related to education, family life, health, and social welfare.

In post-conflict states, in particular, a clear division of power may help prevent future disputes over political authority. The creation of specific mechanisms encourages and facilitates cooperation between the central and provincial governments. It is important that each level of government have sufficient resources and authority to carry out its respective responsibilities and obligations. The allocation of political authority between central and provincial governments can acknowledge the significance of provincial character and simultaneously recognize the importance of national identity.

The 2006 Darfur Peace Agreement (DPA) provided for a federal system of government in Sudan. The DPA also created the Transitional Darfur Regional

¹ For information on fiscal devolution, see the Fiscal Devolution chapter in this guide.

Authority (TDRA) to implement the agreement and facilitate the implementation of security measures and programs for the return of displaced persons in the Darfur region. However, the TRDA did not replace the provincial governments in Darfur.

CORE ELEMENTS

Initial Considerations

Legal Basis for the Assumption of Political Authority

Many states allocate political authority between the central and provincial governments. The allocation of political authority can result from practical necessity. In other states, the allocation is the result of political or historical patterns. In some states, there are limits on provinces' holding additional political authority. In other states, any province that meets specific criteria has the legal right to exercise a high degree of authority. State constitutions frequently include provisions for sharing political power between the central and provincial governing authorities. Many post-conflict states amend their constitutions to permit this allocation of political authority. In other states, domestic legislation, a peace agreement, or a public referendum provides the legal basis for allocation of power between the central and provincial governments.

Central and provincial governments usually agree on the process for the allocation of power. Many constitutions and peace agreements explicitly define the process for the allocation of political authority between the central and provincial governments. States often specify the timeframe within which the allocation of political authority is to take place. In some states, the provincial government begins administering its allocated powers immediately, while in other states, there is a gradual or phased allocation of authority. This can be especially helpful if the province does not have the capacity and infrastructure necessary to execute the additional authorities, such as the existence of a sufficient provincial budget, and an operating executive, legislature, or judiciary. To determine when a particular province may begin administering its additional authority, states employ a variety of criteria, depending on the characteristics and capacity of the particular province.

The following section reviews various approaches for allocating political authority between the central and provincial governments. It provides examples from different states to illustrate the key factors related to establishing a legal basis for the assumption of political authority by provincial governments.

Constitutional Recognition: Italy, Philippines, Spain

Italy: The Italian Constitution names those provinces that have additional powers of self-governance. “[P]articuliar forms and conditions of autonomy are enjoyed by Friuli-Venezia Giulia, Sardinia, Sicily, Southern Trentino, and the Aosta Valley. The province Southern Trentino consists of the autonomous provinces Trento and Bolzano.”²

Philippines: The Constitution of the Philippines specifies which provinces can acquire a higher degree of political authority. The constitution limits this right to “regions in Muslim Mindanao and in the Cordilleras ... sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics.”³

Spain: While acknowledging the “indissoluble unity of the Spanish nation” the Spanish constitution also “recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all.”⁴ The Constitution does not specify the provinces that may increase their powers of self-governance.⁵

Legislative Basis: United Kingdom

In 1998, the British Parliament passed the Scotland Act. The act provided for the allocation of additional political authority to the province of Scotland through the creation of a Scottish Parliament.⁶ The United Kingdom does not have a written constitution.

Peace Agreements: Bosnia and Herzegovina and Cyprus

² ITALY CONST. art. 116 (1947), *available at* http://www.servat.unibe.ch/law/icl/it00000_.html (last accessed Sept. 13, 2007).

³ PHILIPPINES CONST. art. 10, sec. 15 (1987), *available at* <http://www.gov.ph/aboutphil/constitution.asp> (last accessed Sept. 13, 2007).

⁴ SPAIN CONST. Preliminary Title, art. 2 (1978), *available at* http://www.senado.es/constitu_i/index.html (last accessed Sept. 13, 2007).

⁵ SPAIN CONST. Title 8: Territorial Organization, art. 143 (1978).

⁶ Colin B. Picker, *A Light Unto the Nations* -- *The New British Federalism, the Scottish Parliament, and Constitutional Lessons for Multiethnic States*, 77 TULANE LAW REVIEW 1, 41 (2002).

Bosnia and Herzegovina: The Dayton Accords, which ended the conflict in Bosnia and Herzegovina, included a new constitution, which established a new state structure for Bosnia. The new constitution provided for the creation of two provinces, the Federation of Bosnia and Herzegovina and the Republika Srpska.⁷ Each entity exercises identical powers and authorities. The constitution also established mechanisms for coordination between the central government and provincial authorities.⁸

Cyprus: The Annan plan for Cyprus allocated political authority to the constituent states (provinces) of the unified Cyprus. “Cyprus is an independent state in the form of an indissoluble partnership, with a [common state] government and two equal [component states].”⁹ The plan also would have provided for mechanisms for coordination between the common state and the component states.

Popular Referendum: Philippines, Spain, United Kingdom

Philippines: The Constitution of the Philippines requires a referendum to approve an increase in political authority. The national parliament must pass a law providing for the referendum, which must call for the specific purpose of increasing the political authority of the province. Only the voters from the affected province may vote in the referendum. A majority of voting citizens in the province must approve the referendum.¹⁰

Spain: The Spanish Constitution preserves the right of one province, or multiple provinces, to request recognition as an Autonomous Community. At least “two-thirds of the municipalities whose populations represent at least the majority of the electorate of each province or island” must approve the request.¹¹ This

⁷ The General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, Annex 4, art. 1, para. 3 [hereinafter "The Dayton Accords"], *available at* http://www.usip.org/library/pa/bosnia/dayton_gfa.html (last accessed Sept. 13, 2007).

⁸ The Dayton Accords, Dec. 14, 1995, Annex 4, art. 3.

⁹ Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, sec. 1, para. a, *available at* http://www.unannanplan.agrino.org/1revised_un_plan.pdf (last accessed Sept. 13, 2007).

¹⁰ PHILIPPINES CONST. art. 10, sec. 18 (1987).

¹¹ SPAIN CONST. Part VIII, ch. 3, sec. 143, para. 2 (1978).

approval must take place within six months of the initial agreement to grant the provinces' request for the status of an Autonomous Community.¹²

United Kingdom: Following the decision of the British Parliament to provide for a limited Scottish Parliament with political authority over provincial matters, residents of Scotland had to decide by referendum if they would accept the additional authority.

Symmetrical and Asymmetrical Allocation of Political Authority

In many states, each province possesses the same political rights and obligations. This approach is symmetrical allocation of political authority. Other states, and in particular post-conflict states, allocate power such that one or more provinces possess greater rights and obligations than the other provinces. This approach is asymmetrical allocation of power.

Different states use different criteria to decide between symmetrical and asymmetrical allocation of authority. These criteria include the historic nature of the provinces, the institutional capacities of provinces, and the resources available to the central and provincial governments.¹³ Spain and Italy are examples of states that recognize historical communities. Cultural or ethnic ties can also play a role in the decision. For example, the Dayton Accords in Bosnia and Herzegovina

¹² SPAIN CONST. Part VIII, ch. 3, sec. 143 (1978). In addition, there are two "tracks" for attaining increased political authority. The "fast-track" is for primarily historic communities, and the allocation of significant political authority is effective immediately. The "slow track," which has been widely used by Spanish provinces, allocates only specified powers for the first five years after the initial allocation of political authority. The state retains all remaining powers. After five years, a province with increased political authority may enlarge its powers on an incremental basis to include those powers not expressly assigned to the state. Each province must draft and negotiate its own request for increased power (or Autonomous Statute) with the central Spanish government.

¹³ There are differing theories regarding the advantages and disadvantages of asymmetrical devolution as a way to promote provincial self-governance while also maintaining the integrity of the state. Some experts propose asymmetrical federalism as a way to allocate to minority groups separate authority within their own province while maintaining the advantages of being part of a larger state. This additional political authority fosters the desire of these minorities to remain a part of the state as a whole while allowing them control over internal policies. Other experts assert that asymmetrical federalism results in greater differentiation between provinces. These theorists believe that these widening differences, in combination with the greater political authority for selected provinces, strengthen secessionist tendencies.

awarded the three major ethnic groups – Serbs, Croats, and Bosniaks – equal standing within the state.¹⁴

The following section reviews different models of symmetrical and asymmetrical allocations of political authority. It provides a variety of examples in order to illustrate some of the key considerations related to designing symmetrical and asymmetrical arrangements.

Symmetrical Allocation of Authority: Bosnia and Herzegovina, U.S.

Bosnia and Herzegovina: The state of Bosnia and Herzegovina comprises two separate “entities,” the Federation of Bosnia and Herzegovina and the Republika Srpska. These two entities, or provinces, have equal authority and responsibilities.¹⁵

United States: The United States has an institutionally symmetrical system.¹⁶ Each province has equal powers and authorities regardless of size or population or fiscal capacity. Specifically, the United States Constitution mandates that each province must respect the public acts, records, and judicial proceedings of every other state.¹⁷

Asymmetrical Allocation of Authority: Belgium, China, Spain

Belgium: Belgium’s federal system consists of both territorially defined provinces and linguistically linked communities. Provinces have power over economic development and infrastructure maintenance,¹⁸ while communities have power over cultural issues and many direct social services.¹⁹ The provinces have

¹⁴ The Dayton Accords, Nov. 21, 1995, Annex 4, art. 1, para. 3, Nov. 21, 1995.

¹⁵ The Dayton Accords, Nov. 21, 1995, Annex 4, art. 1, para. 3, Nov. 21, 1995.

¹⁶ This excludes U.S. territories, including American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands, and the federally administered seat of government, the District of Columbia.

¹⁷ UNITED STATES CONST. art. IV, sec. 1 (1787), *available at* http://www.archives.gov/national-archives-experience/charters/constitution_transcript.html (last accessed Sept. 13, 2007).

¹⁸ Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 62-63. The powers of regions includes, among other things, economic development, urban planning, housing, public works, water, energy, transportation, and job training, and international treaties (with limitations).

¹⁹ Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 62. The powers of the communities include, among other things, language, culture, education and social services, which “involve direct contact between state-provider and citizen.”

local parliaments and executives, with reserved seats for community representatives. The northern Flemish region and community merged in 1980. Through this merger, the Flemish territory holds the combined authorities of both a region and a community. In addition, the governments of the French-speaking community, the Walloon region, and the Flemish region can adopt decisions, approved by at least two-thirds of their members, to amend their own internal electoral and institutional procedures. The other regions and communities do not have this additional power.²⁰

China: China developed the One-Country-Two-Systems model as part of its reunification strategy, to accommodate disparate economic, social, and political systems in the state's provinces.²¹ The People's Republic of China's Constitution of 1982, provides that the National People's Congress is the highest legislative authority in China and may establish special administrative provinces and allocate substantial political authority to Hong Kong and Macau. In addition, the National People's Congress and the central Chinese executive have unlimited powers to change provincial status.²²

Spain: In Spain, each province desiring Autonomous Community status must request it from the central government. This request must specifically enumerate the authorities requested and the "... basic rules for the transfer of the corresponding services."²³ Each province negotiates separately with the Spanish state for the allocation of political authority. The specific powers eventually allocated to each Autonomous Community are contingent upon the historic status of the province, economic indicators, and the method through which the province requested the additional authority.²⁴ Three historically recognized Communities – the Basque Country, Catalonia, and Galacia – have significantly more political

²⁰ OECD REPORT: MANAGING ACROSS LEVELS OF GOVERNMENT: BELGIUM, *available at* <http://www.oecd.org/dataoecd/10/43/1902434.pdf> (last accessed Sept. 13, 2007).

²¹ The One-Country-Two-Systems model is a device designed to manage an alternative type of economy that was in sharp contrast with the planned economy of China in place when the negotiations for the transfer of sovereignty occurred. China implemented this model in Hong Kong in 1997 and in Macau in 1999. China also offered the One-Country-Two-Systems model to Taiwan in 1981.

²² CHINA CONST. ch. 3, sec. 1, art. 62 (1982), *available at* http://www.servat.unibe.ch/law/icl/ch00000_.html (last accessed Sept. 13, 2007).

²³ SPAIN CONST. Part VIII, ch. 3, sec. 147, para. 2(d) (1978).

²⁴ Luis Moreno, *Federalization and Ethnoterritorial Concurrence in Spain*, PUBLIUS, Autumn 1997, at 66.

authority than the other Communities.²⁵ The remaining Communities have varying levels of political authority based on individual negotiations with the Spanish state.

The Distribution of Political Authority

Division of Powers

States that divide power between the central and provincial governments specify which level of government maintains jurisdiction over certain political rights and obligations. While there is no specific formula for the division of powers, there are commonalities among states as to which powers each level of government holds. Central governments generally retain authority over matters relating to foreign policy, the preservation and defense of the state, and administrative matters necessary for the functioning of a state.²⁶ Provinces typically control matters related to education, family life, health, social welfare, police powers, local taxes, and regional transportation.

Concurrently held powers are those shared by the central and provincial governments. In many states, central and provincial authorities exercise concurrent powers for policies that the central government standardizes but the provincial governments implement. The provinces and central government frequently exercise concurrent jurisdiction over taxation, environmental policy, and in some instances over healthcare, social welfare, education, housing, police, and detention. Many state constitutions include provisions allowing for the devolution of additional authority by law.

Structure for Devolving Power

States organize the allocation of political authority between central and provincial governments in a number of ways. One approach is to allocate specific powers to the provincial governments and reserve the remaining unnamed powers for the central government. A second approach is to allocate specific powers to the

²⁵ Montserrat Guibernau, *Nations without States: Political Communities in the Global Age*, 25 MICHIGAN JOURNAL OF INTERNATIONAL LAW, 1251 (2003). In addition, competences differ among these three communities. Catalonia and the Basque Country, for example, have negotiated control of housing, local transport, and agriculture, and have even obtained control of their autonomous police forces.

²⁶ Powers generally held by the central government include: international affairs and national security, foreign relations, defense and armed forces, immigration and naturalization, communications and transportation, and international commerce and trade.

central government and reserve the remaining unnamed powers for the provincial governments. A third approach is to define the specific powers of each level of government explicitly, and there are no reserved powers. States usually define concurrent powers explicitly.

Allocating Specific Powers to the Provinces

When states allocate specific powers to the provincial governments, they usually list the powers in the constitution, peace agreement, or related legislation. States can leave the powers reserved for the central government undefined or can specify them in the constitution. The section below provides a number of examples of different methods states have used to allocate specific powers to provincial governments.

The Macedonian Constitution provides a list of specific areas over which the provincial governments have jurisdiction. It does not explicitly reserve the remaining power for the central government. In addition, the Macedonian Constitution provides the central government the right and ability to devolve additional powers to the local community through the passage of new laws.²⁷

The Constitution of the Philippines grants specific powers to the provinces of Mindanao and the Cordilleras. The Constitution also explicitly reserves “[a]ll powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions” to the central government.²⁸

South Africa: The South African Constitution explicitly lists the powers held solely by provincial governments and the powers held concurrently by the central and provincial governments.²⁹ All other powers belong to the central government.³⁰

Reserving Unnamed Powers for the Provinces: Cyprus, East Timor, Italy

²⁷ MACEDONIA CONST. ch. V, art. 115 (1991), *available at* http://www.servat.unibe.ch/law/icl/mk00000_.html (last accessed Sept. 13, 2007).

²⁸ PHILIPPINES CONST. art. X, sec. 17 (1987).

²⁹ SOUTH AFRICA CONST. Schedule 4, Schedule 5 (1996), *available at* <http://www.info.gov.za/documents/constitution/index.htm> (last accessed Sept. 13, 2007).

³⁰ SOUTH AFRICA CONST. ch. 4, sec. 44 (1996).

The section below provides a number of examples of different methods states use to allocate specific powers to the central government and to reserve the unnamed powers for the provincial governments.

Cyprus: UN Secretary-General Annan's plan to end the conflict in Cyprus allocated to the Greek and Turkish provinces all powers except those explicitly allocated to the central government. "Within the limits of the Constitution, [the Greek and Turkish provinces] sovereignly exercise all powers not vested by the Constitution in the [common state] government, organizing themselves freely under their own Constitutions."³¹

East Timor: In East Timor, the proposed Constitutional Framework for a Special Autonomy for East Timor specified which powers the central Indonesian government would have had. The Special Autonomous Region of East Timor would have had authority over all the powers not explicitly held by the Indonesian government.³²

Italy: The Italian Constitution provides that "[t]he regions have exclusive legislative power with respect to any matters not expressly reserved to [the] state."³³ The Constitution lists the specific areas that are under the jurisdiction of the central government.³⁴

Legislative Harmonization

Many constitutions require the central government and provincial governments to harmonize legislation on specific issues. Harmonization requires that legislation adopted by a provincial government be consistent, to a degree, with the legislation adopted by all other provincial governments. States usually undertake this harmonization to ensure a basic level of services for all citizens and to coordinate economic development.

³¹ Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, sec. 1, para. c.

³² Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, May 5, 1999, Part 1, ch. 2, art. 12, May 5, 1999, *available at* http://www.usip.org/library/pa/et/east_timor_05051999_toc.html (last accessed Sept. 13, 2007).

³³ ITALY CONST. art. 117, sec. 4 (1947).

³⁴ Paul J. Magnarella, *The Evolving Right of Self-Determination of Indigenous Peoples*, 14 St. THOMAS L. REV. 425, 440 (2001).

States use a number of different methods to achieve harmonization, including constitutional and legislative provisions. In many states, harmonization takes place through the central government's passage of framework legislation. Framework legislation identifies certain goals or guidelines within a specific policy area. Provincial governments must then enact implementing legislation within the guidelines stipulated in the framework. Framework legislation thereby establishes a cohesive national policy on specified areas and provides guidance for implementation of those policies by the provinces.³⁵

Central Harmonization: Malaysia, South Africa, Spain

Malaysia: Malaysia comprises thirteen provinces, nine Malay provinces, and four other provinces. Each province's constitution is required to include the same "essential provisions." The central legislature has the authority to remove inconsistencies in the provinces' respective constitutions.³⁶

South Africa: Devolving authority to the lowest possible level is the central principle of South Africa's government structure.³⁷ However, the South African Constitution also allows the central government to harmonize provincial laws. The Constitution provides the central government the right to pass superseding national legislation even in policy areas reserved for the provinces. Specifically, the central government may pass national legislation if "a matter... cannot be regulated effectively by legislation enacted by the respective provinces," or if the matter "to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity."³⁸ This uniformity may take the form of norms and standards, frameworks, or national policies. The Constitution also permits national law to supersede provincial law in areas of national security,

³⁵ Elizabeth Garrett, *The Purposes of Framework Legislation* (2004), WORKING PAPER NO. 30, CENTER FOR THE STUDY OF LAW AND POLITICS, USC LAW SCHOOL AND CALIFORNIA INSTITUTE OF TECHNOLOGY, at 2. Constitutions are frameworks, but they are more durable than framework legislation and they usually apply generally, rather than to a subset of issues.

³⁶ MALAYSIA CONST. Schedule Eight (1963), *available at* http://www.parliament.go.th/parcy/sapa_db/cons_doc/constitutions/data/Malaysia/malaysia.pdf (last accessed Sept. 13, 2007).

³⁷ SOUTH AFRICA CONST. ch. 3 (1996). South Africa's Constitution explicitly recognizes three levels of government: national, provincial, and local. This is unusual in a federation, as local authority usually falls under provincial control.

³⁸ SOUTH AFRICA CONST. ch. 6, sec. 146 (1996).

economic issues, equal opportunity, equal access to government services, or environmental protection.³⁹

Spain: Spain's central government can pass "laws which establish the principles necessary to harmonize the normative, provisions of the Autonomous Communities even in the case of matters attributed to their competence when the general interest so demands."⁴⁰ The Spanish Constitution requires the approval for both houses of parliament to enact such legislation. Both the central and Autonomous Communities' governments can ask the Spanish Constitutional Court to rule on competency disputes. The Court has thus played a significant role in determining when the central government has the right to require harmonization of Autonomous Communities' policies.⁴¹

Framework Legislation: Austria, Germany

Austria: The Austrian Constitution requires harmonization of central and provincial law and regulations on specific issues, including social welfare, land reform, agricultural labor laws, and electricity, among others.⁴² In these areas, after the central government establishes a policy, provinces are required to pass implementing legislation and execute these laws.⁴³

Germany: The German Constitution allows the central government to enact framework legislation in areas under the concurrent jurisdiction of central and provincial authorities. This framework legislation may not be too detailed, and the provinces must implement the framework through legislation.⁴⁴

Germany's central government has used framework legislation extensively in the past. The Constitutional Court has additionally allowed the federal government wide latitude to use the Constitution's "necessity clause" to harmonize

³⁹ SOUTH AFRICA CONST. ch. 6, sec. 146 (1996).

⁴⁰ SPAIN CONST. Part VIII, ch. 3, sec. 150, para. 3 (1978).

⁴¹ SPAIN CONST. Part VIII, ch. 3, sec. 150 (1978).

⁴² AUSTRIA CONST. arts. 11-14 (1929), available at http://www.ris.bka.gv.at/erv/erv_1930_1.pdf (last accessed Sept. 13, 2007).

⁴³ AUSTRIA CONST. art. 11, 12 (1929). In other policy areas, the Constitution requires provincial governments to execute the central government's laws without passing additional implementing legislation. AUSTRIA CONST. art. 11 (1929).

⁴⁴ GERMANY CONST. art. 75 (1949), available at <http://www.iuscomp.org/gla/statutes/GG.htm> (last accessed Sept. 13, 2007).

provincial laws. The necessity clause gives the central government authority to legislate on matters under concurrent jurisdiction “to the extent that a need for a Federal rule exists because...the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of a Land [province] necessitates it.”⁴⁵

Dispute Resolution

Judicial Review

In most states, the highest national judicial authority, generally the Constitutional Court or Supreme Court has jurisdiction in disputes between the central and provincial governments. In situations where the constitution or statute that establishes the allocation of political authority between the central or provincial governments is unclear, the judicial branch plays an important and ongoing role in clarifying the relationship between the central and provincial authorities.

The following section describes how judiciaries in different states exercise judicial review over the allocation of political authority between central and provincial governments and how rulings have affected the relationships between different levels of government.

Varying Roles Played by Courts: Canada, Germany, South Africa

Canada: Canada’s judiciary has authority over disputes arising between different levels of government. It therefore plays a crucial role in the relationship between the state’s central and provincial governments, particularly when new powers are allocated to either. This has enabled the relationship between Canada’s central and provincial authorities to adapt to new and changing situations. The court has played a particularly important role in addressing the constitutionality of Quebec’s claims for autonomy.

Germany: In Germany, the Constitutional Court has the authority to resolve disputes between the central and provincial governments, both of which may bring claims before the court. The court has generally allowed the federal government wide latitude in harmonizing provincial government policies, which has enabled the central government to increase its role in areas traditionally under the

⁴⁵ GERMANY CONST. art. 72, sec. 3 (1949).

jurisdiction of the provinces. The court has traditionally upheld the principle that the national and provincial governments must consider “the concerns of the other side” when formulating policies, despite the fact that there is no related constitutional provision.⁴⁶

South Africa: The South African Constitutional Court has jurisdiction over disputes arising between the central and provincial governments. The constitution requires all levels of government to exhaust “every reasonable effort to resolve any disputes through intergovernmental negotiations” before involving the Constitutional Court. If the Court determines that the central and provincial government has not met this constitutional obligation, it can refer the case back to the appropriate government agencies and refuse to rule on the issue.⁴⁷

Alternative Mechanisms

Some states have created separate mechanisms or formed special councils to resolve disputes between central and provincial governments before they reach the judiciary. Many states that have created such councils allow both the central and provincial governments to appoint members to the relevant entity. The section below describes a number of mechanisms used to resolve disputes between different levels of government outside of the formal judicial system.

Legislative Mediation Committee: South Africa

In South Africa, legislation that affects the provinces and on which the National Assembly (the directly elected lower house of the Parliament) and National Council of Provinces (the upper house of the Parliament that represents the provincial governments) disagree must go to a mediation committee. This committee is composed of nine members from the National Assembly and one delegate from each of the nine provincial delegations in the National Council of Provinces. At least five National Assembly delegates and five National Council of Provinces delegates on the mediation committee must agree before they can adopt a decision.⁴⁸ If the mediation committee does not resolve the disagreement, then

⁴⁶ Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 156.

⁴⁷ SOUTH AFRICA CONST. ch. 3, sec. 41, paras. 3, 4 (1996).

⁴⁸ The Committee can either agree to: (1) the version of the legislation passed by the National Assembly, (2) the version of the bill passed by the National Council of Provinces, or (3) a new version of the legislation. If the committee agrees to a new version of the legislation, both the

passage of the legislation in question requires a two-thirds majority in the National Assembly.⁴⁹

Coordination Committee: Belgium

Belgium has a coordination committee to resolve disputes between the central or provincial governments. The committee can hear disputes if either the central government or a provincial government believes the actions of the other have adversely affected the claiming authority. The members of the committee include the central government Prime Minister, five ministers from the central executive branch, and six members of the provincial governments.⁵⁰ The committee can stop any action on the part of any level of government for sixty days while it tries to reach a compromise. This committee determines the practical advisability of an executive or legislative act, but it cannot review the legality of a particular act.

Ad-Hoc Boards to Resolve Disputes: Denmark

The Greenland Home Rule Act establishes the relationship between Denmark and its autonomous province Greenland. This act provides for the creation of an ad hoc board to resolve conflicts between the central and provincial governments. When convened, a board consists of two delegates from Denmark, two from Greenland, and three judges from the Danish Supreme Court. The delegates from Denmark and Greenland try to resolve the dispute without the involvement of the Supreme Court judges. If the delegates from Denmark and Greenland cannot reach an agreement, then the judges from the Supreme Court decide the issue.

Coordination Mechanisms

National Involvement at the Provincial Level

Some central governments are involved in the day-to-day activities of the provincial government. In some instances, the representative of the central

National Assembly and the National Council of Provinces must vote on and pass this new version.

⁴⁹ SOUTH AFRICA CONST. ch. 4, sec. 76 (1996).

⁵⁰ Ordinary Act of Institutional Reforms (Belgium, 1980), art. 31; Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 65.

government is an official member of the provincial executive. In other states, the central governments maintain a role in the legislative process of the province. In some states, the central government maintains an office in the province to implement central government responsibilities. The central government's representative is often a member of the local community who provides a link between the two levels of government. In almost all cases, the provincial government must approve the representative.

The following state practice illustrates different models of central government representation in provinces with increased political authority.

Central Government Representative: Denmark, Finland

Denmark: Greenland is an autonomous province in Denmark. The central Danish government appoints a representative to observe both the executive and legislative branches of Greenland's provincial government. Although the central government representative may actively participate in debates and lobby on behalf of the Danish government, the representative has no voting or veto rights within either branch of the provincial government. By acting as a liaison, the central government representative expresses concerns of the central government and resolves potential conflicts before they reach the level of official disputes.

Finland: The Governor of the Åland Islands, an autonomous province of Finland, represents the central government. The Finnish President appoints the Governor but must receive the official approval of the Lagting, the Åland provincial parliament. The Governor oversees the responsibilities and obligations of the central Finnish government.⁵¹

Finland's central government can veto legislation passed by the Lagting if the central government believes the Lagting has exceeded its legislative authority, or if the law affects the internal or external security of Finland. Before exercising the veto, however, the Finnish President must seek the advice of the Åland Delegation and an opinion from the Finnish Supreme Court.⁵² The Finnish government and the Lagting appoint the Åland Delegation.⁵³

⁵¹ Act on the Autonomy of Åland, Aug. 16, 1991, ch. 8, sec. 52, Aug. 16, 1991, *available at* <http://www.lagtinget.aland.fi/eng/act.html> (last accessed Sept. 18, 2007).

⁵² Act on the Autonomy of Åland, Aug. 16, 1991, ch. 4, sec. 19, Aug. 16, 1991.

⁵³ Act on the Autonomy of Åland, Aug. 16, 1991, ch. 8, sec. 55. , Aug. 16, 1991.

Maintaining Provincial Obligations: Spain

In Spain, if one of the Autonomous Communities fails to satisfy its legal obligations or acts in a manner threatening to the central government, the central government can issue a formal complaint to the president of the defaulting Autonomous Community. If the Autonomous Community does not rectify the situation, Spain's central government may intervene by "means necessary in order to oblige the [Autonomous Community] forcibly to meet said obligations" or remove the threat to the central government's interests.⁵⁴

National and Provincial Government Cooperation

Many states provide mechanisms for coordination between the national and provincial governments. Some states constitutionally or legally mandate this coordination. In other states, the coordination is a result of informal political arrangements. States often provide provinces with a formal role in the decision-making process in the executive, legislature, or (less frequently) judiciary of the central government. States also have created joint councils to facilitate coordination between national and provincial governments.

The following section describes the mechanisms for provincial representation in the central government and joint councils for coordination. State practice illustrates how different states have implemented these mechanisms to ensure cooperation between the national and provincial governments.

Provincial Representation in the National Government

Provincial governments often have a formal role in the executive or legislature of the central government. In the executive, this often takes the form of a representative from the provincial executive serving in the national executive. In the legislature, this often takes the form of representatives elected by the provincial citizens or appointed by legislative authorities to sit in the national legislature.

In some states, provincial governments have official representation in the central government. This is a "cooperative" system because the two governments have developed an official mechanism for working directly with one another. In "separate" systems, central governments do not involve provincial governments in the central decision making process. States may represent provincial interests in

⁵⁴ SPAIN CONST. Part VIII, ch. 3, sec. 155 (1978).

the central government through mechanisms such as giving provincial constituents the right to elect representatives to the national legislature directly.

Coordination through Joint Councils

Some states have created joint councils that include representatives from both the central and provincial governments. These councils are usually responsible for ensuring adequate coordination between the two levels of government. Such mechanisms can provide a forum for discussions on overlapping policies, joint initiatives, and informal resolution of potential disagreements between the central and provincial governments.

Limited Representation in the Central Government: Spain

The Spanish Constitution establishes a process through which regions can assert their right to additional political authority, but it does not provide mechanisms for cooperation between the Autonomous Communities and the central government.⁵⁵ The central government drafts and passes legislation without any input from the Communities; similarly, the Communities operate without significant federal oversight in implementing these policies.⁵⁶ The Spanish central government appoints a delegate in each Autonomous Community to implement policies for which it holds exclusive political authority.

The second chamber of the Spanish parliament, the Senate, represents the different regional and Autonomous Communities' interests in the central government. Senate deputies are either directly elected from the provinces or from the parliaments in the Autonomous Communities.⁵⁷ While this chamber had the

⁵⁵ SPAIN CONST. Part VIII, ch. 3, sec. 154 (1978).

⁵⁶ Karen Adelberger, INSTITUTE OF GOVERNMENT STUDIES, Working Paper 99-16, FEDERALISM AND ITS DISCONTENTS: FISCAL AND LEGISLATIVE POWERSHARING IN GERMANY 1948-1999, available at <http://www.igs.berkeley.edu/publications/workingpapers/99-16.pdf> (last accessed Sept. 13, 2007). While the constitution delineates the powers of the central Spanish state and the Autonomous Communities, Article 149 establishes a process through which these powers can shift between the two levels of government. Of note is Article 149.3, which indicates that the norms of the State will supplement those of the Communities. In 1997, the Spanish Constitutional Court clarified the interpretation of this provision to ensure that the central government does not use it to reclaim authorities granted to the Autonomous Communities.

⁵⁷ SPAIN CONST. Part III, ch. 1, sec. 69 (1978).

potential to be a strong advocate for the interests of the Autonomous Communities, only a minority of Senate members come from the Autonomous Communities.⁵⁸

Central Legislative Power for Political Parties: South Africa

Provinces have a significant role in South Africa's legislature. The upper house, the National Council of Provinces, represents the interests of the provincial governments. Each of South Africa's nine provinces sends ten members to the National Council of Provinces. The South African Constitution dictates the formula by which each province selects the members of its delegation.

Political parties, not individually elected representatives, hold the seats in the National Council of Provinces. If a delegate must leave his position, the political party that holds that seat chooses the replacement, which the entire provincial legislature must approve. For each province, the Constitution designates six of the delegates as permanent members and four as special representatives.⁵⁹

Provincial Representation and Joint Council Coordination: Finland

The Åland Islands has a representative in the Finnish national parliament. This representative has the same rights, duties, and privileges as all other members of parliament. The Åland Parliament must approve any Finnish law that affects the ownership of property in the Åland Islands before it enters into force in the Åland

⁵⁸ Siobhan Harty, FORUM OF FEDERATIONS, COUNTRY PROFILE ON SPAIN, *available at* <http://wwwforumfed.org>. Ann L. Griffiths, FORUM OF FEDERATIONS, HANDBOOK OF FEDERAL COUNTRIES (2005), at 328. An inter-party working group considered a constitutional amendment to transform the Senate into a truly representative chamber of regions, but this has not taken place, despite apparent widespread support.

⁵⁹ The permanent members of each province's delegation must come from the provincial legislatures and must relinquish their legislative positions when they become members of the National Council of Provinces. The government chooses the four "special" representatives in the following manner: one is the premier of the province, and the other three can be, but are not required to be, members of the provincial legislature. The National Council of Provinces delegates each have a vote on ordinary legislation that does not affect the provinces. For other bills, however, each provincial delegation casts a single vote. Most questions before the National Council of Provinces require five delegations to vote in favor; amendments to the Constitution require the approval of six delegations.

territory. Furthermore, “an opinion shall be obtained from Åland before the enactment of an Act of special importance to Åland.”⁶⁰

The Åland Delegation is a joint council that facilitates coordination between Finland's central government and the Åland Islands. The Åland Provincial Governor is the leader of the Delegation, and the Åland Parliament must approve his appointment. Other members of the delegation include a vice-chair (appointed by the President with the consent of the speaker of the Finnish Parliament); three members elected by the Council of States (upper house of Finland) and three members elected by the Åland Parliament. The Delegation’s responsibilities include fiscal coordination and resolution of disputes related to new fishing lanes and transfer of land between Finland's central government and Åland authorities.

Provincial Representation in the Executive Branch: Denmark

Denmark’s autonomous province of Greenland is represented in the state’s executive branch. The members of parliament from Greenland serve on the Danish Foreign and Security Policy Committee together with representatives from the Faroe Islands.⁶¹

External Provincial Cooperation

Many states make explicit provisions related to coordination between and among provinces. Agreements between a state’s provinces may or may not require approval from the central government. In some states, certain provinces also have the authority to conclude agreements with foreign states. Such agreements often concern the use and development of natural resources. In addition, some provinces have representatives in regional and international bodies, such as the European Union. Below are a number of examples of province-to-province cooperation as well as instances in which provinces have representation in international bodies.

Province-to-Province Cooperation: Spain, Switzerland

⁶⁰ Act on the Autonomy of Åland, Aug. 16, 1991, ch. 5, sec. 28.

⁶¹ The SECRETARIAT OF THE FOREIGN POLICY COMMITTEE, THE FOREIGN POLICY COMMITTEE, at 11, *available at* http://www.folketinget.dk/pdf/foreign_policy_committee.pdf (last accessed Sept. 18, 2007). The Act on the Foreign Policy Committee provides that the Parliament must choose the seventeen members of the Foreign Policy Committee from among its members and according to proportional representation.

States may require the central legislative or executive branch to approve inter-province agreements or cooperation. For example, the Spanish national parliament must approve any cooperation between Autonomous Communities that the original Autonomy Statute, which spells out the powers devolved to each Autonomous Community, does not stipulate.⁶² Switzerland's Constitution requires the national parliament's approval of agreements between the provinces if the central government or a provincial government raises an objection.⁶³

International Status for Provincial Governments: Union of Serbia and Montenegro, Canada, Denmark

Some provinces have the authority to enter into agreements with other states. For example, while the Union of Serbia and Montenegro was in effect, each of the constituent states could conclude its own international agreements. These agreements could not be contrary to the interests of the Union or of the other province in the Union.

Provincial governments can often establish diplomatic missions in foreign states, particularly with regard to cultural affairs. Canada's provinces of Ontario and Alberta have official representatives in some Canadian embassies; Québec also has its own cultural attachés in other states.⁶⁴

In other states, provinces can enter into agreements with foreign governments. These agreements often provide a mechanism for coordination between an individual province and a foreign government, but do not bind the entire state to norms of international law. For example, Canada's provinces of Ontario and Quebec have a number of educational and cultural arrangements with foreign governments. Similarly, Greenland is included in Denmark's delegation to the Nordic Council. Greenland has its own delegation to the North Atlantic Fisheries organization, through which it has also negotiated a number of fishery agreements with both Russia and Canada.

Provincial Involvement in Intergovernmental Organizations: Germany, Spain, Finland, Denmark, Union of Serbia and Montenegro

⁶² SPAIN CONST. Part VIII, ch. 3, sec. 145 (1978).

⁶³ SWITZERLAND CONST. art. 172 (1999), available at <http://www.admin.ch/ch/e/rs/1999/2556.pdf> (last accessed Sept. 13, 2007).

⁶⁴ Elliot J. Feldman & Lily Gardner Feldman, *The Impact of Federalism on the Organization of Canadian Foreign Policy*, PUBLIUS, Autumn 1984, at 40.

Provinces within some states participate in supra-regional and intergovernmental organizations, such as the European Union. Germany's provinces have the explicit right to represent the state in the Council of Ministers – the main decision-making body of the European Union – on discussions relating to issues under the provinces' jurisdiction. Spain's Autonomous Communities have a representative who speaks for the Communities in the European Union's decision-making process.⁶⁵ In Finland, the autonomous province of the Åland Islands has its own representation on the Nordic Council, separate and distinct from that of Finland. Although the now-defunct Union of Serbia and Montenegro had a single international personality, an agreement allowed each province independently to become a member of intergovernmental organizations whose membership is not contingent on international personality. In missions representing Serbia and Montenegro's missions to intergovernmental organizations, the two entities were represented on a parity basis and through rotation.

Changes to Existing Structures

*Provincial Boundaries*⁶⁶

Many states have procedures for changing provincial boundaries. The process for changing provincial boundaries often requires the approval of all of the affected provinces, as well as the central government. This approval often requires a public referendum and/or a vote in the relevant legislative bodies. Many states require a higher threshold to approve changes to provincial boundaries than is required for other decisions. Other states explicitly deny the right of individual provinces to merge or secede from the state.

Shield from Territorial Divisions: Belgium

Belgium can subdivide its provinces, but a law can also “shield” a territory from division. A majority of the votes in each house of the Belgian national parliament must pass the shielding law. When shielding laws are not in effect,

⁶⁵ Tanja Borzel, *From Competitive Regionalism to Cooperative Federalism: The Europeanization of the Spanish State of Autonomies*, PUBLIUS, Spring 2000, at 29.

⁶⁶ For information on state borders, see the Borders chapter of this guide.

only legislation passed by a majority in parliament can change provincial boundaries.⁶⁷

Joining of Provinces to form Autonomous Communities: Spain

The Spanish Constitution provides for a general right “to autonomy of the nationalities and regions.”⁶⁸ Any province or group of provinces meeting the requisite criteria may apply to become an Autonomous Community. The right is restricted to bordering provinces with “common historic, cultural, and economic characteristics, insular provinces, and provinces with a historic provincial status.”⁶⁹

Central Government Authority: Canada

Canada’s Constitution Act of 1982 allows changes to the boundaries of the state’s provinces. Any such changes are subject to “highly qualified proceedings,” which require the approval of both houses of the Canadian Parliament and the provincial legislatures of any affected province.⁷⁰

Formation of New Provinces: Iraq

The Iraq Constitution of 2005 provides that existing governorates may combine to form provinces. The state consists of twenty regions; only one province, Kurdistan, currently exists. One or more provinces can organize into a region “based on a request to be voted on in a referendum,” submitted through one

⁶⁷ BELGIUM CONST. arts. 4-6 (1970), *available at* http://www.servat.unibe.ch/law/icl/be00000_.html (last accessed Sept. 13, 2007). The relevant provisions of the Constitution of Belgium are: Article 4(3); “The limits of the four linguistic regions can only be changed or modified by a law adopted by majority vote in each linguistic group in each House, on the condition that the majority of the members of each group are gathered together and from the moment that the total of affirmative votes given by the two linguistic groups is equal to at least two thirds of the votes expressed”; Article 5(2): “ By law, the territory can be divided into a greater number of provinces, if necessary”; Article 5(3): “ A law can shield certain territories whose limits it fixes, from division into provinces, make them depend directly on the federal executive power, and make them subject to a statute of their own. This law must be adopted by majority vote as provided for in...” Article 4(3); Article 6: “The provincial sub-divisions can only be established by law”; and Article 7: “The delimitation of the State, the provinces, and the communes can only be changed or modified by law.”

⁶⁸ SPAIN CONST. Preliminary Title, art. 2 (1978).

⁶⁹ SPAIN CONST. Part VIII, ch. 3, art. 143 (1978).

⁷⁰ Canadian Constitutional Act of 1982, Part V, sec. 43, *available at* http://laws.justice.gc.ca/en/const/annex_e.html#III (last accessed Sept. 13, 2007).

of two methods. These methods are: (1) a request by one-third of the council members in each of the governorates seeking provincial status, and (2) a request by one-tenth of the voters in each of the districts seeking provincial status.⁷¹

Subsequent Allocation of Additional Political Authority

Central and provincial governments sometimes find it necessary to amend the allocation of political authority. Most states establish mechanisms for the orderly transfer of these powers. Many central governments retain ultimate authority to approve such transfers, but most also include the provincial governments in these decisions.

Many states allow the central legislature to allocate additional political authority to provincial governments following the initial agreement on the division of power. Such changes are generally the result of political grants, rather than constitutional amendments, and states usually make them for practical reasons. Many states decide that provincial governments are better able to implement powers allocated to the central government. The following section presents various mechanisms used to amend a state's allocation of political authority.

Creation of New Self-Governing Provinces: Italy

Italy's Constitution names those provinces that can gain autonomous status. However, provinces not named can also seek additional political authority⁷² “[A]fter consultation of local administrations, state law may assign further particular forms and conditions of autonomy to other provinces.”⁷³ These autonomous powers are restricted to certain policy areas. “The law, based on an agreement between the state and the region concerned,” requires approval by a majority in the central legislature and the affected provincial legislatures.⁷⁴

Legislative Delegation: South Africa, Spain

⁷¹ IRAQ CONST. art. 114 (2005), *available at* http://portal.unesco.org/ci/en/files/20704/11332732681iraqi_constitution_en.pdf/iraqi_constitution_en.pdf (last accessed Sept. 24, 2007).

⁷² Those regions are Friuli-Venezia Giulia, Sardinia, Sicily, Southern Trentino, and the Aosta Valley (the region Southern Trentino consists of the autonomous provinces Trento and Bolzano). ITALY CONST. art. 116 (1947).

⁷³ ITALY CONST. art. 116 (1947).

⁷⁴ ITALY CONST. art. 116 (1947).

South Africa: The South African legislature may “assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government.”⁷⁵ The constitution does not specify a mechanism for the transfer.

Spain: The Spanish constitution also allows the central government to delegate additional power to its Autonomous Communities by law. These powers must “because of their own nature [be] susceptible to transference or delegation.”⁷⁶ Such laws must also take into account financial transfers that will be necessary to sustain the administrative and legislative transfer.⁷⁷

COMPARATIVE STATE PRACTICE

Aceh

Indonesia is a unitary state with a number of regional levels of government. Each region is entitled to have its own “parliament,” but the national parliament determines the implementation and scope of regional government. The peace agreement between Indonesia and Aceh provides for the asymmetrical devolution of power to Aceh. These powers include all those related to public affairs; the Indonesian government retains authority over only foreign affairs, external defense, national security, monetary and fiscal matters, and freedom of religion.⁷⁸ Additional power-sharing mechanisms include: a requirement that the legislature of Aceh consent to international agreements entered into by the Government of Indonesia that relate to matters of special interest to Aceh; decisions of the legislature of Indonesia that relate to Aceh; and a requirement that the head of the Aceh administration consent to and coordinate implementation of administrative policies issued by the Government of Indonesia.⁷⁹

Afghanistan

⁷⁵ SOUTH AFRICA CONST. ch. 6, sec. 144 (1996).

⁷⁶ SPAIN CONST. Part VIII, ch. 3, sec. 150 (1978).

⁷⁷ SPAIN CONST. Part VIII, ch. 3, sec. 150 (1978).

⁷⁸ Memorandum of Understanding Between the Government of Indonesia and the Free Aceh Movement, August 15, 2005, Part 1, Section 1.1.2, August 15, 2005, *available at* http://www.thejakartapost.com/RI_GAM_MOU.pdf (last accessed Sept. 13, 2007).

⁷⁹ Memorandum of Understanding Between the Government of Indonesia and the Free Aceh Movement, August 15, 2005, Part 1, Section 1.1.2, August 15, 2005.

Afghanistan is a unitary state that devolves substantial power on a symmetrical basis to the provinces.⁸⁰ Powers exercised by the provinces include those related to the development of provincial economic, social, and cultural affairs, as well as the development of political participation.⁸¹ An important additional power-sharing mechanism is the requirement that provincial councils coordinate with the central government on development and other “important issues” related to provincial administration.⁸²

Australia

Australia is a federal state that devolves power on an asymmetrical basis to states and territories. Because laws define most powers held by the provinces, the constitution does not list exhaustively those powers held by the provinces.⁸³

Bosnia and Herzegovina

Bosnia-Herzegovina is a federal-like state comprised of the two entities of the Federation of Bosnia-Herzegovina and the Republika Srpska. Each entity has its own constitution, president, and parliament. The central government retains powers over matters such as foreign policy, customs policy, immigration and macro economic policy. The central government devolves all other powers to the Federation and to Srpska. Additional power-sharing mechanisms include a rotating presidency comprised of the three primary ethnic groups, minority vetoes applicable to nearly all legislative matters, a second chamber of parliament designed to ensure parity among the three primary ethnic groups, and an ethnic based allocation of seats on the Constitutional Court, as well as provision for international participation on the Court.

Cyprus

The Annan Plan for resolution of the Cyprus conflict provided for the creation of a bizonal, bicomunal, federation comprised of the component states

⁸⁰ AFGHANISTAN CONST. art. 136 (2004), *available at* <http://www.moj.gov.af/pdf/constitution2004.pdf> (last accessed Sept. 13, 2007).

⁸¹ AFGHANISTAN CONST. art. 137 (2004).

⁸² AFGHANISTAN CONST. art. 139 (2004).

⁸³ AUSTRALIA CONST. ch. I, Part V, sec. 52 (1900), *available at* <http://www.apf.gov.au/senate/general/constitution/> (last accessed Sept. 13, 2007).

of Northern and Southern Cyprus.⁸⁴ Each component state would have exercised symmetrical powers,⁸⁵ including all powers not vested in the central government.⁸⁶ The powers retained by the central government include external affairs, including EU relations; monetary policy; common state finances, including economic and trade policy and indirect taxes; territorial waters; communications; and combating terrorism, drug trafficking, money laundering, and organized crime.⁸⁷ Additional power-sharing mechanisms included a rotating presidency, a qualified majority for certain legislation, set-aside seats for the Northern component state on the Federal Council, and on the Constitutional Court, as well as provision for the participation of international judges.

Denmark - Greenland

Denmark, a unitary state, maintains an asymmetrical relationship with Greenland. Under the 1978 Greenland Home Rule Act, Greenland operates as an autonomous region within “the framework of the unity of the Realm.”⁸⁸ Greenland maintains control over issues related to the home rule and government in Greenland, such as direct and indirect taxes, religious affairs, environmental affairs and conservation, education, social welfare and health services.⁸⁹

East Timor

The proposed Constitutional Framework for a Special Autonomy for East Timor provided for special autonomy for East Timor within the unitary state of

⁸⁴ Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, *available at* http://www.unannanplan.agrino.org/1revised_un_plan.pdf (last accessed Sept. 13, 2007)

⁸⁵ Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 2, para.a.

⁸⁶ Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 12.

⁸⁷ Basis for Agreement on a Comprehensive Settlement of the Cyprus Problem, Appendix A, art. 12.

⁸⁸ The Greenland Home Rule Act, Act. No. 577, Nov. 19, 1978, sec. 1, para. 1 (1978), *available at* http://www.nanoq.gl/English/The_Home_Rule/The_Home_Rule_Act.aspx (last accessed Sept. 13, 2007).

⁸⁹ The Greenland Home Rule Act, Act. No. 577, Nov. 19, 1978, Schedule A (1978).

Indonesia.⁹⁰ The Framework provided that the central government would be responsible for powers such as foreign affairs, external defense, economic and fiscal policies, and national taxation. All other powers would be allocated to the Special Autonomous Region of East Timor.⁹¹

Germany

Germany is a federal state. Most provinces (Laender) have symmetrical powers, which include all powers not vested in the central government.⁹² The provinces of Baden, Bavaria, Wuerttemberg-Baden, and Wuerttemberg-Hohenzollern hold minor additional powers.⁹³ The powers retained by the central government include: foreign affairs and defense; national citizenship; customs and trading; currency; and cooperation between the federal government and the provinces on certain issues.⁹⁴ Concurrent powers include: criminal and civil law; the administration of courts and notaries; war damages, reparations, and benefits; economic matters, labor law; expropriation and the transfer of lands to the central government for the public good; land laws; disease control; and federation-wide transportation and shipping.⁹⁵

Italy

Italy is a unitary state⁹⁶ that devolves power to specified autonomous regions on an asymmetrical basis.⁹⁷ In certain cases, other regions may gain some

⁹⁰ Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, Part 8, art. 57, May 5, 1999, part 8, art. 57, *available at* http://www.usip.org/library/pa/et/east_timor_05051999_toc.html (last accessed Sept. 13, 2007).

⁹¹ Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, Part 1, May 5, 1999, part 1.

⁹² GERMANY CONST. art. 30 (1949), *available at* <http://www.iuscomp.org/gla/statutes/GG.htm> (last accessed Sept. 13, 2007).

⁹³ GERMANY CONST. art. 138 (1949).

⁹⁴ GERMANY CONST. art. 73 (1949).

⁹⁵ GERMANY CONST. art. 74 (1949).

⁹⁶ ITALY CONST. art. 5 (1947), *available at* http://www.servat.unibe.ch/law/icl/it00000_.html (last accessed Sept. 13, 2007).

⁹⁷ ITALY CONST. art. 116 (1947). “[P]articuliar forms and conditions of autonomy are enjoyed by Friuli-Venezia Giulia, Sardinia, Sicily, Southern Trentino, and the Aosta Valley. The province Southern Trentino consists of the autonomous provinces Trento and Bolzano.”

additional political authority within certain policy areas.⁹⁸ An agreement negotiated between the state and the province concerned can provide additional autonomy, and the central legislature and the provincial legislature must approve the agreement.⁹⁹

The central Italian government holds specific powers, including: foreign policy and international relations; defense and armed forces; financial markets; currency system; state taxation system and accounting; social welfare standards; education policy; social security; electoral legislation, and local government and fundamental functions of municipalities, provinces, and metropolitan cities. The central government and provincial governments share authority over other issues, including: international and European Union relations with the regions; foreign trade; protection and safety of labor; education, with the exception of vocational training; scientific and technological research; health protection; food; sports regulations; and disaster relief service. The regions reserve all other powers.¹⁰⁰

Macedonia

Macedonia is a unitary state with no provinces. The 2001 Ohrid Agreement provided for the amendment of the constitution in order to devolve significant authority to the local governments, thus creating a highly decentralized unitary state. Specifically, the agreement substantially enlarging the competences of municipal councils, particularly in the areas of public services, urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, and healthcare. The Agreement also established a mechanism for the municipal councils to raise substantial revenue.¹⁰¹ Additional power-sharing mechanisms included setting aside the position of Vice President for the Albanian minority, and for requiring qualified majority (a majority of the parliamentarians representing the minority population) to adopt legislation in the areas of culture, language, local government.

Malaysia

⁹⁸ ITALY CONST. art. 116 (1947). “[A]fter consultation of local administrations, state law may assign further particular forms and conditions of autonomy to other provinces.”

⁹⁹ ITALY CONST. art. 116 (1947).

¹⁰⁰ ITALY CONST. art. 117 (1947)..

¹⁰¹ Ohrid Agreement, art. 3, August 13, 2001, art. 3, *available at* http://www.usip.org/library/pa/macedonia/pa_mac_08132001.html (last accessed Sept. 13, 2007).

Malaysia is a federal state that devolves power on an asymmetrical basis to its nine “Malay” states and four “other” states, Malacca, Penang, Sabah, and Sarawak. The Constitution sets out those powers exercised exclusively by the federal government, those powers held exclusively by the provincial governments, and those powers exercised concurrently by both the federal and provincial governments.¹⁰² The powers exercised exclusively by the provinces include matters relating religion, land usage and tenure, permits and licensing for natural resources, agricultural and forestry loans and administration, local government services, state penal codes, housing, internal transportation and infrastructure, and fishing rights.¹⁰³ In addition, the states of Sabah and Sarawak (which joined with Malaysia in 1963)¹⁰⁴ retain a number of other exclusive powers related to law, finance, access to ports not under federal control, and religion.¹⁰⁵ These two states also have a wider spectrum of concurrently powers than the other Malay states.¹⁰⁶ All four of the “other” states have special provisions for the appointment and election of their respective executive leaderships.¹⁰⁷

United Kingdom/Northern Ireland

Most consider the United Kingdom to be a unitary state, although it has recently devolved some power to Scotland and Wales, and substantial power to Northern Ireland. Under the 1995 Belfast Agreement, Northern Ireland was granted exclusive legislative and executive power over the areas within its competence, including agriculture and rural development; culture and the arts; education; employment; enterprise, trade, and investment; the environment; local financial matters; health, social services, and public safety; and local economic and social development.¹⁰⁸ The UK government, represented by the Secretary of State

¹⁰² MALAYSIA CONST. Schedule Eight, Schedule Nine (1963), *available at* http://www.parliament.go.th/parcy/sapa_db/cons_doc/constitutions/data/Malaysia/malaysia.pdf (last accessed Sept. 13, 2007).

¹⁰³ MALAYSIA CONST. Schedule Nine, List II (1963).

¹⁰⁴ MALAYSIA CONST. art. 153 (1963). The populations of Sabah and Sarawak are part of the larger category of minorities in Malaysia termed Bumiputra. These groups are protected by Article 153 of the Malaysian Constitution, which allows the federal government to create civil service and educational quotas favoring these groups. This article is subject to significant controversy among the population.

¹⁰⁵ MALAYSIA CONST. art. 95, Schedule Nine (1963).

¹⁰⁶ MALAYSIA CONST. Schedule Nine (1963).

¹⁰⁷ MALAYSIA CONST. Schedule Eight (1963).

¹⁰⁸ These powers were suspended in October 2002.

for Northern Ireland, retained responsibility for powers not devolved to the Assembly, including policing, security policy, prisons, criminal, justice, international relations, taxation, national insurance, regulation of financial services and the regulation of telecommunications and broadcasting. The Secretary of State will represent Northern Ireland's interests in the United Kingdom Cabinet. The Belfast Agreement left open the possibility for the allocation additional authority,¹⁰⁹ but it also permitted the central government's parliament at Westminster to pass legislation affecting Northern Ireland.¹¹⁰

Philippines

The Philippines is a unitary state that provides for asymmetrical allocation of political authority among its provinces. The constitution provides a higher degree of political authority for the regions in Muslim Mindanao and in the Cordilleras.¹¹¹ The constitution specifies the competences of autonomous provinces, including local administration and planning; ancestral domain and natural resources; personal, family, and property relations; economic, social, and tourism development; education; preservation of culture and heritage. The government may allocate other realms of political authority to the autonomous provinces.¹¹²

Serbia and Montenegro

The State Union of Serbia and Montenegro was comprised of the member states of Montenegro and Serbia.¹¹³ The central government possessed only limited jurisdiction over the implementation of international conventions, defense, borders, immigration and asylum, the budget, and national symbols. The member states exercised control over all other matters. The member states were also entitled to see membership in international organizations, which did not require international recognition as a prerequisite. The member states could also conclude

¹⁰⁹ Good Friday Agreement, Apr. 10, 1998, Strand 1, *available at* <http://www.nio.gov.uk/agreement.pdf> (last accessed Sept. 13, 2007); Website of the GOVERNMENT OF NORTHERN IRELAND, *available at* <http://www.nics.gov.uk/index.htm> (last accessed Sept. 13, 2007).

¹¹⁰ Good Friday Agreement, Apr. 10, 1998, sec. 34.

¹¹¹ PHILIPPINES CONST. art. 5, sec. 15 (1987), *available at* <http://www.gov.ph/aboutphil/constitution.asp> (last accessed Sept. 13, 2007).

¹¹² PHILIPPINES CONST. art. 5, sec. 20 (1987).

¹¹³ SERBIA AND MONTENEGRO CONST. (2003), *available at* http://www.srbija.sr.gov.yu/cinjenice_o_srbiji/ustav_odredbe.php?id=217 (last accessed Sept. 13, 2007).

international agreements so long as they were not contrary to the interests of the Union or of the other member state. Additional measures included the requirement that the member state, which did not hold the presidency, was entitled to three of the five cabinet posts (Prime Minister, Finance, Defence, Foreign Affairs, and External Economic Relations). The Ministry of Foreign Affairs and the Ministry of Defence were required to have Deputy Ministers from the member state that did not hold the Ministerial portfolio.

South Africa

South Africa is a unitary state, with the symmetrical devolution of power to its provinces. South Africa operates based on subsidiarity, which allocates all political authority to the lowest possible level.¹¹⁴ The central government may only pass national legislation, however, if “a matter...cannot be regulated effectively by legislation enacted by the respective provinces,” or if the matter “to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity.”¹¹⁵ The constitution also permits national law to supersede provincial law in areas of national security, economic issues, equal opportunity, equal access to government services, or environmental protection.¹¹⁶

Spain

Spain operates as a federal state, which devolves power on an asymmetrical basis. Although there is no specific reference to federalism in the Spanish constitution, Spain is a highly decentralized state, and constitutional experts categorize it as a federal system.¹¹⁷ The Spanish provinces (Autonomous Communities) possess varying degrees of political power. The specific powers devolved to each Autonomous Community are contingent upon the historic status of the province, economic indicators, and the method through which the province

¹¹⁴ SOUTH AFRICA CONST. ch. 3 (1996), *available at* <http://www.info.gov.za/documents/constitution/index.htm> (last accessed Sept. 13, 2007). South Africa’s Constitution explicitly recognizes three levels of government: national, provincial, and local. This is unusual in a federation, as local authority usually falls under provincial control.

¹¹⁵ SOUTH AFRICA CONST. ch. 6, sec. 146 (1996).

¹¹⁶ SOUTH AFRICA CONST. ch. 6, sec. 146 (1996).

¹¹⁷ SPAIN CONST. Preliminary Title, art. 2 (1978), *available at* http://www.senado.es/constitu_i/index.html (last accessed Sept. 13, 2007).

requested the additional authority.¹¹⁸ Three historically recognized Communities – the Basque Country, Catalonia, and Galacia – possess significantly more political authority than the other Communities.¹¹⁹ In addition, competences differ among these three communities. Catalonia and the Basque Country, for example, have negotiated control of housing, local transport, and agriculture, and have even obtained control of their autonomous police forces.

Switzerland

Switzerland is a confederation, with symmetrical devolution of powers among its thirteen provinces (cantons). The cantons retain all powers not constitutionally delegated to the central government.¹²⁰ The central government exercises power over has competency over foreign relations,¹²¹ use of the army,¹²² legislation on the military,¹²³ legislation of civil defense,¹²⁴ professional education,¹²⁵ the census,¹²⁶ and the promotion of sport.¹²⁷ The central government also has authority over “the tasks which require uniform regulation,”¹²⁸ as well as “fundamental provisions” regarding political rights and their exercise, constitutional rights and their restrictions, individual rights and obligations, taxation, the role of the central government, the obligations of the cantons when undertaking to implement and execute federal law. The constitution permits that the central government may delegate its tasks to the cantons, when constitutional.¹²⁹ The central government may also contribute to education,

¹¹⁸ Luis Moreno, *Federalization and Ethnoterritorial Concurrence in Spain*, 27 PUBLIUS 65, 66 (Fall 1997).

¹¹⁹ Montserrat Guibernau, *Nations without States: Political Communities in the Global Age*, 25 MICHIGAN JOURNAL OF INTERNATIONAL LAW, 1251 (2003).

¹²⁰ SWITZERLAND CONST. art. 3 (1999), available at <http://www.admin.ch/ch/e/rs/1999/2556.pdf> (last accessed Sept. 13, 2007).

¹²¹ SWITZERLAND CONST. art. 54 (1999).

¹²² SWITZERLAND CONST. art. 58 (1999).

¹²³ SWITZERLAND CONST. art. 60 (1999).

¹²⁴ SWITZERLAND CONST. art. 61 (1999).

¹²⁵ SWITZERLAND CONST. art. 63 (1999).

¹²⁶ SWITZERLAND CONST. art. 65 (1999).

¹²⁷ SWITZERLAND CONST. art. 68 (1999).

¹²⁸ SWITZERLAND CONST. art. 42 (1999).

¹²⁹ SWITZERLAND CONST. art. 164 (1999).

normally a cantonal sphere, so long as it does not interfere with the autonomy of the cantons.¹³⁰

DARFUR PEACE AGREEMENT

Federal System of Government

The Darfur Peace Agreement provides that Sudan has a federal system of government in Sudan with legislative, executive, and judicial branches of government at the provincial level.¹³¹ Additionally, the DPA establishes the Transitional Darfur Regional Authority (TDRA) that is responsible for implementing the provisions of the DPA and coordinating the actions and policies of the three provinces of Darfur.¹³²

The TDRA also is responsible for implementing programs to facilitate the return of displaced persons, coordinating the implementation of security measures, and facilitating peace and reconciliation in Darfur.¹³³ The TDRA does not replace or have the power to overrule the provincial governments in Darfur.¹³⁴ However, if the Authority's Chairperson believes that a province's actions undermine the implementation of the DPA, the Chairperson must refer the matter to the Presidency for resolution.¹³⁵

The Darfur Peace Agreement does not provide for the competencies of the central or provincial governments. However, the DPA does provide for representation of Darfurians in each branch of the central government.¹³⁶ The DPA provides the central and provincial governments with concurrent powers of taxation and revenue distribution.¹³⁷ The DPA establishes a Fiscal and Financial Allocation and Monitoring Commission to facilitate the transfer of revenues

¹³⁰ SWITZERLAND CONST. art. 67 (1999).

¹³¹ Darfur Peace Agreement, art. 4, para. 44, May 5, 2006, *available at* http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed, Sept XX, 2007).

¹³² Darfur Peace Agreement, art. 6, paras. 48-49.

¹³³ Darfur Peace Agreement, art. 6, para. 53.

¹³⁴ Darfur Peace Agreement, art. 6, para. 54.

¹³⁵ Darfur Peace Agreement, art. 6, para. 54.

¹³⁶ Darfur Peace Agreement, arts. 8-10.

¹³⁷ Darfur Peace Agreement, art. 18, para. 113.

between provinces and between the central government and the provinces to ensure that all provinces received equitable levels of revenue.¹³⁸

Darfurian Representation in the Central Government

The DPA provides that Darfur should have representatives in the national legislature by allocating at least twelve seats in the National Assembly to nominees of the SLM/A and the JEM.¹³⁹ Further, the Darfur provinces have representatives in the Council of States.¹⁴⁰ In the executive branch, the Senior Assistant to the President is also the Chairperson of the Transitional Darfur Regional Authority, and the President of Sudan chooses the Senior Assistant from a list of nominees that the SLM/A and the JEM provide.¹⁴¹ The Senior Assistant is the fourth ranking member in the Presidency.¹⁴² The DPA also requires the President to appoint a Darfurian to the position of Advisor to the President.¹⁴³ Additionally, the DPA provides that Darfurians should occupy four posts as Cabinet Minister and five posts as State Minister, and a nominee of the SLM/A and the JEM should be the chairperson of one Parliamentary committee in the National Assembly.¹⁴⁴

SAMPLE LANGUAGE

Article XXX

Allocation of Political Authority among Regions

The Republic of Sudan shall consist of X [number determined based on the status of Darfur as one or three separate entities] entities, each entity having equal authority to all other entities.¹⁴⁵

¹³⁸ Darfur Peace Agreement, art. 18, para. 120.

¹³⁹ Darfur Peace Agreement, art. 9, para. 71.

¹⁴⁰ Darfur Peace Agreement, art. 9, para. 72. The Interim National Constitution of Sudan provides that the Council of States shall consist of two representatives from each province in Sudan. SUDANESE INTERIM NATIONAL CONST. part 4, ch. 1, sec. 85, para. 1 (2005), *available at* http://www.mpil.de/shared/data/pdf/inc_official_electronic_version.pdf (last accessed Sept. 19, 2007). The Sudanese Interim National Constitution provides that the Council of States shall consist of two representatives from each province in Sudan.

¹⁴¹ Darfur Peace Agreement, art. 8, para. 65.

¹⁴² Darfur Peace Agreement, art. 8, para. 65.

¹⁴³ Darfur Peace Agreement, art. 8, para. 67.

¹⁴⁴ Darfur Peace Agreement, art. 8, para. 69.

¹⁴⁵ UNITED STATES CONST. art. IV, para. 1 (1787). This language is drawn from Annex 4, article 1 of the General Framework Agreement for Peace in Bosnia and Herzegovina. The United

OR

- (1) The central government of the Republic of Sudan may, in the national interest, and by a legislative act:
 - (a) Authorize the setting-up of a provincial government, where its territory does not exceed that of a region.
 - (b) Authorize or grant, as the case may be, a Provincial Constitution to territories that are not integrated into the provincial organization.
- (2) Provinces must submit their constitutions to the central government for approval. The Provincial Constitution must contain:
 - (a) The name of the province that best corresponds to its historic identity.
 - (b) Its territorial boundaries.
 - (c) The name, organization and seat of its own autonomous institutions.
 - (d) The powers assumed within the framework laid down by the Constitution of the Republic of Sudan and the basic rules for the transfer of the corresponding services.¹⁴⁶

Article XXX

Distribution of Political Authority between the Central and Provincial Governments

- (1) The provincial governments of Sudan shall have exclusive competence over the following matters:
 - (a) Education;
 - (b) Social Welfare;
 - (c) Health;
 - (d) Police powers;
 - (e) Local taxes;
 - (f) Regional transportation;

States also provides for a symmetrical allocation of authority among regions. The United States Constitution provides, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." UNITED STATES CONST. art. IV, sec. 1 (1787).

¹⁴⁶ This language is drawn from SPAIN CONST. arts. 143, and 147 (1978). *See also* CHINA CONST. ch. 3, sec. 1, art. 62 (1982). China also has an asymmetrical system for allocating authority among its provinces. The Chinese Constitution gives the National People's Congress the power to create different types of entities, including provinces, autonomous regions, municipalities, and special administrative regions.

- (g) Cultural issues; and
 - (i) [Other competencies as determined by the parties].
- (2) All matters not expressly given to the provincial governments are reserved to the central government.¹⁴⁷

OR

- (1) The central government of the Republic of Sudan shall have exclusive competence over the following matters:
- (a) International affairs and national security;
 - (b) Foreign relations;
 - (c) Defense and armed forces;
 - (d) Immigration and naturalization;
 - (e) Communications and transportation;
 - (f) International commerce and trade; and
 - (g) [Other competencies as determined by the parties].
- (2) All matters not expressly delegated to the central government are reserved to the provincial governments.¹⁴⁸

Article XXX
Legislative Harmonization

The central government of the Republic of Sudan may enact laws laying down the necessary principles for harmonizing the rule-making provisions of

¹⁴⁷ This language is drawn from SPAIN CONST. art. 149 (1978). PHILIPPINES CONST. art. 10, secs. 17, 20 (1987).of the Spanish Constitution. The Philippine Constitution also lists the specific competences of the governments of its autonomous regions, including administrative organization, educational policies, economic and social development, and preservation of cultural heritage. The Philippine Constitution reserves for the central government all competences not given to the autonomous regions.

¹⁴⁸ This language is drawn from ITALY CONST. art. 117 (1947). *See also* Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, May 5, 1999, part 1, ch. 2, art. 12.the Italian Constitution. The Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor also provided that the central government of Indonesia would have certain competences, such as control of foreign policy and the armed forces, and the regional governments would have the authority to legislate in all areas not reserved to the central government.

the provinces, even in the case of matters over which jurisdiction has been vested to the latter, where this is necessary in the general interest.¹⁴⁹

OR

- (1) The central government shall have power to enact provisions on certain subjects as a framework for provincial legislation. [Subjects should be enumerated here.]
- (2) Only in exceptional circumstances may framework legislation contain detailed or directly applicable provisions.
- (3) When the central government enacts framework legislation, the provincial governments shall be obliged to adopt the necessary provincial laws within a reasonable period prescribed by the law.¹⁵⁰

Article XXX **Fiscal Relations**¹⁵¹

- (1) Revenue from the following taxes shall accrue to the central government: [taxes are specified, such as income tax, corporate taxes, customs duties, and freight taxes].

¹⁴⁹ This language is drawn from the SPAIN CONST. art. 150 (1978). *See also* SOUTH AFRICA CONST. ch. 6, sec. 146, para. 2 (1996).of the Spanish Constitution. The South African Constitution provides that the national legislature may pass legislation overruling provincial legislation if “the national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually” or “the national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation.”

¹⁵⁰ This language is drawn from the GERMANY CONST. art. 75 (1949). *See also* AUSTRIA CONST. arts. 11-14 (1929).of the German Constitution. Austria also uses a framework legislation system in which the central government adopts legislation, and the regional governments must implement it. The Austria Constitution provides, “In the following matters legislation as regards principles is the business of the Federation [central government], the issue of implementing laws and execution the business of the Laender [regional governments],” and then the Constitution lists areas over which the central government has primary legislative authority, such as sanitation, social welfare, and land reform.

¹⁵¹ For more information on fiscal devolution, see Fiscal Devolution the chapter of this guide.

- (2) Revenue from the following taxes shall accrue to the regional governments: [taxes are specified, such as inheritance tax, property tax, and the motor vehicle tax].
- (3) Revenue from certain taxes [specified here] shall accrue jointly to the central and provincial governments based on the extent of their expenditures and a desire to maintain a balance among all levels of government.
- (4) A federal law requiring the consent of the legislature may provide for the grant of supplementary shares of revenue not exceeding one quarter of a region's share to provinces whose per capita revenue from provincial taxes and from its share of federal taxes is below the average of all the regions combined.¹⁵²

OR

All revenues or moneys raised or received by the Republic of Sudan shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Republic in the manner and subject to the charges and liabilities imposed by the Constitution.¹⁵³

Article XXX **Dispute Resolution**

A branch of government involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms

¹⁵² This language is drawn from the GERMANY CONST. arts. 105, and 107 (1949). *See also* SPAIN CONST. art. 156 (1978). The Spanish Constitution also gives the Autonomous Communities the power to levy taxes. Article 156 provides, "The Autonomous Communities shall enjoy financial autonomy for the development and exercise of their powers, in conformity with the principles of coordination with the State Treasury and solidarity among all Spaniards."

¹⁵³ This language is drawn from the AUSTRALIA CONST art. 81 (1900). *See also* VENEZUELA CONST. art. 167 (1999), *available at* http://www.analitica.com/bitblioteca/venezuela/constitucion_ingles.pdf (last accessed Sept. 15, 2007). Venezuela also has a centralized revenue collection system. The Venezuelan Constitution provides that regional governments' revenues come from "their property and the management of their assets," "[c]harges for the use of their goods and services, fines and penalties, and any charges allocated to them," "[p]roceeds from the sale of State-owned commodities," and "[t]he resources to which they are entitled by virtue of constitutional revenue share."

and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute. The highest court shall have jurisdiction to hear disputes between branches of the government.¹⁵⁴

Article XXX

Central and Provincial Government Cooperation

- (1) The federal legislature shall consist of the upper house and the lower house.
- (2) The [lower/upper house] is elected to represent the people and to ensure government by the people.
- (3) The [lower/upper house] represents the regions to ensure that provincial interests are taken into account in the central government. It does this mainly by participating in the federal legislative process and by providing a central forum for public consideration of issues affecting the regions.¹⁵⁵

OR

A delegate appointed by the central government shall be responsible for the federal administration in the territory of each region and shall coordinate it, when necessary, with the province's own administration.¹⁵⁶

¹⁵⁴ This language is drawn from SOUTH AFRICA CONST. art. 41 (1996). *See also* GERMANY CONST. art. 93, paras. 3, 4 (1949). The German Constitution gives the Federal Constitutional Court the jurisdiction to rule “in the event of disagreements respecting the rights and duties of the Federation [central government] and the Länder [regional governments], especially in the execution of federal law by the Länder [regional governments] and in the exercise of federal oversight” and “on other disputes involving public law between the Federation [central government] and the Länder [regional governments], between different Länder [regional governments], or within a Land [region], unless there is recourse to another court.”

¹⁵⁵ This language is drawn from SOUTH AFRICA CONST. art. 42 (1996). *See also* Finland CONST. ch. 3, secs. 24, 25 (2000), *available at* http://www.servat.unibe.ch/law/icl/fi00000_.html (last accessed Sept. 19, 2007). Finland has a unicameral legislature, and the Finnish Constitution divides Finland into constituencies, in which the Finnish people directly elect their representatives to the legislature. The region of Åland has its own constituency and elects one representative to the legislature.

¹⁵⁶ This language is drawn from the SPAIN CONST. art. 154 (1978). PHILIPPINES CONST. art. 10, sec. 16 (1987). The Philippines Constitution also provides, “The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed.”

Article XXX

External Provincial Cooperation

Provincial constitutions may provide for the circumstances, requirements and terms under which provinces may reach agreements among themselves for the management and rendering of services in matters pertaining to them, as well as for the nature and effects of the corresponding notification to be sent to the federal legislature. In all other cases, cooperation agreements among provinces shall require authorization by the federal legislature.¹⁵⁷

OR

The federal legislature shall decide whether to approve inter-regional treaties and treaties between regions and foreign states, should the central government or a provincial government raise an objection.¹⁵⁸

Article XXX

Provincial Boundaries

Any alteration to boundaries between regions may be made by resolutions of the federal legislature and of the provincial legislature of each region to which the alteration applies.¹⁵⁹

Article XXX

Subsequent Allocation of Additional Political Authority

¹⁵⁷ This language is drawn from the SPAIN CONST. art. 145 (1978)

¹⁵⁸ This language is drawn from the SWITZERLAND CONST. art. 172 (1998). *See also* GERMANY CONST. art. 32 (1949). The German Constitution also provides that the regional governments may enter into treaties with foreign states subject to the approval of the central government.

¹⁵⁹ This language is drawn from article 43 of Canada's Constitutional Act of 1982, art. 43. *See also* GERMANY CONST. art. 29 (1949). The German Constitution also provides that a federal law can change the division of the regions. However, the regions affected must approve the change in a referendum. *See also* BELGIUM CONST. art. 5 (1970) (1949). In Belgium, the central government can alter the boundaries of its regions by law, but the legislature can also enact a law to shield a particular region from division into smaller regions. The legislature must reach a majority vote to enact such a shielding law.

The federal legislative authority confers on the federal legislature the power to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government.¹⁶⁰

¹⁶⁰ This language is drawn from SOUTH AFRICA CONST. art. 44 (1996). *See also* SPAIN CONST. art. 150 (1978). The Spanish Constitution also provides, “The State may transfer or delegate to the Autonomous Communities, through an organic act, some of its powers which by their very nature can be transferred or delegated. The law shall, in each case, provide for the appropriate transfer of financial means, as well as specify the forms of control to be retained by the State.”