



**IRISH RESEARCH COUNCIL**  
An Chomhairle um Thaighde in Éirinn

**ELEVATE: Irish Research Council International Career Development Fellow (co-funded by Marie Curie Actions)**

**PROJECT OUTPUT: POLICY PAPER**

**AUTHOR DAWN WALSH**

### **Introduction**

Territorial self-government (TSG) is at the heart of many current and proposed conflict resolution settlements. TSG provides territorially concentrated groups, usually those that are minorities within the wider state, with autonomy over a range of matters. This can provide such groups with security against discriminatory state practices and official recognition. Yet such arrangements are often unhappy compromises, with identity groups pursuing higher levels of autonomy, up to and including secession or unification with a neighbouring kin-state, and central government seeking to limit the level of autonomy to retain power and protect against state break-up. The compromise nature of such measures and the post-conflict context in which they operate makes them inherently unstable.

Many scholars argue that TSG is not an effective conflict resolution mechanism. They argue that the autonomy structures provided by TSG facilitate secessionist activities by identity groups. The identity groups will utilise self-rule provided by the central government to manipulate TSG arrangements, moving the compromise in the direction which they favour – more autonomy or even full independence, again bringing them into conflict with the state.

The ability of TSG to resolve conflict can also be undermined by the reverse process – recentralisation. Central governments may agree to autonomy provisions as part of a peace accord, however once the violence has ended, identity groups have surrendered land or arms, and international attention has faded, they may re-centralise these powers. Such unilateral moves are again likely to lead to the re-emergence of conflict.

Even where the identity group or central government have no intention of manoeuvring the TSG provisions to achieve their preferred outcome a lack of trust between the parties impedes the conclusion and operation of such agreements. Conflict parties often have negative past experiences of interacting with each other. They do not typically have a history of cooperation or reciprocal compromise; rather there may have been atrocities committed by both sides or long-standing patterns of discrimination. So despite preferring reform and institutions provided for in a peace agreement to continued violence, parties may not sign up to agreements. These deficits of trust are particularly problematic in relation to TSG. They ensure that both identity groups and central governments are fearful that TSG will fail due to the possible aforementioned manipulations by the other.

### **Guarantee mechanisms**

TSG can only act as a conflict management mechanism if the self-government arrangements are expected to remain in place for the foreseeable future. Early guarantees are key, as new institutions gain legitimacy as they endure over time. Endurance strengthens the legitimacy of these institutions and makes deviation from them or efforts to resolve conflict outside of them less acceptable.

Guarantees are valuable for central governments, in that they commit all parties to an agreed structure and imply that there can be no unilateral changes outside pre-agreed procedures, such as the referenda provided for in the settlements. Such guarantees ensure that the number of delegated powers will not increase so as to threaten the viability of the state; countering the charges that TSG is centrifugal. Guarantees are also vital for groups provided with self-government as they mitigate against what appears to be a tendency towards re-centralization, which would fundamentally undermine TSG.

Guarantees can be international or domestic. International guarantees may take the form of 'hard' guarantees (international treaties, direct governance or peace-keeping operations, etc.) or of 'soft' guarantees (aid or trade policy conditionality, conditional future membership of a regional organisation etc.). Hard international guarantees usually take the form of legally enforceable international treaties or agreements and can offer strong protection of TSG arrangements. Soft international guarantees are offered in the form of the involvement of international organisations in the negotiation, implementation, and potentially in the operation of a particular peace agreement.

Domestic entrenchment can take place either through constitutional assurance or through legislation. Domestically, constitutional guarantees are the strongest. Other special laws, for example those which need supra-majorities to be changed, may also offer strong guarantees. Guarantees provided in ordinary legislation offer the weakest form of entrenchments.

## **Research**

In order to develop recommendations for dispute resolution, where TSG is used as a conflict management mechanism, this research examined five existing countries (UK-Northern Ireland, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Moldova-Gagauzia, and Iraq-Kurdistan) where TSG has been used as a conflict management tool. The guarantees employed in each of the five cases were classified using the different categories outlined above, (hard international guarantees, soft international guarantees, and domestic guarantees provided in constitutional, special, or ordinary domestic legislation) the logic for the inclusion of these guarantees and whether these guarantees helped TSG to overcome its inherent instability was then examined. Careful consideration was also given to how the design of TSG institutions, other aspects of the agreement, and the wider political context affected their operation.

In order to ascertain whether the inclusion of guarantees in TSG peace agreements increased the stability of these arrangements a range of data relating to the different case countries was examined. There was a wealth of data in the public domain in the form of official statements, recommendations, and reports. Over 10,000 documents were analysed. These were sourced from records of political parties, governments, international organisations, research centres and NGOs. These documents range from 1993 to 2017, and in each case they were chosen to capture the lead up to the political agreement, negotiations, and the implementation and operation of TSG arrangements. Thirty semi-structured interviews with representatives of

governments, political parties, international organisations, NGOs, and local academics were used to supplement these existing documents.

## **Research findings**

The research findings indicate that stronger guarantees are more effective at both encouraging conflict parties to reach TSG agreements and countering centrifugal or centripetal momentum during their implementation. Domestic constitutional guarantees and both hard and soft international guarantees convince conflict parties that TSG will not be manipulated. However, during the implementation and operation of the TSG these guarantees can be much weaker than was expected during the negotiation or drafting of the peace accord. Constitutional guarantees run into problems when efforts to add detail to the broad framework and resolve any ambiguity uncover competing interpretations of what kind of TSG has been agreed. International guarantees are weakened as the approach and policies of international actors is driven by a range of concerns: other international crisis, economics, domestic challenges, and these factors often do not facilitate the continued guaranteeing of TSG stability.

## **Recommendations for policy-makers and practioners: increasing the effectiveness of different guarantees**

This section highlights how the failings of both domestic and international guarantees can be overcome providing advice to policy-makers and practioners, both domestic and international, as to how guarantees should be designed and combined to ensure that they are effective in entrenching TSG.

### *Domestic guarantees*

- Domestic ordinary laws are not effective as they do not provide sufficient entrenchment to stabilise TSG. International policy-makers and mediators should avoid relying on such laws to prevent unilateral changes to TSG. Even where the current central government is sincere in its commitment to upholding TSG arrangements to manage a conflict future governments may not share this commitment. If TSG is reliant of an ordinary domestic law it is vulnerable to such shifting central majorities. Domestic laws can be used to provide additional details developing a commitment to TSG which is outlined in special laws or the constitution but alone they are ineffective.
- Special domestic laws, which do not have a constitutional status but require special procedures to be altered can provide a solid guarantee of TSG. However, their utility is dependent on ensuring that they are designed in such a way as to prevent unilateral alteration of the TSG. They need to be structured in such a way as to ensure that the group granted TSG can veto any changes. In some cases where the group is sufficiently large and politically represented central parliament supra-majorities may provide this minority veto but in cases where the TSG group is too small or not sufficiently politically represented at the centre concurrent majorities between the central parliament and a local assembly would provide a better guarantee of the TSG.
- Domestic constitutional guarantees are important for minorities seeking TSG. Where TSG is entrenched in a domestic constitution minorities are provided with reassurance that the central state will not infringe on its autonomy in the future. The more difficult it is for a constitution to be altered the stronger the guarantee that is provided to TSG

through constitutional entrenchment. Constitutional guarantees are the strongest domestic guarantee and as such can play a vital role providing a permanent guarantee that will continue to exist once international guarantees are withdrawn.

- Constitutional guarantees are not effective if they are ambiguous or do not provide clear guidelines on important aspects of TSG such as the delineation of powers between the state and the TSG region. Both domestic negotiators and international mediators need to ensure that provisions included in constitutions clearly address the important aspects of TSG and represent a shared understanding of how the TSG will operate.
- The effectiveness of all domestic guarantees during the operation of TSG is dependent on the presence of an enforcement mechanism. Constitutional or supreme courts are often charged with fulfilling this role. However, such courts have a poor record of successfully resolving such disputes. A sister policy paper, available on DORAS outlines how much courts can be designed to maximise their chances of success and how alternative dispute resolution committees may be useful.

#### *International guarantees*

- Soft international guarantees such as trade or future membership of regional organisations are low cost ways which international actors can incentivise respect for TSG institutions. Where an aid or trade relationship is not particularly important for the international provider but is significant for the central state or TSG unit which is the receiver such conditionality is particularly viable as a guarantee mechanism.
- But the ability of these guarantees to effectively prevent violation of TSG arrangements is limited by the fact that trade policy and membership of organisations is dependent on a variety of factors and other considerations such as economic needs may take precedence. Where an economic relationship offers substantial benefit for an international actor it is likely that the actor will enter into this relationship even if it destabilised the TSG institutions.
- Hard international guarantees are the strongest assurance which conflict parties can receive that TSG will be faithfully implemented and will not be unilaterally changed. The presence of international military forces or an international administrator on the ground in a post-conflict states will strongly discourage domestic actors from trying to manipulate TSG.
- The usefulness of hard international guarantees is limited by the ability of international organisations to sustain the depth of intervention which these guarantees represent over the long-term. Once violence has dissipated the international community's attention may be drawn to other crises. This is understandable but the transformation of relationships between the central state and TSG groups takes years, even decades, and until trust between the groups develops international guarantees are vital.
- In order to avoid accusations neo-colonialism and to ensure that domestic actors develop necessary capacities to take responsibility for their own affairs international

guarantees should be combined with efforts to develop local capacities. For example, helping TSG units develop technical capacities.

- International actors should only intervene when necessary and the depth of any intervention should be appropriate to the level of instability which the TSG is suffering. The international community needs to be a proactive observer of the TSG. Low level mediation may be sufficient where the dispute between the TSG region and the state does not pose a serious risk of renewed conflict. However, where a domestic party willingly violates the TSG for example by threatening an independence referendum the international community should act swiftly to outline the strong sanctions which will be used to punish such a move.
- International actors can also use soft guarantees to deter neighbouring states or kin-states from engaging in activities which destabilise TSG. This provides additional opportunities for the international community to stabilise TSG. For example, offering a kin-state aid or trade opportunities as a reward for discouraging their kin from engaging in separatist activities can be a strong stabiliser of TSG as TSG regions may require the support of kin-states to make any demands for further autonomy realistic.
- The coordination of international guarantees, both soft and hard, is also necessary for them to be effective. It can be difficult to secure agreement between different international actors with different priorities to take a consistent approach to guaranteeing TSG. Powerful international actors need to build coalitions and dissuade other international actors from deviating from an agreed approach that prioritises stabilising TSG.
- The international community needs to recognise that centralisation represents a serious threat to peace. International legal norms often encourage the international community to pay attention to secession but to be less aware of centralisation. Secession may appear to be a more serious problem than centralisation, but centralisation can put minorities at serious risk of discrimination or repression. Furthermore, unilateral centralisation risks provoking a violent response from the TSG group, and as such represents a real threat to international peace and stability. TSG group are often less capable of harnessing any domestic guarantee and as such are dependent on the international community to protect its autonomy.

### *Implementation and reform*

- It is vital that guarantees are not only included in TSG peace agreements but that they are invoked where necessary. Non-implementation of guarantees can result from a range of issues including weak domestic institutions or changing international circumstances which dissuade an international actor from providing a pre-agreed assurance. Guarantees may not be applied even where TSG arrangements have been promulgated if violence has not remerged. While this may appear sensible, especially given limited resources, allowing groups to renege on elements of the peace agreement without sanction will encourage further defaulting, not only in relation to the particular conflict but potentially in other post-conflict contexts.
- Where guarantees successfully stabilise TSG they must not freeze rather than resolve conflicts. The shape of TSG institutions generally reflects the power relations between

the groups at the time a peace accord incorporating them is agreed. However, it may become evident over time that the agreed TSG arrangements have certain weaknesses, e.g. are overly decentralised. Even where agreed TSG institutions do not have inherent weaknesses at conception, future reforms may be necessary to address changing circumstances such as demographic changes. Guarantees must be adapted to facilitate rather than prevent necessary reform.

- Some mechanisms are useful at certain points but lose their effectiveness or can have a negative effect on success if they are applied at the wrong point. For example, soft international guarantees through policy conditionality operate most effectively where membership to a regional organisation or significant aid or trade opportunities are under negotiation. Similarly, direct international governance as a hard international guarantee provides a safety-net to prevent the collapse of institutions and renewed conflict, which is necessary in the immediate post-conflict or post-agreement period. However, its ongoing use will inhibit the development of domestic capacities and lack legitimacy.

## **Conclusion**

TSG institutions are increasingly used to manage or resolve intra-state identity group conflict. TSG arrangements often suffer from instability, critics highlight the potential for state disintegration, though re-centralisation is also a possible source of volatility. This instability is almost inherent in TSG where it is used as a conflict resolution mechanism, as it is usually an unhappy compromise; representing an acceptable but non-ideal position for the different conflict parties. Furthermore, these societies suffer from a lack of trust between different groups which makes it difficult for agreements to be concluded or operated even where the conflict issues have been resolved.

There is a suspicion by the different conflict parties that other groups will not faithfully operate the agreed institutions and may try to renege on compromises, or interpret ambiguity in a manner beneficial to their group. This may suggest that TSG should be avoided in these circumstances however despite its instability it often represents the *only* arrangement acceptable to the conflict parties. It provides identity groups with recognition and security within the broader framework of the state.

Given the inherent instability of TSG in this context, combined with the necessity of using these institutions due to the fact they are the only arrangements that meet the needs of the different parties, a range of guarantee mechanisms should be incorporated into agreement to provide reassurance that TSG will endure in its agreed form. International guarantees and domestic constitutional, special, or ordinary provisions are effective mechanisms to prevent abrogation from agreed arrangements due to the reputational damage which their violation incurs.