

CONSTITUTION WRITING IN POST-CONFLICT SETTINGS: AN OVERVIEW[†]

JENNIFER WIDNER^{*}

During the past forty years, over 200 new constitutions have emerged in countries at risk of internal violence. Internationally brokered peace accords have entailed the development of constitutions not only in the Balkans but also in Cambodia, Lebanon, East Timor, Rwanda, Chad, Mozambique, Bougainville-Papua New Guinea, Nepal, the Comoros, and other places.¹ New constitutions have heralded the adoption of multiparty systems from Albania to Zambia.²

Policymakers have started to ask what we have learned and specifically whether some constitutional reform processes are more likely than others to deliver a reduction in violence or more rights-respecting fundamental documents. For example, over the past decade, the Commonwealth, the U.S. Institute of Peace, and

[†] This Article draws in part on WIDER Research Paper 2005/51 and is published with the kind permission of the UNU-WIDER.

^{*} Professor of Politics and International Affairs, Princeton University. The author wishes to thank the organizations that funded the data collection for this project, including the U.S. Institute of Peace, as well as the colleagues who helped in the collective endeavor to develop the ideas presented in the last part of the Article: Robert Barros, Ana Maria Bejarano, Michele Brandt, Jill Cottrell, Justice Lech Garlicki, Yash Ghai, Tom Ginsburg, Andrea Iff, Sakuntala Kadirgamar-Rajasingham, Tinatin Khidasheli, Heinz Klug, Chibli Mallat, Christina Murray, Muna Ndulo, Anthony Regan, Kirsti Samuels, Richard Simeon, Alexander Their, and Tomás Vial.

1. See, e.g., Pranay B. Gupte, *O.A.U. Says It Will Pull Out Force Unless Chad and Rebels Halt War*, N.Y. TIMES, Feb. 12, 1982, at A4; Youssef M. Ibrahim, *Lebanese Factions Agree on Charter To Resolve Strife*, N.Y. TIMES, Oct. 23, 1989, at A1; *Macedonia Appeals for World's Help To Restore Stability*, N.Y. TIMES, Nov. 17, 2001, at A10; Seth Mydans, *East Timor Lures Experts in Helping New Nations*, N.Y. TIMES, Sept. 18, 2001, at A10; Terence Neilan, *World Briefing: Africa: Comoro Islands: U.S. Cuts Arms Aid*, N.Y. TIMES, June 11, 1999, at A6; *Peace Process Begins*, EVENING POST, Jan. 25, 2002, at 2; Jane Perlez, *Mozambique Moving to Democracy*, N.Y. TIMES, Aug. 29, 1990, at A3; Somini Sengupta, *New Conflicts Accompany Nepal's Efforts at Democracy*, N.Y. TIMES, Apr. 29, 2007, at A1; *World Briefing: Africa: Rwanda: New Constitution*, N.Y. TIMES, Apr. 24, 2003, at A8.

2. See, e.g., *Albanian Communists Propose a Constitution*, N.Y. TIMES, Apr. 11, 1991, at A5; Ann M. Simmons, *Zambia Swears in a New Leader*, L.A. TIMES, Jan. 3, 2002, at A8.

the non-governmental organization International Institute for Democracy and Electoral Assistance (IDEA) have worked to develop good practice guidelines for the conduct of constitution writing.³ Does the type of deliberative forum make a difference? Do better results emanate from elected constituent assemblies than from unelected bodies? Does the choice of decision rules shape the regard for a broader range of interests?

This challenge is difficult. Our instincts tell us that process makes a difference. Constitution writing has sometimes inflamed passions and sparked violence, as it did in the Solomon Islands, Iraq, Chad, and the Republic of the Congo, for example.⁴ It has produced better than expected results in some other countries, including South Africa.⁵ It is devilishly difficult to show, empirically, that procedures made the difference in these cases, however. A number of very serious analytical problems hamper the ability to give a social science answer to the question policymakers have asked. Mark Tushnet is right to wave warning flags.⁶ Nonetheless, there may be some paths forward.

My primary intention here is to offer a description of the range of procedures currently in use and the “results,” very narrowly defined, associated with these procedures. This overview draws on an original dataset,⁷ as well as on conversations that took place

3. See generally Commonwealth Secretariat, <http://www.thecommonwealth.org> (last visited Feb. 18, 2008); U.S. Institute of Peace, <http://www.usip.org> (last visited Feb. 18, 2008); International IDEA, <http://www.idea.int> (last visited Feb. 18, 2008).

4. See, e.g., *39 Killed in Clashes in Eastern Congo*, L.A. TIMES, Dec. 26, 2005, at A11; Jonathan C. Randal, *Francophone West Africa's Economies Perform Well: Aid Linked to Reform Contributed to Success*, WASH. POST, Apr. 10, 1996, at A22; George F. Will, Editorial, *'Standing Up' a Constitution*, WASH. POST, Oct. 18, 2005, at A25.

5. See, e.g., Suzanne Daley, *A New Charter Wins Adoption in South Africa*, N.Y. TIMES, May 9, 1996, at A1.

6. See Mark Tushnet, *Some Skepticism About Normative Constitutional Advice*, 49 WM. & MARY L. REV. 1473 (2008).

7. The proportions and illustrations in this Article come from a dataset that covers 195 cases of constitution writing between 1975 and 2002. The focus of the Article is on the subset of cases in the most recent wave of constitution writing, which began in 1989. The dataset records over 120 characteristics of the procedural rules employed in each constitution building episode, along with information about context and consequences. A parallel dataset records some of the substantive terms chosen by constitution writers in these cases. The tables at the end of the Article summarize some of the information from the dataset. Constitution Writing and Conflict Resolution Datasets (Jennifer Widner, unpublished data) (on file with author) [hereinafter Datasets].

among constitution drafters and scholars under the auspices of Princeton University, Interpeace, and International IDEA in May 2007.⁸ It serves as a preface to some of the other contributions in this issue. Part I probes some of the expectations one might have about the effects of process on outcomes. Part II defines what drafters mean by “process” and offers a quick, general description of recent trends in the choice of procedure. Part III explores some of the patterns in the data. Part IV offers an agenda for research and discussion of constitution writing and conflict resolution.

I. EXPECTATIONS

High hopes often attend efforts to write new constitutions. “Success” has many dimensions. A common aspiration includes the achievement of a durable agreement, an arrangement that will not be disregarded or suspended lightly and within a short period. More immediately and perhaps more importantly, people often hope for a reduction in violence and an increase in civility. The degree to which a constitution or a constitution-writing process displaces conflict from the streets and into institutions is an important measure of success. Said one participant in a conference at Princeton University in May 2007, “a successful process is transformational; it converts the spoilers.”⁹ The people most able to cause violence accept the basic terms and are willing to process disagreements in constitutionally acceptable ways. Their orientation toward political institutions and toward law changes in the course of negotiations.

Success may have other dimensions as well. It may pertain to the choice of terms in the document itself. Order is not all that matters in today’s world. Historically, constitutions often developed as agreements about how to design government so that the sovereign could not abuse citizens, especially those who had to foot the bill, in money or lives, of foreign misadventures and lavishness at home.¹⁰

8. See Proceedings, Workshop on Constitution Building Processes, May 17-20, 2007, Bobst Ctr. for Peace & Justice, Princeton Univ., in conjunction with Interpeace and Int’l IDEA, available at [http://www.princeton.edu/bobst/docs/Edited_Proceedings_1_\(2\).doc](http://www.princeton.edu/bobst/docs/Edited_Proceedings_1_(2).doc).

9. *Id.* at 8.

10. The Magna Carta was one of the first constitution-like documents. At its core was an effort to restrict the power of the crown to tax the nobles. Several doctrines designed to restrict executive abuse of power have their origins in this bold statement. A classic, two-part

A process that produces a document that aggregates all power in the executive would be hard to countenance today. The future ability of citizens to participate in the affairs of their own countries—to act as members of a political community—matters too. And of course, where people feel excluded or where they can be thrown in jail for no good reason, grievances may also fester and breed violence. By both logics, a constitution that protects individual and civil liberties might be deemed more “successful” than one that does not.

A third set of ambitions focuses on the degree to which a constitution can become self-enforcing. Public knowledge or awareness is likely to contribute to this aim, because people who are better armed with information about principles and institutions are more likely to police their governors than those who know little. Constitution-building processes that yield greater public awareness of government institutions and of the basic principles that lie behind those institutions are arguably more successful than others. Even where drafts fail at referendum, many consider that conditions have improved if public awareness is a product.¹¹ Whether a

essay on this subject by Edward S. Corwin in 1928 and 1929 spawned a literature on the influence of the Magna Carta and other writings on constitution writing in the 1700s. See Edward S. Corwin, *The “Higher Law” Background of American Constitutional Law*, 42 HARV. L. REV. 149 (1928) and 42 HARV. L. REV. 365 (1929). For a thoughtful essay on the general subject of executive restraint and constitutions, see Stephen Holmes, *Lineages of the Rule of Law*, in DEMOCRACY AND THE RULE OF LAW 19-61 (José Mariá Maravall & Adam Przeworski eds., 2003). For a more contemporary treatment in the form of a guide for constitution writers, see JOHN HATCHARD, MUNA NDULO & PETER SLINN, COMPARATIVE CONSTITUTIONALISM AND GOOD GOVERNANCE IN THE COMMONWEALTH: AN EASTERN AND SOUTHERN AFRICAN PERSPECTIVE (2004), especially the chapter on “Presidentialism and Restraints on Executive Power.” Certainly not all constitutions restrict the power of the executive, however; constitution writing may empower a chief executive as it did when Jean-Bedel Bokassa declared himself emperor of the Central African Republic and rewrote his country’s constitution accordingly. Where respected, the idea of a constitution as “higher law” necessarily imposes some constraints on whim, however, and the extent of government and executive power is an important current in constitution writing from the Magna Carta forward.

11. This perspective is characteristic of those who think constitutional provisions have little power in the absence of constitutionalism, defined as a publicly shared recognition that no individual is above the law coupled with public awareness of key principles embedded in a polity’s constitution. It is also characteristic of those who think that constitution making is especially important as a way to transform popular perspectives. See, e.g., HAROLD H. SAUNDERS, A PUBLIC PEACE PROCESS: SUSTAINED DIALOGUE TO TRANSFORM RACIAL AND ETHNIC CONFLICTS (1999); Heather Deegan, *A Critical Examination of the Democratic*

country has implemented the terms of a new constitution five years out from ratification may also capture an important dimension of the success of a process.

Policymakers associated with the initiatives launched by the U.S. Institute of Peace and others expect that quite apart from the influence of the actual terms selected, the steps taken to draft a constitution matter for these three types of outcomes.¹² Those “steps” refer to the complex bundle of procedural rules that governs deliberation. They include incentives created to convince delegates to take the long view and to eschew short-term personal advantage; rules governing representativeness of deliberative bodies; decision rules used to regulate inclusion of passages (not just the voting rules, but also the form in which amendments may be introduced, the points at which votes are taken, etc.); ratification rules; and opportunities for public participation.

Specifically, how might procedural choice matter? First, several aspects of process matter for the degree to which delegates may be willing to put aside short-term personal or partisan advantage and consider the long-term welfare of the broader political community. Veil rules increase any given delegate’s uncertainty about his future position or the future position of his constituents.¹³ They introduce prospectivity, generality, and durability into decision making.¹⁴ That is, they structure deliberation in a way that increases the likelihood that a broader range of interests will be considered. One might include in this category rules that reduce the dominance of current interests by setting limits on eligibility, by forcing recusal

Transition in South Africa: The Question of Public Participation, 40 COMMONWEALTH & COMP. POL. 43 (2002). Finally, it is a perspective common among those who think that acceptance of a constitution comes in part from consultation and the sense of inclusion and awareness that consultation generates. See, e.g., Jamal Benomar, *Constitution-making After Conflict: Lessons for Iraq*, J. DEMOCRACY, Apr. 2004, at 89; see also Vivien Hart, *Constitution-making and the Transformation of Conflict*, 26 PEACE & CHANGE 153, 160 (2001); Robert Vipond, *Constitutionalism as a Form of Conflict Resolution*, in IDENTITY, RIGHTS, AND CONSTITUTIONAL TRANSFORMATION 172-85 (Patrick J. Hanafin & Melissa S. Williams eds., 1991).

12. See, e.g., VIVIEN HART, U.S. INST. OF PEACE, SPECIAL REP. 107, DEMOCRATIC CONSTITUTION MAKING (July 2003), available at <http://www.usip.org/pubs/specialreports/sr107.pdf>.

13. See generally Adrian Vermeule, *Veil of Ignorance Rules in Constitutional Law*, 111 YALE L.J. 399 (2001).

14. See *id.* at 408-19.

of some kinds of incumbents, such as the military, or by restricting conflicts of interest in other ways, especially through mediation. Another example of a veil rule is the incorporation of a delay between the ratification of a new constitution and first elections under the new rules. Some countries hold elections immediately, while others stipulate that there will be a delay of eighteen months or longer.¹⁵ A few countries have simply banned negotiators from running in the first set of post-ratification elections, spawning another set of difficulties. Informal practices may help promote a “long view” too. Informal bilateral contacts may build trust and obligation, making resort to strongly partisan positions more difficult. These arguments about procedure focus on incentives and their psychological impact.

Representativeness is a function of the choice of forum or “reform model,” as well as delegate eligibility and selection rules.¹⁶ We generally think that elected constituent assemblies or legislatures will be more representative than other types of forums and ought to produce terms that are more “other-regarding” as well as constitutions that enjoy more public support and endure. Much depends, however, on the electoral rules put in place, the willingness of people to exercise their right to vote, social biases, and the degree to which people cast ballots to suit patrons. A number of countries have argued that reserving some seats for people who

15. Many countries hold elections within a year of drafting a new constitution. Examples include Algeria in 1996, Angola in 1992, Argentina in 1994, Benin in 1990, Burundi in 1981 and 1992, Bosnia & Herzegovina in 1995, the Central African Republic, Burkina Faso, the Republic of the Congo, Ecuador, Estonia, Ghana in 1992, Haiti in 1987, Hungary in 1989, Nicaragua, and Niger. Some countries have held elections during the constitution-writing process, including, for example, Armenia in 1995, Azerbaijan in 1995, Bangladesh in 1991, Bolivia in 1994, Brazil in 1988, Cambodia in 1993, Cape Verde in 1992, Croatia in 1990, El Salvador in 1992, Gabon in 1991, Sierra Leone in 1996, and others. Some countries have either refrained from holding elections immediately after constitution drafting or have barred drafters from running for office. These countries include Albania in 1998, Burundi in 2001, Colombia in 1991, South Africa in 1996 (elections took place for a constituent assembly in 1994 and that assembly became a standing legislature), Croatia in 2000, Timor Leste, Indonesia in 2002, Lebanon in 1990, Mozambique in 1990, Peru in 1993, Papua New Guinea in 1995, Uganda in 1995, and others. *See* Datasets, *supra* note 7.

16. *See generally* Jennifer Widner, Constitution Writing & Conflict Resolution: Reform Models, <http://www.princeton.edu/~pcwr/drafting/models.html> (last visited Feb. 20, 2008) (outlining the five main alternative reform models: elected constituent assemblies, legislatures, transitional legislatures, executive-directed processes, and peace negotiations).

represent regions, women, youth, important occupational groupings or sectors, and other types of social groups might prove more representative than a purely elected assembly.¹⁷ Further, where violence prevails or where there is no infrastructure for elections, a method of appointment that is not controlled by the incumbents may yield an assembly that the public is more likely to trust. Uganda is an example of a country that has employed a hybrid system.¹⁸ These arguments about procedure focus on the isomorphism between popular conceptions of “representativeness” and the rules of delegate selection chosen.

Procedural choices may also affect behavior on the floor of an assembly. For example, rules that lock delegates into positions or encourage public campaigning for subsequent political office are generally counterproductive. An example of this kind of claim is Jon Elster’s proposition that highly public processes, in which negotiators deliberate in front of the media or audiences, promote grandstanding and are less friendly to compromise.¹⁹ David Stasavage and others have picked up on this theme, though not with respect to constitution drafting.²⁰ Many constitution-writing processes have closed committee deliberations to the media for this reason, allowing coverage only of the occasional plenary session, although they have often reported extensively on the outcome of committee deliberations.

The public’s ability to monitor respect for the constitution and to punish those who infringe its terms is partly a function of procedural choice. If citizens are engaged in the process through public consultation and civic education, they are more likely to know the rough parameters of accepted behavior under the new constitution, monitor the behavior of officials, and impede those who transgress. Where leaders are aware that citizens are better able to monitor

17. See, e.g., Louise Harmon & Eileen Kaufman, *Dazzling the World: A Study of India’s Constitutional Amendment Mandating Reservations for Women on Rural Panchayats*, 19 BERKELEY WOMEN’S L.J. 32, 69-70 (2004).

18. This process is “hybrid” because it borrows from a variety of traditions.

19. See Jon Elster, *Arguing and Bargaining in Two Constituent Assemblies*, 2 U. PA. J. CONST. L. 345, 410-13 (2000).

20. See generally ELLEN MEADE & DAVID STASAVAGE, LONDON SCH. OF ECON. & POL. SCI., PUBLICITY OF DEBATE AND THE INCENTIVE TO DISSENT: EXAMPLES FROM THE US FEDERAL RESERVE (2004), available at <http://cep.lse.ac.uk/pubs/download/dp0608.pdf>.

boundary lines, they may be more likely to refrain from actions that transgress, anticipating that they will meet resistance. The “monitoring theory” often raises eyebrows, but it is not as implausible as it may first appear. After new constitutions ushered in a new multiparty rule, several African leaders sought passage of amendments to eliminate term limits or grant themselves immunity.²¹ These bids to hold onto power have often encountered popular resistance. For example, Mali’s Alpha Oumar Konare backed away from an amendment designed to grant him immunity from prosecution,²² and Malawi’s Bakili Muluzi conceded that he would not win permission for a third term as president.²³

Process may also influence the sense of inclusion and trust (social capital) felt by political elites as well as sub-communities. Constitution-building programs that exclude key players or social segments generally result in short-lived documents and rarely reduce violence, at least in theory.

Finally, the design of constitution-building programs may provide models to guide the interaction of elites and exchanges between citizens and their governments long after the document itself is ratified. In Mali, for example, the government opened up annual “Days of Dialogue” that emulated many features of the country’s national constitutional conference.²⁴ The purpose was to give people a chance to ask questions of ministers and officials and challenge them.

21. See, e.g., Howard W. French, *Once Seen as a Political Beacon, Senegal Backslides*, N.Y. TIMES, Mar. 31, 1998, at A4; Marc Lacey, *World Briefing: Africa: Uganda: Parliament Eliminates Term Limits*, N.Y. TIMES, July 13, 2005, at A13.

22. See, e.g., Norimitsu Onishi, *With Africa Watching, Senegal Casts Votes that Count*, N.Y. TIMES, Feb. 27, 2000, at A3.

23. See, e.g., Rachel L. Swarns, *World Briefing: Africa: Malawi: Term Limit Remains in Place*, N.Y. TIMES, July 6, 2002, at A5.

24. For the details of the Mali case, see generally R. James Bingen, *Overview – The Malian Path to Democracy and Development*, in DEMOCRACY AND DEVELOPMENT IN MALI 245 (R. James Bingen, David Robinson & John M. Staatz eds., 2000) and Andrew Clark, *From Military Dictatorship to Democracy: The Democratization Process in Mali*, in DEMOCRACY AND DEVELOPMENT IN MALI, *supra*, at 251.

II. REFORM MODELS

What do we know about the kinds of procedures tried in the most recent era of constitution writing? The information developed in the Constitution Writing and Conflict Resolution project comes from a database constructed with the support of the U.S. Institute of Peace, from a smaller project on constitutional terms, and from a modified version of a database on internal conflict prepared by the PRS group. The “drafting database” records roughly 130 procedural and contextual features of over 194 constitution-writing cases carried out between 1975 and 2002.²⁵ The information in the database comes from documentary sources and from interviews with drafters. The sources used include *Constitutions of the Countries of the World*, the *Inter-Parliamentary Union Chronicle*, *Keesings Archive*, the Lexis-Nexis World News backfile, and a wide variety of regionally specific yearbooks, personal accounts, and academic articles. The dataset does not yet include some important recent cases, such as Afghanistan and Iraq.

The cases include new constitutions and regime-changing amendments. A regime-changing amendment includes provisions that affect participation and contestation, such as shifts from authoritarian rule to multiparty systems or vice versa; civil and political liberties; property rights; regional or ethnic autonomy; and significant efforts to reallocate power among the branches of government. In most cases, these modifications reflect what ancient philosophers might have termed a change in the sense of political good. That is, they imply new standards of political virtue.

For inclusion in the dataset, there must also be a minimal chance that a dissatisfied party could take up arms. Here, the dataset errs in favor of a generous definition, because ability to take up arms is hard to assess. In most developing countries, limited territorial control by the state has meant that even under highly authoritarian governments it is possible for a faction of the elite or the populace to use violence. Therefore, on this criterion the dataset excludes

25. See Datasets, *supra* note 7.

only constitutions drafted in the USSR pre-Gorbachev, the People's Republic of China, and North Korea.

The dataset imposes an income threshold, but that threshold is quite high and is designed only to exclude cases in an upper income category where there are few cases in the past thirty-five years and thus no real opportunities for systematic comparison. The countries excluded by the income threshold are Canada, the Netherlands, and Belgium.

One of the obvious difficulties for anyone who strives to offer an empirical test of theories about the effects of drafting strategies on outcomes is that constitution writing embraces a bundle of procedures, not a single, identifiable decision rule. It generally covers a number of functions, organized in stages: negotiation of ground rules; development of interim documents or immutable principles; preparation of an initial text; deliberation and adoption of a final draft; and finally, ratification and promulgation. There are several formal ways to assemble these tasks. In one common model, a commission prepares a text at the request of the executive, which then submits the recommendations in whole or in part to a regular legislature or constituent assembly for deliberation, adoption, and ratification. Another approach begins with a national conference or convention to develop guidelines and elect a transitional legislature from its members. The transitional legislature then appoints a commission to prepare the text. It debates, modifies, and adopts the draft, and it sends the final version to a referendum. Still other processes are executive driven or include combatants in an agenda-setting role. In practice, countries have experimented with a wide range of approaches and within these they have varied dramatically with respect to the representativeness of key assemblies, decision rules, publicity, public consultation, and other matters.

The database makes it possible to glimpse some of the trends in constitution writing. Here, the focus is on cases since 1987, the era associated with the collapse of the Berlin Wall and a wave of political change around the globe. In 65 percent of the constitution-drafting episodes that have taken place since 1987, delegates were popularly elected, while in 12 percent they were chosen by the executive branch. In other instances they have been appointed by the leaders of warring parties, indirectly elected from the ranks of

the legislature or a national conference, or selected by some other means. There are also examples of mixed systems in which some delegates are directly elected while others are indirectly elected or appointed.

The character of the main deliberative body is often the primary focus of interest, possibly on the grounds that its character and composition send strong signals about representativeness to the public at large. In this period, twenty countries, roughly 14.3 percent, sponsored constituent assemblies. Legislatures sitting in special session as constituent assemblies accounted for eight cases, or about 5.7 percent of the total. Regular legislatures had responsibility for deliberating and for producing the final draft in fifty-six cases, or 40 percent of the total.²⁶

Appointed transitional legislatures, sometimes indirectly elected from large national conferences, assumed responsibility for the draft in eleven cases, or about 8 percent of the total.²⁷ National conferences themselves, modeled on the *Etats-Generaux*, deliberated and prepared the final text in seven instances.²⁸ In the remaining countries, smaller bodies, often appointed and less representative, assumed authority to prepare the final draft.²⁹ For example, in three instances, peace negotiations gave rise to new founding documents; in three other cases, roundtables among contending parties did the job; in eight cases, a congress of the

26. An "elected constituent assembly" or "commission-legislature" model was employed in cases such as Pakistan in 1997, Bangladesh in 1991, Ghana in 1992, Lesotho in 1993, the Republic of Georgia in 1995, Guatemala in 1994, Armenia in 1995, Albania in 1998, Malawi in 1995, Cape Verde in 1992, Mongolia in 1992, Latvia in 1993, South Africa in 1996, Venezuela in 1999, Poland in 1997, and others. *See* cases with a "1" or "5" as the first number in the first set of parentheses in the tables at the end of this Article.

27. Some countries that held large national conferences used these bodies to prepare principles or provide advice but wrote the draft in a small body. Benin is an example of this approach. *See* countries with an "11" as the first number in the first set of parentheses in the tables at the end of this Article.

28. A large "national conference" was the main deliberative body in the Comoros in 1996, the Central African Republic in 1992 and 1994, Niger, Mauritania, Djibouti, Russia in 1993, and other countries. *See* countries with a "2" as the first number in the first set of parentheses in the tables at the end of this Article.

29. An executive-driven approach was used in Belarus in 1996, Tunisia in 2002, and many processes organized before 1989. Little public participation was also entailed in some of the constitutions drafted as parts of peace settlements, where warring parties chose terms in a roundtable session. A prime example of this model is the Dayton Accords, which produced the constitution for Bosnia-Herzegovina in 1995.

ruling party wielded control; and in twenty-two cases, the executive branch or a commission appointed by the executive was in charge. In very rough terms, about 25.7 percent of new constitutions were drafted by bodies that would not be considered representative either in terms of method of authorization or composition. The real proportion of non-representative deliberative bodies is higher, of course, because some of the legislatures, national conferences, and transitional bodies serve some parts of the population more than others.

Colonial heritage helps shape the type of approach pursued. During the period 1987-2002, former British colonies tended to vest responsibility in a regular legislature or a constituent assembly. Former French colonies rarely pursued this approach but instead favored large national conferences and appointed transitional legislatures, either singly or in tandem. No discernible patterns were evident in other blocs. Since 1994, variation within zones of influence has increased. That is, over time, there is more borrowing of forms across lines of cultural and colonial heritage.³⁰

In some cases the body with responsibility for deliberating and for adopting a draft also prepared the initial text. More commonly, however, a subcommittee or appointed commission did so. Depending on the rules for debate and amendment, this two- or three-stage process of textual development could vest considerable authority in the hands of veto players who are not evident to many members of the public, though some countries have endeavored to appoint people with some public trust to these posts. Opening roundtables sometimes play a similar role, articulating essential principles or features that the final draft must respect, as in the South African case, or focusing the attention of drafters on some important demands, as in the case of Benin.

The level of public consultation also varies across regions and periods. In some instances, such as Nicaragua and Colombia, governments sponsored hearings on the draft during the preparation process. In others, such as Uganda, teams associated with

30. For example, Uganda's constituent assembly included reserved seats for women, who were indirectly elected, as well as some representatives from important groups such as the country's youth. In the recent failed process in Kenya, the country hosted a large national conference to help revise a commission-prepared draft.

the commission charged with preparing the initial text held consultations with civic groups and with villagers in remote areas. Countries on the fringes of the European Union rarely employ public consultation of this sort but encourage debate in the press, which may serve as a functional substitute.

Although there is some variation across cases with respect to the decision rules employed, informal practices often converge, leaving us little variation to study. In Africa, one might hear the oft-repeated refrain, “the African way is consensus,” which, when pushed, means “sufficient consensus.” In Latin America, where simple majority rules are frequently on the books, negotiators might be heard to say, “Well, of course, if it is a sensitive matter then we want to make sure most people agree.” Thus, supermajority rules effectively predominate. It should be noted, however, that countries differ widely in the degree to which votes are taken on very many items. Voting is time consuming and can inflame passions. In quite a few instances, including South Africa, many issues were resolved informally and were never put to a vote.³¹ “Elders” or senior statesmen are sometimes used as tie breakers when the possibility of deep division is great.

The primary method of ratification in the period 1987-2002 was a vote in the main deliberative body, the procedure used in 55 percent of cases. Public referenda have taken place in 44.3 percent of drafting processes. In a few instances, ratification was a more complicated process that required either prior approval by the executive, certification by a court (as in South Africa), or some other kind of check.

This brief overview does not do justice to the enormous variety in the procedures employed to make new constitutions. In the era of decolonization, processes were often remarkably similar to one another, but there is no longer a template—not surprising given the number of permutations and combinations of stages, delegate selection rules, decision rules, consultation processes, etc.

31. South Africa’s informal procedures are well documented. See, for example, PATTI WALDMEIR, *ANATOMY OF A MIRACLE: THE END OF APARTHEID AND THE BIRTH OF THE NEW SOUTH AFRICA* 208-14 (1997) for a nice description of the conversations between Cyril Ramaphosa and Rolf Meyer.

III. SOME INTRODUCTORY OBSERVATIONS

To hone good practice recommendations, one might first check whether our expectations about the effects of procedure on performance correlate as anticipated with the patterns in the data. Good practice guidelines are just another name for reliable causal explanations. We recommend a practice because it tends to deliver a particular kind of result, whether that result is a reduction in violence, increased likelihood of compromise, a sense of inclusion, preference for stronger rights protection, or some other outcome of interest. What do the data say?

The “outcome” measures used in this Part are very simple. The first is the difference in violence between the five years prior to ratification and the five years after ratification. A second measure is the rate of suspension or replacement of the new constitution. If a constitution was suspended within five years of ratification, it is considered a “failed” effort, although it is worth noting that in two recent cases, levels of actual violence diminished substantially before a government suspended the constitution in place, so the process failed on one account and succeeded on another. A third measure is the degree of rights protection provided by the provisions or terms selected. For the purposes of discussion, this Article employs a simple summary score on rights protection. The measure incorporates analysis of each case on twenty-six dimensions.³² Out

32. The project includes multiple measures of executive-legislative relationships, protections against executive abuse of power, and rights protection. A few of the components are used to create the index employed in this analysis. The result is a rather encompassing rights protection score. The components of the score include the following, unweighted so that each carries a value of 1. These components ask whether the document:

- (1) Specifies that constitution is the highest law and all other laws must be consistent with it;
- (2) States that each citizen accused of a crime has a right to a fair trial;
- (3) Offers explicit guarantee of freedom of speech;
- (4) Offers explicit guarantee of freedom of association;
- (5) Offers explicit guarantee of freedom of assembly;
- (6) Offers explicit guarantee of freedom of the press;
- (7) Offers explicit guarantee of freedom of religion;
- (8) Offers explicit guarantee of right to hold private property;
- (9) States that citizens have duties toward the state or community other than military service, duty to pay taxes and respect laws, and other conventions (0=yes);

of a possible score of forty points, the median in the dataset, with some instances of missing data, was twenty-seven, with most cases clustering at that point.

The character of the constitution-writing process is difficult to capture because of the many procedural steps and choices involved. However, it is possible to tap the participatoriness and representativeness of these processes with some common indicators. In the tables that appear at the end of this Article, each country code is followed by a string of numbers. In the first set of parentheses are five of the 130 elements of this project's "process" dataset. The first number indicates the character of the main deliberative body, the entity responsible for developing a final draft. In the real world, most of us distinguish between processes on the basis of the main deliberative body. Thus, in Iraq, Ayatollah al-Sistani insisted on an elected constituent assembly or legislature as more democratic or representative than an indirectly elected legislature, an appointed national conference, a roundtable of key parties, or an executive-directed process. The key is as follows:

- 1 specially elected constituent assembly
- 2 national conference
- 3 roundtable among warring parties or major political parties

-
- (10) Contains an explicit anti-discrimination clause;
 - (11) States that main rights are not derogable during states of emergency;
 - (12) Provides for multi-party competition;
 - (13) Provides for an independent judiciary;
 - (14) Grants the judiciary powers of judicial review;
 - (15) Grants judges security of tenure in office;
 - (16) States that civilians are to be tried by ordinary courts, not courts martial or exceptional tribunals;
 - (17) Provides for an independent prosecutor;
 - (18) Explicitly creates an independent electoral commission;
 - (19) Explicitly creates an independent public service commission;
 - (20) Explicitly creates an independent central bank;
 - (21) Explicitly creates an independent auditor (comptroller, inspector general);
 - (22) Explicitly creates an independent human rights commission;
 - (23) Explicitly subjects national security forces to the authority of an elected legislature and prime minister or an elected president;
 - (24) Provides for legislative oversight of defense forces;
 - (25) Provides for legislative oversight of all other security forces; and
 - (26) Requires that executive branch inform legislature of use of defense forces promptly and in appropriate detail.

- 4 legislature sitting in special session as a constituent assembly
- 5 normal legislature, no special procedures
- 6 commission appointed by the legislature
- 7 executive branch officials
- 8 parties to peace negotiations (similar to 3 but mediated)
- 10 commission appointed by the executive
- 11 appointed transitional legislature
- 12 decolonization conference
- 13 central committee of ruling party or party congress

The other numbers in the first set of parentheses indicate, respectively, the method of delegate selection for the main deliberative body, the method of delegate selection for the body that wrote the initial text, the level of public consultation, whether a referendum was required for ratification, and the result of a statistical attempt to capture representativeness on multiple dimensions. These correspond with many observers' benchmarks or shorthand for characterizing a reform process, although they are very limited in the information they convey. The key to the codes is as follows:

Method of delegate selection, main deliberative body

- 1 appointed by the head of state
- 2 appointed by leaders of warring parties
- 3 appointed by the major political parties
- 4 appointed by the legislature
- 5 elected from within the ranks of the legislature
- 6 appointed by corporate bodies, such as peak associations
- 7 popularly elected

Method of delegate selection, body that drafted initial text

- 1 appointment by dominant party in elected drafting body
- 2 appointment with approval of a majority of delegates to an elected drafting body
- 3 appointment with approval of a supermajority of delegates to an elected drafting body
- 4 appointment by the executive branch

- 5 appointment by the leaders of the warring parties
- 6 appointment by leaders of contending political or social groups
- 7 appointment by leaders of corporate groups (e.g., peak associations)
- 9 popularly elected
- 10 appointed by external mediators
- 11 appointed by a dominant political power (but not a political party)

Public consultation: “0” is no formal public consultation (hearings, solicitation of briefings, surveys, canvassing) either before development of initial text or prior to final revision and ratification; “1” if consultation at either stage; “2” if consultation at both stages.

Referendum: “0” if no referendum; “1” if popular referendum

Several outcome variables also appear in the tables. The number in the second set of parentheses is the measure for explicit protection of rights in the text negotiated. Numbers above 26 or 27 indicate rights protection above the median. If a country’s identification code is in boldface, the constitution was suspended within 5 years of ratification. If the country’s identification code is in italics, it indicates that the 5-year average level of violence increased post-ratification compared to the equivalent period pre-ratification. (This indication can be misleading because it includes countries with relatively low levels of violence that experienced a small increase in strikes and street demonstrations as well as countries that descended into civil war.)

What do the data say? First, by the time a country gets agreement on a new constitution, whatever the character of the document, the level of violence tends to drop slightly. There are far more successes than failures when one employs blunt measures such as suspension or the average level of violence in the five years before ratification compared to the five years after ratification, as scored by International Country Risk Group (ICRG).³³ Some of the

33. The International Country Risk Group data is developed and maintained by a commercial firm, the PRS Group. PRS conducts expert assessments of a variety of indicators, including levels of internal conflict, on a monthly basis. It uses a 1-12 scoring system, with

“failures” become successes, but endure a slight up-tick in violence for a few years after the drafting process is complete. Many conflicts are probably ripe for resolution by the time the constitutions are ratified.³⁴ This observation does not control for differences in the coercive capacity of governments. Hence it is possible that places with executive-directed or otherwise unrepresentative or non-participatory processes sometimes meet with short-term success because the government can repress dissent effectively. The five year time frame may also be too short to pick up differences among cases. Moreover, one would ideally want to compute changes in the level of violence as the difference between anticipated and actual levels, not as a before and after measure.

Some more useful tentative insights may be gleaned from subsets of the cases: clusters whose members are similar with respect to conflict intensity prior to the drafting process, GDP per capita, restrictiveness of the rights regime at the time the process started, and colonial heritage, ordered within sets by level of ethno-linguistic fragmentation. Let me list a few observations to move discussion forward and refer those who want more detail to the tables in the Appendix.

Among countries with low-intensity violence, low incomes, and restrictive rights regimes prior to drafting, those which also share a French colonial heritage are more likely to fail. Further, 75 percent of these cases yield constitutions that provide rights protection that is below the median. The main deliberative body in these instances is almost always an appointed or indirectly elected transitional legislature, a national conference, or an executive-appointed commission.

One interpretation, then, is that these kinds of forums are subject to legitimacy problems or management difficulties that are not helpful to conflict reduction. Another is that they permit parties to resist inclusion of rights protections more easily than is true in other settings. However, it could be that there is something about sharing a French colonial heritage that contributes to the difficul-

12 being an indicator of high stability. Ratings of 1-3 reflect ongoing civil war, while a score of 8 is typically associated with demonstrations.

34. See generally I. WILLIAM ZARTMAN, *RIPE FOR RESOLUTION: CONFLICT AND INTERVENTION IN AFRICA* (1989).

ties these countries experience. One possibility is that “bureaucratic quality” is lower in Francophone countries than in countries with a British colonial heritage, and lower government capacity accounts for the difference in outcomes. Comparatively greater centralization of institutions within institutions in the region might account for this pattern. Another alternative explanation for the pattern is that the French tended to establish colonies in places with geographies that made governing difficult,³⁵ and geography, not colonial past, drives the outcomes observed. Among comparable countries with a British colonial heritage, the rate of suspension or increased violence is lower and over half of the new constitutions display rights protection at or above the median. Tracking these theories, those countries that empower a party congress as the main deliberative body or vest responsibility in the executive are more likely to fail than those that locate the process in a legislature or constituent assembly.

Low-income countries from the former Soviet Union (FSU) or of Portuguese or Spanish colonial heritage tend to display slightly lower levels of rights protection, but the patterns are less discernible than they are in the French cases. The less inclusive the main deliberative body, the lower the level of rights protection, but most of the constitutions produced by legislatures also tend to produce rights protection that is below the median.

The variability is greater within the category of post-civil war cases. Thus, if we exclude the countries where constitution writing took place in response to demand for institutional change, usually amid low levels of violence, and concentrate just on the deeply divided societies, the ratio of successes to failures is lower. The variation in outcomes is more pronounced. However, the anticipated correlation of success with more representative features does not emerge, possibly because of variation across countries in the degree

35. Jeffrey Herbst has argued that countries with large, lightly inhabited hinterlands or with population centers widely separated by less populous areas are harder to govern and more prone to coups or secession. This is the thesis of his book, *STATES AND POWER IN AFRICA* (2000). The Francophone countries of Africa are mainly, but not exclusively, semi-arid countries with population patterns similar to those Herbst describes as “unfavorable geographies.” That said, some of the most turbulent appear to have more favorable geographies, drawing this alternative explanation into question.

to which there are external mediators or more complex conflict-reduction mechanisms behind the scenes.

Among low-income countries with restrictive rights regimes at the time drafting begins, the rates of failure are higher among all groups of countries. The failure rate is 60 percent in former British areas and 63 percent in former French areas, for example. About 50 percent of the constitutions developed by elected legislatures fail in this category. The former French countries yield lower levels of rights protection on the whole than is true of other groups. There are many fewer cases in each of the “high violence” sets, however, and one may not wish to draw strong inferences.

Not surprisingly, regardless of the prior level of violence, middle income countries tend to generate new constitutions with levels of rights protection above the median. The exceptions to this rule are mainly Middle Eastern countries, which tend to generate very low levels of rights protection.

A quick examination of the subgroup data suggests two other patterns. First, within categories, the level of public consultation does not correlate with stronger rights protection. Within some subcategories this finding is not surprising. East European countries such as Poland, Hungary, and the Baltics have tended to emulate their Western European counterparts, favoring deliberation through elected bodies and lots of press coverage to deliberate popular engagement. The press coverage has tended to serve as a substitute for “administered” popular consultation. In other instances, the deviation from expectations may have to do with the difficulty of managing consultative processes in ways that truly help them achieve objectives set for them. Second, the level of ethno-linguistic fragmentation (not the same as level of ethnic tension) has no systematic effect, one way or another, on outcomes. New constitutions in culturally divided societies do not seem to succeed or fail at a greater or lesser rate than new constitutions in other settings.

Based on this evidence, one might say that that the choice of procedure does not really matter much. More representative processes may yield better results in contexts where the level of violence is relatively low; the evidence is not overwhelming, however.

IV. ISSUES SPECIFIC TO POST-CONFLICT CONSTITUTION WRITING

How can we account for the high variability in the efforts to draft constitutions as part of peace negotiations or immediately thereafter? Why does the representativeness of the assembly not appear to matter as much in these instances? The answer is partly that, again, the details matter.

There are some questions of particular importance that pertain to constitution writing in the aftermath of conflict but are of less concern in other settings. A conference on constitution writing and conflict resolution that the author organized at Princeton University in May 2007 brought together practitioner-scholars to think carefully about some of the advice they would dispense to others, particularly in the context of high levels of violence.³⁶ Their observations point to issues that merit further investigation, although many of the problems that attend the analysis reported in the previous Part also make it difficult to frame reliable answers to the questions posed.

One maxim is that interim arrangements may boost the success of constitution building in post-conflict settings.

Usually it is easier to convince politicians to take a long view and consider broader community interests when conditions are peaceful. High levels of insecurity cause people to draw inward and to restrict their contacts to kin or to people they know well. Sectarianism inevitably increases in the context of violence, as a result.³⁷

Moreover, conflict resolution may be governed by imperatives somewhat at odds with those that usually prevail in constitution writing. As a quid pro quo for laying down arms, combatants may try to enshrine their power, for example, and inevitably those who refrain from armed conflict are left out.³⁸

As a general matter, use of interim arrangements is preferable to a full-scale effort to draft a new constitution in the context of

36. See generally Proceedings, *supra* note 8.

37. *Id.* at 25.

38. See *id.*

peace negotiations or ongoing violence. “The interim constitution is likely to be a hybrid that borrows on previous constitutions and adjusts the terms to produce a settlement.”³⁹ The hybrid may also draw on the existing laws, modified in light of some key principles a roundtable of combatants sets out.⁴⁰ Later, when passions have diminished and trust has increased, it is possible to approach the process more logically and to frame a document that serves the broader purposes usually associated with constitutions, in particular creating a framework for accountable government.

A second maxim is that sunset provisions are often helpful, if morally ambiguous, in diminishing passions. “Sunset clauses can be used to offer warring parties some time to adjust, ... yet ensure that they can’t live under interim arrangements indefinitely.”⁴¹ Sunset clauses have proven helpful in some of the settings in which they have been tried. In South Africa, they included an agreement that civil servants would be able to retain their positions for a limited period and a government of national unity would endure for five years.⁴² In Bougainville and Uganda, sunset clauses “allowed militants to participate for a certain period of time.”⁴³

When reducing passions is especially important, the tradeoffs between transparency and ability to engage in compromise may be skewed in favor of the latter. In constitution writing, high publicity is often valued as a way to engage the public and allow people to see that their representatives are upholding their interests.⁴⁴ The inevitable grandstanding that results may be an acceptable price to pay.⁴⁵ In the context of conflict, however, the balance shifts the other direction. Closing many of the proceedings and using secret ballots make sense in order to induce compromise.⁴⁶ It may also be essential to lessen intimidation of delegates.⁴⁷ In Afghanistan,

39. *Id.* at 26.

40. *See id.* at 16.

41. *Id.* at 31.

42. *See id.*

43. *Id.*

44. *See id.* at 38.

45. *See id.*

46. *See id.* at 33, 45.

47. *See id.* at 33.

support for a secret ballot emerged from “fear that full discussion in a plenary and roll-call voting would elicit reprisals.”⁴⁸

Time frames are important. There must be a reasonable ‘end’ so that ‘normal’ politics can develop. Clear time frames (agreed to by parties) are necessary for this to happen.

Deadlines help prevent reluctant parties from delaying processes endlessly.... [However,] [w]here deadlines create a risk that key parties will feel excluded, then splitting some kinds of issues away from the main constitution drafting process might help. Mali and the Republic of Georgia were both mindful of the risk that a protracted process would cause the delegates to lose momentum and the public to lose interest, while a short process could not address key problems, in both cases a low-intensity armed conflict in a part of the country. When a country has many different problems, it might be advisable to split the process so that there is no danger of missing a constitutional moment. In a country faced with an institutional crisis, constitution making to re-design the ‘power map’ might take place on one track while conflict resolution proceeds in parallel and over a longer period.⁴⁹

South African colleagues Christina Murray and Heinz Klug have also discussed the attributes of a “one draft rule” as a way to promote engagement and foster compromise.⁵⁰ “In South Africa, organizers tried to keep one draft and to insert options into the draft.... [T]hey produced a composite draft that initially included everyone’s ideas.”⁵¹ The practice meant that everyone could feel they had a voice, “allowed parties to see similarities in positions and negotiate towards agreement, and avoided the danger of competing versions,”⁵² a common problem in post-conflict settings or where there is a high degree of polarization. This approach made it easier to reach compromises, because the language of all options was available for everyone to see.

48. *Id.*

49. *Id.* at 36.

50. *See id.*

51. *Id.*

52. *Id.*

In post-conflict settings, where trust may be absent, small group preparatory workshops, bilateral conversations, and social contact among the group members are especially useful in building the rapport important for constitution writing.⁵³ These should happen well before the process starts. Travel, often discredited, may have a useful role to play in these cases, but study tours should focus on issues that are not very controversial, since the real rationale is to build ties between participants, not arrive at an agreed set of terms.⁵⁴

CONCLUSIONS

For several reasons, it is likely to remain difficult to offer strong statements about “best practice” with respect to constitution writing, especially in the context of high levels of violence. The results of past practice are often ambiguous because of the many factors, other than choice of procedure, that shape desirable outcomes: conflict reduction, inclusion of rights provisions, agreement on structures that restrict abuse of power, and public awareness. Cases are difficult to compare because they vary with respect to procedural details in important ways, even when they appear broadly similar. Moreover, the choice of procedure is often a function of something else, including colonial heritage, underlying governmental capacity, historical experience, etc.

Social scientists can usefully point to the tradeoffs, in different contexts, of adopting one rule or another. For example, we can point to the effects of alternative voting rules given different distributions of delegate party affiliation or ethnic background. We can offer useful analysis of the impact of publicity and other practices on the balance between grandstanding and compromise or bargaining versus arguing (persuasion). We may be able to say something about the extent to which the choice of ratification procedures affects delegate behavior. Under what circumstances is ambiguity helpful and when is it dangerous? We can ask whether it is possible to generalize about the effects of impending elections on delegate decision making and under what circumstances ambiguity and

53. *See id.* at 35, 37-38.

54. *See id.* at 37.

contradictions—Cass Sunstein’s “incompletely theorized legal agreements”⁵⁵—aggravate difficulties or create space for gradual resolution of differences. Social scientists may also be able to point to procedural devices for minimizing the bad consequences of certain choices, a gesture of some utility in a world in which international or regional trends or cultural preferences—and not concern for outcomes—may motivate selection of frameworks that may aggravate conflict.

55. CASS SUNSTEIN, *LEGAL REASONING AND POLITICAL CONFLICT* 1 (1998).

APPENDIX

Table 1: Country Background Characteristics & Type of Constitutional Reform Process**a. Post 1987, low-intensity violence, low income, restrictive rights regime at time of negotiation**

By identity of former colonial power, if any, and ranked in cells by level of ethno-linguistic fragmentation (high to low)

<u>British</u>	<u>French</u>	<u>Other</u>
PNG95 (5,7,, , 0,3) (-)	CMR96 (2,7,4,0,0,3) (21)	STP90 (13,8,9,,1,1) (25)
TAN92 (5,7,4,1,0,3) (-)	<i>TOG92</i> (1,8,8,0,1,5) (27)	GNB91 (5,8,4,,0,3) (22)
GHA92 (1,8,4,2,1,3) (34)	CGO92 (3,8,-9,0,1,5) (34)	MOZ90 (5,8,11,1,0,3) (30)
KEN91 (5,8,4,2,0,3) (27)	MAD92 (1,, , 1,1,4) (27)	INA02 (2,8,6,1,0,1) (24)
NGR89 (1,8,4,1,0,6) (22)	<i>CAR92</i> (2,8,8,0,0,3) (-)	ETH87 (13,3,4,1,1,6) (18)
NGR99 (7,8,4,1,0,6) (27)	CAR94 (2,8,4,,1,4) (12)	AFG87 (10,8,8,1,0,6) (18)
<i>GAM96</i> (7,8,4,,1,6) (40)	<i>CIV00</i> (2,1,4,0,1,6) (-)	SUR87 (11,8,, , 1,2) (15)
ZAM91 (3,3,4,1,0,7) (30)	MLI92 (1,8,8,,1,4) (26)	IRI89 (10,4,-9,1,1,6) (9)
ZAM96 (5,7,8,1,0,3) (40)	<i>BUR91</i> (2,1,,0,1,6) (24)	KAZ93 (5,7,4,1,0,3) (23)
<i>NEP90</i> (13,1,8,,0,6) (19)	BUR97 (1,7,1,0,0,2) (23)	KAZ95 (10,1,-9,1,1,6) (26)
PAK97 (5,8,-9,0,0,3) (22)	GUI90 (2,8,4,1,1,6) (23)	YUG92 (5,7,,0,0,3) (27)
<i>LES93</i> (1,1,-9,,0,1) (33)	NIG89 (2,1,4,0,1,6) (12)	MDA94 (5,7,,0,0,3) (29)
BAN91 (5,8,,0,1,2) (24)	NIG92 (2,8,8,1,1,5) (20)	<i>GEO95</i> (5,7,,2,0,3) (32)
YEM90 (4,8,, , 1,9) (16)	NIG96 (2,8,4,0,1,6) (-)	GUA94 (5,7,8,0,1,3) (27)
YEM01 (5,7,, , 1,2) (23)	NIG99 (2,1,4,0,1,6) (-)	UZB92 (5,7,2,,0,3) (25)
MDV97 (1,, , , , 2) (11)	<i>MTN91</i> (2,1,4,0,1,6) (18)	GEQ91 (10,1,,0,1,6) (23)
	BEN90 (2,8,8,2,1,5) (17)	<i>UKR96</i> (5,7,8,,0,3) (29)
	DJI92 (2,1,4,0,1,6) (18)	NCA95 (5,7,8,2,0,2) (32)
	MAR96 (2,8,4,0,1,6) (-)	ROM91 (4,7,,0,1,3) (30)
	COM89 (,, , , 0,1,2) (-)	BUL91 (4,7,, , 0,2) (28.5)
	COM96 (2,8,4,0,1,6) (18)	AZE95 (10,1,4,1,1,6) (32.5)
	HAI87 (3,8,-9,1,1,1) (27)	ARM95 (5,7,4,0,1,3) (24)
		<i>ALB98</i> (5,7,,2,1,2) (39)

b. Post 1987, low-intensity violence, low income, less restrictive rights regime at time of negotiation

By identity of former colonial power, if any, and ranked in cells by level of ethno-linguistic fragmentation (high to low)

<u>British</u>	<u>French</u>	<u>Other</u>
MAW95 (5,7,,1,0,2) (39)	COM92 (2,6,,0,1,4) (19)	STP03 (5,7,,0,0,2) (-) BOL94 (5,7,,,0,2) (31) KGZ93 (5,7,,1,0,3) (29.5) ECU98 (1,7,,0,0,2) (30.5) YUG03 (5,7,8,0,0,3) (25) CPV92 (5,7,,,0,2) (37) DOM94 (4,7,6,0,0,3) (21) MGL92 (5,7,,1,0,3) (24) PHI87 (10,1,,1,1,6) (27)

c. Post 1987, low-intensity violence, low middle income, by rights regime at time of negotiation

Ranked in cells by level of ethno-linguistic fragmentation (high to low)

<u>Restrictive Rights Regime</u>	<u>Less Restrictive Rights Regime</u>
BLR94 (5,7,1,0,0,3) (22) <i>FIJ90</i> (9,8,4,1,0,4) (31) <i>BLR96</i> (7,7,4,0,1,6) (22) TKM92 (5,7,,1,0,2) (-) ALG89 (10,1,4,1,1,6) (21) TUN88 (5,7,,1,0,3) (23)	<i>LAT98</i> (5, 7,,0,0,2) (19) FIJ97 (5, 7,6,1,0,3) (34) LAT93 (5, 7,,0,0,2) (-) LTU92 (5, 7,,,0,2) (36.5) PAR92 (1,7,,,0,2) (37) THA91 (13,8,8,0,0,6) (18)

d. Post 1987, low-intensity violence, middle income, by rights regime at time of negotiation

Ranked in cells by level of ethno-linguistic fragmentation (high to low)

<u>Restrictive Rights Regime</u>	<u>Less Restrictive Rights Regime</u>
TUN02 (7,7,,1,1,6) (-)	RSA96 (1,7,2,,0,2) (38.5)
GAB91 (5,7,8,0,0,3) (30)	BRA88 (4,7,,1,0,2) (32)
QAT03 (7,8,4,0,0,6) (12)	EST92 (13,9,-9,1,1,6) (35)
MKD91 (5,7,,,0,2) (32)	VEN99 (1,7,1,2,1,2) (34)
CHI89 (3,3,-9,0,1,7) (22)	THA97 (1,4,2,1,0,2) (-)
OMA96 (10,1,-9,0,0,6) (17)	SVK92 (5,,,1,0,3) (34)
CRO00 (5,7,2,0,0,2) (41)	ARG94 (1,7,8,0,0,3) (20)
CRO90 (5,,,1,0,2) (32)	TPE91 (9,8,11,0,0,1) (-)
RUS93 (2,8,4,0,1,4) (27)	<i>TPE97</i> (1,7,1,,0,3) (-)
TUR95 (5,7,6,0,0,3) (25)	CZE92 (5,5,,,0,2) (30)
URS90 (2,8,4,1,0,2) (16)	<i>POL97</i> (5,7,2,2,1,2) (29)
SLO91 (5,7,,,0,3) (34.5)	
HUN89 (5,7,6,0,0,3) (34)	
<i>SEY93</i> (1,7,,2,1,2) (36)	
KOR87 (5,7,6,0,1,2) (-)	
PLW92 (1,7,,,1,2)* (24)	

e. Post 1987, high-intensity violence, low income, restrictive rights regime at time of negotiation

By former colonial power and ranked in cells by level of ethno-linguistic fragmentation (high to low)

<u>British</u>	<u>French</u>	<u>Other</u>
UGA95 (1,8,4,1,0,3) (40)	CGO02 (11,1,4,0,1,5) (34)	ETM02 (1,7,,2,0,2) (40)
SLE91 (5,8,4,1,1,3) (34)	<i>CHA96</i> (11,8,8,2,1,5) (24)	ANG92 (5,,.,1,0,3) (27)
SLE96 (5,7,,0,0,2) (34)	CHA89 (11,1,4,1,1,6) (18)	ETH94 (11,3,11,1,0,5) (34)
SUD98 (4,8,4,0,1,3) (21)	BDI01 (11,7,5,0,0,7) (-)	BIH95 (8,2,8,0,0,7) (27)
SRI87 (5,7,5,0,0,3) (-)	BDI92 (10,1,-9,2,1,6) (15)	ERI97 (5,8,8,2,0,3) (34)
	RWA03 (11,3,6,2,1,2) (36)	TJK99 (8,2,5,,1,7) (29)
	RWA91 (5,7,4,2,0,3) (20)	<i>TJK94</i> (5,2,4,0,0,3) (27)
	COM02 (8,2,-9,0,1,7) (-)	ESA92 (5,7,,0,0,3) (29)
		CAM93 (1,7,,0,0,2) (17)

f. Post 1987, high-intensity violence, lower middle income, by rights regime at time of negotiation

Ranked in cells by level of ethno-linguistic fragmentation (high to low)

<u>Restrictive Rights Regime</u>	<u>Less Restrictive Rights Regime</u>
COL91 (1,8,-9,1,0,1) (36)	<i>MKD01</i> (5,7,,1,0,2) (35)
PER93 (4,7,,1,1,2) (38)	NAM90 (1,7,2,0,0,2) (34)
LEB90 (5,7,9,0,0,3) (17)	
<i>ALG96</i> (3,3,8,1,1,9) (18)	