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# Creating or Modifying States in Federations: Lessons for Myanmar

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# Overview of Presentation

- Variety and significance of member-state structures
- Comparative history of how were decided
- Failed federal transitions and member-state structures
- Procedures and timing for deciding member-state structures
- Importance and influence of member-state structures for dynamics of a federation
- Five key issues for Myanmar in considering its member-state structure

# Variety of State Structures in Federations

- Federations have ranged from 2 states (former Pakistan) to 50 (USA)
- In some federations most states are linguistically or culturally distinct (Switzerland), while in other federations states are mainly “territorial”. Often linguistic and territorial considerations are mixed.
- States in some federations have relatively comparable populations in size though in most state populations vary considerably. In some federations one or two states are especially large.

# Importance of State Structure in Federations

- The number, linguistic or ethnic make-up, and relative sizes of states have a strong bearing on the functioning of a federation.
- The state structure is as important as the division of powers, the nature of the legislature and executive, the judicial institutions, the fiscal and intergovernmental arrangements, the electoral regime and the constitutional amending formula.
- All these institutional arrangements influence one another, and their design should be considered in relation to one another.

# Creating State Structures in Early Federations

- In USA, 13 colonies came together in a federation. In Canada, one large colony split, while two other colonies joined for an initial 4 states. As new lands were acquired, new states were added or created in both countries.
- Argentina, Brazil and Australia all became federations within their existing territory. Australia was six colonies coming together. States in Argentina and Brazil were based on old colonial divisions; over time Argentina created new states in thinly populated territories while Brazil created five new states out of border territories.

# Creating State Structures in Postwar Federations

- 20 new federations since World War 2. All (except Malaysia in part) were cases of existing countries or colonies transitioning to federalism within existing territory.
- Belgium, Bosnia-Herzegovina, Ethiopia, Germany, Malaysia, Nepal, South Africa and Spain all resolved state structure as part of original federal constitution (though with some minor modifications afterwards).
- India, Nigeria, and Pakistan undertook major state restructuring after their initial independence and early federal form.

# Post-war Member-State Structures Created When Federal Constitution Created

- Victors in Ethiopia's civil war promoted “ethnic federalism”, but ultimately only five of nine original states strongly ethnic given geographic mix of populations. Now 12 states. Constitution largely imposed.
- Victorious allies basically determined Germany's state structure, relying heavily on states of Weimar Republic, but with some adjustments and abolition of Prussia. Not contentious.
- Federation of Malaya based on traditional monarchies and sultanates, plus two British colonial territories. Expanded to Malaysia with addition of Singapore, Sarawak and North Borneo, but Singapore expelled after two years.

# Post-war Member-state Structures Created when Constitution Created (cont'd)

- After Nepal's civil war, Maoists advocated ethnic federalism. Opposition parties against. It proved impossible. Long process to federal constitution. Created seven provinces from 75 districts. Criteria were geography, ethnicity, population size, language and culture. Decided by 2/3 vote in Parliament. All states multi-ethnic and no state can be named after one ethnic group. Highly contentious. Some communities objected to being marginalized.
- In South Africa's transition to federalism, old apartheid boundaries rejected. Boundary commission's criteria were economic, geographic, institutional and administrative capacity. Adopted nine states, largely based on economic regions; in practice seven have an ethnic majority but boundaries not adjusted to created ethnically homogenous states. Relatively non-contentious issue.

# Post-war Member-State Structures Created when Federal Constitution Created (cont'd)

- Spain's 50 provinces under Franco considered too many for devolved federation. “Historic nationalities” or islands could have a new state created from a former province, but on mainland other provinces were required to amalgamate (2 or 3 into a new state).
- Decisions on amalgamation made by local municipal representatives or by referendum subject to central criteria. If no agreement, no new state. 17 states created from 50 provinces. Relatively non-contentious.

# Post-war Member-State Structures Created or Revised after Federation

- At independence, India created temporary 27 states in three classes out of old British arrangements. Parliament given power to create new states by simple majority, after consulting states affected.
- Strong demand for linguistically based states. One new linguistically state created, which led to a States Reorganization Commission and reorganization with 14 states and 4 union territories. Some states essentially linguistically based, but others had two or more large language communities. Several Hindi speaking states.
- Over time additional 15 new states, often for linguistic reasons but also small new states in North East which were largely tribal.

# State Structures Revised after Federation Established (cont'd)

- Nigeria's federation had three states based on British regions. Difficult dynamics. One new state created but problem not solved. Coup led to years of military rule, when army-imposed series of state creations, with eventual 38 states. Criteria were to break up very big tribal groups. Recently some calls for new six-state structure. Contentious process but imposed by army. Helped stabilize politics.
- At independence Pakistan had four provinces and 15 princely states in the West, but only one province in the East, which had over 50% of the population. Constitution of 1956 established unbalanced two-unit federation. Military took over in 1958. After election in 1971 won by East Pakistan party, military led violent crackdown in East, leading to civil war and Bangladesh independence. Remainder of Pakistan became federation with four historic provinces and a federal territory (which became a state).

# Member-State Structures in Unsuccessful Transitions to Federalism

- Somalia, Yemen, Cyprus, Iraq have failed to transition to federalism or made only a partial transition.
  - In Yemen, disagreement over state structure was a significant cause of failure. National dialogue couldn't decide on states.
  - In Somalia, the transition has been partial because of difficulties regarding the state structure.
  - In Iraq, the Kurds and Sunnis wanted federalism, but it has been rejected by the Shia, so only the Kurds have local autonomy.
  - Negotiations for the reunification of Cyprus based on a two-state federation have failed because of disputes over devolution, central power-sharing, security and other issues.

# Deciding Member-State Structure when Establishing the Federation

- Most often member-state structure is not very controversial, but it can be extremely difficult.
- Can be done using formula for approving constitution (e.g. Nepal, 2/3rds majority).
- May create a commission to advise (South Africa)
- Can be top down by external powers (Germany, Bosnia-H) or army (Nigeria) or civil war victors (Ethiopia)
- Can be subject to criteria with local politicians or referendums having role (Spain)

# State Structures Revised after Federation is Established

- Changing boundaries once a federation is established almost always requires consent of affected states and may require constitutional amendment, which can be a high hurdle.
- India unique in giving Parliament power to decide by simple majority after consulting affected states.
- Switzerland created a new canton by a series of referendums and then constitutional amendment.
- Germany requires referendums with majority vote approval in proposed new state and in affected state. If affected state opposed, then need 2/3 support in proposed new state.

# Criteria for Designing a Member-State Structure

- In older federations, little conscious design: original states were clear and new ones added over time.
- Major debate in some countries re “ethnic” versus “territorial” design. Linguistically based states can provide services in majority language. But all states have ethnic minorities and some have no ethnic majority.
- *All citizens should have equal rights so minority rights is a major issue if a state is deemed “ethnic”.* Constitution can establish minority rights protected by courts, but can be difficult to enforce.
- Countries transitioning from unitary to federal often use previous territorial divisions as basis of state structure, though this may be revised (e.g. in Spain and South Africa)

# Member-State Structure Influence on Political Dynamics of a Federation

- Politics of a federation affected by:
  - Character of states: culturally homogenous, heterogeneous or a mix of the two
  - Number of states
  - Relative sizes of states
  - Total size of population and territory
- In federations with 6 to 13 states, possibly one large state may be dominant or highly influential. Those with more states usually don't have a dominant state.
- Federations with 2 to 4 states often have unstable politics. May have a dominant state or extensive power-sharing (mutual vetoes) in central institutions. Power sharing can create blockages and so must be carefully designed.

# Member-State Structure and Political Dynamics

- *If large or dominant ethnic or linguistic groups are broken into several states, this can promote more fluid politics and accommodation (India many Hindi majority states; Canada many English majority states; Nigeria, three main tribes broken up)*
- Federations can have very large differences in the populations of states (e.g. India 300:1; USA 70:1). If there are big differences, this can be an issue in design of upper chamber: all states equal (US) or some weighting by population (India)
- Having very many states may contribute to a stronger central government, but not necessarily (e.g. Switzerland with 28 small cantons very devolved)

# Issues for Myanmar's Member-State Structure

- Key issues in considering Myanmar's future state structure:
  - To what extent should each state be ethnically homogenous? Should each ethnicity be in one state to the extent possible?
  - Should the member-state structure be based on the current 14 units (perhaps with some changes)? If not, what is the alternative?
  - Does the member-state structure matter for the design of central institutions and the electoral law?
  - Does the member-state structure matter for the division of powers?
  - When and how will the member-state structure be decided?

# Issue one: Ethnically homogenous states?

- What are challenges in creating regions/states as ethnically homogenous as possible?
- Currently all Bamar regions are more than 85% Bamar majority, but among states only Chin heavily majoritarian (96%) while Kayah, Kayin and Rakine have ethnic majorities (61-69%) but significant minorities. Kachin, Shan and Mon far from having one majority group (30-40%)
- Trying to restructure states so that each had a large majority group (say 80% or more) would be extremely challenging especially dealing with townships with very mixed populations or with indigenous groups that are non-contiguous. It might involve creating several states with very small populations (e.g. current Self-administered zones (SAZ))

# Ethnically homogenous states? (cont'd)

- To avoid proliferation of small states, there could be an increase in number of SAZ to deal with small, geographically concentrated indigenous minorities. But SAZ's typically have limited population and capacity. Indian experience of creating "states within states" has been problematic.
- *Alternative would be more emphasis on local government authorities as part of federal structure.*
- In practice, even if there was an attempt to promote ethnically homogenous states, most states—even Bamar majority states—will have significant minority groups. So a critical issue is the *recognition of the equality of all citizens* so that there is no discrimination against minorities.

## Issue two: Fourteen, more, or fewer states?

- New federations often use existing territorial divisions for state structure. Takes a major issue off the table and is familiar. CRPH has supported legal continuity.
- Myanmar could base federalism on current 14 states and regions, at least initially. Could deal with adjustments or major restructuring later.
- Currently Yangon over 7 million, 5 units between 5 and 7 million and only two very small states (half million or less). Compared to other federations is a potentially balanced structure.
- Of course, central feature of Myanmar is Bamar majority of 69% and many ethnic groups (three with 4 to 7 percent of the population; all others less than 2 percent) The seven “ethnic” states have about 28% of the population, while the Bamar majority regions have 72%.

## How many states (cont'd)

- An equal number of Bamar and indigenous majority states might promote balance in federal structure. Upper house might give each state equal representation, though balance could be achieved through other mechanisms if the state number were unbalanced.
- If Bamar population concentrated into one or two very large states well over half population would be in one or two states alongside seven or more small ethnic-minority states. Major issue of balance. Would likely increase Bamar political weight in federation and could exacerbate ethnic tensions. Breaking up dominant or very large population groups into different states has brought fluidity and reduced polarization in federations. Can bring shifting alliances across ethnic lines.

# Issue three: Member-State Structure in relation to Central Institutions and Electoral Law

- A key issue for Myanmar will be how to protect the interests of the minority ethnic populations and states in the central institutions (Parliament, Executive, Judiciary), while respecting the principle of equal citizenship for all and due regard for “majority rule”.
- One aspect can be the upper house, which typically is based on “state representation”. Some federations (USA) give equal representation to all states in the upper house, while others (India) link representation to population size, though normally with over-representation of small population states.
- So key issue may be composition and powers of upper house, which is linked to member-state structure.

# Member-State structure, central institutions, electoral law (cont'd)

- Parliamentary regimes usually give lesser powers to upper houses, but an upper house could have powers in relation to critical interests of ethnic minority states and populations. Equal representation for the ethnic states and the Bamar states could be part of such an arrangement, but special voting procedures would be an alternative (Belgian model).
- There are many ways to deal with balancing minority and majority interests in central institutions, which go beyond this presentation.
- First-past-the-post electoral laws amplify political differences across states; often one party may win all seats even if other parties have significant support. Mixed or proportional representation can promote healthier party competition within states. This would increase the possibility of a state electing representatives who support and oppose the government, thus reducing regional tensions.

# Issue Four: Relation of Member-state Structure to the Division of Powers

- The capacity of states to take on devolved responsibilities could influence the division of powers. Very small, poor states will have less capacity to manage complex responsibilities. A state structure with many small, poor states could be a brake on devolution.
- Another issue will be the role of local governments within states. Giving them a significant role can help address the minorities within states issue.

## Issue Five: When and How to Address the Member-state Structure

- Myanmar faces large challenges in developing a federal constitution.
- A key issue will be to decide what is the decision-rule for deciding the constitution. Requiring consensus or a very high majority could endanger the project.
- Broad dialogue processes can be useful, but they are not suited for decision-making.
- Might there be a way to avoid being bogged down over boundaries? Could the federation be established with limited changes to the current map, with provision for other changes once the federation is established.
- The constitution could establish criteria and procedures for modifying boundaries and creating new states.

# Some Conclusions

- Member-state structure is important and relates to other elements of federal institutional design.
- There are serious demographic limits to how far Myanmar could create a federation based primarily on the ethnic composition of states. Moreover, too strong an emphasis on ethnicity risks undermining shared citizenship.
- Myanmar's 14 states could serve as the basis for a balanced federation, though this could be modified. Creating many small ethnic states or consolidating the Bamar population into a single state would have major implications for federal dynamics.
- Attempting a *major* redesign of the member-state structure early in the transition could put constitutional agreement at risk. Changes during the constitution-making process should enjoy a broad consensus. Other changes could be considered once the federation is established.

## Three Key Questions

- Given the number of ethnic groups in Myanmar and the extensive ethnic mixing in many areas, could Myanmar ever have a truly “ethnic federalism”? Should it try?
- What would having ethnic states mean for the rights of minorities in those states? Could their rights be protected in ethnic-majority states?
- Who should decide on a new constitution? An elected parliament? By what majority? And how would minorities interests be protected? Would non-elected representatives of ethnic groups have a role in the decision-making?