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# Interim Constitutions after Civil War

## Balancing short- and long-term goals in transitions from war to peace?

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# Abstract

In light of a rise in the number and recurrences of armed conflicts, the purpose of this thesis is to investigate the role of interim constitutions in balancing short-term peacemaking and long-term peacebuilding goals in war-to-peace transitions where a new constitution is to be written. Drawing on peacebuilding and constitution making literature, the study examines the effect of the duration of interim constitutions with regard to the amount and quality of deliberation and participation in the constitution making process as well as the strength of national identity – the latter linking to power-sharing. Applying a mixed-methods research design, a descriptive statistical analysis is conducted on a sample of 11 post-conflict countries with interim constitutions, followed by an in-depth comparative case study analysis of two of them: Iraq and Rwanda. The results indicate that by interposing time between the conflict and the final constitution, interim constitutions can contribute to a constitution making environment more conducive to inclusiveness and consensus-seeking. Accordingly, more time can enhance the potential for interim constitutions to positively affect the impact of post-conflict constitution making on the prospects of sustainable peace.

*Key words*: interim constitutions, peacebuilding, time, post-conflict constitution making, power-sharing

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# 1 Introduction

2014 saw the highest number of reported armed conflicts since 1999 (40)[1] as well as the highest number of battle-related deaths in a single year since 1989 (Petterson & Wallensteen 2015: 536). Even if excluding the major contributor, Syria, from the equation, who was single-handedly responsible for more than half of all deaths, the number of fatalities was still the highest since the year 2000 (ibid.: 539, 546). At the same time, most contemporary civil wars are new recurrences of old civil wars, restarted by the same sets of rebels (Walter 2015: 1242-3). The need to find ways to end armed conflicts and establish the foundations of sustainable peace is, needless to say, of substantive and immediate importance. As Walter pinpoints, "the main challenge surrounding civil war is no longer how to prevent new wars from starting but how to permanently end the ones that have already broken out" (ibid.: 1243).

A number of studies have looked into how armed conflicts end and how the way in which they end affects the likeliness of violence to recur (e.g. Kreutz 2010; Licklider 1995; Toft 2010a; Toft 2010b). Licklider and Toft, for example, both find that civil wars ended by negotiated settlement are more likely to recur than those ended by the military victory of one side[2]. Nonetheless, the end of the Cold War has seen a significant increase in the proportion of conflicts ending in a peace agreement[3] and a concurrent sharp reduction in the number ended by military victory (Paris & Sisk 2009: 1; Ramsbotham et al. 2011: 172; Toft 2010a: 6-7). At the time of writing, the war in Syria has entered a negotiation phase in which the Syrian government and the main Syrian opposition group, the High Negotiations Committee (HNC), are engaged in peace talks led by the UN and conducted amid a cessation of hostilities, suggesting that a negotiated settlement to the five-year long civil war is a probable outcome. Bearing the empirical findings of Licklider and Toft in mind, the recent development in Syria and the increased post-Cold War peace agreement trend actualizes and substantiates the need to consider the role and potential of negotiated peace processes in not only ending violent conflict

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[1] Following the Uppsala Conflict Data Program (UCDP) threshold of at least 25 battle-related deaths per year for a conflict to be considered active.

[2] While one side's military victory can hardly be seen as a deliberate peacemaking tool, a belligerent could be "allowed" or even supported to win if the alternative, e.g. continued fighting, is deemed more harmful. See Toft (2010b) for an elaboration of the "give war a chance" argument.

[3] While the increase in proportion is widely acknowledged, there is broad disagreement over the size of that proportion, ranging from 18 percent (Kreutz 2010: 246) over one-third (Harbom et al. 2006: 617) to 50 percent (Bell 2006: 373) for the period 1989/90-2005. Other studies covering other and longer periods of time similarly suggest a one-third proportion (see e.g. Högbladh 2011: 39; Licklider 1995: 681 [looking at civil wars ended by negotiation]).

but also preventing the resumption of violence in the longer term. This, ultimately, entails considering the relationship between peacemaking and peacebuilding.

Constitution making has long played a role in transitions from war to peace. While historically – following the developments in civil war termination – constitutions were usually imposed by the victors of a conflict, today they are more often part of a negotiated settlement to conflict (Brandt 2005: 6). In the last half century, and notably since the end of the Cold War, a surge in constitution drafting[4] has taken place, a large part of which has taken place in conflict-affected contexts (Hart 2003: 2; International IDEA 2011: 8; Widner 2005: 503). As such, the periods after post-colonial independence and the end of the Cold War, the latter characterized by global political instability and a rising amount of intrastate conflicts (see e.g. Figure 1 in Petterson & Wallensteen 2015: 539), experienced a boom in new constitutions (International IDEA 2011: 8; see also Figure 1 in ibid.: 9; "New Constitutions" data visualization by Comparative Constitutions Project). Constitutions and constitution making processes are seen by many as central to state- and peacebuilding agendas and the prospects of achieving sustainable peace in post-conflict societies as they may offer warring parties the opportunity to negotiate and settle underlying disputes through non-violent means while establishing an institutional framework that can foster long-term stability, security and justice (Ghai 2004: 1; Ludsin 2011: 243; Samuels 2006; Widner 2005: 503; Zulueta-Fülscher 2015: 8). A positive connection between constitutions and sustainable peace has found empirical support with Walter (2015: 1256-8), who finds that countries with a written constitution have about one-tenth the risk of returning to civil war compared to countries without a constitution[5]. Also in Geneva, the peace talks on the future of Syria are intended to focus, among other things, on a new constitution for the war-ridden country (Davison 2016).

In some instances, constitution drafting has found use not only as a post-conflict measure, but also as a way to end armed conflict. In such cases, forging a new design of the state and/or securing the rights of a warring minority group in a not easily amendable constitutional document may be prerequisites for the combatants to lay down their arms – or encouraged by international peacemakers in order to convince them to do so (Ludsin 2011: 242-4; "Workshop on Constitution Building Processes" 2007: 25). This may lead the peace process to involve constitution writing and the resultant constitution to function as a peace agreement (Ludsin 2011: 239). However understandable the reasons for conflating peacemaking and constitution drafting processes may be, it may not be equally desirable: Whereas peacemaking is first and foremost concerned with ending

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[4] The terms *constitution making*, *constitution building*, and *constitution drafting* will be used interchangeably, as they are in much of the literature.

[5] Walter argues that by increasing government accountability through legal checks and restraints, the presence and independent judicial enforcement of constitutions make government leaders more attractive and trustworthy negotiating partners for the rebels (2015: 1245). However, as Walter does not look at when, how and by whom constitutions are drafted, his results do not say much about constitution building as a deliberate peacebuilding tool.

violence, constitution drafting is aimed at founding a stable and functioning state by establishing a legal framework for governance (ibid.: 245-7). The nature and purpose of a peace agreement is different from that of a constitution as are the actors usually involved in making them. Drafting a constitution amid conflict may simply lead the immediacy of saving lives to move the longer-term constitutional goals down the priority list. This carries with it a number of risks all of which have potentially detrimental consequences for the subsequent peace, the stability of the state and, ultimately, the sustainability of peace (ibid.: 284-5; "Workshop on Constitution Building Processes" 2007: 25).

Following from the tension between the peacemaking and peacebuilding potential of constitution drafting, emerging but still limited scholarly attention has been given to interim constitutions. Usually following the signing of a peace agreement, or de facto constituting one, the interim constitution is intended to simultaneously set out an immediate (but temporary) institutional framework for government, set the stage for negotiating a new governmental structure and outline the procedure – and often deadline – for drafting a final constitution (International IDEA 2014: 5; Ludsin 2011: 287). Because of their potential to both satisfy the constitutional demands necessary for *creating* peace, and at the same time enhance the permanent constitution's chances of contributing to its *maintenance* by deferring the final drafting to more secure and stable times, the use of interim constitutions has been widely and explicitly preferred by scholars over permanent ones during ongoing violence (see e.g. Ludsin 2011: 310-11; Varol 2014: 463; Widner 2008: 1533-34; "Workshop on Constitution Building Processes" 2007: 26-7).

A central aspect of an interim constitution is its duration, i.e. the period of time it interposes between peace agreement and final constitution. As a recent study on interim constitutions concludes, "[t]ime is an interim constitution's single most important contribution to a constitution-building process in a conflict-affected setting" (Zulueta-Fülscher 2015: 28). Nevertheless, interim constitutions in general and the role of *time* in particular has received only marginal scholarly attention as specific issues of study, leading Jackson (2008: 1278) to emphasize "the need for more analysis of the role of time, and timing, in constitution-making and regime change". This thesis seeks to remedy these deficiencies by examining the following research question:

## 1.1 Research question and purpose of study

*How does the duration of interim constitutions affect the peacebuilding potential of post-conflict constitution making?*

As reflected in the research question, the purpose of this study is to investigate the usefulness of interim constitutions for balancing short- and long-term considerations in war-to-peace transitions that involve constitution making. It will do so by analyzing the effect of interim constitutions' duration on a number of

factors that are believed to have an impact on the prospects of building a stable and secure post-conflict society. The factors under study are *deliberation*, *participation* and *power-sharing* (further explained below). Three hypotheses relating to these factors will be deduced and their validity explored in a mixed-methods analysis, beginning with a statistical analysis of 11 post-conflict countries with interim constitutions since 1990 and followed by in-depth case studies of two of them.

Due to its centrality to the study, the notion of 'peacebuilding potential' needs clarification. 'Peacebuilding' in this context is understood as the process towards creating a self-sustaining peace and, ultimately, preventing a resumption of civil war, once a negative peace has been established (further elaborated below). As this study does not aspire to evaluate and assess the implementation and success of these processes, the term 'potential' reflects the expected (based on the literature) rather than actual contribution to the peacebuilding goals of founding a sustainable peace. In Section 5.3, the distinction between potential and actual is briefly touched upon regarding the cases under in-depth study.

# 2 Previous research and theoretical argument

## 2.1 Previous research

By focusing on interim constitutions, this study both speaks to and is informed by different strands of scholarly research. Interim constitutions find themselves in the nexus between war and peace; between peacemaking and peacebuilding; and between peace agreement and permanent constitution, which demands an interdisciplinary approach to their examination. This study will therefore tap into the fields of peace and conflict studies and rule of law and, within these, engage with conflict resolution, peacebuilding and constitution making theory and practice. As called for in the discussion report from an academic workshop on interim constitutions in post-conflict settings in December 2014, ”[t]here is a clear need to establish linkages between the normative literatures on constitution making on the one hand, and conflict resolution and peacebuilding on the other” (International IDEA 2014: 3). This thesis attempts to make a contribution to this. Below some central points within and between these disciplines in relation to the focus of the thesis will be briefly discussed.

### 2.1.1 Peacemaking and peacebuilding

The marked increase of armed conflicts ending in a peace agreement since the end of the Cold War has been followed by a growing scholarly literature on peace agreements (Bell 2006: 373-4). Given their questionable track record[6], much of this literature has looked at the design and substance, i.e. the different elements, of peace agreements with a view to assess how it affects their success or failure (e.g. Rothchild 2002). Less focus has been paid to their binding nature and legality – or lack thereof – and its importance for compliance (Bell 2006: 374-5). A number of recent studies though have looked at legality in negotiated settlements, merging the legal and conflict resolution spheres in hybrid conceptualizations such as “peace agreement constitutions” and “constitutional peace agreements” (Bell 2006; Easterday 2014). The concepts underscore both the centrality of (interim) constitutions in war-to-peace transitions and the fluidity between them and peace

[6] According to research, nearly 50% of peace agreements break down within five years and more so within ten years (Bell 2006: 375).

agreements[7]. According to these scholars, such legalized agreements may – both as providers of a framework for governance and as sources of norms and (also legal) interpretation that promote peaceful interaction and conflict resolution – enhance the continuous commitment of warring parties and the population to compromises made to stop violent conflict (Bell 2006: 407-8; Easterday 2014: 386-7). As such, they can be seen as attempts at bridging the gap between short-term/negative peace and long-term/positive peace goals of the peace process – that is, between peacemaking and peacebuilding (Bell 2006: 408).

> *"The timeliness of analyzing the role of interim constitutions or constitutional provisions as peacebuilding mechanisms is self-evident, given the increasing use of constitution building in peacebuilding processes"* (International IDEA 2014: 3)

While peacemaking is concerned with ending direct violence, peacebuilding is "the project of overcoming structural and cultural violence" (Ramsbotham et al. 2011: 199). The hope is that peacebuilding can "consolidate peace in the short term; and, in the long term, increase the likelihood that future conflicts are resolved without violence" (Ludsin 2011: 242). Central to this end is the process of statebuilding, which encompasses efforts to build, or strengthen, effective and legitimate governmental institutions as a way to (expectedly) foster security and stability (ibid.: 243; Paris & Sisk 2007: 8; Paris & Sisk 2009: 1-2). A recent but central reference point within statebuilding literature and practice is "Fixing Failed States" by Ghani & Lockhart (2008), in which the authors outline a framework for rebuilding states consisting of ten key functions a state should perform and at which statebuilding exercises should be aimed. The ability, among other things, to set out such (democratic) institutional framework, has led several scholars to argue for the relevance of constitutions in state- and peacebuilding (see Introduction).

Other scholars have argued that peacebuilding must entail a focus not only on (re)building state functions but also on the strength of the political community, involving elements of culture and identity, in order to assign legitimacy to the new state institutions (e.g. Brown et al. 2010). In line with this thinking, studies have looked at constitution making's peacebuilding potential through its contribution to nationbuilding processes in divided societies. These studies argue that by directing and formalizing the formation of a collective, national identity, "constitutional nationbuilding" may provide such legitimacy for the statebuilding project (von Bogdandy et al. 2005). Whichever approach to peacebuilding is taken, the overall aim is to prevent a recurrence of civil war.

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[7] The close connection between interim constitutions and peace agreements is not only theoretical: In 15 out of 18 cases of post-Cold War interim constitutions in conflict-affected settings studied by International IDEA, the interim constitution was either preceded, succeeded or constituted by a peace agreement (Zulueta-Fülscher 2015: 13).

### 2.1.2 Constitution making

In the literature on constitution making, recent attempts have been made at trying to better understand and optimize the role of constitution making in conflict-affected settings from both a theoretical and practical perspective. This new strand of research is borne out of the surge in new constitutions, especially post-conflict ones, following the end of the Cold War and diverges from previous constitutional theory, which has mainly been concerned with constitutions in stable political contexts.

The theoretical foundation is a new conceptualization of the nature and role of constitutions in times of radical political change developed by legal scholar Ruti Teitel, namely that of *transitional constitutions*. Against the realist view, according to which constitutions reflect the balance of power at the time of political change and therefore do not play any certain role as agents of change, Teitel builds her theory upon an idealist perspective that recognizes their potential to constitute a break with an old system and a foundation of a new political order (Teitel 1997: 2052-6). While the constitution in this view is seen as the culmination of the transition, Teitel views transitional constitution making as less of a clean break and more of a gradual, transformative process "in fits and starts" (ibid.: 2057). The transitional constitution is often not a permanent, enduring structure but instead intended as an interim measure with partly provisional features and continually subject to development (ibid.). Teitel thus departs from idealist thinking, theorizing that "[t]ransitional constitutions are not simply revolution-stoppers, but they also play a role in constructing the transition" (ibid.: 2059). They permit rather than complete the revolution (Ludsin 2011: 248). Building on Teitel's ideas, Vivien Hart proposes a more process-focused and participatory *new constitutionalism* as a way of bridging the tensions between the stability and permanence traditionally associated with constitutions and the flexibility necessary to mediate conflict and divisions (Hart 2001; Hart 2003). Interim constitutions are widely regarded as a central aspect of this new paradigm of constitution making and "one possible way of resolving the tension between fluidity and order, and contributing to sustainable peace" (International IDEA 2014: 3; see also Arato 2007; Hart 2003)

From a more practical perspective, scholars have looked at the design of post-conflict constitutions in terms of both their substance and the process of their drafting with a view to explore and enhance their potential for contributing to a successful outcome (e.g. Ghai & Galli 2006; Horowitz 2008; Lijphart 2004; Miller 2010; Samuels 2006; Samuels & Wyeth 2006; Widner 2008). Lerner (2010), for instance, proposes an incrementalist approach to constitution making in deeply divided societies in which constitution drafting is limited to institutional matters, while decisions over foundational and potentially divisive aspects of the polity, e.g. questions of national identity or state-religion relationship, are postponed and exported to those political institutions. Other more process-oriented studies have focused on the degree and nature of international involvement in constitution drafting (e.g. Brandt 2005; International IDEA 2011); and another, large body of literature on the type and extent of public participation

in the process (e.g. Ghai 2004; Hart 2001; Hart 2003; Samuels 2005; Widner 2005). Because of its relevance for this thesis, the latter is briefly discussed below.

Based on the view that how constitutions are made is as important as their content, a number of scholars, led by Vivien Hart and Kirsti Samuels, have highlighted the significance of inclusiveness in constitution making for the prospects of creating a sustainable peace. This has, at least, two explanations: First, involving the public in the process, the argument goes, is necessary for legitimizing the new constitutional order "based on the belief that without the general sense of 'ownership' that comes from sharing authorship, today's public will not understand, respect, support, and live within the constraints of constitutional government" (Hart 2003: 4). Second, constitution making is seen as a "forum for negotiation" and "open-ended conversation" over contested issues and may as such "lead to the democratic education of the population, begin a process of healing and reconciliation through societal dialogue, and forge a new consensus vision of the future of the state" (Samuels 2006: 667). While an apparent trend of public involvement exists in practice (Ginsburg et al. 2009: 219; Miller 2010: 647), Hart even speaks of an emerging legal *right* to participate in constitution making (2003; 2010).

While some theoretical critiques have been raised (see Moehler 2008: 33-4 for a brief review), a number of empirical studies have investigated the theoretical assumptions about the effects of participation on constitutional outcomes. From a case study of Uganda, Moehler (2008) finds that participation did not determine citizens' support for the constitution – it was rather affected by elite opinion. While his study suggests that the potential of participation to increase constitutional legitimacy may be conditioned by elite sentiments toward the process and outcome (cf. the first explanation above), Moehler at the same time finds that public involvement in constitution making can "make citizens more democratic, knowledgeable, discerning and engaged", thus positively affecting political culture (cf. the second explanation) (ibid.: 203). In a large-N study examining the effects of participation on constitutional content, Ginsburg et al. find an apparent association between public involvement and the presence of rights and democratic institutions in the final constitution (2009: 219).

### 2.1.3 Interim constitutions

> *"The literature on conflict resolution and peacebuilding has mostly not elaborated on the specific role of interim constitutions as part of the greater constitution building process"*
> (International IDEA & the Edinburgh Centre for Constitutional Law 2014: 5)

A monumental and important work in the nexus between peacemaking, peacebuilding and constitution drafting has been done by Hallie Ludsin (2011). In her text, Ludsin presents a number of practical tensions deriving from the use of constitution drafting as a peacemaking tool. Ludsin sees the tensions as inherent to the merging of the two processes, caused by their diverging goals rather than as

a result of a specific constitutional design. While questioning and challenging the assumption of compatibility of these processes, she acknowledges that "the nature of many conflicts (and the parties to them) often demand some type of constitutional change to secure peace, making it impossible to simply abandon this peacemaking tool" (ibid: 286). To overcome this, she proposes an interim constitutional process with multiple stages involving 1) establishing the procedure for drafting an interim constitution; 2) adopting the interim constitution; and 3) drafting a permanent constitution (ibid.: 287-291). In her view, notwithstanding the risk of being undermined by context-specific conflict-circumstances, such interim process offers the potential to alleviate the merger tensions and thus holds a better opportunity for achieving sustainable peace than a permanent constitution drafted during ongoing violence (ibid.: 310-311).

While the theoretical basis of interim constitutions is slowly emerging, empirical studies of the topic are largely absent. As exceptions to the rule, two recent studies by International IDEA (2014; Zulueta-Fülscher 2015) have developed the conceptual framework as well as empirical, comparative knowledge basis of interim constitutions. The latter study detects 30 cases of post-Cold War interim constitutions adopted worldwide of which 20 were in conflict-affected settings (Zulueta-Fülscher 2015: 13). One of the conclusions the study draws from the analysis showing that 14 countries either relapsed into or never stopped being in conflict is that interim constitutions offer no guarantee of success if the success criteria is simply to end violence (ibid.: 15-16). Highlighting the difference between peace agreements and interim constitutions in terms of legality, the study furthermore provides a definition of an interim constitution as "a constituent instrument that asserts its legal supremacy for a certain period of time pending the enactment of a contemplated final constitution" (ibid.: 9).

### 2.1.4 Power-sharing

Power-sharing is found both in the conflict resolution, peacebuilding, democratic theory and constitution making literature. This is understandable: It is usually applied in the immediate context of (ending) armed conflict, often enshrined in constitutional form and with potential long-term effects on the post-conflict society. The concept is comprehensive and comprises a range of different sub-categories and -dichotomies. One concerns approaches to power-sharing: Whereas *consociational* power-sharing aims to make society's different (ethnic, sectarian, religious) sub-groups govern together by some form of consensus, the *integrative/centripetal* model aims to transcend group differences and encourage multi- or cross-ethnic coalitions and political agendas (Horowitz 2008; Samuels & Wyeth 2006: 1; Sisk 2013: 10). Another distinction concerns the level at which power-sharing takes place: The *horizontal/political* dimension involves power-sharing and political representation in the main branches of government, while

*vertical/territorial* power-sharing refers to federalism and decentralization, e.g. granting regional autonomy (Norris 2008; Samuels & Wyeth 2006: 5-7)[8]. Although theoretically dichotomized, these latter categories are not mutually exclusive, and elements of both may, and do, co-exist, as is the case in Bosnia and Herzegovina.

While some form of power-sharing is broadly recognized as a useful and often necessary short-term tool for making combatants lay down their arms[9] – in particular in identity-based conflicts – there is more scholarly disagreement as to its effects over time for the prospects of sustaining the peace. Advocates argue, based on the consociational model, that securing major societal groups and former warring parties a stake in inclusive, democratic processes encourage cooperative behavior, which may moderate ethnic tensions and stabilize fragile democracies (Lijphart 2004; Norris 2008). Against this argument, a large, critical strand of literature claims that the rigidity and formalization of divisions of power along ethnic or identity lines resulting from power-sharing structures creates an institutional 'path dependency' and prevents the fostering of reconciliation and a broader national identity (Jarstad 2008; Rothchild 2002; Samuels 2009; Samuels & Wyeth 2006; Sisk 2013; Sisk & Stefes 2005). Instead, it risks "both entrenching and radicalizing underlying divisions" (Samuels 2009: 183). These arguments have found empirical backing: A study by the International Peace Academy (IPA) examining the impacts of constitutional choices in six post-conflict countries finds that formal executive power-sharing structures (as opposed to territorial power-sharing) along ethnic or other identity lines appear to entrench rather than ameliorate the divisions that fueled the conflict, leading to a fragile peace where the parties are not reconciled and the underlying tensions not addressed (ibid.: 6). On the contrary, those "divisions appear to become radicalized during the power-sharing phase" (ibid.). Other empirical studies have similarly shown that territorial autonomy or decentralization may increase the likeliness of civil war recurrence by reinforcing disintegrative tendencies in the state-subunit relationship (Pospieszna & Schneider 2013; Roeder 2012 (as reported in Sisk 2013))[10].

Without rejecting power-sharing altogether due to its usefulness for ending civil war, the critics argue that "[f]or statebuilding over time, initial power-sharing institutions need to be gradually reformed to introduce ongoing incentives for more fluid bargaining and coalition-making that cross-cuts the lines along which war was fought" (Sisk 2013: 15). The present study takes its point of departure in this critical position.

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[8] As Pospieszna & Schneider (2013: 48) note, the former is more likely used after conflicts over government, the latter over territory. Supplementing this most often-applied dualism, recent empirical studies have also distinguished and examined military and economic forms of power-sharing (Jarstad & Nilsson 2008; Ottmann & Vüllers 2015).

[9] According to one study, "warring parties are 38 percent more likely to sign an agreement if it includes guaranteed positions in the future government" (Jarstad 2008: 109).

[10] The opposite case, however, has also been argued (see e.g. Jarstad & Nilsson 2008; Samuels & Wyeth 2006), and the effects of territorial power-sharing on sustainable peace are generally more disputed than is the case for political power-sharing, where the 'negative effect' view is predominant.

## 2.2 Theoretical argument and hypotheses

The study will seek to answer the research question by examining if and how variance on the *duration* variable affects a number of factors that are claimed to affect the peacebuilding potential of post-conflict constitution making. The factors are *deliberation*, *participation* and *power-sharing*. They are chosen on the grounds that they, according to the literature, are influenced by time *and* influence the potential for peacebuilding. These factors and their connection with time is described below.

As a point of departure, interim constitutions in conflict-affected settings are intended to have an effect on the level of violence in the area affected by conflict. An often-cited measure of success for interim constitutions, as for constitutions in general, is ending violence (see e.g. Ludsin 2011: 287; Widner 2008: 1515; "Workshop on Constitution Building Processes" 2007: 7; Zulueta-Fülscher 2015: 15-6). As noted above, interim constitutions are closely connected to peace agreements: they sometimes precede them; they most often succeed them; and sometimes peace agreements constitute de facto interim constitutions (Zulueta-Fülscher 2015: 13-4). Interim constitutions, together with the peace agreement, may therefore be expected to halt or at least scale down violent conflict (ibid.: 3) – particularly in cases where constitutional change is demanded by warring parties and therefore necessary for them to lay down their arms. The extent to which this happens determines its success as a peacemaking tool. Since the halt or decrease in violence is expected to take effect when the interim constitution is adopted, the duration of the interim period may not in itself have an effect on the level of violence. However, the extent to which the level of violence decreases throughout the interim period is decisive for the interim constitution's ability to provide some measure of security for the drafting of the final constitution to take place in. This is one of the key reasons for using interim constitutions and a key contribution to the peacebuilding potential of the broader constitution making process. As Ludsin formulates it, "[a] multi-stage [interim constitutional] process can succeed only if security is achieved prior to the drafting of a final constitution" (2011: 310). The centrality of the relation between interim constitution and level of violence is apparent in its influence on the other factors studied here and will therefore be part of their examination.

First therefore, one consequence of a longer interim period is that it allows for more time to deliberate and negotiate the final constitution. The potential benefits of more deliberation are seen in its contrast: A short, pre-fixed timeframe or pressure caused by on-going violence to simply reach an agreement, even if imperfect, may provoke a speedy drafting process leaving less time for the drafters to "thoughtfully" and "carefully" design the new constitution and its institutional framework as well as to consider the impacts of their decisions in the long term (Easterday 2014: 402-3; Horowitz 2008: 1227; Ludsin 2011: 269; Zulueta-Fülscher 2015: 28). Without proper time to reflect on the meaning of each constitutional provision, the final drafting becomes more likely to result in unintended consequences for the post-conflict state (Ludsin 2011: 292). Because

it also risks inappropriately limiting the substance of the constitution – in terms of both the provisions that enter the final document and those that do not – a hurried process may reduce the ability of the final constitution to suit both current and future needs of the population (ibid.: 269-70). On the contrary, "[l]onger time-frames between the peace agreement negotiation and constitution drafting can allow for more deliberation and inclusion and can increase the likelihood that the constitution will succeed" (Easterday 2014: 403; see also Brandt 2005: 29). This leads to the first hypothesis:

H1: *The longer the interim period, the more deliberation over the final constitution.*

However logical and potentially significant the relationship between time and deliberation may be, it will not be explored in the statistical analysis because of the difficulty of operationalizing and measuring the *deliberation* factor quantitatively. It will be explored in the case study analyses instead.

Second, another benefit of interim constitutions is that they may increase the likelihood of an inclusive and participatory final drafting process. They may do so, first of all, indirectly by affecting the level of security, as described above. Ongoing violence may limit the participation of both negotiators and the broader population in the drafting because of e.g. fear for one's safety, a likely result of intimidation, or the impossibility of arriving at the negotiations (Ludsin 2011: 254-5). Thus, an interim constitution that significantly lowers the level of violence likely increases the prospects of a participatory process. In addition to this, more inclusive and representative drafting procedures simply take more time to be conducted. More concretely, the most time-consuming elements of a constitution making process are elections for and the administrative and procedural establishment of a constituent assembly; public education and consultation, including the opportunity for drafters to take the public input into account; and the holding of a ratification referendum (Miller 2010: 640); all elements of a representative and participatory process. In a more direct sense, therefore, longer interim periods that allow more time for drafting are likely to increase the degree of participatoriness in the constitution making process by allowing for lengthy participation components (Ludsin 2011: 292-3). As shown above, this may increase the legitimacy of the constitution and lead to democratic education and a process of reconciliation in the population with positive consequences for the prospects of building a stable and secure society. On hypothesis form:

H2: *The longer the interim period, the more participatory the drafting process of the final constitution.*

Third and finally, as mentioned above one central benefit of the interim period is that it can 'remove' the final drafting process from the proximity of armed conflict. In societies coming out of conflict over ethnic identity issues, for instance, "people might be unlikely to be able to think in non-ethnic or even cross-ethnic terms when only recently ethnicity might have been a matter of life

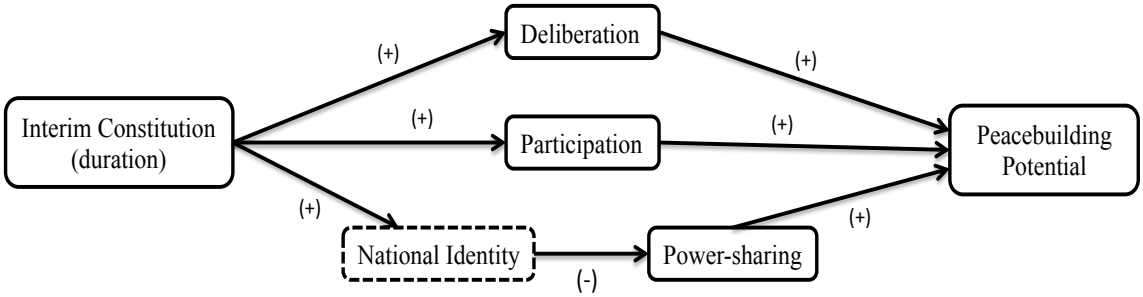
and death" (ibid.: 264). The factors that helped create and drive the conflict are likely to remain in people's minds, even after violence has ended, leaving society divided and with a poor base for national unity. The passage of time, however, may allow the immediate conflict dynamics, enmities and polarizations to ease and some level of trust to be built among the warring groups (ibid.: 309-10; Zulueta-Fülscher 2015: 21). By giving time before the final drafting, interim constitutions therefore "have the potential to facilitate consensus over time on issues that directly or indirectly caused the conflict to erupt in the first place" (ibid.: 27). This may in turn provide the basis on which a new national identity can be forged. A short interim period makes it difficult to establish that consensus on national identity since trust does not have sufficient time to grow (Ludsin 2011: 268-9, 291-2). Of course, this is not to expect such consensus to be reached at all during the interim period – after all, unifying a divided population behind a common national identity is a focus of long-term nationbuilding and reconciliation processes. Nevertheless, higher levels of trust and a less polarized environment than during or immediately after violent conflict should increase the chances of a *stronger* consensus on national identity.

The risk of drafting the final constitution on the basis of a weak national identity is that it may end up institutionalizing the societal divisions in formal power-sharing arrangements (ibid.: 264; Samuels & Wyeth 2006: 5-6). Power-sharing has been a common tool for conflict resolution in peace negotiations since "a power-sharing model is often the only option that will bring the parties to the table and stop the violence" (ibid.: 5). However, as effective it may be as a peacemaking tool, as ineffective or potentially detrimental power-sharing may be for the peacebuilding agenda and the aim of fostering sustainable peace (see Section 2.1.4). These considerations should lead us to expect that a longer duration of the interim constitution would reduce the likeliness, and necessity, of the final constitution to contain power-sharing provisions by providing a stronger basis for consensus on national identity and unity. Therefore:

H3: *The longer the interim period, the less likely the presence of power-sharing provisions in the final constitution*.

Power-sharing functions as an implication of the intervening variable, national identity. The latter and its relationship with power-sharing will be examined in the case studies. The relationship between the duration of the interim constitution, the factors mentioned above and the peacebuilding potential of constitution making is illustrated in Figure 1 below.

Figure 1: Theoretical argument



# 3 Research design and methodology

## 3.1 Mixed-methods research design

This study relies on the use of mixed methods. The advantage of combining quantitative and qualitative analysis is intuitively evident: The ability of the former to, inter alia, detect generalizable patterns of a hypothesized correlation over a large number of units is complemented by the latter's utility for examining the plausibility and direction of causal mechanisms in that relation. Such complementarity, whereby the weaknesses of each method is counter-balanced with the strengths of the other, may increase overall confidence in a study's findings (Lieberman 2005: 436). For this reason, first, a limited, descriptive statistical analysis is carried out aimed at examining the correlation (if any) between the duration of the interim period and the factors *participation* and *power-sharing*. Second, for the triple purpose of (1) analyzing factors that are difficult to quantify (in this case, the quality of deliberation), (2) understanding the mechanisms at work in the hypotheses and (3) examining the likelihood of any causality (i.e. the ways and extent to which time may or may not influence the factors, including the explanatory power of the proposed intervening variable, *national identity,* for *power-sharing*) a comparative case study is conducted.

## 3.2 Delimitations

The sample of cases examined in the thesis is based on International IDEA's recent study on interim constitutions (Zulueta-Fülscher 2015) and consists of 11 conflict-affected countries since 1990 that have had an interim constitution that eventually resulted in a final constitution[11]. The selection has been correlated with data from the Comparative Constitutions Project (Elkins et al. 2014). The 11-case sample is derived from a universe of 30 interim constitutions adopted since 1990 (see Zulueta-Fülscher 2015: 10). Here, the first delimitation has been made of excluding interim constitutions adopted prior to 1990 from the analysis. This is partly due to the fact that the use of interim constitutions has increased significantly since 1990, and partly that most interim constitutions in the 1945-

[11] These are Ethiopia (1991-1995), Togo (1991-1992), Eritrea (1992-1997), Chad (1993-1996), Rwanda (1994-2003), Democratic Republic of the Congo (DRC) (1994-1997 and 2003-2006), Burundi (1998-2001 and 2001-2004), Afghanistan (2001-2004), Kosovo (2001-2008), Iraq (2004-2005) and Nepal (2007-2015).

1990 period were deployed after coups (International IDEA 2014: 5) and not as part of a negotiated settlement to civil war, which is the primary focus of this thesis.

Of the 30-case universe of post-Cold War interim constitutions, the following delimitations have been made: First, the interim constitutions that have not emerged from conflict-affected settings are excluded[12]. Since the thesis is interested in the nexuses between war and peace, peacemaking and peacebuilding, and peace agreement and final constitution, and notably how the contribution of constitution making to sustainable peace is affected by taking place amid conflict, interim constitutions that were not created in a conflict-affected country and in some way related to the conflict are not of interest to this study[13]. Second, the interim constitutions that have not been followed by a final constitution (of which some are still in force) have been excluded. Interim constitutions are, as noted above, to be seen as part of a broader constitution building process and are almost per definition intended to lead to the adoption of a final constitution (Ludsin 2011: 287; Zulueta-Fülscher 2015: 9). As the peacebuilding potential of the broader constitution making process can hardly be examined in the absence of a final constitution, only cases in which a final constitution has replaced the interim are included[14]. As a result, for Burundi and DRC only the second and last interim constitution is considered, while the first is excluded from the analysis.

## 3.3 Operationalization of variables

The units of analysis are countries, more specifically the 11 countries in the sample mentioned above. The interim period of each country in the sample is broken down into year-units, starting from the year of adoption of the interim constitution and ending with the year of adoption of the final constitution. The variables examined in the statistical study are operationalized in the following ways:

Level of violence: For each country-year-unit, the number of battle-related deaths is recorded.

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[12] I follow, in line with the International IDEA study, Uppsala Conflict Data Program's (UCDP) definition of an active conflict as one with 25 or more battle-related deaths (BRD) in a calendar year.

[13] Two notes on this: First, Togo was not conflict-affected according to UCDPs Battle-Related Deaths Dataset, but there was violence against civilians involved in the democratic transition process, which is recorded in the UCDP One-sided Violence Dataset (v.1.4-2015). For that reason Togo is included as conflict-affected. Second, Thailand *was* conflict-affected according to UCDPs Battle-Related Deaths Dataset due to a conflict in the southern Patani region between Patani independence groups and the Thai government. However, the interim constitutions (2006 and 2014) were consequences of military coups and not directly responding to the ongoing conflict. Therefore, Thailand is not recorded as conflict-affected in this context.

[14] In the case of Eritrea, the permanent constitution adopted in 1997 has not yet entered into force (Tronvoll & Mekonnen 2014: 28). While the implementation of a constitution is, obviously, decisive for its peacebuilding *effect*, its peacebuilding *potential* lies in its content and the way in which it is made. Eritrea is therefore no less relevant and informative to the purposes of this thesis.

H2: For each country, the *participatoriness* of the drafting process, i.e. degree of public participation, is examined. Participatoriness is understood and operationalized as (1) *representation* and (2) *consultation* (equivalent to Widner's (2005) *process* and *consult* variables respectively). Representation concerns the character of the main deliberative body, i.e. the kind of body with ultimate responsibility for preparing the draft (e.g. constituent assembly/legislature, national conference, roundtable, elected/appointed). Consultation encompasses the level of public consultation in the process, i.e. whether civic education, public involvement before and/or after adoption of the draft and a ratification referendum was involved.

H3: For each country, the presence or absence of power-sharing provisions – as defined above – in the final constitution is examined. Power-sharing is understood and operationalized here as any form of power-sharing, i.e. *political* and/or *territorial*. Political power-sharing is narrowly understood as guaranteed seats or positions in either the legislative or executive branch of government to specific political, ethnic or religious groups, i.e. groups directly or indirectly related to the previous conflict[15]. Territorial power-sharing denotes some form of regional autonomy or decentralization, including federalism.

## 3.4 Case selection for in-depth analysis

From the 11-case sample, two cases are selected for the comparative case study analysis. For the purpose of putting the hypothesized importance of time to "the ultimate test", the cases are selected with respect to variation on the independent variable, i.e. the duration of the interim period, so as to ensure the broadest possible distribution along the duration span. This rules out the possibility of selection bias, as the selection is independent from the results of the quantitative study and done without regard to the values of the dependent and intervening variables, which are discovered during the study (King et al. 1994: 140). In addition to avoiding the arbitrariness of random selection, selecting on the independent variable is therefore, according to King, Keohane & Verba, "the best 'intentional' design" (ibid.).

In the 11-case sample, the duration of the interim period spans from approximately one year in Togo (1991-1992) to 9 years in Rwanda (1994-2003) (Zulueta-Fülscher 2015: 14). Due to a lack of data on Togo's interim constitution, however, the two cases to be examined are Iraq (1,5 year) and Rwanda. In consequence of the theoretical deliberations above, we would expect to find a higher quality of constitutional deliberation, a more participatory constitution drafting process and less likelihood of power-sharing in the final constitution in

[15] A broader, consociationalist definition includes e.g. the element of proportional representation (PR) (see e.g. Lijphart 2004). As this is not aimed at specific groups and is a common electoral model also in peaceful states, it is not used as a measure of political power-sharing here.

Rwanda than in Iraq. Overall, Rwanda's interim constitution is expected, as a result of its longer duration, to make a greater contribution to the peacebuilding potential of its constitution making exercise than that of Iraq.

The contextual differences between the two cases are considerable and will be discussed in the analysis. An alternative strategy had been to select more similar cases, e.g. Burundi and Rwanda: neighboring countries, roughly of the same size and sharing ethnic makeup and conflict lines (Hutu/Tutsi). The main priority, however, has been to have as much variation on the independent variable as possible.

## 3.5 Structured, focused comparison

In the strive for analytic coherence in the case study analysis (as well as between the quantitative and qualitative analysis parts), the analysis is guided by the method of *structured, focused comparison*. The approach intends to enhance the comparability and, thus, scientific usefulness of case studies by performing them in a standardized, comparable manner guided by theoretical objectives rather than case peculiarities (George & Bennett 2005). Based on statistical and survey research methods, this type of analysis is *structured* in that it asks the same set of general questions to each case, making a systematic comparison of the findings possible. In order not to "drown" in the richness and complexity of the cases, the study is *focused* by virtue of dealing only with those aspects of the cases that are of theoretical interest (ibid.: 67-70).

In line with this method, the following questions will be asked to the cases of Iraq and Rwanda:

How was the constitution making period utilized? How did drafting proceed? Was the final document consensus-based? What was the nature and extent of public participation? Who was included? Was a sense of national identity forged? How did violence influence the process? And to what extent was this enabled or impeded by the time available?

## 3.6 Data collection

As for the statistical study, sources for the independent variable consist of ConstitutionNet's Interim Constitutions Catalogue and International IDEA's study "Interim Constitutions: Peacekeeping and Democracy-Building Tools" from 2015. The level of violence is analyzed using data from the UCDP Battle-Related Deaths and One-sided Violence datasets. Data on participation comes from Widner's Constitution Writing & Conflict Resolution Dataset One on Process and Context (2004). The power-sharing variable is based on data on constitutional provisions from International IDEA's ConstitutionNet and Comparative

Constitutions Project's (CCP) Constitute databases as well as an examination of the English versions of the sampled countries' constitutions.

The material on which the case studies are based consists of both primary and secondary sources. Primary sources include (1) data on and descriptions of armed conflicts from the UCDP Conflict Encyclopedia, and (2) English versions of the official interim and permanent constitutions of Iraq and Rwanda. The versions used in this thesis are gathered from the ConstitutionNet (interim constitutions) and Constitute (permanent constitutions) databases. In the case of Rwanda's Fundamental Law, the original French version is used, taken from Hein Online's World Constitutions Illustrated. Secondary sources include academic articles, news articles, press releases, reports by various organizations and books.

Translated documents always carry an element of subjectivity on the part of the translator and a risk of imprecise or inadequate wording in the translation, which is all the more decisive in constitutional and other legal documents where linguistic precision is vital. Despite these reservations, the sources for constitutional documents used in this thesis are believed to be reliable and the translations valid.

# 4 Statistical analysis

This chapter will examine the correlation between the duration of the interim period and (1) the participatoriness of the constitution drafting process, as well as (2) the presence of power-sharing provisions in the final constitution. First however, the relationship between the interim constitution and the level of violence throughout the interim period is analyzed. Without aiming to answer it, this chapter will inform the question *if* variance on the *duration* variable affects the peacebuilding potential of post-conflict constitution making.

## 4.1 Level of violence

Figure 2 presents the number of battle-related deaths (BRD) throughout the interim period in the 11-country sample[16]. The red line (x-value = 0) marks the year the interim constitution was adopted, while the highest x-value marks the year of adoption of the final constitution. The number of deaths in the two years preceding the interim period is included to illustrate the intensity of prior conflict and the change occurring with the adoption of the interim constitution.

As the figure shows, in half of the cases (5 out of 11) the interim constitution did not manage to end violent conflict, which continued into the interim period on a more or less irregular basis. In three of those five cases (Afghanistan, Burundi and Iraq) violence was still raging when the final constitution was adopted, thus failing to provide a secure context for the drafting to take place in. In all 11 cases, however, there was an equal or lower level of violence at the end of the interim period than at its beginning: In the four cases where the interim constitution was adopted in peaceful circumstances without violence, the interim period remained peaceful throughout; where it was adopted in a year with violent conflict, the level of conflict was lower in the last interim year, and in some cases violence had ceased entirely[17].

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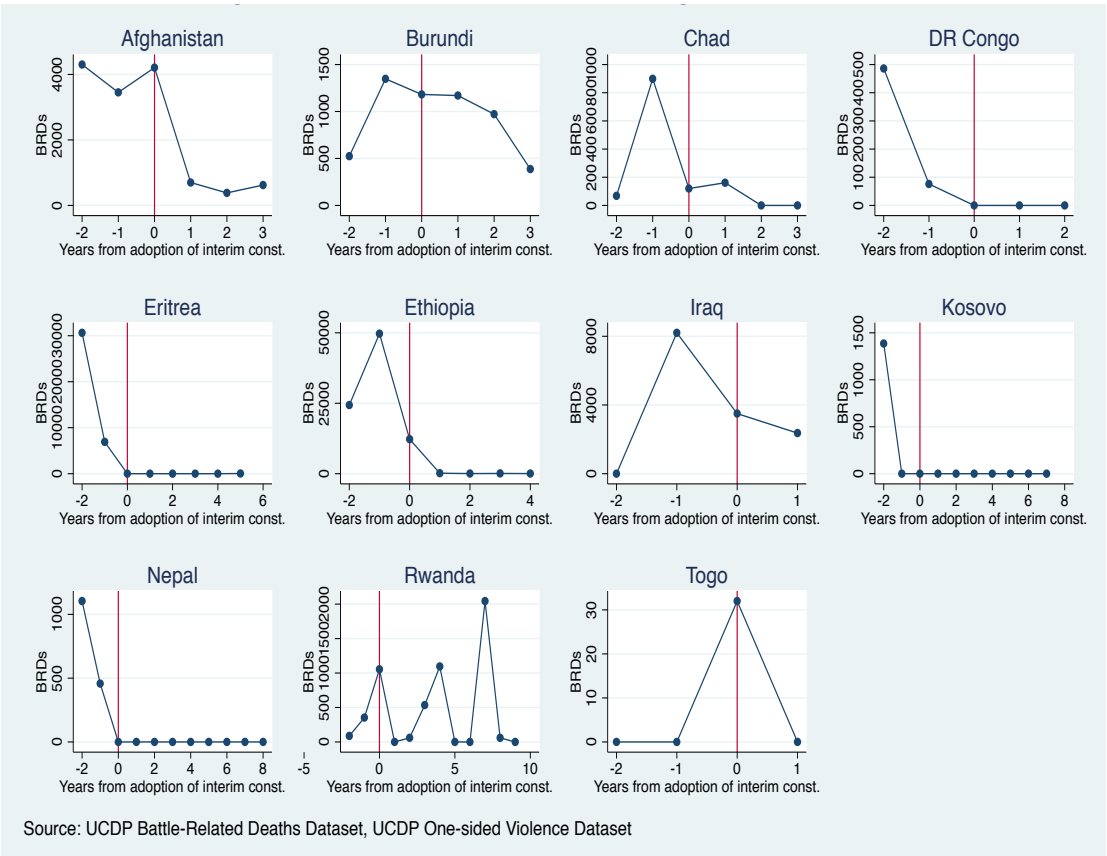
[16] In UCDP's dataset, the BRDs for Kosovo are listed under the conflict between the Government of Serbia (Yugoslavia) and UCK (Kosovo Liberation Army). For Eritrea, the BRDs from 1989-1991 appear in the incompatibility between the Government of Ethiopia and EPLF (Eritrea Peoples Liberation Front).

[17] As the interim constitution may have been adopted months into the "adoption year", some of the violence in this year has likely taken place prior to the adoption and can therefore not be considered a "result" of the interim constitution. Likewise, BRDs in the last interim year may well have occurred after the final constitution was ratified and thus be a "result" of the permanent rather than interim constitution. As the number of deaths *within* the interim period is in both cases expectedly lower than those reported in Figure 2, the above observation likely remains valid.

Without suggesting causality, the figure shows a positive correlation between the presence of an interim constitution and a reduced level of violence during the interim period. Whether the impact on the level of violence may be attributed to the interim constitution itself or to the peace agreement to which the interim constitution is related is obviously difficult to pinpoint – but also less relevant[18].

Interpreting the results, the above figure suggests that while interim constitutions are not a guarantor of peace, the expectation that they should halt or at least scale down violence is empirically supported. This is a consequence of the *presence* rather than *duration* of the interim constitution. However, and as the figure illustrates, interim constitutions allow the drafting of the final constitution to take place in further temporal distance from violent conflict – or in worst case a less violent environment – than it otherwise would (3,18 years on average between the last year of violent conflict and the final constitution). For that reason, the duration of the interim constitution, in combination with its peacemaking ability, should positively affect the peacebuilding potential of the constitution making exercise (the mechanism by which this happens is illustrated in the case studies).

Figure 2: Level of violence during interim period




Source: UCDP Battle-Related Deaths Dataset, UCDP One-sided Violence Dataset

[18] In two of the three cases where the final constitution was adopted during ongoing violence (Afghanistan and Iraq), there had been no peace agreement at all (Zulueta-Fülscher 2015: 13).

## 4.2 Participation

Using data from Widner (2004), this section analyses the elements and extent of representation and consultation in the constitution making processes in Chad, Eritrea, Ethiopia, Rwanda and Togo[19]. The five cases represent altogether full variance on the duration variable, ranging from Togo (1 year) in the low end, Chad (3), Ethiopia (4) and Eritrea (5) in the medium category and Rwanda (9) in the high end[20]. The cases are therefore suitable for analyzing the correlation between duration and participatoriness.

In four of the five cases, the main deliberative body holding ultimate responsibility for preparing the draft was an appointed transitional legislature, ranging in the middle of Widner's (2005) 'scale of representativeness'. Assumingly more representative was the normal legislature that held that authority in Eritrea. In none of the cases were there representatives of the parties to the armed conflict in this body.

With the exception of Togo, all cases had a period assigned for public education on constitutional matters and the constitution writing process. These campaigns usually included meetings with civic groups and local communities as well as radio broadcasts. The period in Eritrea was long (16 months), in Rwanda (3,5) and Ethiopia (5) of medium length and in Chad short (0,75). In Eritrea, the time was used to conduct a substantial campaign with many different elements, including explaining the draft and process through school curricula and culture (theatre, songs, comics). In all cases but Ethiopia, the campaigns encompassed citizens not only in urban but also remote rural areas.

Public involvement in the drafting processes was widespread. In four cases, public input was made to the draft both before and, except for Ethiopia, after the release of the draft. Only in Togo no public commenting on the draft took place at all. The public was given the final say in a ratification referendum in Chad, Rwanda and Togo, whereas in Eritrea and Ethiopia the constitution was ratified by the constituent assembly.

Drawing lessons from the 5-country sample analyzed here, the correlation between duration and participatoriness does not appear clearcut. The medium duration countries Eritrea and Ethiopia did not have a public referendum, whereas the countries at both extremes of the duration scale, Rwanda and Togo, did. Moreover, the latter two both had an appointed, medium representative main deliberative body despite very different preconditions for electing one. While the Eritrean process (high end of the medium duration category) ranked high with regard to representation and public education and input, it did not provide for a referendum, as did for instance Chad (lower medium end).

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[19] Widner's data, on which the analysis is based, covers the period 1975-2002 and has not been updated since. From the 11-case sample, Widner's dataset covers only these five countries.

[20] By comparison the average duration of the interim period in the 11-case sample is 4,3 years, the median and mode 3 years.

In line with the theoretical assumption, however, Rwanda had extensive public consultation and education in all parts of the country while there was no input from or output to the population in Togo during the constitution making process, leaving the Togolese public with a somewhat questionable basis for voting on the final constitution. While this may lend some credibility to the hypothesized (H2) positive relationship between the length of the interim period and the degree of participatoriness in the drafting process, overall the hypothesis is not clearly confirmed.

Finally, the results call into question any putative relationship between an educative and consultative process and public support for and, consequently, legitimacy of the final constitution. As such, the 1992 Constitution in Togo gained support from 98,11% of the voters in the referendum, more than in both Rwanda (93,42%) and Chad (61,5%) where public education and input had been extensive.

## 4.3 Power-sharing

Figure 3 illustrates the relationship between the duration of the interim period and the presence/absence of power-sharing provisions, as defined in Section 3.3, in the final constitution across the 11-case sample. Guided by hypothesis H3, we would expect a negative relationship and a concentration of observations in the upper left and lower right corners. As the figure shows, this assumption is not supported empirically. All three duration "categories" – short (1-2 years), medium (3-5 years) and long (7-9 years) – contain both power-sharing and non-power-sharing cases. The average duration for power-sharing countries (4,7 years) is longer than that of non-power-sharing countries (4 years), and overall the relationship between duration and power-sharing is slightly positive with a 0,03 slope. In sum, not only does the figure not support hypothesis H3, it actually indicates the rather opposite effect.

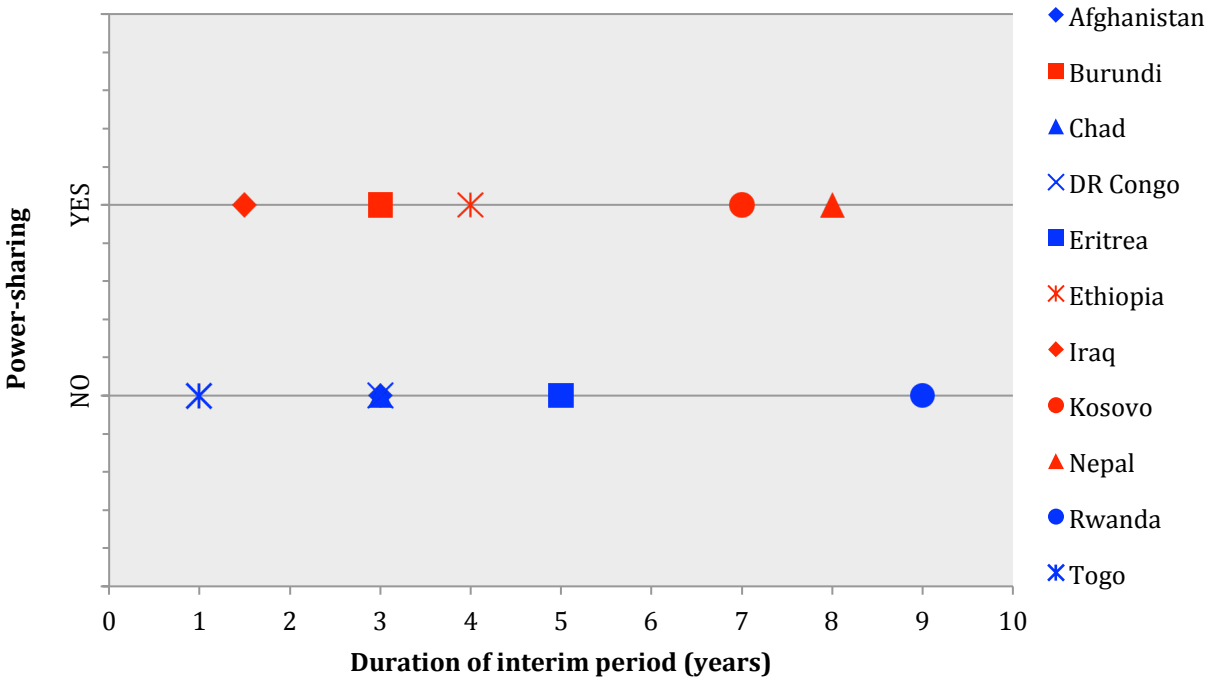
Following the causal argument, two interpretations, at least, may be given of these results: First, a longer interim period may not necessarily entail a stronger consensus on national identity. Despite the potential to allow enmities to lessen, reconciliation efforts to take place and effect and, ultimately, trust to be built, "[a]n interim process does not guarantee that societal groups will be able to locate a shared identity or that they will not more strongly identify and coalesce as separate groups" (Ludsin 2011: 309). This is a likely explanation for the outlier Kosovo where identification as and tension between Kosovo Serbs and Kosovo Albanians was – and still is – a reality, even after a 7-year long and peaceful interim period (Chick 2015).

Second, the presence or absence of power-sharing does not necessarily reflect the existing strength of national identity. On the one hand, a constitution drafted on the basis of a weak national identity may not necessarily institutionalize the societal division in power-sharing arrangements. It may instead be used by drafters as a tool for building that national identity (ibid.: 264) and, as such, a result of insistence on a constitution void of power-sharing despite a continued

existence of well-defined societal groupings. On the other hand, a constitution may contain power-sharing in some form, even in the absence of these groupings, if former warring parties agree to (mis)use the constitution to protect their interests in "a mere division of spoils between powerful players" (ibid.: 304). As Samuels & Wyeth note, "[p]ower-sharing arrangements are often the result of agreements between elites over access to power and resources, not real attempts to resolve divisions between ethnic communities" (2006: 6).

Lastly, the results may partly be eschewed by measuring the "wrong" type of conflict. While power-sharing is most common in ethnic/identity-based conflicts, the conflict in Togo, for instance, was a result of democratic transition processes. As such, the type of conflict may well have a decisive impact on the propensity to power-sharing, irrespective of the duration of the interim period.

Figure 3: Power-sharing



# 5 Case study analyses

The following chapter will unpack the questions if and how variance on the *duration* variable affects the peacebuilding potential of post-conflict constitution making. Drawing on the results of the statistical analysis above, it will examine the hypothesized relationship in the cases of Iraq and Rwanda. For each case, the first paragraph will in a descriptive fashion provide the conflict context for constitution making, followed by an examination of the interim constitution's impact on deliberation, participation and power-sharing/national identity, before a brief summary of findings will round off each case. The chapter will conclude by drawing lessons from the two cases for the overall question of the significance of time for constitution making's peacebuilding potential.

## 5.1 Iraq

### 5.1.1 Background and overview of interim period

On 20 March 2003 a US-led coalition invaded Iraq in a mission to, in US President George W. Bush's words, "disarm Iraq of weapons of mass destruction, to end Saddam Hussein's support for terrorism, and to free the Iraqi people" (The White House 2003). While the presence of weapons of mass destruction (WMD) in Iraq has since been questioned (Associated Press 2005) and Bush later regretted that the intelligence asserting that Iraq possessed WMDs "was wrong" (The Washington Times 2006), the objective of the invasion to foster regime change and put Iraq on the road to democracy remained and became increasingly central (Heuvel 2009: 25).

On 9 April the ruling Ba'athist regime fell in Baghdad, Iraqi President Saddam Hussein fled, and shortly thereafter the internationally (mainly US-) orchestrated democratic transition process began (Diamond 2005: 9). The first step was, paradoxically enough, to install an international administrating body for Iraq, the Coalition Provisional Authority (CPA), led by former US diplomat Paul Bremer (ibid.: 10). Shortly after its establishment, the CPA appointed a 25-member Iraqi Interim Governing Council (IGC) in July, tasked inter alia with delivering a plan and timetable for the process of drafting and adopting a new constitution (ibid.: 11). The CPA, however, retained the supreme decision-making power, including the right to veto any IGC decision, and effectively governed Iraq until June 2004 (ibid.: 10; Heuvel 2009: 25).

Writing a new permanent constitution for Iraq was regarded in both international and certain Iraqi political circles as central, if not crucial, to the

transition from an authoritarian past to a stable, democratic future (Brandt et al. 2011: 338); not only because "none of Iraq's previous constitutions were democratic", but also because it was expected to institute a level of constitutional stability and juridical normality unknown to twentieth-century Iraq, where constitutions were mostly of interim nature and frequently breached by coups or atrocities committed by autocratic rulers (Morrow 2010: 564, 566). Even the otherwise politically stable period under Saddam Hussein had been characterized by temporary and often breached constitutions. A new constitution could therefore, it was imagined, provide a base on which constitutionalism and the rule of law could grow and establish a social contract between the state and citizens of Iraq that did not exist beforehand (ibid.).

The constitutional and political transition processes were initially set out in the November 15 Agreement between the CPA and the IGC. The agreement set 30 June 2004 as the latest date for the transfer of power from the CPA to an appointed Iraqi Interim Government – thus formally ending the international occupation of Iraq – and prior to that, the IGC were to draft an interim constitution that outlined the political process after 30 June 2004 and the steps towards a permanent constitution (Heuvel 2009: 25).

The interim constitution, named the Transitional Administrative Law (TAL), was promulgated by the CPA in March 2004 and acted as the supreme law of Iraq during the so-called "transitional period", starting from the handover of sovereignty to the Iraqi Interim Government and ending with the formation of an elected Iraqi government under a new permanent constitution by 31 December 2005 at the latest (Coalition Provisional Authority 2004). It stipulated the timeframe for and sequencing of events within the 18-month interim period. As prescribed by the TAL, elections for a Transitional National Assembly (TNA) were held in January 2005. Besides holding legislative authority, the TNA played a central role for the continued political and constitutional processes: Politically, it appointed in April 2005 a Transitional Government that were to replace the Interim Government and govern Iraq until elections for a permanent parliament and government were held no later than 15 December 2005; constitutionally, the TNA was formally tasked with drafting and adopting the permanent constitution with a 15 August 2005 deadline for completing the constitutional draft (Heuvel 2009: 25-6). In line with the TAL, the new constitution was adopted through a public referendum on 15 October 2005.

Throughout the period sketched out above widespread violence raged in Iraq. When the US launched a number of missile attacks in Baghdad on 20 March 2003, followed by a ground invasion by US and British forces later that day, it was the beginning of an interstate conflict between the coalition of USA, Great Britain and Australia – backed by a multinational coalition of forces – and the government of Iraq that would last less than one month (UCDP Conflict Encyclopedia n.d.a; UCDP Conflict Encyclopedia n.d.b). When the last armed resistance was eliminated by the Coalition on 14 April, five days after taking Baghdad, a total of 7.927 people had died during the course of the conflict (ibid.). The ousting of Saddam Hussein from power terminated the interstate war, and in the subsequent period of international occupation, coalition forces remained in

Iraq during which time they were frequently attacked by opposition groups "believed to be a mélange of regime loyalists, disaffected Iraqis, terrorist groups and foreign fighters" (UCDP Conflict Encyclopedia n.d.a). From the time the Iraqi Interim Government took over power from the CPA in June 2004, intrastate conflict was a reality in Iraq: On one side, the new Iraqi government with strong military support from coalition forces who "remained in Iraq to support the new government in providing security, policing, and reconstruction" (UCDP Conflict Encyclopedia n.d.c); on the other side, various rebel groups opposing and violently resisting the new government and, especially, the presence of foreign forces (ibid.). At the same time, sectarian violence mainly between Shias and Sunni Arabs spread throughout the country (ICG 2006a). During 2004 and 2005, when the TAL interim constitution was in effect, at least 6.702 people were killed in the intrastate conflict (4.094 in 2004; 2.608 in 2005) (UCDP Battle-Related Deaths Dataset v.5-2015)[21].

### 5.1.2 Deliberation

While the interim period lasted 18 months, the actual drafting process was much shorter. Establishing 15 August 2005 as the deadline for submitting the constitutional draft, the TAL had provided the TNA – elected on 30 January 2005 – with little over six months for drafting the permanent constitution. The 275-member assembly decided at the outset to delegate the writing of the draft to a smaller, 55-member committee (Morrow 2010: 572). As a result of prolonged negotiations in the TNA over the formation of the Iraqi Transitional Government, the members of the drafting committee, however, were not appointed until 11 May; the committee's chairman and vice chairmen not until 23 May; and only in June did the committee begin its deliberations, leaving it less than three months for the drafting (Brandt et al. 2011: 339; Morrow 2010: 573).

Once the committee got started, difficulties of reaching consensus between Iraq's three major communities, Sunnis, Shias and Kurds, on central issues such as the status and autonomy of the federal regions, the role of religion in the state and the management and distribution of oil revenues – along with other factors – meant that drafting work progressed slowly (Morrow 2010: 575-6). The TAL had allowed for one six-month extension of the deadline, and as 15 August approached there was widespread, albeit not unanimous, support for an extension in Iraqi political and civil society circles, including among central committee and assembly members (ibid.: 573-4). The deadline, however, was not extended,

[21] The numbers reflect deaths resulting from state-based violence. The actual number of casualties related to the conflict is slightly higher as some of the non-state violence and one-sided violence committed in the period was related to the conflict as well (see UCDP Conflict Encyclopedia n.d.d).

seemingly as a result of strong pressure from the US (Horowitz 2008: 1227; ICG 2005: 3; Jackson 2008: 1273; Ludsin 2011: 269; Morrow 2010: 574)[22].

Several factors suggest that the short drafting period – prompted by the length of and insistence on the TAL deadline – did not allow for sufficient deliberation and negotiation of the constitution. First, amendments to the constitutional draft were made *after* the deadline had expired. When the 15 August deadline passed, a deal had not yet been struck. As a result, a series of ad hoc decisions and actions by the TNA followed, including short deadline extensions on an almost day-to-day basis and amendments to the constitutional draft – actions whose legality has been called into question on the grounds that Articles 61(E) and 61(G) of the TAL, stating that in the event of a missed 15 August deadline "the National Assembly shall be dissolved. Elections for a new National Assembly shall be held no later than 15 December 2005", were not observed (Arato 2007: 551; ICG 2005: 2; Morrow 2010: 582). Even after the constitution was adopted by the TNA on 28 August, the text was amended several times, the last time on 12 October – only a few days before the referendum and after the text had been printed and distributed among the Iraqi population for review (Arato 2007: 551; Jackson 2008: 1273-4; Morrow 2010: 581-2).

Second, the final text of Iraq's constitution reflected to a larger extent ambiguity and deferral than consensual solutions. Sunni representatives were included in the drafting process only a month before completion and were de facto excluded again shortly before the deadline, when negotiations moved to closed meetings between Shia and Kurdish party leaders in an effort to speed up the process (Easterday 2014: 402). In an apparent attempt to compensate for the failure to reach consensus in the constitutional negotiations, the final document was left "vague", "ambiguous" and "capacious" as to comprise different national visions and identities, and furthermore deferred the resolution of central issues such as the formation of the Federation Council (one of two legislative chambers) (Art. 65) and the Supreme Court (Art. 92), a specific definition of federalism, the exact division of powers between the central government and regions, and the procedures for forming regions (Art. 118) to the national assembly to be elected in December 2005 (Hamoudi 2013: 7-8; Heuvel 2009: 27; ICG 2005: 1). Furthermore, the provision (Art. 142) that was added to the final constitution only days before the public referendum provided for further constitutional amendments to be swiftly adopted by the future national assembly and subsequently approved by referendum (Jackson 2008: 1273-4).

Taken together, the above suggests that the very limited time available for drafting the constitution *did* affect deliberation by not allowing for sufficient time to build consensus, forge consensual agreements and write a constitution that provided clear and negotiated solutions to contested issues, necessitating instead broader and less specific "framework" provisions, deferral of important decisions

[22] According to one source, the drafting committee actually decided to request an extension, but the application was retracted after intervention by the US Ambassador to Iraq, who "*instructed the assembly that no extension was to be granted*" (Brandt et al. 2011: 339).

and further revision of the document itself. The ambiguous and open-ended nature of Iraq's constitution as well as the necessity of the drafters to make last-minute, potentially unlawful amendments to the text right up to the referendum because "some provisions were incomplete when the draft was submitted" (Horowitz 2008: 1227) indicates, that the short drafting period negatively affected the amount and quality of deliberation, thus lending support to hypothesis H1.

### 5.1.3 Participation

Judged by the provisions contained in the TAL, the Iraqi constitution drafting process was to be a participatory one with high levels of representation and public consultation. On the representation side, the main deliberative body ultimately responsible for writing the draft was a democratically elected legislature, the TNA (Art. 30, 60), representing the highest level of representativeness on Widner's (2005) 'scale of representativeness'. As for consultation, besides giving the Iraqi people the final word in a referendum, the TAL provided for public involvement and debate to take place both during and after drafting. According to Article 60, the TNA should carry out the drafting "in part by encouraging debate on the constitution through regular general public meetings in all parts of Iraq and through the media, and receiving proposals from the citizens of Iraq as it writes the constitution". The draft would later be put in front of the Iraqis for ratification in a referendum, prior to which "the draft constitution shall be published and widely distributed to encourage a public debate about it among the people" (Art. 61(B)).

The reality of Iraq's constitution making process was, however, less participatory than what the TAL implied. On 8 August 2005, the final negotiations were, as noted above, moved to a small, closed, elite-level forum of Shia and Kurdish party leaders, the Leadership Council, convened and closely followed (and sometimes hosted) by the US embassy in an attempt to speed up the process and make the 15 August deadline (Morrow 2010: 574). From that time, the members of the TNA and drafting committee – the latter including representatives of the Sunni community as well as women and non-Kurdish minorities – were effectively sidelined in the process, without access to constitutional drafts and little or no influence on the further development of the draft (ibid.: 582-4)[23]. Finally, the TNA adopted the draft without a vote (ICG 2005: 4), thus largely

[23] While it seems plausible that the deadline would not have been met had the committee remained in charge (see Morrow 2010: 575-7 for an explanation of the committee's difficulties in finding common ground), entrusting the drafting to a non-representative body in order to meet the deadline was only one of the alternatives available. Another was to keep the committee in charge but extend the deadline for six months which, according to Morrow, "very likely would have produced better results" based on the assessment that further deliberation between and within the three major groups, in particular the Sunni Arab one, as well as better opportunities for international mediation could have brought the groups' negotiating positions closer to one another and increased the likelihood of consensus-based solutions (ibid.: 577-80).

reducing the constitutional fingerprint of the body formally responsible for its drafting to appointing the drafting committee.

As for public consultation, an outreach unit, charged with disseminating constitutional information to the public and receiving and analyzing the public response, was set up in early June. The public outreach process, however, was flawed. The unit's first task, to disseminate information, was insufficient at best as "there was no period of public education on constitutional issues" (Morrow 2010: 585). This likely affected the chances of properly understanding and, in effect, answering the constitutional questionnaire for non-elite Iraqis in particular[24]. More significant, while the outreach unit ultimately received more than 400.000 submissions from the public, none of these – nor the report circulated by the outreach unit – reached the committee before it was sidelined by the Leadership Council on 8 August (ibid.: 586). Thus, effectively, "there was little or no chance for the views of the public, as expressed to the committee via the unit, to be taken into account in the preparation of the constitution" (ibid.), ultimately failing to meet Article 60 of the TAL.

On a positive note, and contrary to the logic behind hypothesis H2, Iraq's constitution making process did, during and in spite of its short timeframe, see a constituent assembly being elected, an expert drafting body established, public consultation conducted and a public ratification referendum held (cf. Miller 2010: 640) – all but the expert drafting body elements of a participatory process. Nevertheless, and *because* of the short timeframe, the merits of these bodies and processes for enhanced participatoriness were far from fully enjoyed: In terms of representation, the time it took to elect and form the TNA and drafting committee – combined with the US insistence on the 15 August deadline – meant that the time those bodies had for actual drafting work was very limited. In the end, and also a consequence of the insistence on 15 August, the assembly and committee were sidelined by the Leadership Council in the decisive final phase, thereby reducing their influence on the final draft and, consequently, the degree of representativeness of the process overall.

As for consultation, even though a public consultation program was set up and carried out by the outreach unit, the consultation efforts were practically undermined by the rushed process towards the TAL deadline and, most notably, the transfer of negotiations to the Leadership Council, which left the drafting committee with no opportunity to take the public input into account in its drafting work. As a result, public consultation in Iraq had no or very little effect on the draft constitution. Furthermore, even though the referendum was held and the draft constitution was printed and distributed throughout Iraq by the UN prior to that – in accordance with Article 61(B) of the TAL – the continued post-adoption and even post-printing and -distribution negotiations over and changes made to the draft – ultimately a consequence of inadequate time for "official" drafting – meant that "the public [was] left in the dark, even up to the point of the

[24] Constitutional awareness programs were conducted, however, by various international organizations (ibid.: 586).

referendum, as to the status and contents of the constitution" (Morrow 2010: 582; see also Arato 2007: 551; Brandt et al. 2011: 339-40). Consequently, the basis for the pre-referendum public debate about the draft constitution, as encouraged in Article 61(B), was uncertain at best and illegal and illegitimate at worst.

In sum, while the institutions and procedures of a participatory constitution making process were present in Iraq, the short timeframe made their merits for enhanced representativeness and consultation – and whatever degree of legitimacy that might follow – much less realized than what they are expected to imply. The hypothesized (H2) positive relationship between time and participatoriness thus, in the case of Iraq, is presumably confirmed – by the lack of both.

### 5.1.4 Power-sharing and national identity

The constitution of Iraq that was adopted on 15 October 2005 did not include political power-sharing arrangements as defined here. Neither in the legislative chambers – the Council of Representatives and the Federation Council – nor the executive branch – comprising the President and the Council of Ministers – were seats or posts guaranteed to or proportionately distributed among distinct political/ethnic/religious groups (Constitution of Iraq 2005). Scholars who argue that the Iraqi constitution contains political power-sharing elements have looked at the proportional representation electoral system (which generated a multiparty coalition government at the December 2005 elections) and the representation quota for women in the Council of Representatives (see Norris 2008: 29-30, 220-1). None of these elements, however, were aimed at specific political, ethnic or religious groups, and do thus not fall into the 'political power-sharing' category used in the thesis.

While the constitution did not establish political power-sharing between Iraq's three large communities – Shias, Sunni Arabs and Kurds – it established a vertical/territorial form of power-sharing among different layers of government. When the constitution was adopted, Iraq became a federation. The new federal system involved a high level of decentralization with four layers of government: the federal, regional, governorate and local (Constitution of Iraq 2005: Art. 116). The regions – the federal region of Kurdistan in particular – were given high levels of autonomy, including the right to adopt their own constitution; the right to exercise executive, legislative and juridical powers of their own; their own regional security forces; and in cases of a contradiction between federal and regional legislation, priority was given to the latter (ibid.: Art. 115, 120, 121.1, 121.2, 121.5). Governorates were given the right to form a region if accepted by referendum (ibid.: Art. 119), leaving the possibility open for a future southern, predominantly Shia, federal region (Morrow 2010: 576). The powers of the federal government were conversely reduced to foreign policy, defense, and fiscal and customs policy, with the rest devolved to regional or local level (Heuvel 2009: 26), leaving one commentator to conclude that the Iraqi state "is possibly the weakest federal government in the world" (Morrow 2010: 564).

Considering the influence of the interim period on the vertical power-sharing structure contained in the permanent constitution, it is worth noting that much of the federal design in Iraq's constitution was already set out in the TAL[25]. The TAL largely represented the same intent to prevent power centralization in Baghdad through a multilevel, decentralized system of government, as did the 2005 Constitution[26]. From this it can be inferred, in line with hypothesis H3, that the interim period did not reduce the necessity for a federal power-sharing solution in the permanent constitution.

Whether the duration of the interim period had an impact on this seems, at first sight, doubtful. The federal solution was seemingly a fairly deliberate choice already envisioned when the TAL was made, seen by international actors as a way to hold a fragmented Iraq together and preferred by Kurds as a way to secure and enhance their own autonomy (Morrow 2010: 567, 580, 588). According to this rationing, the constitutional outcome would likely, regardless of the length of the process, have been more or less the same. Considering the chronically fragmented nature of Iraqi society comprised of various ethnic and religious groups and sub-groups holding different views of the Iraqi state (Heuvel 2009: 27-8), forging a national Iraqi identity in the course of any interim period that would render some sort of power decentralization unnecessary would be, to put it mildly, unrealistic. As Morrow notes, "[t]he constitution represents probably the only workable solution to competing interests of [Sunni] Arab nationalism, Kurdish nationalism, and Shia Islamism" (Morrow 2010: 588).

The rushed constitution making process, however, was able neither to transform social and political identities nor to narrow existing societal cleavages and thus provide a broader base for national consensus – rather to the contrary (ibid.). As shown above, the short interim period did not allow for sufficient deliberation between and within Iraq's major communities to forge a consensus-based final document. Furthermore, the timeframe was a main factor behind the marginalization of Sunnis in the process, the group the least prone to federalism, who ultimately rejected with overwhelming majority the constitution in the October 2015 referendum (ibid.: 563). As meeting deadlines was prioritized over inclusiveness, the constitution making process became a new stake in the political battle and societal fragmentation rather than an instrument to solve, or at least mitigate, it (ICG 2005: 4). This led the International Crisis Group to conclude that "[n]o single issue proved more polarizing in post-war Iraq than the 2005 drafting of the country's permanent constitution" (ICG 2006b: 3). Contrary to initial expectations of both the international community and many Iraqis that the

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[25] Besides introducing (for the first time) the federal system and its division of powers between federal and regional governments, governorates, municipalities and local administrations (Art. 4), the TAL contained, inter alia, provisions on the exclusive competences of the federal government (Art. 25), the autonomy of the Kurdistan region (Art. 53(A) and 54) and the right of governorates to form regions (Art. 53(C)) similar to those in the final constitution.

[26] Article 52 of the TAL explicitly states: "*The design of the federal system in Iraq shall be established in such a way as to prevent the concentration of power in the federal government*". Article 56(C) states a general intent of devolution of authority downwards.

constitution and the process of making it could constitute a basis for reconciliation and unity, it "ended in discord, and sharpened the differences between the Sunnis and others" (Brandt et al. 2011: 340). It did not forge a new social contract between state and citizens, nor a stronger national identity between the three main groups, but instead constitutionalized Iraq's breakup into geographic regions along ethnic and sectarian lines (Morrow 2010: 563-4).

In line with the logic behind hypothesis H3, a stronger consensus on national identity was not established during Iraq's 18-month interim period – rather to the contrary. The final constitution, consequently, institutionalized existing divisions in not political but vertical/geographic power-sharing arrangements, affirming the hypothesized (H3) negative relationship between time and likeliness of power-sharing. While some degree of federalism may have been unavoidable, a longer interim period could likely have made possible something more than "the weakest federal government in the world".

### 5.1.5 Findings

It is clear that the TAL did not manage to halt violence in Iraq. Whether the decrease in violence over the interim period can be attributed to the TAL itself is difficult to judge, but doubtful since it neither acted as nor followed from a peace agreement or ceasefire. Despite the decrease, the level of violence was still substantial when the permanent constitution was drafted, not least in August 2005 when most of the constitution was written (Morrow 2010: 589). The lack of security, together with the short time for drafting, prevented the achievement of a participatory and deliberative constitution making process and a consensus-based, broadly accepted and fully legitimate outcome. The primary reason for the short interim and drafting period was the deadline and sequencing of events set out in the TAL. While it cannot be blamed for the insistence on meeting the deadline, despite the option it provided to extend it, the TAL did little to enhance the peacebuilding potential of constitution making in Iraq.

## 5.2 Rwanda

### 5.2.1 Background and overview of interim period

Rwanda's civil war started in October 1990 when the Rwandan Patriotic Front (RPF) swept over the border from Uganda and invaded Rwanda. Since the so-called "Social Revolution" of 1959-1962, when the Tutsi monarchy was toppled and a Hutu-dominated republic established, many Rwandans, mainly Tutsis, had fled the country, creating a large Rwandan diaspora in neighboring countries such as Burundi, Uganda, Tanzania and the Democratic Republic of Congo (DRC) (Butenschøn et al. 2015: 61). Established in 1987 by Rwandan refugees in Uganda who had participated and gained military experience in the Bush War of 1981-

1986, the RPF started launching incursions into Rwanda in 1990 looking to secure the repatriation of Rwandans in exile and reform, if not topple, the Rwandan government (Ankut 2005: 6; Butenschøn et al. 2015: 62).

Shortly after but not in response to the RPF invasion, a new constitution was adopted in 1991 establishing a multi-party system in Rwanda after both international and internal opposition pressure. Since 1978 Rwanda had officially as well as effectively been a single-party state, the 1978 Constitution banning all political formations other than the Hutu *Mouvement Révolutionnaire National pour le Développement* (MRND), but in the wake of the new constitution, a process of political liberalization began with new political parties emerging and entering the political realm (Ankut 2005: 8). Under their influence in the coalition government formed in April 1992, rapprochements between the RPF and the government were made and peace negotiations initiated, resulting in the peace agreement signed in Arusha, Tanzania on 4 August 1993 (Butenschøn et al. 2015: 64-5). Besides explicitly bringing the intrastate conflict between the government and the RPF to an end (Art. 1), the Arusha Accord contained substantial legal provisions and, together with the 1991 Constitution, was to act as the Fundamental Law of Rwanda during a transitional period set to 22 months (Art. 3; Art. 22 of Protocol VI in Art. 2). During that period, a new permanent constitution was to be prepared by the newly established Legal and Constitutional Commission (Art. 24(B) of Protocol III in Art. 2). Politically, the Arusha Accord established a Transitional National Assembly (TNA) and a Broad-Based Transitional Government (BBGT) to govern the country during the transitional period.

The Arusha Accord, however, did not terminate Rwanda's civil war[27], nor did it come to determine the duration of the interim period. On 6 April 1994 the airplane carrying President Juvénal Habyarimana was shot down by unknown perpetrators killing the president as well as his Burundian colleague, both Hutus. Hutu extremist groups blamed the RPF for the killing and incited ordinary Hutus to retaliate against Tutsis (Butenschøn et al. 2015: 70). Over the course of the next three months between 500.000 and 800.000 Rwandans, mainly ordinary Tutsis but also moderate and liberal Hutus, were killed[28]. During the same period, and in response, the RPF marched on the capital, which was captured in July, shortly after which they took control over the whole country (ibid.). Besides putting an end to the genocide and Rwanda's civil war, the military victory of the RPF also marked the beginning of Rwanda's interim period, on which it came to exert significant influence.

The *Fundamental Law* governing Rwanda's 9-year transition period – in effect its interim constitution – was constituted by four texts: The 1991

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[27] It can be discussed whether the military actions during the genocide from April to July 1994 should be seen as a new intrastate conflict or a resumption of the old one. In line with the literature used for this case study, I adhere to the latter view.

[28] Although some literature counts more than one million dead (e.g. Reyntjens 2004: 177-8), the numbers used here reflect what the UCDP terms the "general consensus" in the literature on the genocide (UCDP Conflict Encyclopedia n.d.e).

Constitution, the Arusha Accord, the RPF Declaration of 17 July 1994 (after seizing power) and a Protocol of Agreement signed by the RPF and seven other political parties on 24 November 1994 (Reyntjens 1996: 236-7)[29]. The Fundamental Law – which was adopted on 26 May 1995 by the TNA, but entered into force retroactively on 17 July 1994, the day when the RPF declared its victory – contained no substantial law provisions itself, but hierarchically ordered the four constitutional texts as sequenced above (ibid.). As such, without completely discarding it, the constitutional order resulting from the negotiated settlement in Arusha was restructured "in favor of the victorious party" of the civil war, who, due to their military victory, were "able to set the terms and the pace of Rwanda's transitional period" (McDoom 2011: 10; Reyntjens 1996: 236). The concrete manifestations of this will appear throughout the following sections.

The Fundamental Law outlined the timeline and procedures of the transitional period. The 22-month long transitional period set forth in the Arusha Accord was amended by the RPF Declaration, expanding the period to 5 years (Déclaration du FPR 1994: Art. 5). It was later extended to 9 years, ending with the holding of general elections in 2003 (McDoom 2011: 10). The Legal and Constitutional Commission (Constitutional Commission) was set up at the end of 2000 and given three years to finalize its work (Ankut 2005: 15-6). A month later than stipulated in the Commission's Action Plan, Rwanda's new constitution was adopted by referendum on 26 May 2003 and promulgated into law in June 2003 (ibid.: 18).

Despite the RPF's military victory in 1994, violence continued on an unsteady basis throughout the interim period. After a brief period of inactivity in 1995, the new RPF-led government became engaged in armed conflict with the *Armée pour la Libération du Rwanda* (ALiR), a rebel group formed by remnants of the Rwandan army and the Hutu *Interahamve* militia who had fled together with more than a million Hutu civilians to the DRC (then Zaire) following the RPF's military victory (Butenschøn et al. 2015: 72; UCDP Conflict Encyclopedia n.d.f). ALiR later became the *Forces Démocratiques de Libération du Rwanda* (FDLR). To a great extent, however, fighting took place inside or near the border with the DRC and became largely inactive by 2002.

### 5.2.2 Deliberation

Out of Rwanda's 9-year long interim period, 3 years were devoted to the drafting process. Looking at the timeline and sequencing of events during that period gives a clue as to the nature and extent of deliberation. The TNA elected the members of the Constitutional Commission on 10 July 2000, and later, on 23 November, appointed its president, vice president and executive secretary (Ankut 2005: 15). The Commission used the first six months to properly understand the task they had been given and discuss and formulate its internal rules of procedure. It

[29] Unless otherwise noted, any use of the term "Fundamental Law" in the remainder of the thesis will refer to the one comprised by these four texts.

decided inter alia to work by consensus, not taking any decisions unless its members were in agreement (ibid.: 16-7). The next four months were spent on learning about other countries' constitution making experiences through study trips abroad and an international seminar in Rwanda, during which the Commission developed a detailed Action Plan outlining the legal framework, strategic objectives, different phases, scheduled activities and detailed timeline of the process from May 2002 to July 2003 (ibid.: 17-8; see Legal and Constitutional Commission 2002). After extensive public consultation had taken place (see next section), the Commission spent two months writing the draft, followed by a three-day seminar with 800 participants, including the diaspora population and international experts, who were to study the constitution and ensure its conformity to international standards (ibid.: 18). Finally, the draft was under parliamentary debate for 2 months resulting in a number of amendments ahead of the referendum (ibid.).

While only briefly sketched out here (for more details see ICG 2002: 32-3; Legal and Constitutional Commission 2002), the way in which Rwanda's three-year long constitution making period was utilized suggests a process that allowed time for thorough deliberation and negotiation on the constitutional draft. The drafters were given time to properly understand and reflect upon the task ahead of them and work out their working procedures, ultimately letting them work on a consensual basis with discussions continuing until agreement could be reached. The timeframe further allowed the knowledge basis upon which the Commission prepared the draft to be broadly informed by both large segments of the Rwandan population, including the diaspora, as well as international experts and other countries' constitution building experiences. Lastly, upon its initial completion, the draft was thoroughly debated on and reviewed by the government, parliament and population with amendments made before it was adopted, making the text put to referendum in May 2003 a finalized and carefully and thoroughly worked-through one.

In line with hypothesis H1, the above suggests that the three-year long drafting period in Rwanda positively affected the amount and quality of deliberation by allowing sufficient time to work out a consensus-based and thoroughly processed final document.

### 5.2.3 Participation

Rwanda's constitution making process was outlined by the Fundamental Law, which, albeit without specifying the exact procedural details, laid the ground for a participatory and inclusive process. Considering first representativeness, the Rwandan process seems to place itself somewhat in the medium to low end of Widner's (2005: 510) scale. According to the Arusha Accord, while the Constitutional Commission was to be comprised of non-elected "national experts", the Commission would be acting under the TNA and submit the preliminary draft to the assembly for finalization, the TNA thus holding the ultimate responsibility for and authority over the preparation and approval of the

draft (Art. 41 of Protocol III in Art. 2). While this could indicate a higher degree of representativeness, the 70-member TNA, however, was not a popularly elected legislature. Instead, its members were appointed by the political parties whose place and share of seats in the assembly was stipulated in the Fundamental Law (further examined in the following section) (Art. 60 of ibid.). At the same time, 8 of the 12 members of the Constitutional Commission elected by the TNA were representatives of the parties holding seats in the TNA, leading the International Crisis Group to assess that "[t]he composition of Commission members exactly mirrors the political make-up of the ANT [French abbreviation of TNA]" (Ankut 2005: 16; ICG 2002: 6). Due to the influence of the RPF in the TNA, a study by International IDEA concludes that the Commission "was not a representative body as it only included allies of the RPF" (Samuels 2005: 18). In consequence, the Rwandan populace was only indirectly represented in the constitution drafting bodies to the extent that the political and constitutional views represented by the members of the TNA and Constitutional Commission reflected those of the population (2 of the 12 Commission members were representatives of civil society (Ankut 2005: 16)).

Regarding public consultation, the Arusha Accord had instructed the Constitutional Commission to conduct "extensive consultation with all the strata of the population" in its preparation of the constitutional draft (Art. 41 of Protocol III in Art. 2). In addition to their direct involvement in the drafting process, the Rwandan public was given control over ratification of the final text in a referendum (ibid.). These instructions were closely followed by the Commission. Throughout 2002-2003 it conducted widespread and substantial public education and consultation campaigns, including (1) a six-month constitutional training and awareness-raising program in the provinces in the first half of 2002 involving Commission members and thousands of trained assistants, in which discussions were held and questionnaires distributed on constitutional issues and responses from the population recorded in a database; (2) one month for summarizing the public feedback in a booklet to be taken back to the population for validation and further education; (3) and one month for public review of the final draft as amended by the TNA ahead of the referendum (Ankut 2005: 17-9). A central aspect of the process was to sensitize the largely illiterate and rural Rwandan population to the nature and role of a constitution and instill a sense of constitutionalism. As a tool for this, a training manual was developed targeting students, rural and diaspora populations as well as local leaders educating the local population (ibid.: 15, 20).

Although the constitution making period was a relatively peaceful one, violence did occur – 155 deaths in 2000, 2.044 in 2001 and 59 in 2002 – in the conflict between the Rwandan government and the ALiR/FDLR rebel group (UCDP Conflict Encyclopedia n.d.g). Due, however, to the fact that most of the fighting took place inside or along the border with the DRC and Burundi and before the consultation process was initiated, it did not prevent the population from participating in consultation and interacting with the Constitutional Commission (ibid.).

While the high level of public consultation and inclusivity in the Rwandan constitution building process is widely acknowledged, the extent to which the participation – and effectively the outcome – was truly democratic and reflective of the population's opinions has been questioned. It has been argued that the process was highly supervised by the regime and that most of the participants at the meetings and debates held by the Constitutional Commission were "members of the RPF and sympathizers of the RPF-led government" (Ankut 2005: 21). This may have affected, potentially skewed, the input of the consultation to the Commission. Also, due to a lack of oppositional campaigning, there was "no challenge to the political strategy enforced by the regime" and the public had "no real possibility to reject the [constitutional] text", making one observer conclude that "[i]t was a state-managed referendum, and we have a state-managed result" (ICG 2002: 6; Reyntjens 2004: 185). While the overwhelming popular support for the constitution in the referendum – 93% voting in favor and an almost 90% turnout – may reflect an extensive consultation process producing a document that takes into account the prevalent public opinion, it has been argued that it "was a consequence of political intimidation, terror and ethnic mobilization" (Ankut 2005: 20). Despite these claims, a general sense of belonging to and ownership of the constitution seems to be prevalent among the Rwandan population as a result of their participation in the process (ibid.: 27-8).

In line with the theoretical assumption in hypothesis H2, Rwanda's constitution making process involved most of the most time-consuming process elements, including establishing an expert drafting body, carrying out public education and consultation and holding a ratification referendum (cf. Miller 2010: 640), only the former not being an explicitly "participatory" element. Most notably, the three years for drafting the constitution allowed the Constitutional Commission the time to conduct a lengthy, widespread and substantial public education and consultation process, including time to reach remote parts of the country and properly manage and consider the public input. However, in spite of the long timeframe the process did not see a constituent assembly being elected, but instead relied on an already appointed one for finalizing and approving the draft. The reasons for not seeking to increase the representativeness of the constitution making bodies, the TNA and Constitutional Commission, however, appear more related to political motivation than temporal limitation. Overall, the case of Rwanda lends support to the hypothesized positive relationship between the time available for and participatoriness of a constitution drafting process – as well as the potential merits vis-à-vis the societal acceptance and legitimacy of the constitution.

### 5.2.4 Power-sharing and national identity

As it was seen in the statistical analysis, Rwanda's 2003 constitution did not include provisions on power-sharing. Rwanda is a unitary, i.e. non-federal, state with a presidential system of government consisting of a two-chamber Parliament – the Chamber of Deputies and the Senate – and an executive branch comprising

the President and the Cabinet (Butenschøn et al. 2015: 73-8). While the principal legislative body, the Chamber of Deputies, in similarity with Iraq, uses the proportional representation electoral system and has 27 of its 80 seats reserved for representatives of women (24)[30], youth (2) and disabled (1), the constitution guarantees no posts or seats to political, ethnic or religious groups – most notably, the Hutus and Tutsis – in neither the executive nor legislative government branches (ibid.). With support thus found for the hypothesized (H3) negative relationship between time and power-sharing, this section is dedicated to examining the proposed *national identity* link in the mechanism: Whether a stronger consensus on national identity was forged during Rwanda's 9-year interim period, and whether this, at least partly, impacted the absence of power-sharing arrangements in the final constitution.

In response to the civil war and in the wake of the multi-party system introduced by the 1991 Constitution, the Arusha Accord provided for substantial political power-sharing. Whereas the conflict and subsequent genocide was largely along Hutu-Tutsi lines, the Arusha Accord shared power not between the ethnic groups, but between political parties: The 21 ministerial portfolios in the BBTG were allocated to six political parties, including MRND and, for the first time, the RPF (Art. 55, 56 of Protocol III in Art. 2); and in the 70-seat TNA all registered parties were allocated one seat, while five of the six parties in the coalition government were given 11 seats each and the last one 4 (Art. 62 of ibid.). While power was not explicitly shared between ethnic groups, against the background of a history of monopoly of power by either one ethnic group or the other, the distribution of seats to different political parties – in particular the Hutu MRND and the Tutsi-dominated RPF – in effect, and for the first time in independent Rwanda, constituted power-sharing across ethnic lines (McDoom 2011: 11-2). The same applied to the posts of president and vice president, which, upon the latter's creation by the RPF Declaration, were held by a Hutu and Tutsi respectively (ibid.). More explicitly "ethnicity-focused" was the Arusha Accord's provision for deleting any reference to ethnic group in official documents (Art. 16 of Protocol VI in Art. 2).

The attempts at eliminating ethnic identity from Rwandan society intensified throughout the interim period. After a civil war and genocide that had deepened the already existing cleavage between Rwanda's Hutu ethnic majority (84%) and Tutsi ethnic minority (15%), the new government assuming office shortly after the RPF's military victory in July 1994 adopted a deliberate policy of national unity and reconciliation (McDoom 2011: 3, 12). Seeing ethnicity and ethnic mobilization as the core drivers behind the genocide, the BBTG intended to reduce the role and force of ethnicity in Rwandan society by suppressing ethnic identification in public space and promoting instead a single national Rwandan identity (ibid.). One concrete example of such policy was the BBTG's support for

[30] Combined with the requirement for at least 30% of the remaining 53 seats to be held by women, as instigated by law in 2007, this has given Rwanda the highest proportion of female MPs in the world (63,8% in the Chamber of Deputies since 2013) (Butenschøn et al. 2015: 74).

an understanding of Rwanda's history that assigned primary responsibility for the country's inter-ethnic conflicts to the former colonial ruler, Belgium, rather than the ethnic groups themselves (ibid.: 12). The policy was ultimately given constitutional weight in 2003, the new constitution banning political parties based on ethnic, tribal, racial or other proscribed divisions and obliging parties to "constantly reflect the unity of the people of Rwanda" (Constitution of Rwanda 2003: Art. 54).

Whereas the power-sharing provisions in the Arusha Accord resembled consociationalism, the process of "de-ethnification" and national unification in general and informal representation and sharing of power between Hutus and Tutsis in government, parliament and presidency in particular had integrative overtones. A central driver behind it was the RPF. Coming out of the civil war as victors gave the RPF a dominant position in the political sphere in the interim period, controlling the posts of president and vice president and dominating the BBTG, in which "all power was in the hands of the RPF leadership" (Butenschøn et al. 2015: 71, 78). The RPF itself was founded on a pan-ethnic ideology inspired by the anti-tribalism of the Ugandan regime, and the political program it adopted upon its inception called inter alia for the consolidation of national unity, which included the removal of ethnic quotas (ibid.: 62-3). From the outset it attempted to attract Hutu members (ibid.), making it both an example of and driver for transcending ethnic categories[31]. With the RPF's influence over the interim period in mind, it may seem less surprising that the permanent constitution put a ban on ethnic parties rather than provided for formal sharing of power between them.

To what extent the deliberate and highly top-down attempts at forging a national identity have taken root in the population is uncertain. Studies suggest that while the suppression of ethnic identification has to some extent entered the private sphere with Rwandans increasingly avoiding the use of the terms Hutu, Tutsi and Twa (an ethnic minority constituting 1% of the population), the categories and antagonisms between them still exist (McDoom 2011: 3-4). Because of the difficulty of knowing whether the relative post-genocide inter-ethnic stability is a result of compliance and fear of repercussions or an actual social transformation, "we simply do not know how far Rwanda has moved from being a state with a divided society to being a nation united" (ibid.: 4). This suggests that the absence of power-sharing arrangements in general and ethnic quotas in particular in the 2003 Constitution is a consequence of political insistence rather than popular consensus on national unity. The constitution was, seemingly, rather to build than built upon a strong consensus on national identity.

In sum, the case of Rwanda affirms the hypothesized (H3) negative relationship between the duration of the interim period and the likeliness of power-sharing provisions in the final constitution. Whether the absence of power-sharing is a consequence of a strong popular consensus on national identity built up during the 9-year long interim period is, however, uncertain, although the use

[31] Although Hutu RPF members have been widely represented in government and held the post of president (Pasteur Bizimungu from 1994-2000), the RPF is still predominantly Tutsi (Reyntjens 2004: 187-8).

of ethnic markers has become less pronounced among Rwandans and a stronger sense of Rwandan identity than immediately after the civil war and genocide is likely. Rather, it seems the result of a political insistence on advancing a Rwandan national identity at the expense of ethnic ones, reflected by the constitution's ban on ethnic parties. The absence of consociational solutions is, to some extent, counterbalanced – and possibly explained – by already existing integrative elements of intra-party, -parliamentary and -governmental representation of and informal power-sharing between Hutus and Tutsis, although the representation is not proportionate to their shares of the total population (Reyntjens 2004: 188).

### 5.2.5 Findings

The case of Rwanda is largely supportive of the hypothesized effects of a long interim period on deliberation, participation and power-sharing: A positive relationship is found in the two first cases; a negative in the latter. The absence of power-sharing, however, is an expression of political insistence (and enforcement) rather than strong popular consensus on national identity, and as such, the duration of the interim period may have been less decisive for the absence of power-sharing than it was for deliberation and participation. Nonetheless, the Fundamental Law and the timetable it set out overall improved the peacebuilding potential of constitution making in Rwanda.

## 5.3 Comparing the cases

Figuring at opposite ends of the duration scale, the cases of Iraq and Rwanda were the "ultimate test" of the hypothesized importance of time. In line with the hypotheses, the findings suggest that the duration of interim constitutions *has* a positive effect on the amount and quality of deliberation and participation in the constitution making process, and, to a lesser extent, a negative effect on the likeliness of power-sharing in the final constitution. When considering the significance of time for the outcomes in Iraq and Rwanda, however, some contextual differences between the two cases must be taken into account.

One significant difference is the role that continued armed violence played during the interim period. In Rwanda, violence was irregular, geographically peripheral and had largely ceased by the time the public got involved in the drafting process. In Iraq, war was ongoing throughout the interim period, which seriously hampered broader participation in the process: A Sunni boycott of the elections for the Transitional Assembly; Sunni drafters suspending their committee membership after a Sunni member was killed; enhanced security measures reducing the opportunity for Iraqis to access and observe the drafters to practically nothing; all a result of the unstable security situation (Ludsin 2011: 255-6; Morrow 2010: 570, 573). This not only undermined the legitimacy of the drafting process; its alienation of Sunnis, reflected by their rejection of the final

text, is believed to have fueled the insurgency that continued to plague Iraq in the following years (Brandt et al. 2011: 340; Ludsin 2011: 269-70). This highlights the significance of using interim constitutions to keep violence at bay from the drafting of the final constitution, both by virtue of their function as (or connection to) a peace agreement and of their duration. Such usage includes the option of extending the interim period if the conflict continues unabated or starts anew. As the former UN Special Envoy for Iraq, Lakhdar Brahimi, notes "the long-term interests of Iraq would have been served much better if the TAL had been retained until peace and security had returned to that unhappy land" (Brahimi 2007: 8).

Another matter on which the cases differ is the degree of international involvement. Rwanda's constitution was a purely "homemade" one with international involvement limited to financial contributions (Ankut 2005: 25). In Iraq, not only was the process in general and limited drafting time in particular heavily influenced by internationals, mainly the US; the constitution making exercise itself was primarily a priority of the US, regarded as a step towards democracy and believed to instill an end to violence (Ludsin 2011: 255). The reason for writing the constitution was simply not premised on a negotiated settlement to civil war by warring parties, as was initially the case in Rwanda. The strong international interference that followed greatly impacted the process and outcome, not least by deciding the time available.

Lastly, unlike Iraq, Rwanda is informative as a case of how post-conflict constitution making can be affected by taking place after military victory. While the RPF largely based the interim constitutional foundation on the Arusha Accords that had initially set out the interim process, the changes in the Fundamental Law gave them a dominant political position from which they could exert influence over the interim and constitution making period. As a consequence, in terms of both participation and in particular (the absence of) power-sharing the outcomes were to varying extent influenced by the RPF and their political preferences, apart from the length of time available (see preceding section). These contextual differences, however, do not make the two cases less comparable, but rather bring new perspectives and insights on elements that can affect the outcome of post-conflict constitution making to the fore.

Following from the results of the case studies, the implicit assumption is that this should enhance the peacebuilding outcome of the constitution making exercise in Rwanda and reduce that of the one in Iraq. Without attempting to assess the implementation of the constitutions, the following will briefly reflect on this assumption in the case studies and, as such, on the distinction between 'potential' and 'actual' peacebuilding effect.

Without embracing the way in which it was made, Hamoudi (2013) – writing after years of declining violence in Iraq, but shortly before the conflict with Islamic State (IS) escalated – argues that the Iraq Constitution was a success, based on the view that "[i]t serves as a 'constituent agent' of Iraqi identity, a document to which all significant political factions claim fealty and by whose ground rules they claim to operate" (ibid.: 1). In his view, the primary reason for the success is its ambiguous nature and deferral of contentious matters for later resolution. In divided societies such as Iraq's, he argues, consensus cannot

realistically be reached at the bargaining table, and a better solution than forcing one group's vision of the state onto the constitution is to create a capacious framework document on which consensual constructions can over time – after its ratification and continued efforts at reconciliation – be developed (ibid.: 8-9).

While it may be that ambiguity and deferral was the best possible compensation for the inability to forge a consensus-based document in Iraq, Hamoudi's assertion that "[g]reater time to negotiate [after the constitution had been ratified by referendum] (…) proved necessary before something approaching a lasting functional order could exist" (ibid.: 9) is not in contradiction to the conclusion reached in this thesis. Rather, his assessment supports the assumption that more time (for negotiation, reconciliation, trust) is necessary for a durable and stable order to emerge. The main (if not sole) difference between conducting post-ratification negotiations and extending the interim period seems to be whether more time would be spent during or after the official constitution making process. If spent before, it could likely have rendered the ambiguity and inconclusiveness of the final document unnecessary. In effect, Hamoudi indirectly supports the conclusion reached here that the time available in Iraq was not conducive to the constitution's contribution to long-term peace efforts.

In Rwanda, the deliberate attempts at eliminating ethnicity, as enshrined in the 2003 Constitution, may not have been followed by a similar elimination of the potential for conflict. As Butenschøn et al. note: "There is little evidence to suggest that the suppression of ethnicity has limited the potential for ethnic conflict in Rwanda" (2015: 80).

In light of the multi- or non-ethnic base of the RPF, the relevance of ethnicity for access to power in Rwanda may on the one hand, despite (or even because of) the concentration of power in the hands of the RPF, be decreasing and with it a central aspect of what previously constituted ethnic discrimination and conflict. On the other hand, the RPF party elite is still predominantly Tutsi, and since 1994, Tutsis – as well as the RPF – appear to have been overrepresented in Rwanda's political, juridical, academic and military sectors, reflecting, in Reyntjens' terms, a "Tutsization" and "RPF-ization" of Rwandan society (Butenschøn et al. 2015: 75-6; McDoom 2011: 35-6; Reyntjens 2004: 187-9). According to these authors, the official denunciation of ethnicity has been used to mask this fact, leading Butenschøn et al. to conclude that "[s]uppressing ethnicity has in effect underrepresented the Hutu majority, which may prove to be a risk to peace in the future" (2015: 76). McDoom consequently believes that long-term sustainable peace in Rwanda depends in part on "the gradual opening of political space and de-concentration of power in the hands of the ruling elite (…)" (2011: 38).

Notwithstanding whether any potential future conflict in Rwanda would be politically (against RPF dominance) or ethnically (Hutu-Tutsi) motivated, the above suggests what may seem self-evident, namely that the absence of power-sharing in Rwanda's constitution is not sufficient on its own for preventing future conflict, but can contribute - alongside democratization and reconciliation efforts.

# 6 Concluding discussion

In cases where a new constitution is to be written for a country emerging from conflict, the role of interim constitutions in preventing the civil war from recurring is a promising but so far understudied matter. While the theoretical underpinnings and conceptual framework of interim constitutions is slowly emerging, this thesis has aimed to fill an empirical gap by putting a number of theoretical assumptions to both statistical and in-depth empirical test. Examining the independent effect of the amount of time interim constitutions interpose between peace agreement and permanent constitution, the above study shows a potential for interim constitutions to positively affect the impact of post-conflict constitution making on the prospects of sustainable peace, although the effect is not equally strong across all factors under study.

Concerning the first factor, deliberation, the case studies showed strong support for the proposed effect of interim constitutions' duration on deliberation: Longer interim periods positively affect the amount and quality of deliberation. Otherwise, as in Iraq, the result may be an ambiguous and non-consensus-based constitutional text that fails to garner support from all (major) segments of society (the Sunnis in Iraq).

Unlike the deliberation variable, the two other factors were also examined quantitatively. Regarding the effect of time on participation in the constitution making process, the statistical results were ambiguous, suggesting some (*consultation*) or little/no (*representation*) correlation. The case studies, however, were more supportive of the hypothesized positive relationship and they indicated causality: In Iraq, the merits of otherwise participatory institutions and procedures were not fully realized as a result of the short and rushed process; in Rwanda, the time available allowed for lengthy and widespread consultation, although it may have been affected politically by the RPF-led regime. The in-depth study of Iraq furthermore proved the merits of using mixed-methods by revealing a low actual effect on participation by elements that in a statistical analysis would have indicated the opposite.

The results on the effect on power-sharing were less promising. The statistical analysis showed no clear correlation between the duration of the interim period and the presence of power-sharing in the final constitution. Overall, and contrary to hypothesized, the relationship found was slightly positive, the exceptions including Iraq and Rwanda. The case studies gave some support for national identity being an intervening factor between time and power-sharing. However, as the study of Rwanda showed, a lack of power-sharing may just as well result from a political insistence rather than popular consensus on national identity.

Obviously, the statistical results must be taken with a grain of salt due to the small number (11) of cases examined (5 for participation). Nevertheless, a general

conclusion that can be drawn is that while time matters, more time does not do it alone. A longer duration does not automatically lead to a more participatory and deliberative constitution making process or a stronger consensus on national identity, but it *enables* and raises the probability of it, both by allowing sufficient time for the process to be thorough and not inappropriately rushed *and* by increasing the chances of a less violent and polarized and a more – not fully – safe and trusting environment for the final constitution to be made in. The statistical analysis provided empirical support for this latter point. However, as the case studies also showed, the choice and implementation of constitutional and procedural design and content will in the end depend much on contextual circumstances such as the nature and severity of prior conflict, political preferences and international involvement.

The implications of this study are several. First, it contributes to the dawning body of literature on interim constitutions. By doing so, it runs a valuable interdisciplinary errand by establishing linkages between the research fields on constitution making and peacebuilding/conflict resolution. Besides shedding light on their nexus, the thesis speaks to the literatures separately: In the former, notably on the role of interim constitutions as part of a broader constitution making process; in the latter, on the need and options for integrating short- and long-term priorities in peace processes. In addition, the thesis fills a gap in the literature on the specific role of time in constitution making in conflict-affected settings.

Second, the thesis contributes with empirical insights into the effects of interim constitutions, which has so far been a matter more theorized than empirically tested. In doing this, it includes an in-depth coverage of two cases, which may appeal to readers interested in the constitution making experiences in Iraq and Rwanda specifically. Notwithstanding the results of the study, the methodological approach taken can hopefully be of some inspiration to researchers aspiring to empirically examine the effects of interim constitutions.

Finally, the thesis informs the choice and balancing between short- and long-term approaches to institutional design in transitions from war to peace that faces mediators, warring parties, constitution-drafters or policy-makers. With the situation in Syria still unsettled and the current high number of both armed conflicts and peace agreements in mind, the need for such considerations is both substantive and topical. An interim constitution is one possible tool to attain that balance, and this study has indicated what that tool may and may not be expected to entail. Even in situations where an interim constitution is a consequence of certain political circumstances rather than a deliberate policy choice, knowing the potential benefits and pitfalls of that situation is one step closer to enhancing the impact of the broader constitution making process on the prospects of sustainable peace.

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