

Thomas Benedikter



# The World's Modern Autonomy Systems

Concepts and Experiences of  
Regional Territorial Autonomy

The World's Modern Autonomy Systems  
*Concepts and Experiences of Regional Territorial  
Autonomy*

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This work is dedicated to my father, Alfons Benedikter (born in 1918), who for most of his life gave his all for autonomy and self-determination in South Tyrol.

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## ACRONYMS AND ABBREVIATIONS

ABAS	Aceh Barat Selatan	IRA	Irish Republican Army
ALA	Aceh Leuser Antara	IWGIA	International Working Group for Indigenous Affairs
AMM	Aceh Monitoring Mission	MILF	Moro Islamic Liberation Front
ARC	Autonomous Republic of Crimea	MISURA-	Miskito, Sumo, Rama, Sandinista, working together
ARMM	Autonomous Region of Muslim Mindanao	SATA	Moro National Liberation Front
ASEAN	Association of South East Asian Nations	MNLF	Moro National Liberation Front
		MoU	Memorandum of Understanding
ASSR	Autonomous Socialist Soviet Republic	MRG	Minority Rights Group
ATSIC	Aboriginal and Torres Strait Islanders Commission	NAFTA	North American Free Trade Association
BIA	Bureau of Indian Affairs	NATO	North Atlantic Treaty Organization
BRA	Bougainville Revolutionary Army	NCP	National Congress Party (Al Bashir regime)
BRG	Bougainville Reconciliation Government	NGO	Non-Government Organization
		NIC	Nunavut Implementation Commission
CASSR	Crimean Autonomous Soviet Socialist Republic	NIF	National Islamic Front
CCM	Chama Cha Mapinduzi	NPC	National People's Congress
CIA	Central Intelligence Agency	NPCSC	Standing Committee of the National People's Congress
CLARC	Community Lands and Resources Committee	OSCE	Organization for Security and Cooperation in Europe
CLRAE	Congress of Local and Regional Authorities of Europe	OIS	Organization of Islamic States
CoHA	Cessation of Hostilities Agreement	PIP	<i>Partido Independentista Puertorriqueño</i>
CPC	Communist Party of China	PNG	Papua New Guinea
CPT	Comprehensive Peace Treaty	PNP	<i>Partido Nuevo Progresista</i>
CUF	Civil United Front	PNV	<i>Partido Nacional Vasco</i>
DOM	Daerah Operasi Militer	PP	<i>Partido Popular</i>
EA	Eusko Alkartasuna	PPD	<i>Partido Popular Democrático</i>
EAJ-PNV	Eusko Alderdi Jeltzalea-Partido Nacional Vasco	PRC	People's Republic of China
EB-IU	United Left	PSOE	Spanish Socialist Party
EFTA	European Free Trade Agreement	RAAN	<i>Region Autónoma Atlántico Norte</i>
ETA	Basque fatherland and freedom', or Euzkadi ta Askatasuna	RAAS	<i>Region Autónoma Atlántico Sur</i>
EZLN	Ejército Zapatista de Liberación Nacional	RNAL	Regional National Autonomy Law
FALN	Fuerzas Armadas de Liberación Nacional	RP	Republican Party
FCNM	Framework Convention for the Protection of National Minorities	RPCR	Rally for Caledonia in the Republic
FLA	Front for the Liberation of the Azores	RSFSR	Soviet Republic of Russia/Russian Federation
FLNKS	Front de Libération Nationale Kanak Socialiste	SNP	Scottish National Party
FSLN	Sandinista National Liberation Front	SPCPD	Southern Philippines Council for Peace and Development
FUEN	Federal Union of European Nationalities	SPLA/M	Sudanese People's Liberation Army/Movement
GAM	Gerekan Aceh Merdeka	SVP	<i>Südtiroler Volkspartei (South Tyrolean People's Party)</i>
GDP	Gross Domestic Product	TANU	Tanganyika African National Union
ICCPR	International Covenant for Civil and Political Rights	TAR	Tibetan Autonomous Region
ICESCR	International Covenant on Economic, Social and Cultural Rights	TOM	<i>Territoire d'outre-mer</i>
IDEA	International Institute for Democracy and Electoral Assistance	UNDP	United Nations Development Programme
ILO	International Labour Organization	UNPO	Unrepresented Nations and Peoples Organization
		VAT	Value Added Tax

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# PREFACE

In recent times, social and political theorists as well as constitutionalists have been engaged with the problems of democracy, and ironically this attention to the problems of democracy, known variously as the 'democratic deficit' or the 'democratic paradox' comes at a time when the challenges to democracy were taken to have been historically resolved, and history's final verdict on the supremacy of democracy over all other ideals, ideologies and systems, and processes of rule had been given in overwhelming positive terms. The annus mirabilis of 1989 is nearly 20 years old, and the triumphal mood and euphoria of that time has now paled in the wake of new anxieties and concerns about the democratic deficit. Against this backdrop, Thomas Benedikter's comparative research into world's autonomies is a welcome publication and will soon be regarded as a significant contribution in the era of democratic self-introspection. We are equally hopeful that the European Academy's (EURAC) work in the areas of minority protection, democratic jurisprudence and territorial autonomies will receive worldwide attention and admiration.

The question was of course relevant since the early days of modern democracy. Was democracy a rule of the people, and if so, did it mean a rule of the majority? Otherwise, with elections defining periodically the majority of the people, how would one define the people, its constituting process, and the constituted nature? Thomas Benedikter's account of the emergence of world's autonomies is sufficient evidence of the presence of the problematic in various democracies and regions, and it may not be an exaggeration to say that only by coping with problems of self-determination and by constituting autonomies as forms of minimal justice to the discriminated - forms that are dialogic - can they become democratic. In that sense, existing forms of autonomy to the extent they are not successful, let us say in Kashmir, Basque or Balochistan, show democracy's incompleteness, its deficit. It is important therefore to study autonomy's success and failure for a proper mapping of democracy's development. To undertake such an exercise, a chronicle of autonomies like Benedikter's is essential, and therefore the author deserves our thanks. Once such map is available to us, it will go a long way in facilitating appropriate constitutional engineering.

As we all know, democracy is marked - and we are still

helpless in this matter - by majorities and minorities. Ideal democracy tries to protect minorities; human rights laws speak of non-discrimination against all kinds of minorities; they speak of the rights of minorities; democracy has produced different concepts and definitions of minorities too. Yet the fundamental fact of division, drawing an almost unbridgeable faultline across the entire polity and society remains. Territorial autonomy as a form of protecting minorities from constitutional majoritarian rule emerged in the last century in various parts of the globe. It is seen often as a compromise between full self-rule and absorption of the minority life in the majority cultural-economic political tide. Does this form with its varieties offer a specific minority a chance of blossoming into a 'people' in the sense of a legal-political category? Can autonomy be taken as a step towards sharing of sovereignty? Can this be taken as the first necessary step towards making democracy federal, indeed politics federal? Benedikter's global survey raises these and many other questions, whose answers are still not clear.

If we closely follow this survey, some interesting things emerge. For instance, in some cases constitutionalism has succeeded and in some other cases it has failed. The accounts of success do not necessarily imply a resolution of the problematic. But they signal the success of constitutionalism, of containment and of keeping the clash between the majorities and minorities, dominant and subordinate identities, state and nationalities, forward and backward regions, within a framework of dialogue. In this context, there may be reasons of global compulsion behind local arrangements of autonomy. There may be also the affordability factor (huge compensation), sometimes buttressed by the environmental factor, which highlights durable arrangements for autonomy. Improved political and economic conditions of democracy facilitate the integration of the principle of autonomy in the very structure of rule. But there are also instances of failed experiments for autonomous arrangements. In some cases, political accommodation becomes subordinate to constitutional process and legal fundamentalism, which fail to ensure a smooth passage to political accommodation. In other cases, imperatives of globalization make the daily practice of political accommodation difficult and subject it to universalized constitutional practices that push the political-ethical task of accommodation to the margins of political rule. In yet some other cases, one can notice that economic integration has the task of special protection of minorities that do not threaten the political class. In this way, it facilitates

resolution of old conflicts. But this integration creates new ghettos, therefore new exiles, new selves and a declining legitimacy of the political rule. Hence regional autonomy has to be seen as a 'joint venture' in a double sense: a path to solution of conflicts between the central state and the minority people, and also a challenge to different ethnic groups sharing the same region. If ethnic groups sharing the same territory are opposed to each other in open conflict, joint responsibility and power-sharing can hardly work. In order to unfold the creative potential of autonomy, consociational mechanisms and common political responsibility must enforce the territorial dimension of the autonomy. If autonomy is expected to last, the single ethnic groups must perceive the region as their common home, where political power and responsibility must be shared for the benefit of everyone.

However we can say that wherever the arrangements for territorial autonomy for protection of ethnic minorities are linked with the task of guaranteeing minimal justice, accommodation and reconciliation, such arrangements have far greater chance of durable success. Of course one has to remember that the federalization and confederalization of politics is a continuous task. This brings the readers of this book to another interesting aspect of the discussion on autonomies. While the previous trend of discussion on autonomies set the issue in the perspective of democratic sovereignty as envisioned by Rousseau, today the emphasis is on the perspective of conflict and conflict resolution. Autonomous arrangements today are often parts of peace accords; hence they show greater variety. But because they are the halfway houses for some sort of homelands, conflicts may persist between two ethnic minorities, accords may therefore fail, and conflicts may be renewed. The point is that in these cases the autonomous arrangements see themselves in the mirror of the sovereign, therefore they reproduce the spirit of the nation-states. And this is natural: when states do not change their image of and the desire to be the repository of unbound sovereignty, how can autonomies not become the dreaded homelands marked by great bloodshed?

The challenge, it seems today, even from the perspective of conflict resolution is: How can we turn the autonomy question into a fundamental question of democracy and make democracy a vision of intersecting autonomies in society, making politics federal? In other words, how shall we establish that autonomy is not an exceptional principle for some dissenting minority, but an integral part of the democratic arrangement? Thereby we shall take a great historic step. We

shall go beyond Kant and the hermeneutics of the autonomous self, and proceed toward a federal vision of our own collective life. In meeting the need for an intense exchange of political experiences on regional and territorial autonomous arrangements worldwide, the publication of this work therefore stands out as a significant step – particularly in the form of cooperation between an Asian institution, the Calcutta Research Group, Kolkata, and the EURAC in Bolzano, South Tyrol. It is not a matter of chance that an Indian research institution with a major focus on minority protection and minority rights in South Asia, conducting detailed work on Indian autonomies, and an European institute working on minority rights and located in an 'older' autonomous region, are cooperating to publish this first comprehensive comparative analysis of the world's territorial autonomies. The work will hopefully lead to more in-depth research and further exchange of experiences, supported by empirical data and a full-fledged 'theory of political autonomy'.

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## Part 1

**Introduction****Solving ethnic conflict through self-government**

The recent history of the world's wars and military conflicts indicates that since the late 1960s the intrastate conflicts with ethno-political backgrounds have increased significantly, peaking in 1992-3 with more than 60 conflicts, largely due to the power vacuum left after the dissolution of the former Soviet Union and Yugoslavia. Since the end of the 1990s, the number of armed conflicts registered annually has consistently ranged between 30 and 40. Most of these conflicts are caused by secessionist reactions of minority groups or peoples to discrimination by state powers. Today, few violent conflicts are between multiple states, but rather occur within states due to tensions between state majorities, minority groups and peoples demanding respect for their fundamental individual and collective rights. Frequently, such tensions are caused by territorial changes, burdens from colonial times, authoritarian regimes and last but not least, the bias of unitary states to subordinate democratic participation to the consolidation of the central power.

Nevertheless, today's conflicts between states and ethnic minorities are overwhelmingly settled by political, non-violent means. The majority of secessionist conflicts could finally be solved through negotiations leading to accords and peace treaties that are entrenched in constitutional or organic laws and autonomy statutes. It is in this way that many violent intrastate conflicts have been transformed into institutionalized forms of power-sharing, participation in decision-making by minority groups and stable forms of territorial self-governance. Sometimes it took many years to fully implement agreements of power-sharing and autonomy and this process suffered repeated setbacks before reaching a stable equilibrium. Numerous national minorities and minority peoples could be accommodated by safeguarding their rights and granting a minimum standard of autonomy, yet dozens of instances of armed conflict still await resolution. In general terms, in the last few decades, the preponderant form of the unitary state has been questioned on every continent. States with a centralized power structure even for the sake of stability, efficiency and welfare have shifted

to more decentralization, regional self-government or at least local self-administration. Some states have even newly transformed themselves into full-fledged federations (such as Ethiopia, Nigeria, Bosnia-Herzegovina, Belgium and the Comoros). Others have needed to be convinced about the necessity and usefulness of autonomy, when regions with historical minority nations or minority groups have argued for self-determination and actively struggled for their collective rights.

Over the past 50 years a number of peoples, national minorities and regional communities have entered into autonomy arrangements with their states to accommodate demands for self-governance. While some of these arrangements have brought about virtual sovereignty for the people or entity concerned, others provide for a very limited level of self-governance. As experience has shown, the degree of autonomy has depended on the relative political and economic weight of the autonomous entity and the democratic maturity of the state involved.

Just a few states have chosen not only to give way to more decentralization, but transferred a certain differentiated degree of autonomy to all regions or entities (e.g. Spain, Italy and Russia). However, despite this recent trend towards decentralization, the majority of the world's states continue to possess a unitary character, reluctant to any substantial transfer of power to some single regions. Take the examples of Turkey, France, Romania, Burma, Iran and Pakistan: all these states are faced with very relevant autonomy claims, repressed in part by violence and in part by political and legal means.

On contrary, regional autonomy is a specific territorial political organization having its own constituent features. It should not be confused with a subcategory of federalism. It is based on a specific formula of the political and legal relationship between a central state and a regional community within its traditional territory. Regional autonomy is a political and constitutional organization sui generis that deserves distinct attention and analysis in theory and practice.

Autonomy as a means of ethnic conflict resolution and minority protection is still far from being recognized as an instrument applicable in every context and in every kind of state structure, even within federal states and war-stricken regions. But substantial evidence has been provided that outright secession of a region, apart from triggering military reaction to preserve the status quo, is not generally the key to a stable conflict settlement. Regional autonomy movements, despite a

nationalist rhetoric, can be accommodated with self-governance in some central policy sectors as long as robust guarantees are provided. They seek political participation in the state's powers on an equal footing with the state majority and claim a just share of the state's and region's resources, being aware that complete separation could harm their own interests as well.

If an autonomous legal-territorial framework is created, successful conflict solution depends on the balance between all groups sharing the same 'homeland'. It is fundamental that if new tensions inside autonomous regions are to be avoided, measures ought to be taken to protect the 'minorities within the minorities'. Minority groups inside autonomous regions need not feel threatened by the powers conferred to regional majorities in an autonomous entity. Minorities, minority peoples and/or autonomous communities have the right to be represented at the national level and in the state's institutions.

Autonomy, if applied in a democratic environment governed by the rule of law, allows an ethnic, linguistic or religious minority to exercise its collective rights while providing the state's majority certain guarantees for the unity, sovereignty and territorial integrity of the state. Autonomous entities are given specific powers of self-governance, either devolved or shared with the central government, while remaining under the latter's authority in accordance with the constitution. The formal status of territorial autonomy is not directly linked to a state's democratic organization, but democracy is definitely a prerequisite to comply with its fundamental aim of a higher degree of internal self-determination and self-government. Pluralist democracy in this text is considered a *conditio sine qua non* for genuine 'modern' territorial autonomy.

No single model of existing territorial autonomy can claim to provide a generally satisfying solution to the diverse needs and complex problems produced by ethnic, religious and linguistic cleavages. Each of today's working autonomies has its own specific genesis and historical-political background. Nevertheless, a clear pattern of both the procedure to achieve and establish autonomy and to shape the power-sharing arrangement is emerging in the world, especially if the final aim is a stable and harmonious balance between the collective rights of minority peoples or regional communities and the sovereignty and unity of existing states.

Finally, autonomy is not a panacea for every kind of conflict, but the solutions regional autonomy offers are universally relevant and applicable. There

are experiences in Europe's recent history where autonomy has failed, mostly due to a sudden change in the international context and a lack of sincere commitment by all involved parties, rather than due to the concept of territorial autonomy itself. In those cases, it is not autonomy itself which should be blamed, but the conditions that led to its failure. Autonomous status must always be tailored to the historical, geographical, cultural, political and social circumstances of the concerned area. Eventually, territorial autonomy reaches its limits as a means of conflict solution.

In 2009 there is an 88-year-old record of experiences with regional autonomy, as the first autonomy in the modern sense was established on the Åland Islands in 1921. Today, this case is one of the 'best practices' of autonomy in the world. Although most of the working autonomies are still located in Europe, especially in its Western part, autonomy is a consolidated concept of power sharing on every continent, including Oceania and Africa. Not every established autonomy has succeeded or survived. Some of the working autonomies have only been fully operative for a few years or, in the case of Aceh (Indonesia), from just 2006 onwards.

Nevertheless, autonomy is a worldwide political experience which has not yet been studied from a global comparative perspective based on empirical evidence. No solid theory underpins autonomy, perhaps because autonomy arrangements are often very pragmatic ad hoc solutions that escape generalizations. Hence, the first chapter aims to provide for concepts and definitions as clearly as possible for the purposes of classification, selection and comparison of working autonomies.

Since Hurst Hannum's pioneering research on 'autonomy, sovereignty and self-determination'<sup>1</sup> in 1993, a large number of essays, articles and in-depth studies on autonomy have dealt with all possible aspects of the subject, producing enough insight for an organic 'theory of political autonomy', a project yet to be undertaken. The present work cannot fill this gap, nor should it provide exhaustive data on the political performance of the working autonomies. Hopefully the near future will bring together a cluster of concerned scientists to share such a task of global relevance. This text is merely an attempt to set a new track, presenting all of the world's working modern autonomies. Every autonomy system in this surprisingly articulated world of autonomies is different and would deserve at least a book of its own to be fully described and illustrated.

The present work has a triple scope:

1. It should give, in a reasonably short time, an introduction to all basic elements of the concept of regional territorial autonomy in order to achieve a clear idea about what these terms mean in today's political reality. Hence, I clarify and define autonomy, starting from precise legal and political criteria and distinctions from other forms of territorial power sharing.
2. It should present, in an updated and condensed manner, all modern autonomy systems operating in the world today, as an overview of a peculiar form of territorial political organization, or at least one autonomous region for each state where such arrangements exist.
3. It should filter out, in an attempt of comparative analysis, the typical features and functional elements of territorial autonomy and draw some conclusions about the minimum and optimum standard of a territorial autonomy, as well as the basic factors and conditions of success.

Finally some possible further applications of territorial autonomy will be considered, as well as the need of an 'international right to autonomy'.

Some basic criteria have to be defined and shared if the 'genuine working autonomies' are to be selected. In this context, autonomy arrangements will be clearly distinguished from other regulations providing for the protection of minority rights and self-government, such as federalist states, regionalist states, decentralization and associated states. The world's operating autonomies are all legal and political systems of their own, but as federal systems as well, they share common constituent features. On that basis, all 'autonomies at work' will be briefly presented with their genesis, basic features and current developments.

I would like to express my gratitude to Prof. Dr Jens Woelk, professor at the University of Trent (Italy) and Dr Günther Rautz, coordinator of the Institute of Minorities and Autonomies at the European Academy of Bozen, South Tyrol (EURAC) for the precious support and suggestions provided and for giving me the opportunity, to concentrate on this issue in the framework of a research project on South Asia within the EURAC. In addition, I would like to extend my heartfelt thanks to some colleagues of the EURAC, such as Dr Olga Kamenchuk (Russia), Dr Farah Fahim (India), Dr Tove Malloy (Denmark), Dr Sergiu Constantin (Romania), Dr Carolin Zwilling (Germany), Prof. Christoph Pan (South Tyrolean Institute for Ethnic Groups) and Dr Maria Ackrén (Åbo Akademi of Turku, Finland) for all important stimuli and suggestions, as

well as Mr Matthew Isom for his careful proofreading of the final text.

I hope, that the present text will help to develop a comprehensive theory of autonomy and contribute to efforts for a co-ordinated evaluation and comparative analysis of the experiences collected with territorial autonomy all over the world.

Thomas Benedikter  
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December 2009

## NOTES

1. Hurst Hannum in the 1990s developed the first legalistic analysis of autonomy in *Autonomy, Sovereignty and Self-determination: The Accommodation of Conflicting Rights*, (2nd edition, University of Pennsylvania Press, Philadelphia, 1996). Today's understanding of political autonomy in all of its forms and applications owes a great deal to groundbreaking scholars such as Hannum, and later Ruth Lapidot, Markku Suksi, Yash Ghai, Marc Weller and Stefan Wolff.

Before, already in 1981 Yoram Dinstein analysed autonomy, but with a rather small choice of examples of working autonomies (Yoram Dinstein (ed.), *Models of Autonomy* (Tel Aviv, 1981).

When Ruth Lapidot came out with her inspiring considerations on autonomy, taken from 'a journey through historical and current autonomy arrangements', some of today's autonomous regions were not yet existing and others had definitely disappeared (Ruth Lapidot, *Autonomy: Flexible Solutions to Ethnic Conflicts*, Washington, 1997).

In 1998 Markku Suksi's team published *Autonomy: Applications and implications* (The Hague, 1998), a most significant contribution to the upcoming theory of autonomy.

Zelim A Skurbaty, editor of *Beyond a One-dimensional State: An Emerging Right to Autonomy?* (Leiden, 2005) and Weller and Wolff collected essential components of such a theory, which are still to be assembled in a classical theory textbook (Marc Weller and Stefan Wolff (eds.), *Autonomy, Self-governance and Conflict Resolution*, Routledge, London, 2005).

Very inspiring in this regard are also Yash Ghai's *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge University Press, Cambridge, 2000) and Gnanapala Welhengama's *Minority Claims: From Autonomy to Secession* (Ashgate, Aldershot, 2000).

In 2008 the *International Journal on Minority and Group Rights* (M. Nijhoff Leiden, NL) devoted a special issue on forms of autonomy (Volume 15, No. 2-3, 2008).

A new approach to comparative analysis of territorial autonomies has been provided in 2009 by Maria Ackrén, researcher with the Åbo Akademi in Finland, with her *Conditions for Different Autonomy Regimes in the World*.

## *Part 2*

### **The concept of political autonomy**

- 2.1 Power-sharing in the modern state
- 2.2 What is autonomy? Defining and distinguishing autonomy
- 2.3 The history of political autonomy
- 2.4 The legal basis for territorial autonomy
- 2.5 Diverse forms of autonomy
- 2.6 Procedures and fundamental rights within an autonomy
- 2.7 The institutional framework and scope of autonomy
- 2.8 Advantages of autonomy
- 2.9 Objections to and limits of autonomy
- 2.10 Criteria to determine working autonomies

## 2.1 Power-sharing in the modern state

The ideal propagated by Europe's nation-state builders in the nineteenth century was 'One nation – one state'. But in scarcely any of these states has this ideal ever been achieved. All European states, excluding the micro-states,<sup>1</sup> host national minorities. The overwhelming majority of European states have populations composed of several different peoples, featuring a majority (titular nation or ethnic group) and from three to 45 national minorities.<sup>2</sup> It is most likely that the majority of the current 192 UN member states share these fundamental characteristics.

Generally speaking, most national or ethnic minorities live in their traditional homeland, but over the course of history have found themselves included in a state dominated by a major 'titular nation', a national majority, that typically exerts a cultural hegemony by the sheer effect of demographic, economic, social and political power. Minority ethnic groups in such states are structurally disadvantaged and often excluded from power. How can this implicit bias be redressed? Are anti-discrimination provisions on an individual basis sufficient? How can equal chances and opportunities be ensured for majority and minority identities?

Endowing a minority group with its own territory and all necessary powers to ensure cultural survival and the protection of collective minority rights has in recent history been a device to redress the imbalance between a state majority and the ethnic minorities sharing the same territory. This is a first, simplistic approach to the rationale of territorial autonomy. Theoretically, the concept of autonomy derives from the existence and recognition of ethnic and national groups who are subjects of collective rights. In the post-war period, the UN system of human rights has stressed the individual dimension of human rights, managing to establish them as a universal standard.<sup>3</sup>

<sup>1</sup> 10 out of 47 European states have fewer than 1 million inhabitants: Andorra, Cyprus, Iceland, Liechtenstein, Luxembourg, Malta, Monaco, Montenegro, San Marino and the Vatican.

<sup>2</sup> There are 45 national minorities officially recognized in the Russian Federation, the major European state in terms of population (143 million in 2005).

<sup>3</sup> There are several data banks on international minority rights quickly accessible, just four examples:

[<http://www.eurac.edu/miris>]: the Minority Rights System of the European Academy of Bozen

But only after the de-colonization period, the collapse of the Soviet bloc and the growing number of intrastate conflicts caused by denial of the rights of minorities, the international community turned back to focus on the collective dimension of minority rights. Minority rights are a part of fundamental human rights in defence of human dignity against the state. But in addition to the classic, individual human rights there are specific minority rights which, by nature and legal definition, can only be exercised collectively (e.g. religious and cultural activities, education facilities, use of one's own language in the public sphere, the right to information etc.). How can non-titular minority groups in a state with different 'titular nations' be enabled to fully enjoy these rights?

Most of the armed conflict today stems from the role of the state in society, the most powerful organization in almost all countries of the world.<sup>4</sup> The control of the state apparatus provides for access to social status, distribution of economic and financial resources and political power in society. Therefore, fierce and permanent competition for control over the state arises from the struggle for a decisive share of power. These conflicts can be regulated or prevented by redistributing resources, reforming the state structure, recognizing minority rights and allowing effective representation and participation of all concerned groups. A productive strategy to ensure both the state's integrity and the collective rights and self-government of minority groups can be based upon power-sharing between diverse institutional layers or bodies of the state.

This process was hitherto carried out mainly in the form of federalism and decentralization, exceptionally in the form of territorial autonomy or other ad hoc adjustments of the structure of the state. Beyond the challenge of solving ethnic conflicts, territorial power-sharing affects a general aim of democracy: endowing specific regions with autonomy provides the opportunity for local resolution of local problems. It also offers the prospect of broadening democracy by increasing political representation and opportunities for participation beyond the level of the central state,

[<http://www.eblul.org>]: the European Bureau for Lesser Used Languages;

[[http://www.coe.int/T/E/human\\_rights/minorities](http://www.coe.int/T/E/human_rights/minorities)]: the Council of Europe; [<http://www.ecmi.org>]: the European Centre for Minority Rights in Flensburg.

<sup>4</sup> As of 2009, there are failed states (e.g. Somalia) and internationally recognized states which do not have control on their territory (Western Sahara) or some parts of their territory (Colombia, Myanmar, Georgia, Moldavia, Cyprus). For a coverage of ongoing wars: [[http://en.wikipedia.org/wiki/List\\_of\\_ongoing\\_conflicts](http://en.wikipedia.org/wiki/List_of_ongoing_conflicts)]

which is a particular need of national minorities.<sup>5</sup> Stated bluntly, the fundamental aspiration to self-governance in a genuine democracy is simply felt and needed more strongly when the concerned population is distinguishable by ethnic, linguistic and religious features from the titular majority nation of a given state.

What is the most sustainable way of solving ethnic conflict? A school of 'realistic thinkers' asserts that territorial division and institutional segregation of powers would be optimal. In opposition, the 'idealistic school' proposes building up multi-ethnic societies based on democracy, rule of law and protection of individual human and minority rights. Common to both schools of thought is a growing accord on the necessity of individual and collective rights, enshrined in numerous international covenants. Less agreement can be observed regarding the application of these rights.

Two alternative responses have been created throughout the world to cope with the necessity of power-sharing between the levels of governance of a given state: symmetrical federalism (with some asymmetrical exceptions depending on the political, cultural and historical context) and political autonomy in different forms. Federalist states are usually 'symmetrical' in the sense that the scheme of power-sharing affects all constituent units of the state. In asymmetrical federations, one or more regions (federated states) are vested with special powers not granted to other provinces, especially to allow for the preservation of a specific culture, language and form of living. Sometimes the devices of federalism and autonomy are combined, as the federal states of Canada, India and Russia demonstrate. While they are federal systems, these states encompass also some entities with special powers (asymmetrical federal system).<sup>6</sup> Such entities could also be denominated as 'special territorial autonomy in the framework of

a federal state'. Thus, there are a variety of forms of territorial power-sharing, which are often not mutually exclusive, but flexible, depending on the political context.

Federalism is the best known system of territorial power-sharing. Its basic idea claims equal powers for all constituent territorial units, which share an identical relationship with the central government. Federalism in various historical and political cases has accommodated ethnic diversity, as the examples of Switzerland, Canada and partially also Russia show. Federalism has also been used to settle ethnic conflict after a period of centralist structure, as in Belgium, Malaysia and Nigeria. But if just one or a few minority groups settling on a smaller part of the national territory are to be accommodated, federalism may not be entirely necessary. The geographical concentration of a group, however, is essential to territorial autonomy.<sup>7</sup> In some cases, the very particular nature of one ethnic national minority and region might acquire a particular arrangement that is neither claimed nor necessary for other units of the state. This has happened in China's western regions and the islands of Scandinavia (Åland Islands, Faroe Islands, Greenland), with the special need of indigenous populations living in their traditional territories in a form not strongly integrated in national society.

If only one or a few regions are to be treated in a specific manner, political autonomy is an appropriate way of structuring the state. By its very nature, autonomy is asymmetrical and case-specific. Regional territorial autonomy is widely considered the most advanced device of minority protection.<sup>8</sup> Autonomy as a compromise solution provided the possibility of sharing legislative and executive powers between the central state and national minorities, safeguarding both aims: the fundamental right of national minorities to enjoy at least internal self-determination without changing international borders, and the integrity of the state they are living in. Very crucial implications of autonomy are the internal relationship between all ethnic groups living in a certain region and the 'work in progress' character of an autonomy. The legal design of an autonomy corresponds to the claims, needs and interests of a specific minority group living in a

<sup>5</sup> Capotorti's widely accepted definition of a 'national minority' is: 'Minority nationalities are groups numerically inferior to the rest of the population of the state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly a sense of solidarity, directed towards preserving their culture, tradition, religion or language.' (quoted from: Christoph Pan and Beate S Pfeil (2002), *Minority Rights in Europe: A Handbook of European National Minorities*, Vol.2, Vienna)

<sup>6</sup> This is the case with Quebec and Nunavut in federal Canada, with Tatarstan and many other subjects in federal Russia; for some states of the north-east of federal India and once for Jammu and Kashmir; for the German Community in the Belgian Federation. Regarding the criteria of distinction see Chapter 2.2

<sup>7</sup> Yash Ghai (2000), *Ethnicity and Autonomy: A Framework for Analysis*, in Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States*, Cambridge University Press, Cambridge, p.8

<sup>8</sup> Yash Ghai, (2000), *Ethnicity and Autonomy*, p.8-9; and Christoph Pan and Beate S Pfeil (2003), *National Minorities in Europe: Handbook*, Vienna, pp.190–6.

specific part of the state's territory. In 2009, at least 30 states have established autonomous territories with special legal statutes, but by far not all of them match the criteria of "modern autonomy systems".<sup>9</sup> What they share is a specific relationship between the autonomous territory and the central state and a specific arrangement of self-government compared to rest of their state. On the other hand, there are very relevant differences between autonomy solutions from one to another country, and from paper to practice.

The contemporary relevance of the autonomy issue has to be considered in both perspectives: as an efficient means of conflict resolution and prevention through accommodation of the fundamental needs of national minorities within the existing state boundaries and as a fundamental right of national or ethnic minorities, still to be officially considered in international law. Claims for autonomy remain an urgent issue for numerous states on all continents, the 'old democracies' and the new democracies that emerged from the collapse or erosion of authoritarian systems in the last decade. Europe has been the cradle of territorial autonomy, as exposed in the following chapter, but new autonomies are emerging in Asia, Africa and America, where territorial autonomy is increasingly considered as a modern form of internal self-determination of indigenous people, beyond the phasing out model of the 'Indian reservations'.

Autonomy and federalism (also asymmetrical federalism) are clearly distinguishable, despite blurring boundaries. The basic distinction is that in a federation, the federated states or regions are generally involved in policymaking, whereas autonomous entities rule themselves, but normally have no special rights regarding the central power. They participate in national institutions by democratic means, but have no special level of representation at the centre as federations (e.g. with a second chamber composed of representatives of the regions). As in most regulations of state powers in the world, there are exceptions.<sup>10</sup>

The term autonomy has historically often been used ambiguously, ranging in meaning from simple decentralization all the way to regionalism and federalism. The concept of autonomy depends on the

specific arrangement applied to a specific territory. While all the territorial authorities of a certain level of government, such as the cantons, provinces or Länder in a federal state and the regions in a federalist or regionalist state, enjoy the same powers and substantially the same degree of self-government, autonomy is a concept of special regulations. In a proper sense, we use the term 'autonomy' whenever only a specific part of the territory acquires a special status with specific characteristics. In the case of Switzerland, Belgium and Germany we are dealing with federalist systems, whereas Denmark has conferred autonomy to Greenland and the Faroe Islands. Italy is still a regionalist state that has accorded autonomy to five of its 20 regions on specific cultural, ethnic and historical grounds. Spain officially is not a federal state, but a 'state of autonomous communities', endowed with different levels of autonomy. The Azores and Madeira as autonomous island regions are part of the unitary state of Portugal. Within the federal system of Canada, all provinces enjoy the same legal status except Quebec (a province with some special rights) and Nunavut, whose autonomy is a very special arrangement. This short list shows that even from an empirical perspective, federal systems and autonomy can be clearly distinguished.

Two more existing forms of government have to be clearly distinguished from autonomy. Reservations were first used by European settlers in the Americas to dominate the indigenous population, later established in Australia, Africa<sup>11</sup> and some parts of Asia. Today reservations exist primarily in Brazil and the United States, aiming to protect the rights of indigenous ethnic groups in their traditional land, and are even partially exempted from national civil and criminal law in order to preserve their political, cultural and religious life. Reservations are thought of as a kind of 'conservation area' with limited sovereignty linked to the individual membership to an ethnic group, but excluded from participation in the democratic institutions and life of the state they belong to. Autonomies are by constitution and statute bound to democracy, rule of law and respect for human rights, fully part of the constitutional and political order of a state. Recently, however, the political aspirations and claims of most indigenous peoples have concentrated - if not on full self-determination- on forms of special autonomy, being self-governing areas with forms of citizenship by limiting immigration and mobility of non-members of

<sup>9</sup> These criteria to determine modern territorial autonomy will be illustrated in Chapter 2.2 and 2.10.

<sup>10</sup> A good overview of all possible power-sharing solutions is also given in: Venice Commission, *A general legal reference framework to facilitate the settlement of ethno-political conflicts in Europe*, adopted by the Venice Commission at the 44th plenary meeting, 13–14 October 2000.

<sup>11</sup> History has discredited the concept once applied in South Africa of the 'Bantustans', homelands for the black indigenous population, which later became symbols for ethnic discrimination, segregation and oppression.

Government arrangement	Description of the arrangement	Examples
Associated state	A federal (treaty) relationship where the smaller polity is linked to a larger state. It has substantial authority over its own affairs, but very little influence in affairs of the larger state. Usually either party may dissolve the relationship at any time.	Cook Islands, San Marino, Holy See, Micronesia, Puerto Rico
Condominium	A polity is jointly ruled by two authorities in a way that permits substantial self-rule.	Andorra, New Hebrides
Confederation	A loose, but institutionalized cooperation of two or more independent states without federal constraints.	CSI, EU, Serbia-Montenegro (until May 2006)
Reservation	Form of self-governance of a smaller people on a given territory, with separate 'citizenship' as legal member of the titular ethnic group of the reservation and almost no participation to general affairs of the state.	Navajo, Sioux, Hopi (USA), Miqmaq (Canada) Yanomami (Brazil)
Federation	Two or more constituent entities enter into a constitutional framework with common institutions. Each member state retains certain delegated powers and the central government also retains powers over the member states.	Belgium, Germany, Switzerland, USA, India, Russia, Brazil, Canada
Regionalist state	A state with two levels of legislative powers, central and regional, with the national parliament retaining the sole legislative power on national and constitutional level.	Spain, Italy
Dependent territory	Political dependency, defined under the UN-Charter, Article 73, not considered to be part of the motherland or mainland of the governing state.	Gibraltar, Virgin Islands, Tokelau, etc.
Territorial autonomy	Particular, but integral parts of a political sovereign state which have legislative and executive powers entrenched by law. Specific solution for one or more units of a state, but not for the whole territorial state structure (except Spain).	Åland Islands, Gagauzia, Aceh, Greenland, Muslim Mindanao

Source: The author's elaboration on a scheme of the Tibet Justice Centre (TJC), New York<sup>1</sup>

<sup>1</sup> This table is following the scheme published by the Tibet Justice Centre under the title 'Autonomy types', but the TJC is using different definitions starting from 'the principle, which explains almost every autonomy arrangement in place in the modern world, the federal principle'. In the same website, the TJC reports a 'Glossary of Autonomous Arrangements', where again all forms mentioned in the table above are mixed up as 'types of autonomy'. However see: [<http://www.tpprc.org/scripts/conceptofautonomy.aspx>]. For the dependent territories and associated states see the complete list in the Appendix, Part 4 and 5.

the concerned indigenous peoples.<sup>12</sup>

Local government institutions are vested with limited administrative powers in a process generally defined as decentralization. This form of power-sharing does not fit in the concept of autonomy for two main reasons: on the one hand, it is for the most part not based on a constitutional status; on the other hand it lacks the quality of autonomous legislation. The typical case is France, a traditionally centralist state, which vested its départements and regions with some powers, but without giving them the basic entitlement of self rule.

Besides autonomy and federalism, various forms of division of powers between different layers and

<sup>12</sup> This happened for instance in Nunavut (Inuit of Canada) as well as in Greenland (Inuit), in the Cordillera Region in the Northern Philippines (Igorot) and in Panama's Comarca Kuna Yala (Kuna).

structures of government are found throughout the world. They generally aim to render a state more just and efficient in administration, as well as to widen democratic participation. However, autonomy is a distinct quality, since its aim in most cases is either the accommodation of the rights of particular ethnic and cultural communities or a specific political system (Hong Kong). The difference must be kept in mind: examples are Papua New Guinea, which established some arrangements for decentralization of powers to its provinces but at the same time attributed autonomy to Bougainville. In the absence of those features, other spatial arrangements for either self-government or limited power-sharing, such as Provincial Councils or regionalism, are not regarded as 'autonomy' or autonomous entities. The limits are fluid and the labels may even be deceptive. In the following table

an overview on all existing categories of arrangements of territorial (vertical) power sharing.

In this text, the term 'autonomy' is used as a clear-cut political and legal concept with specific features. A clear definition of territorial autonomy will follow in the next chapter, clarifying the distinction of autonomy from all other existing forms of power-sharing in a state. After a brief look at the history of political autonomy, the fundamental features of autonomy are explained: its legal basis, diverse forms, institutional framework and scope. The assumed advantages of and sometimes expressed objections to autonomy are discussed before starting the 'journey' through the world's operating autonomies in Part 3. The classification and distinction of autonomous entities (regions, provinces, etc.) has been possible only on the grounds of four precise criteria, which are introduced in Chapter 2.10.

## 2.2. What is political autonomy?

### 2.2.1 Defining autonomy

The term autonomy derives from two Greek words: auto meaning self and nomos meaning law or rule. To make one's own laws is therefore the basic meaning of 'autonomy'. Today, the term is used widely in various branches of science, from philosophy to psychology and theology. But even within political science and jurisprudence, autonomy has various meanings and differing interpretations. Thus, much effort has been expended in order to reach a general agreement on the basic concept.

There are four main categories of definitions or approaches to autonomy.<sup>13</sup>

1. Autonomy as a right to act upon one's own discretion in certain matters, whether the right is possessed by an individual or public body.
2. Autonomy as a synonym for more independence.
3. Autonomy as a synonym for decentralization.
4. Autonomy as a quality providing for exclusive powers of legislation, administration and adjudication in certain areas.

We will focus on the latter concept, which is also called 'political autonomy' as distinguished from mere administrative autonomy. In the field of minority rights, autonomy generally denotes 'limited self-rule', which can range from self-administration to complete self-rule just short of independence.

In ancient times, 'autonomy' was used to designate the characteristics of the political condition of ancient Greece where every city or town or community claimed the right of independent sovereign action. But in modern-day United States, the word refers more specifically to territories or communities which, although subject to a higher authority, are ruling themselves freely in various respects.

Autonomy is, however, not a term of art or a legal term, which would have a defined meaning in public international law,<sup>14</sup> and hence there is even no

<sup>13</sup> Ruth Lapidoth (1997), *Autonomy: Flexible Solutions for Ethnic Conflicts*, Washington, Part I.

<sup>14</sup> André Legaré/Markku Suksi, Rethinking the Forms of Autonomy at the Dawn of the 21<sup>st</sup> Century, in: *International Journal on Minority and Group Rights* 15 (2008), p. 143; Autonomy has been enshrined as a constitutional law only in article 2 of the Spanish

generally accepted definition of autonomy, and no general consensus of what political autonomy exactly means as a concept of public or constitutional law.<sup>15</sup> Thus, only seven distinguished scientists will be quoted here, whose ideas – considered together – come close to a comprehensive definition of the concept.

'An autonomy is a territory with a higher degree of self-rule than any comparable territory of a state.'

– Kjell Ake Nordquist<sup>16</sup>

'Autonomy is a means for diffusion of powers in order to preserve the unity of a state while respecting the diversity of its population.'

– Ruth Lapidoth<sup>17</sup>

'Autonomy is a relative term for describing the degree of independence that a specific entity enjoys within a sovereign state.'

– Hurst Hannum<sup>18</sup>

'Autonomy is a device to allow ethnic or other groups that claim a distinct identity to exercise direct control over affairs of special concern to them while allowing the larger entity to exercise those powers that cover common interest.'

– Yash Ghai<sup>19</sup>

'In international law autonomy means that a part or territorial unit of a state is authorized to govern itself in certain matters by enacting laws and statutes, but without constituting a State of their own.'

– Hans-Joachim Heintze<sup>20</sup>

Constitution.

<sup>15</sup> In a broader sense 'autonomy' means, always in a legal and political context, the autonomous self-determination of an individual or an entity, the competence or power to handle one's own affairs without outside interference. In national public law one speaks of autonomy of universities, schools, cities and churches. This is always done in relation to the state. In this broader sense autonomy describes the limits of state interference, on the one hand, and the autonomous determination and regulation of certain affairs by specific institutions on the other. (Hans-Joachim Heintze, 'On the legal understanding of autonomy' in Markku Suksi (ed.), *Autonomy: Applications and Implications*, Kluwer Law International, The Hague, 1998, and Josef Marko, *Autonomie und Integration, Rechtsinstitute des Nationalitätenrechts im funktionalen Vergleich*, Böhlau Wien, 1995, especially pp.262–96).

<sup>16</sup> Kjell Ake Nordquist (1998), 'Autonomy as a Conflict-solving Mechanism' in Markku Suksi (ed.), *Autonomy: Applications and Implications*, Kluwer Law International, The Hague, p.7.

<sup>17</sup> Ruth Lapidoth (1997), *Autonomy: Flexible Solutions for Ethnic Conflicts*, Washington, Part II.

<sup>18</sup> Hurst Hannum (1996), *Autonomy, Sovereignty and Self-determination: The Accommodation of Conflicting Rights*, Philadelphia, p.8.

<sup>19</sup> Yash Ghai (2000), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States*, Hong Kong, p.484.

<sup>20</sup> Hans-Joachim Heintze (1998), 'On the legal understanding of

'Territorial autonomy is a defined geographical territory that, in relation to the majority of other sub-national territories, enjoys a special status including some legislative powers, within the state, but does not constitute a federal unit, or an independent state.'

- Pär M. Olausson<sup>21</sup>

„Territorial autonomy implies the grant of exclusive legislative powers to a decision-making body of a territorially circumscribed entity.“

- Legaré/Suksi<sup>22</sup>

As a general rule, autonomous territories possess no international character, and are not treated as states for the purposes of international law. Hence, autonomy can be defined as a means of internal power-sharing aimed to preserve the cultural and ethnic variety, while respecting the unity of a state. Autonomy thus consists in permanently transferring a certain amount of powers suitable for those purposes to a certain territory, giving its population the possibility of self-government, and leaving only residual responsibilities to the central state.<sup>23</sup>

Autonomy is a special device if a particular part of a state with a population differing from the majority population of that state is envisaged to be accommodated. Ethnic-linguistic minorities (or national minorities) are the classic subjects to demand autonomy, especially when settling homogeneously in their original homeland. In some rarer cases, geographical peculiarity is at the genesis of an autonomy (islands, former colonies and dependent territories, Netherlands Antilles and New Caledonia, Madeira and Azores, Sicily and Sardinia) or the status of former colonies located very distantly from the mainland (Netherlands Antilles and France's New Caledonia). Autonomy has also been established for economic and political reasons, based on the principle of 'two systems - one country' (as is the case

autonomy' in Markku Suksi (ed.), *Autonomy: Applications and Implications*, Kluwer Law International, The Hague.

<sup>21</sup> Pär M. Olausson (2007), *Autonomy and Islands, A Global Study of the Factors that Determine Island Autonomy*, Åbo, Åbo Akademi University Press, p.25

<sup>22</sup> André Legaré/Markku Suksi (2008), op. cit., p. 144

<sup>23</sup> Ruth Lapidot (1997), *Autonomy, op. cit.*; territorial autonomy by some authors is referred to as an arrangement where the population is granted special rights to run its own affairs in certain areas. Such a general definition is not helpful for our purpose. Rather for the general concept see the comprehensive approach of Markku Suksi (ed.), *Autonomy: Applications and Implications*, The Hague, 1998.

More extensive definitions in Daniel Elazar (1991), *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements*, Longman Group, UK, pp.xvii-xviii, and John Kincaid, 'Introduction' in *Handbook of Federal Countries*, 2002, Forum of Federations, Montreal, London, Ithaca, pp.3-13

with Hong Kong and Macau) or because of the national interest of certain metropolitan areas (Moscow, St Petersburg, Buenos Aires).<sup>24</sup>

Control over territory is essential for the creation of the normal organs of local or regional government and may also be important in terms of economic viability or development: „The territory can be seen as a primary guarantor of two fundamental human needs: identity and security.<sup>25</sup> The identifying character may be seen by a group of people as a ‚homeland‘ where ancestors have lived for centuries. The security to have a place to live could be seen as a guarantor for threatened group in a country. Where minority groups are dispersed throughout the state, there may be a need to have a defined territory in which these community members can feel secure.<sup>26</sup>

Territorial autonomy in a proper sense not only encompasses administrative powers of local bodies, but requires the existence of a locally elected legislative assembly independent from central state institutions with a minimum power to legislate in some basic domains, as well as an elected executive who implements this legislation in the given autonomous areas. In practice, not every form of government body labelled 'autonomous' is consistent with the criterion of 'democratically elected autonomous bodies', especially if the concerned region is a part of a non-democratic state. However, if the local or regional population and the national minorities are involved in the management of the affairs of the territory, 'autonomy' in a proper sense may not be fulfilled, but we can nonetheless speak about 'autonomy based sub-state arrangements'.<sup>27</sup>

Territorial autonomy is one among several mechanisms

<sup>24</sup> [[http://www.absoluteastronomy.com/reference/list\\_of\\_autonomous\\_entities](http://www.absoluteastronomy.com/reference/list_of_autonomous_entities)] also lists three further states with autonomous entities: Saint Kitts and Nevis with Nevis; Sao Tomé and Principe with Principe and Trinidad and Tobago with Tobago. In all these micro-states the label 'autonomous' serves to underscore the distinct authorities of the respective two islands within the common republican framework, not to identify a real territorial autonomy.

<sup>25</sup> Hurst Hannum (1996), *Autonomy, Sovereignty and Self-Determination*, op. cit., p. 463-464

<sup>26</sup> See Maria Ackrén (2009), *Conditions for Different Autonomy Regimes in the World*, Åbo, Åbo Akademi University Press. Herein Ackrén uses the following definition: "A territorial autonomy is a geographically defined area, which differs from other sub-regions (like municipalities, federal states, etc.) in a specific country and has received special status with legislative and/or regulatory (administrative) powers." (p.20)

<sup>27</sup> This is the case in the People's Republic of China, in Uzbekistan (Karakalpakstan), Azerbaijan (Nakhichevan) and Tajikistan (Gorno-Badakhshan), as will be explained in Chapter 4.6.

of power-sharing, and there is neither in political and legal practice a clear distinction between the various devices, nor is each region officially labelled as 'autonomous' a truly operating autonomy. Yet in order to select a closed list of those autonomous regions to be illustrated and compared as 'genuine autonomies', objective criteria must be set. Territorial autonomy has to be distinguished from federal systems, decentralization, associated statehood and 'self-government'.

'Devolution' is used to describe the process of transfer of powers in the United Kingdom from the centre to three of its historical regions: Northern Ireland, Scotland and Wales, ultimately transforming them into autonomous regions. 'Self-administration' is not equivalent to autonomy or self-government, as it refers to the transfer of administrative powers, whereas autonomy necessarily has to include legislative powers.

Sometimes in legal vocabulary as well as in political speech, the term 'self-government' is used in place of 'autonomy'. This term is synonymous with 'home rule' and 'self-rule'. Its meaning has been discussed by the UN in Chapter XI of the UN Charter<sup>28</sup> regarding the 'Declaration regarding non-Self-Governing Territories'. Under Article 73 of the UN Charter, member states 'administering territories whose peoples have not yet obtained a full measure of self-government' have a duty to develop self-government and 'to transmit regularly to the Secretary General statistical and other information of a technical nature relating to economic, social and educational conditions in the territories'. The UN General Assembly adopted lists of factors to serve as guidelines when determining whether a region has achieved self-government. Some regions call themselves autonomies, but upon further investigation they lack real autonomous status: "The regions might be disputed matters within their own states or lacking the political institutions crucial for their functioning as territorial autonomies."<sup>29</sup>

Ruth Lapidoth suggests that if definitive criteria are to be chosen, one ought to start from the three classic elements of a state (territory, people and control by a government):

1. Territorial government: freedom from control or interference by the government of another state into the internal affairs of the state in the executive, legislation and judiciary.

2. Participation of the population: democratically elected representatives of the whole regional population are vested with political power.

3. Economic and social jurisdiction: complete autonomy with respect to economic and social affairs, not in external affairs. This could be enlarged to the term 'internal affairs' embracing cultural affairs and all core powers to preserve cultural identity.

Self-government can be considered an appropriate term for a complete autonomy, and thus a special case of autonomy which has reached the highest degree of power transfer without formal independence.<sup>30</sup> Possible examples would include Greenland's current autonomy or Jammu and Kashmir's historical autonomy from 1947 to 1953 under Article 370 of the Indian constitution. This provision assigned to the Federal Union no responsibilities other than defence, foreign affairs and communication.

A modern understanding of autonomy has been elaborated from the legal distinction of the external and the internal right to self-determination. The latter can be accomplished by granting territorial autonomy. But territorial autonomy, differing from free associated statehood, generally does not endow a regional community with the right to a referendum concerning secession and full statehood, which represents the main difference to associate statehood. Some of today's autonomy arrangements, however, also encompass the right to 'external self-determination' in the form of a referendum to be held after a fixed period and thus do not rule out later secession.

Decentralization is a general term for the transfer of limited powers from the centre to the periphery, but still subjected to the control and responsibility of the centre. Decentralized powers can, by definition, be revoked unilaterally at any moment by an ordinary government or parliament act. Autonomy, contrarily, can generally be abrogated or amended only with the consent of both the central authorities and the autonomous entity. There are, however, various degrees of decentralization depending upon the scope of the delegated powers, the extent of participation of locally elected representatives and the degree of supervision. Decentralization is a form of bringing administration closer to the 'final consumer', without really empowering the local community with the ultimate responsibility.

The classic example of decentralization is France,

<sup>30</sup> Lapidoth (2001), *ibid.*, p.19.

<sup>28</sup> Ruth Lapidoth (2001), 'Elements of Stable Autonomy Solutions', CAP Papers, p.18

<sup>29</sup> Maria Ackrén (2009), *Conditions*, *op.cit.*, p. 42

where the region, although vested with an elected assembly, does not have a genuine statute or constitution, but merely decentralized administrative powers. The major distinguishing feature is the kind of control: whilst the government principally cannot interfere directly with the legal act of autonomous organs, if not by judicial procedures (Supreme or Constitutional Courts), in a regime of decentralization the central government is fully empowered to control and supervise the acts of the decentralized authorities. In the case of only decentralized powers, the ultimate responsibility lies with the respective central ministries. Autonomy means definitively enacted and legally entrenched transfer of a minimum amount of legislative and executive power to a regional territorial entity governed by a democratically elected body. If democratic procedures of decision making are absent in such entities, no meaningful autonomy exists.<sup>31</sup>

„Is this variety of understandings a good situation or does it confuse the discussion to the detriment of the aspirations of minority groups?“ ask Legaré and Suksi.<sup>32</sup> From my view it is definitely required to settle for a coherent definition of autonomy in a strict sense, leaving other forms of self-government in a broader sense of autonomy to a residual category of „autonomy-like arrangement of territorial power sharing“. The flexibility of the concept of autonomy has to lie in its scope, the amount of power transferred to the autonomous entity and the forms of application, not in the definition of fundamental criteria of determination of an „genuine territorial autonomy“.<sup>33</sup>

Hannum (1993) and Lapidoth (1998) have provided the initial definitions of autonomy. In the meanwhile new forms of autonomy have been established. Autonomy, indeed, is a flexible tool, as it is federalism, but not

arbitrarily flexible. Its greatest value is its ability to grant conflict solution through self-government without disrupting existing states. A generally accepted definition of our understanding of forms of autonomy is needed, in order to provide a clear theoretical and practical reference when political movements and states are entering into negotiations for such a power sharing device.

In this text the focus lies on a theoretical, not normative approach, as the fundamental criteria of determination of territorial autonomy are grounded in a territorial concept of democratic self-government, open to operationalization and empirical assessment. As in the modern theory of federalism, a theory of autonomy, still in fieri, has to determine the main institutional characteristics of such an arrangement.<sup>34</sup> Some of them as the permanent devolution of legislative powers to regional decision making bodies are not disputed; others as the democratic nature of the autonomous legislative and executive have to be added. There are good reasons for the application of a very limited, but precise set of criteria of constituent qualities of an autonomous entity in order to establish a coherent definition of „modern autonomy“. There is a difference between practical flexibility and theoretical ambiguity. Even while assuming a theoretically sound and strict definition to determine what a „modern territorial autonomy“ is like, the concept of territorial autonomy offers an almost unlimited range of possible applications in the political reality, comparable to federalism.

<sup>31</sup> Which is the case in the People's Republic of China: „The system in China denies true autonomy of choice and the organs of self-government are bound by the Communist party.“ Yash Ghai (2000), *Autonomy regimes in China: Coping with Ethnicity and Economic Diversity*, in Yash Ghai (ed), op. cit., p. 77

<sup>32</sup> André Legaré/Markku Suksi, *Int. Journal on Minority and Group Rights* 15 (2008), p.154

<sup>33</sup> Michael Tkacik, in *International Journal on Minority and Group Rights* 15/2008 develops and examines a new typology of autonomy forms and proposes a „Forms of Autonomy Model“. Tkacik argues that forms of autonomy can be distinguished on three axes:

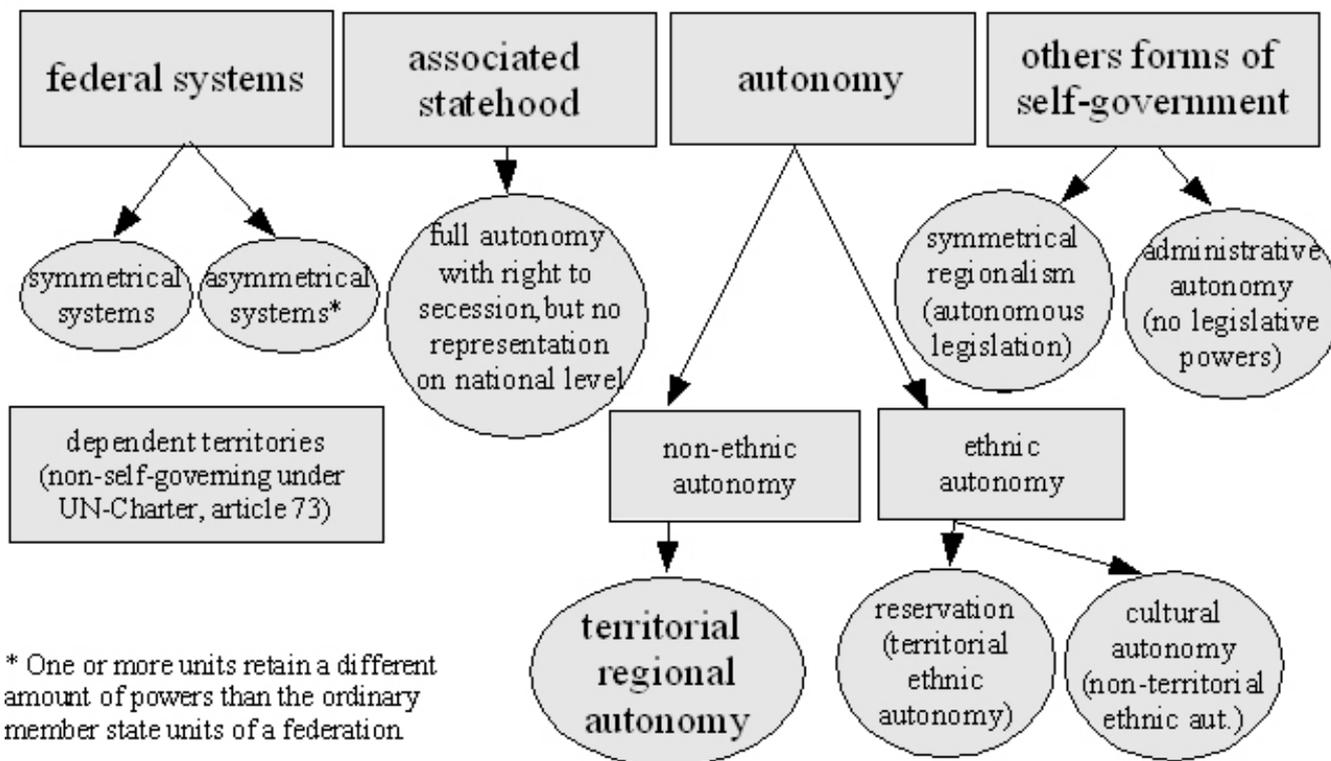
1. the scope of control over issues affecting an autonomous entity
2. the depth of control granted to the autonomous entity and
3. the spatial assertiveness of the autonomous entity (territory).

Tkacik reveals, through this model, that when taken together scope, depth and territory give us „the total volume of autonomy“ of an entity. Two of his variables are acceptable:

- a) scope of control (aggregate number of autonomous sectors or powers)
- b) depth of control (primary/secondary legislation, or only regulatory powers)

<sup>34</sup> For a theoretical reflection on vertical power sharing see: Brendan O'Leary (2008), „The Logics of Power-sharing, Consociation and Pluralist Federations“, in: Marc Weller/Barbara Metzger (eds), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Amsterdam, Nijhoff, pp.47-58

## Forms of territorial power sharing in modern states



### 2.2.2 Distinguishing autonomy from other forms of power-sharing

#### a) Autonomy and associate statehood<sup>35</sup>

An associated status, according to Lapidoth, 'is established with the consent of both the principal and the associate. The associate is interested in the relationship in order to enhance its security and its economic viability'.<sup>36</sup> An associated state has its own constitution and full internal self-government, but certain (minimum) matters are controlled by the principal: mainly defence and foreign affairs, and in most concrete cases the monetary system as well. With regard to foreign affairs, there are various degrees of delegation of powers to the principal. In some cases the principal must consult with the associated state whenever its interest are concerned, while in other cases the management of foreign affairs are divided between the two partners. The main difference between autonomy and associate statehood lies in

<sup>35</sup> For the definition and list of subjects of associated statehood today see the Appendix, Part 4; for the whole chapter see also Ruth Lapidoth (1997), *Autonomy*, Washington, pp.50–8.

<sup>36</sup> Ruth Lapidoth (2001), 'Elements of Stable Autonomy Solutions', CAP Papers, Munich, 2001, p.20.

the legal term 'statehood': The latter entities may indeed revoke the association at any time, being endowed with statehood. Some of them have exerted this right (Marshall Islands, Palau, Federated States of Micronesia) and are now independent members of the UN. Autonomy, on the other hand, is not equivalent to statehood, does not encompass the right to secession and in most cases cannot be unilaterally revoked.<sup>37</sup>

#### b) Autonomy and federalism

Major emphasis has to be placed on the relationship of the notions of federalism and autonomy, as this is the major area of semantic and real overlapping. In the specialized literature, both forms of usage can be found: 'autonomy' as a special form or a subsystem of federalism and vice versa, 'federation' as a means of power-sharing establishing autonomy for each territorial part of a given state in a symmetrical or asymmetrical form. However, there is a general consensus in the scholarly world on the essence of the federal principle (free decision of territorial units to

<sup>37</sup> See also Council of Europe, 'Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe' (rapporteur: Andi Gross), DOC 9824, 3 June 2003, Part VI.v, [<http://www.coe.int/>].

stipulate an agreement to form a common state) and of federal systems (a form of state based on a federal arrangement, division of powers in a constitutionally defined pattern between the centre and single component units). The territorial units assume different names: states in India and in the United States, cantons in Switzerland, provinces in Canada, regions and communities in Belgium, entities in Bosnia-Herzegovina, Länder in Germany and Austria. But in every case, the regions, as such, participate in the legislation of the central state: their representatives are members of a second chamber of the national parliament (Bundesrat, senate, state council) and the consent of this second chamber is required whenever the federal constitution is to be amended or federally relevant laws are to be approved.

There is a special tribunal, usually the Constitutional or Supreme Court, for settling disputes among the regions or between a single region and the federal state. Usually, symmetrical federalism assigns an equal level of powers and the same legal position assigned to all regions while exceptionally existing federal systems assign a different amount of power to different federal subjects. A striking example of asymmetrical federalism is the Russian Federation. In some publications, regional autonomy is considered as a 'subcategory' or a special form of federal arrangement, but in a constitutional sense there is a clear distinction. While autonomy can be established by a mere national act (rarely based on an international treaty), a federation can only be created by a state constitution. In most cases autonomies are created for a particular reality in only one or a few of the regions composing a state, largely meeting their particular ethnic composition or other peculiarities. The federal structure, be it even or uneven, applies to the entire territory of each federal system of the world. Finally, autonomous entities are represented at the centre in the national parliaments (or exceptionally through delegates to the governments), but they do not participate in a decisive manner in the legislation and government of the central or national level. The member entities of a federation, on the contrary, play a constituent role in the central institutions: in the constituent assembly, in a chamber of the parliament and in the federal legislation procedure.

Can autonomies be established within federal systems? Yes. Some federal systems, like those of Canada, India and Belgium, have established special forms of regional autonomy due to the particular ethnic character of those regions. Canada, for the sake of accommodating

specific ethno-political issues, has incorporated three forms of self-government: symmetrical federalism for most of its provinces, an asymmetrical federal status for Québec, special territorial autonomy for Nunavut and reservations for its indigenous peoples. The federal state of Belgium has established a territorial autonomy for the German Community within the region of Wallonia. India has a range of autonomous bodies inside the member states endowed with mostly administrative and financial autonomy and sometimes a modest amount of legislative autonomy. Even Bosnia-Herzegovina has a territory with a special regime (the city of Brcko).<sup>38</sup>

### c) Autonomy and asymmetrical federations<sup>39</sup>

Asymmetrical federations<sup>40</sup> are federations attributing different degrees of power to different subjects of member entities. This is the case in Russia and partially in India, although various constituent entities of Russia carry the attribute 'autonomous'. A case sui generis is Spain, which might be considered a disguised federation as the whole state, in fact, is organized on federal principles (upper house as a representation of the autonomous communities, all regions vested with autonomy, which is even enshrined in the constitution as a general right). But Spain refrained from adopting the term 'federation', preferring 'state of autonomies' (or autonomous communities). Spain is a state based on autonomy as the chief principle of the entire state architecture.

On the other hand, the Russian Federation is by fact and self-definition a federal system based on six different kinds of federated subjects, some of them called 'autonomous' (autonomous republic, autonomous region, autonomous oblast, etc.). Russia not only grants autonomy to some of its component units, but allows a differentiated degree of autonomy

<sup>38</sup> 'Added to these broad categories of self-government Those systems are variations in the detailed arrangement in each category, such as the division of powers between different layers of government, structures of government, the relationship between these structures at different levels, and the distribution of financial and other resources', Yash Ghai, 2000, p.488.

<sup>39</sup> The concept is extensively explained in: Francesco Palermo/Carolin Zwillig/Karl Kössler, *Asymmetries in Constitutional Law – recent Developments and Regional Systems*, EURAC Research, Bozen/Bolzano, 2009; and in: Palermo/Hrbek/Zwillig/Alber (2007), *Auf dem Weg zum asymmetrischen Föderalismus?*, NOMOS, Baden-Baden

<sup>40</sup> John McGarry (2005), *Asymmetrical Federalism and the Plurinational State*, Brussels; and also Donna Bahry (February 2000), 'Rethinking Asymmetrical Federalism', paper for the conference 'Future of Russian Federalism: Political and Ethnic Factors', at [[http://federalmcart.ksu.ru/conference/konfer1/bari\\_eng.htm](http://federalmcart.ksu.ru/conference/konfer1/bari_eng.htm)]

of the single constituent unit and the Federation. For that reason, Russia and Spain are two 'front-line cases' of autonomy and federal systems. The Russian Federation brought the feature of asymmetry to its most advanced degree, whereas Spain, starting from its historical autonomies created in the 1930s before the centralist Franco era (Catalonia, Galicia and the Basque Country), stretched territorial autonomy to embrace all 17 regions, yet still in an asymmetrical pattern, as every region may adopt its own statute with its own degree of autonomy.

Besides those cases of overlapping systems, nearly every working autonomy operates in a unitary state, and few federal systems have established special forms of territorial autonomy catering to special situations and requirements. The United States and Canada are symmetrical federal states with special forms of autonomy for single units (Nunavut and Quebec in Canada; the associated states or 'commonwealth' with the United States)<sup>41</sup>.

Hence, to sum up the difference between autonomy and asymmetrical federalism, federalism is a system in which all regions have equal power, with some exceptions whenever the level of self-governance ensured by the powers of an ordinary federated unit may not be sufficient to accommodate the peculiar needs of a peculiar community which require a major measure of self-government. Federal systems with one or more regions vested with special powers are defined as 'asymmetrical federal systems', or are labelled as 'federal systems with some forms of territorial autonomy'.<sup>42</sup>

On the other hand, federalism may seem unnecessary if there is just one region or one national minority to be accommodated with special rights and institutional arrangements.<sup>43</sup> But the basic point of distinction is that in a federal state, the equality of the constituent units is a predominant feature of the state structure, while in a state with one or more autonomous entities it is not.

On the other hand, autonomy does not entail the institutionalized cooperation of all constituent units

in central affairs as does a federation. Autonomy is often granted and guaranteed by a treaty under international or national law (constitution or state law). Without a treaty, autonomy depends on the sovereign decision of the component state organs: thus, the granting or withdrawal of autonomy is not a problem of international law. 'The essential element of autonomy is the granting of certain rights to a specific part of the State population, in view of its characteristics which differ from the majority of the population. In democratic societies, the majority hardly needs protection because it has the power to determine the law. Linguistic, cultural and ethnic minorities are the prototypes of entities in need of protection. In order to preserve their culture, their language or their religion, they are interested in having their own schools, other cultural institutions, and so on. They are interested in excluding State and majority interference as far as their specific background traditions and way of life are concerned. Because a certain group is, and feels, different from the majority of the population, it longs for different rights. This seems to be the central element of territorial political autonomy.'<sup>44</sup>

Combinations of federalism and autonomy are possible and discernible. Democratic majority rule, in order to grant a certain amount of self-determination, has to be limited/restricted to one area, where the minority is living. The different legal and political forms of federalism and autonomy sometimes blend into one another, and delimitation becomes blurred: 'The choice of labels is not important for purposes of negotiations, and some deliberate fudging may indeed be beneficial, especially when constitutions seem to prohibit some option as in Romania, Turkey, Sri Lanka, Pakistan and Iran.' But federalism, like autonomy, is not a 'tool for all times and all places'.<sup>45</sup>

#### d) Autonomy and micro-states

In some publications,<sup>46</sup> micro-states such as Andorra, San Marino, Liechtenstein, Monaco and the Vatican are considered along with territorial autonomies. Although some of the existing micro-states have legally transferred some powers to major neighbour states, this has been done by virtue of the decision of a sovereign state. Micro-states are, by their juridical

41 In this textbook both 'associated states' with the USA (Puerto Rico and the Marianas) are classified as working autonomies, as only the right to democratic representation in the federal parliament is missing and could be established at any time.

42 Rudolf Bernhardt (1981), 'Autonomy and Federalism', in Yoram Dinstein (ed.), *Models of Autonomy*, Tel Aviv, p.25.

43 With regional autonomy, special powers are devolved to one or more regions, where these powers are exercised by democratic institutions. This form of autonomy by its nature is asymmetrical. See Yash Ghai (ed.), *International Conflict Resolution After the Cold War*, The National Academics Press, 2000, at [<http://darwin.nap.edu/books/0309070279/html/483.html>]

44 Ruth Lapidot, 2001, p.26.

45 See Rudolf Bernhardt, 'Autonomy and Federalism', in Yoram Dinstein (ed.), *Models of Autonomy*, Tel Aviv, 1981, pp.23-8.

46 See Tibet Justice Centre at: [<http://www.tpprc.org/scripts/conceptofautonomy.aspx>]; also Hurst Hannum (1996), op. cit., p. 10

nature, sovereign states and members of the UN;<sup>47</sup> autonomous entities are not.

#### e) Autonomy and reservations

A reservation is generally a form of self-governance of a smaller people within a given territory, with a separate 'citizenship' of its inhabitants as legal members of the titular ethnic group of the reserve. One distinctive feature of a political territorial autonomy arrangement is its democratic representation within the national parliament of the state to which it belongs. This criterion marks the difference between autonomous regions and reservations for indigenous peoples. In addition, reservations have separate rules referring to the right of access to the entity. This distinction will be dealt with more extensively in Part 4.3.

### The main features of a modern federal state at a glance

- 1) A constitutionally entrenched distribution of powers between the central state and the component units. The federal legislature and central authorities have enumerated powers. They possess legislative powers on functions enumerated by the Constitution.
- 2) The legal equality of these units: all of them have more or less identical powers and institutional stance in the federal structure.
- 3) A governmental structure in all the component units with governments and legislatures of their own (very often also with their own constitutions or statutes).
- 4) The participation of the component units in the handling of federal affairs in a particular institutional way (second chamber elected in different procedure as the first chamber).
- 5) The equality of all citizens in federal elections and in other federal affairs.

In the classic federal state, the single component units were endowed with proper statehood, in the sense that they were given they right to secession. The federal character (foedus treaty) of the state's nature

<sup>47</sup> In their article on 'Lilliput Under Threat', Sutton and Payne define smallness as states with less than 1 million inhabitants; see P. Sutton and A. Payne, 'Lilliput Under Threat: The Security Problem of Small Islands and Enclave Developing States', *XLI:4 Political Studies* (1993), pp.579-593. Bartmann in his study on the "Micro-State Experience" uses the same definition of a micro-state (see B. Bartmann, *The Micro-state Experience: Very Small States in the International System* (2000), at [http://www.fo-dk.dk/Baggrund\(microstate\\_experience.htm](http://www.fo-dk.dk/Baggrund(microstate_experience.htm)). The number of such states from that definition would be in 2008 of 46, 31 of which are island states. All member states of the UN are listed on: [<http://ediplomat.com>]

entailed the right to withdraw from the treaty. Today, in most federal states this right is no longer enshrined in the respective constitutions. In most if not all of the federal states, the constituent units are equal insofar as they all have the same competencies (symmetrical power-sharing). But deviations from the classic pattern can be found.

In 'asymmetrical federalist states', some units enjoy a higher degree of power, others a lower degree. 'In nearly all federal states the federal parliament is composed of two chambers. One of them represents the composing units and/or their citizens. The Senate of the United States and that of Canada, the Nationalrat in Switzerland, and the Bundesrat in Austria and Germany represent the component units. The members of some of these chambers are elected by popular vote; in other cases the federated unit's assembly appoints them. Very often, all the component units have the same number of seats irrespective of the size and the number of citizens in the several states. The federal structure is always decisive for the composition and powers of this chamber.'<sup>1</sup> „Ideal-type federalism is based on a non-centralised or poly-centred structure in which there is no clearly defined hierarchy between the federal unity and the centre. In short, territorial autonomies rely on 'guarantees from above' while federal systems are often based on 'guarantees from below'."<sup>2</sup>

#### f) Autonomy and dependent territories

Dependent areas are territories that do not possess full political independence or sovereignty as states. There are varying degrees and forms of such dependence. They are commonly distinguished from subnational entities in that they are not considered to be part of the motherland or mainland of the governing state, and in most cases they also represent a different order of separation. A subnational entity typically represents a division of the country proper, while a dependent territory might be an overseas territory that enjoys a greater degree of autonomy. For instance, many of them have a more or less separate legal system from the governing body. The areas separately referred to as non-independent are territories that are disputed, are occupied, have a government in exile or have a non-negligible independence movement.<sup>48</sup>

<sup>48</sup> All the present dependent territories are listed in the Appendix, Part 5.

g) Autonomy and administrative decentralization

The mere transfer of administrative powers to regional bodies reduces the 'self-government agencies' to a sort of peripheral branch of the state administration, subordinated to carry out decisions taken at the centre.<sup>49</sup> For this reason, Corsica, for example, does not qualify as an autonomous region, since its regional assembly may only propose legislative acts to the French government in Paris. The same applies to the island of Rodrigues, which is a part of the democratic state of Mauritius, with Oecussi Ambeno of Timor Leste and Tobago in the state of Trinidad and Tobago. A real autonomy must comprise the right to set out its own laws, in both forms, as exclusive domain or as a concurrent domain within a framework of setting and limiting the powers of the central state. Otherwise there is nothing more than decentralization of administrative or executive functions. Conversely, Italy's 'ordinary regions' are endowed with a legislative council and legislative powers, and thus form the principal second tier of the regionalist structure of the Italian state.<sup>50</sup>

e) Autonomies and regional democracies

The concept of regionalism appears a more vague concept as it is used for different forms of territorial power sharing below the level of federalism. On the one hand regionalism shares some features with federalism (e.g. it covers the entire state's territory), on the other hand, in legal terms, it accords a weaker position to the sub-state entities (regions). The region's legislative powers are normally more limited in depth and scope, and the regions lack the power of framing their constitutions, while the national parliament retains the power to legislate on the power sharing as such. In other terms: the regions of a regionalist system do not participate directly to the national decision making in framing ordinary and constitutional acts and thus have no "competence-competence".<sup>51</sup>

Nevertheless, the regional legislative power in regionalist systems is based on a concept of popular

democratic sovereignty of a regional community. This community mostly derives from a common territory, a shared history and some typical cultural characteristics, in some cases also from ethnic or linguistic criteria or the self-perception as a specific community. This regional community as a part of the national electorate participates to the democratic life of the state, but at the same time acts as a regional community of resident citizens who vote for regional representations and determine the regional politics. Only in a few exceptions also forms of "regional citizenship" have been established, linked mainly to the origin of the family, the duration of residency and the knowledge of the local language.

In regionalist states as Spain and Italy the specific identity of the component entities is recognised by the Constitution, which in a generally symmetrical way are all accorded legislative and executive powers. As federal states, regionalist states can be symmetrical or asymmetrical. Consequently, such regions vested with legislative powers are also defined as "constitutional regions".<sup>52</sup> The power to attribute powers, however, is retained by the national or central parliament. In such states, nothing prevents the state parliaments to establish a "second chamber in representation of the constituent regions", in charge of acting at the same level as the first, directly elected chamber, and participating to national decision making. In this case, definitely the opaque limits to federalism are trespassed. A reduction of the regional powers in a regionalist state appears compatible, as long as the essence of the legislative function of the regions is safeguarded.

"The theoretical concept of the regional legislative power originates from the merger of the democratic and federal idea: legislative power is conceived as the deepest expression of the original independence,"<sup>53</sup> states Anna Gamper, "of the regional demos, which in the form of regional constituent power mirrors the principle of popular sovereignty. This principle, ultimately, requires that the constituent power is vested in the people."<sup>54</sup> This argumentation is very relevant for the definition of territorial autonomy in a double sense. First, the permanent devolution of legislative powers to democratically elected institutions of a region (or sub-state entity) must not be restricted to one or some few regions, but can be extended to the entire territory of

<sup>49</sup> See also Council of Europe, 'Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe' (rapporteur: Andi Gross), DOC 9824, 3 June 2003, part VI.iii and iv, [<http://www.coe.int/>].

<sup>50</sup> The issue of "autonomy-like arrangements of territorial power sharing" is dealt with in chapter 4.6.

<sup>51</sup> The term denotes the power to determine the pattern of power sharing. On the whole following concepts see Anna Gamper (2004), *Die Regionen mit Gesetzgebungshoheit*, Europ-Verlag der Wissenschaften, Frankfurt, p.88-90

<sup>52</sup> Anna Gamper (2004), op. cit., p. 88

<sup>53</sup> Anna Gamper uses the German term 'Unabgeleitetheit', which can not be translated in English.

<sup>54</sup> Anna Gamper (2004), op. cit., p. 90 (translation by the author)

the state. The classical example for such a process is Spain, which has recognised the right to autonomy of each constituent region (comunidades autonomas). Second, the distinction between an autonomous entity and a member region of a regional state becomes quite sophisticated even in constitutional terms. In Italy all regions enjoy a minimum level of legislative autonomy,<sup>55</sup> but five of them have been established as “regions with a special statute”, whose statutes are entrenched in the Constitution. Whenever territorial autonomy becomes the core principle of territorial power sharing of the state, autonomy ceases to be a special formula to settle special regional requirements. For the time being such cases are rare exceptions, while territorial autonomy remains a specific solution for specific situations. To conclude: special territorial autonomy normally is established in centralist states to accommodate special territories, but it co-exists also in federal systems (India, Canada, Belgium) and in regionalist states (Italy, Indonesia) and it can develop to shape the whole state’s architecture (Spain).

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<sup>55</sup> The level of their legislative powers exceed the powers of some special autonomous regions in other states, “recognized” in this text as territorial autonomy.

## 2.3 The history of political autonomy<sup>56</sup>

If we accept a definition of political autonomy according to the criteria indicated in Section 2.2 (democracy, rule of law, minimum legislative and executive powers, de jure and de facto autonomy, neither a sovereign state nor a dependent territory or associated state), the history of autonomy does not begin before the twentieth century. But in Europe, since the sixteenth century some forms of autonomy of religious communities have been sanctioned for different minorities such as the Protestants in Catholic regions, Jews in various countries, Muslims in Christian areas, Catholic and Orthodox Christians as well as Jews in the Ottoman-Muslim areas. This latter system of religious and cultural autonomy, called the Millet-system, was employed during the Ottoman Empire until 1918.

The Millet system of Turkey developed since the 13<sup>th</sup> century as a non-territorial form of organization granting public authority to religious groups living as dispersed minorities among the Sunni Muslim population of Turkey. By the end of the 19<sup>th</sup> century, close to 20 Millets existed. Under this system, Jews and Christians were allowed to maintain their own laws and customs in the personal realm, run family matters, operate their own courts, run their schools and impose taxes on their own members. Millet-type forms of organization can at least in some form still today be found in, e.g., Jordan, Lebanon, Israel and Egypt.<sup>57</sup> The abolition of the Millet-system and the increasing repression of ethnic and religious minorities added substantially to the resistance of the local peoples of the Balkans against the new rulers.

A general trend regarding the issue of self-determination and autonomy can be traced back to the period after the First World War. The League of Nations paid attention to autonomy issues in three distinctive ways. First, new countries were established as a result of the

war; second, colonies which belonged to the defeated powers were taken over by the victorious powers and were organized under a special commission systems; third, in over 20 countries of the peace treaties, arrangements for protection of minorities as well as autonomies were reinforced.<sup>58</sup>

In this period between the world wars, autonomy was established in some cases to contain political conflicts provoked by territorial readjustments after World War I. Certain national minorities in Central and Eastern Europe were accorded territorial autonomy by the victorious powers of World War I as a viable substitute for self-determination, including the Free City of Danzig, the Saarland (from 1920 to 1935) and the Memel-Klaipeda territory.<sup>59</sup> But on the whole, the solutions applied were defective and their inadequacies provided a pretext for aggressive nationalist neighbours or kin-states such as Nazi Germany to build up irredentist threats and expansionist moves. Even the role of the League of Nations was considered a failure in this regard.

The post-World War II atmosphere of the Cold War provided an unfavourable environment for a broad political discussion of autonomy. Although the right of all peoples to self-determination had been enshrined as a fundamental principle of international law in the UN Charter of 10 December 1948 and in the International Covenant of Civil and Political Rights and Freedoms (ICCPR) of 1966, its application was limited to peoples colonized by the classic colonial powers. Thus, new forms of colonialism exercised by newly independent developing countries were disregarded.

On the other hand, national minorities and indigenous peoples within independent states could neither claim to be beneficiaries nor be legally entitled to the right to self-determination. Autonomy as a group right in Europe was perceived rather as a threat to existing states, most of which were based on a historical background of a 'nation-state' (with certain exceptions, like Switzerland, Belgium and most recently Bosnia-Herzegovina). In the presence of more than a hundred national minorities in Europe, a collective right to autonomy was not seen as a substitute for full statehood or a tool for 'internal self-determination', but as an invitation to break up the existing state

<sup>56</sup> For this issue, see Markku Suksi (ed.) (1998), *Autonomy: Applications and Implications*, Kluwer Law International, The Hague; Zelim Skurbaty (ed.) (2005), *Beyond a one-dimensional state*, Leiden; Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States*, Hong Kong, 2000; Ruth Lapidoth (1997), *Autonomy: Flexible Solutions for Ethnic Conflicts*, Washington, Part III-7 and III-8; Hurst Hannum (1996), *Autonomy, Sovereignty and Self-determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia.

<sup>57</sup> André Legaré/Markku Suksi (2008), op. cit., p. 145

<sup>58</sup> Lauri Hannikainen (1998), 'Self-Determination and Autonomy in International Law' in Markku Suksi (ed.), *Autonomy: Application and Implications*, op. cit., p. 79

<sup>59</sup> Ruth Lapidoth (1997), *Autonomy*, op. cit., pp.77–84; Hurst Hannum (1996), *Autonomy, Sovereignty and Self-determination*, op. cit., pp.370–406.

structures. Hence, state elites regarded this concept with deep suspicion.<sup>60</sup>

The only experience with territorial autonomy in Africa after de-colonization was the arrangement established between Ethiopia and Eritrea by a UN General Assembly resolution, which lasted from 1952 to 1962 and failed miserably, collapsing into three decades of armed resistance in Eritrea. In another case, the first autonomy of South Sudan, established in 1972, existed only on paper, and its failure triggered two decades of war in 1983. A form of autonomy, based on a detailed peace agreement stipulated in 2005, has been established in 2006 as a transitional device in order to prepare the South for independence not before a referendum to be held in 2011. On the other hand the partnership established in 1964 between Tanganyika and Zanzibar has proved that in Africa autonomy solutions can also be successful and stable.

Asia's experiences with autonomy are contradictory. Iraqi Kurdistan's autonomy, introduced in 1970, was smashed just four years later by the Saddam Hussein regime. Territorial autonomy obtained a breakthrough in 1948, when, after the bloody partition wars in South Asia, Jammu and Kashmir gained a status of full autonomy in both states, Pakistan and India. Later on both sides of the 'Line of Control' both autonomy and democracy were trimmed along the interests of full political control of the respective central states. Later territorial autonomy gained momentum in India as a concept for sub-state democratization. In Bangladesh, autonomy for the indigenous peoples of the Eastern hills turned out to be a bitter illusion. In the Philippines and in Indonesia, only in the 1990s was territorial autonomy seriously considered to solve long-lasting violent conflicts with minority peoples in Mindanao and Aceh. A separate case of territorial autonomy is to be found in China, which has to be considered and evaluated in different terms due to the special character of that state.

In America – or 'Abya Yala' (the bloody continent) as Panama's Kuna have named the continent – the concept and practice of autonomy is strictly linked to the history of subjugation and forced assimilation of the indigenous peoples. Whereas Latin America's colonizers choose the strategy of mixing up the European cultures of the intruders with the indigenous cultures in the ongoing process of *mestización*, the peoples of North America

were either eliminated or confined to live in reserves set up in the most inhospitable parts of North America. Territorial autonomy as applied in Nunavut, in the Comarca Kuna Yala and in Nicaragua's Atlantic region only recently came up as a more decent strategy to respect the fundamental rights of the Amerindian peoples.

Apart from these rather few cases in Africa, America and Asia, however, the path of political autonomy was first embarked upon in Europe. The old continent, as well as Africa and Asia in particular, presents a complex mosaic of ethnic, cultural, and linguistic variety, with many different kinds of national minorities with different aspirations. Many of them were facing serious difficulties to survive as a cultural group with a distinct collective identity. A general political approach to accommodate all their claims was not conceivable at that time, but many conflicts could have been solved with a clear entrenchment of minority rights and autonomy concepts in international law.

Nevertheless, in the post-World War II era some states in Western and Northern Europe found their way to a politics of recognition and protection of national minorities through constitutional arrangements and special national laws. A growing trend of general decentralization or regionalisation (Italy, France and Spain) and devolution (Great Britain) encouraged this process towards autonomy. Special forms of autonomy were established in Italy and Denmark, apart from Europe's oldest working autonomy, the Åland Islands in Finland. Belgium offers an example how a previously unitary and centralized state transformed gradually into a federal state providing full cultural autonomy to the three historical ethnic communities: the Flemish (Dutch speaking), the Wallons (French-speaking) and the German speaking minority in the East along the border with Germany.<sup>61</sup>

Aiming to accommodate the strong political aspiration of their historical smaller nations Spain recognized the 'right to autonomy of the nationalities and regions which make up the Spanish state' in its 1978 constitution (Article 2). Hence, in the last few decades Spain has transformed from a highly centralized state under the Franco regime into a nearly federalist state today. This prevented the country from sliding into an

<sup>61</sup> Bruno de Witte (2004), 'Regional autonomy, cultural diversity and European integration: the experience of Spain and Belgium', in: Ortino, Zagar and Mastny (eds.), *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West*, Manchester, at: [\[http://www.eurac.edu/Press/Publications/Monographs/0049635.htm\]](http://www.eurac.edu/Press/Publications/Monographs/0049635.htm).

<sup>60</sup> A quantitative overview on the ethnic variety of Europe is given in: Christoph Pan and Beate S Pfeil, *National Minorities in Europe: Handbook*, Braumüller ETHNOS, Vienna, 2003.

escalation of secessionist conflict, in particular with Catalonia and the Basque Country.<sup>62</sup>

In Great Britain, Northern Ireland had to wait until 1998 to find a viable, internationally approved solution based on the devolution of most governmental powers to an assembly and a government in Belfast, whose work had barely taken off. This reflects the problems of a deeply divided and highly segregated society with a history of discrimination, deprivation and exclusion of one community – the Catholics – from political power.

In France, the claims of various national minorities such as the Corsicans, the Bretons, the Basques and the Alsatians to be granted at least cultural autonomy were stubbornly rejected on the grounds that the French recognize no national communities other than the French. Italy, in 1948 constituted as a 'regionalist state', also established five autonomous regions for historical and ethnic reasons, catering either to the respective national minorities (Aosta, South Tyrol, Sardinia, Friuli-Venezia Giulia) or a strong regionalist movement (Sicily). Nevertheless, it took almost 20 years to implement this complex structure, which since the 1970s has produced positive results.

The minority question in Europe gained significant momentum during the 1990s, in the aftermath of the break-up of the former Yugoslavia. The subsequent series of secessions and violent rebellions of ethnic minorities provoked military repression and ethnic cleansing in four countries (Croatia, Bosnia-Herzegovina, Kosovo, Macedonia) claiming over 200,000 lives, while over two million people were temporarily or definitely displaced.

The repression and persecution of ethnic-linguistic minorities in many parts of Eastern Europe has challenged the existing mechanisms of their recognition and protection. In the states of the former Eastern bloc, the resurgence of nationalism and xenophobia has threatened the very cultural existence of many national minorities leading to violent reactions (Moldova, Georgia, Azerbaijan, Macedonia and in the Russian Caucasus). Finally, redrawing Europe's state boundaries has not produced national homogeneity within the new states, but virtually all of the 28 states of Central and Eastern Europe contain a significant number of ethnic or linguistic minorities. It is against this background that autonomy is actually considered

of utmost importance by both states and minority representatives.

It should be acknowledged, however, that some experiences of autonomy and consociational arrangements in Europe bitterly failed. Cyprus and Kosovo reflect the cases of deeply divided societies with a history of discrimination and persecution of the respective ethnic minority, the Albanians in Kosovo and the Turks in Cyprus. In the latter case, in 1974 Turkey intervened militarily to protect the Turkish population, and the island was divided in two ethnically homogeneous parts to the North and South. There has not been any attempt to solve the crisis through an effective autonomy regulation, but only through half-hearted anti-discrimination provisions. In Cyprus, neither a possible territorial or cultural autonomy nor a combination of the two has been given any chance.

In Kosovo in the same year, a radical reform of the autonomy was launched (in force since 1948 in this region inhabited by a 90 per cent majority of ethnic Albanians), putting the Kosovars on a near-equal footing with the other constituent peoples of Yugoslavia. The multicultural region of Vojvodina in the north of Serbia enjoyed a similar extent of autonomy in the framework of the socialist and federalist architecture of ex-Yugoslavia. But in 1989, while the rest of Eastern Europe celebrated the transition to democracy and freedom from dependency on the Soviet power, Milosevic's Serbia turned into an oppressive nationalist regime, starting with the abolishment of Kosovo's autonomy. It is not autonomy as such that failed in Kosovo, but the policy of nationalist denial of fundamental rights to smaller nations inhabiting a part of the state's territory. Subsequently, the whole Titoist construction of a brotherhood of socialist nations collapsed in a bloody mess, culminating in the wars of Bosnia (1992-5) and Kosovo (1998-9).<sup>63</sup>

Again, it was the abolition of the autonomy previously enjoyed in a different context (Soviet Union) that triggered the rebellion of two regions in Georgia (Abkhazia and South Ossetia). The bloody repression of a small Caucasian people, the Chechens' claim for self-determination and separation by Moscow since 1994, the secessionist breakaway of other smaller, ethnically distinct regions in Eastern Europe like Transdniestria (Moldova) and Nagorni Karabagh (formerly Azerbaijan) and the brief armed rebellion of

<sup>62</sup> All constitutions of the world are to be found at: [<http://nhm-ced.cc.tx.us/contracts/lrc/kc/constitutions-subject.html>] (supported by the Kingwood College Library).

<sup>63</sup> The case of Kosovo has been elaborated also by the author of this text. See, Thomas Benedikter (1998), *Il dramma del Kosovo*, Datanews Rome

Macedonia's Albanians in 2001 have demonstrated the inadequacy of existing mechanisms of power-sharing and minority protection.

Notwithstanding the high degree of sensitivity with regard to autonomy in whatever form remains strong in quite a few member states of the Council of Europe. There is widespread fear of the suspected spiral of 'cultural autonomy, self-government, secession'. It remains to be seen, in light of the working historical and newly established autonomies, whether this concept in Europe has indeed generated secessionism, or, on the contrary, has accommodated the legitimate claims and interests of national minorities within existing state boundaries. In this sense, international law, far from finished with the topic of minority rights, has to face the challenge of developing the internal aspect of self-determination, which, based on democratic representation and the rule of law, creates a political and legal space of 'internal self-determination', confined to a territory and many important aspects of life. This more conciliatory approach to national minorities' claims is enforced by an ever tighter cooperation among international organizations or supranational institutions in Europe. State majorities are becoming increasingly aware that autonomy is in their own interest if peace and fundamental rights are to be preserved.

When considering the genesis of the working autonomies in existence today, at least four situations can be observed which enhanced the establishment of autonomy.<sup>64</sup>

First, when the state itself underwent a general transformation as happened in Spain after the end of the Franco regime in 1975, in the Philippines after the overthrow of the Marcos dictatorship in 1985, in Moldova and the Ukraine after the dissolution of the Soviet empire in 1991, or in Italy and Portugal, when dictatorial and centralist regimes in 1948 and 1974 were replaced by democratic and regionalist structures. The same happened, albeit in a more troubled manner, in Nicaragua, when the Somoza regime ended in 1979.

A second case is the granting of autonomy in a process of de-colonization when full independence is either not wished by the concerned population or their community is restrained from having the capacity for full statehood. This occurred in Greenland, Nunavut

and Panama's Comarca Kuna Yala, but also in the Netherlands Antilles, in New Caledonia and French Polynesia.

Third, in some cases autonomy has been granted on the basis of mutual understanding between the state and the region in question in combination with the pressure from a kin-state (South Tyrol, Åland Islands, Crimea).

Fourth, autonomy has needed to be granted after harsh disputes and conflicts, sometimes escalating into violent conflict: Aceh's conflict with centralist Indonesia lasted from 1976 to 2005, Mindanao was at guerrilla war with Manila since 1969, and South Sudan from 1983 to 2002. There were four years of fighting in the Atlantic Coast of Nicaragua connected with the anti-Sandinist Contra. Violence reigned in Bougainville from 1989 to 2001 and from 1985 to 1998 in New Caledonia. In Europe, violence has afflicted the Basque Country (900 victims between 1969 and 2003), Northern Ireland (about 3,000 victims from 1972 to 2005) and Corsica since the 1970s (where violence continues). But in many cases, such struggles are still going on.<sup>65</sup>

Hence, in a historical perspective, territorial autonomy has been arranged primarily to settle conflict between central states and minority peoples or national minorities. But beyond this main cause, two broader trends have enhanced autonomy and devolution, one of political and another of societal character. The spread of democratization since the early 1970s and again in the 1990s has prompted increased concern with popular representation and participation, and this factor, in turn, has heightened the role of regional and local governments. The expansion of democracy at the subnational level has also come to be seen as a potential counterweight to the re-emergence of authoritarianism.

A broader societal change pushing for decentralization has been evident in most regions of the world during the last few decades. Beyond the growing conscience of ethnic and communal identity (making cultural preservation, language and territorial autonomy much more salient), a parallel need for 'regional homelands'<sup>66</sup> has emerged in the globalizing world. The appeal of

<sup>65</sup> For the ongoing wars in 2009 see: [[http://en.wikipedia.org/wiki/Ongoing\\_wars](http://en.wikipedia.org/wiki/Ongoing_wars)].

<sup>66</sup> The term has to be interpreted not in a historical sense referring to South Africa, but rather in the meaning of the German concept of '*Heimat*', which is not properly translatable.

<sup>64</sup> Ruth Lapidot (2001), 'Elements of Stable Autonomy Solutions', CAP Papers, Munich, p.12.

centralized collective organizations such as national political parties and trade unions has diminished over time, while the role of the regional and local groups has increased. As a result, people are less likely to see themselves as part of a large centralized organization, and more likely to identify with local communities - what Michael Keating (1999) calls a 're-territorialization' of politics, moving the focus of responsibility for policies from the central to the regional and local level<sup>67</sup>. While the role of transnational ties has increased, the influence of subnational governments has also been heightened.

Nevertheless, as far as the international legal basis for collective rights of national minorities and minority peoples (including indigenous peoples) is concerned, far less progress has been made since the approval of the UN Declaration on minority rights in December 1992. Although in Europe some instruments of minority protection have brought about a widespread recognition and protection of minority rights by national parliaments, timid efforts to entrench an international right to territorial self-governance and autonomy have been immediately blocked, and even the most enlightened Central European states are reluctant to give in on this issue. The acknowledgement of the potential conciliatory and stabilizing power of territorial autonomy has yet to gain a foothold.

## 2.4 The legal basis of autonomy

### 2.4.1 General remarks

Generally, under international and constitutional law of the states, which are party to the most relevant international covenants on human rights, discrimination against a person on grounds of religious, ethnic, cultural or linguistic affiliation or gender is prohibited. Most often, in Europe a person is discriminated against as a member of a specific ethnic or linguistic group rather than – compared with Asia – based on features of religion or caste. Hence, a member of a national minority who feels discriminated against can evoke his or her right to be protected against discrimination. But granting only normal equality regarding individual rights is not sufficient, because minorities suffer a structural disadvantage vis-à-vis the state's titular nations or dominant groups. The state has to grant effective equality and set forth positive measures to preserve and promote minority cultures and group rights. However, it has been widely acknowledged that minority protection based on a pure individual human and civil rights approach is inadequate. Thus, „a certain degree of autonomy for minorities can indeed be linked to the demands of the equality principle since such internal self-determination might be essential to put members of minorities on an equal footing with the rest of the population.“<sup>68</sup> Similarly, the right to self-determination is to provide every people with the possibility to live under those political, social and cultural conditions that correspond best with its characteristic singularity, and above all to protect and develop its own identity.<sup>69</sup>

National minorities can only enjoy their rights if the state, with its public institutions and services, actively intervenes. An ethnic community needs a particular legal and political framework if equal rights with the members of the national majority are to be ensured in every field of life. In that institutional framework – geographically limited to an autonomous area inhabited by the bulk of a national minority's population – the minority can assume responsibility for its own cultural survival and development, as well as for the territorial community as a whole. Moreover, regarding political

participation, some special devices are needed to put minorities and the majority on an equal footing.

In terms of international law, a collective right means that a group is subject of the right: thus, a minority as a whole is entitled to rights, not just its individual members. Group rights are more than the simple sum of individual rights. Apart from the fundamental scope of minority protection – to grant them all human and civil rights as the majority members enjoy – three more scopes are linked to minority protection: the prevention of conflict, the preservation of group identity and the cultural exchange and mutual enrichment process among groups living together.

The classic protection of minorities is an example of the combination of individual and group rights. A member of a national minority can keep his identity only if his group has the possibility to exist and develop. On the other hand, collective rights integrate individual rights and grant their comprehensive protection. The concept of collective rights ever since has been often disputed. The UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities of 18 December 1992, n.47/135<sup>70</sup> testifies to this. Although still not enshrined explicitly in any international covenant of minority protection, the international community is slowly beginning to recognize the need for collective minority rights.

Today, the bulk of minority rights applied by states or state-entities take the form of constitutional, national or regional acts or regulations, in accordance with the international conventions, charters or bilateral treaties. This complex corpus of minority rights<sup>71</sup> was essential to provide for the recognition of ethnic or national minorities and the enhancement of their collective identity. On the other hand, these general acts of national or regional law could not or did not fully complying with another need and claim of national minorities: that of self-government in their own territory. It cannot be denied that the question of identity is strictly linked to a territory that has been

<sup>70</sup> The text can be found at:

[http://www.unhcr.ch/html/menu3/b/d\\_minori.htm](http://www.unhcr.ch/html/menu3/b/d_minori.htm)

<sup>71</sup> Regarding Europe there are scores of websites on the matter to be consulted in this regard. Some of the most important are: ,The minority rights system MIRIS of the European Academy of Bozen at:

[\[http://www.eurac.edu/miris\]](http://www.eurac.edu/miris); the European Bureau for lesser used languages: [\[http://www.eblul.org\]](http://www.eblul.org); the Council of Europe:

[\[http://www.coe.int/T/E/human\\_rights/minorities\]](http://www.coe.int/T/E/human_rights/minorities); the MERCATOR minority language centre:

[\[http://www.ciemen.org/mercator\]](http://www.ciemen.org/mercator); the European Centre for Minority Rights in Flensburg (Germany): [\[http://www.ecmi.org\]](http://www.ecmi.org).

<sup>68</sup> Kristin Henrard (2004), *Relating Human Rights, Minority Rights and Self-Determination to Minority Protection*, in: Schneckener/Wolff, *Managing and Settling Ethnic Conflicts*, London, p. 52

<sup>69</sup> D. Murswick (1993), *The Issue of A Right of Secession Reconsidered*, in C. Tomuschat (ed.) *Modern Law of Self-Determination*, Dordrecht: Martinus Nijhoff, p.38

inhabited by national minorities as a homogeneous group since ancient times. Keeping the question of personal or cultural autonomy separate, the protection of a minority is best implemented in a precise geographical and cultural space. Differing from the issue of the 'new minorities' of migrant workers and families, the traditional ethnic or national minority issue all over the world is linked to the geographical region in which a group with a collective identity is settling, which has become a part of states with a different ethnic-cultural majority. This is the very origin of the idea of territorial autonomy.

But no international convention accords ethnic or national minorities such a 'right to autonomy' or a 'right to internal self-determination'. Only in September 2007, instead of a Charter the UN achieved to approve the 'Declaration of the Rights of Indigenous Peoples', which recognizes in principle the right to self-determination of indigenous peoples.<sup>72</sup> Nevertheless, many states still consider political autonomy a first step towards self-determination and secession. In reality, various historical experiences of territorial autonomy in Europe have demonstrated that autonomy acted as a mechanism of conflict solution and rather prevented secessionist movements and struggles. In other terms: not the concession, but the denial of autonomy has provoked some critical escalation of minority conflicts throughout the last century, leading frequently to claims for independence, and sometimes to violent resistance (Basque Country, Northern Ireland, South Tyrol, Albanians in Macedonia, Corsica, Chittagong Hill Tracts, Aceh, Kurdistan) or secession (Albanians in Kosovo, Russians in Transdniestria, Abkhasians and Ossetians in Georgia, Turks in Cyprus, Bougainville in Papua New Guinea).<sup>73</sup>

In the absence of any 'right to autonomy' or 'duty to grant autonomy to national minorities' for state parties (to which we will return in the 'Outlook' in Chapter 6), what are the legal bases for territorial autonomy?

### 2.4.2 The legal bases of autonomy in international law

From the historical development of territorial autonomy, some forms of entitlements and legitimacy have

<sup>72</sup> The text of the UN-Declaration of the Rights of Indigenous Peoples 2007 can be found at: [<http://www1.umn.edu/humanrts/instreet/declra.htm>]. and at: <http://www.iwgia.org/sw248.asp>

<sup>73</sup> For this issue consider also the UNPO's 1991 Covenant of the Unrepresented Nations and Peoples Organisation, at: <http://www.unpo.org/maindocs/0710cove.htm>

emerged clearly as decisive factors for establishing an autonomy.<sup>74</sup> Legal instruments are relevant firstly for the establishment and implementation of an autonomy solution, and subsequently for the possibilities of legal or judicial remedies provided by national or international law in case of conflict and dispute. The presence or absence of entitlement to autonomy in either constitutional or national law, as well as provisions limiting its scope, can play an important role in the conduct of negotiations and for the relative bargaining position of parties, especially when there is an international or third-party mediation. Only in a few cases has autonomy been awarded due to a bilateral agreement or a decision taken by an international body. Generally the case for autonomy rests on three principal sources of international law: minority rights, indigenous peoples' rights and – more controversially – the right to self-determination.<sup>75</sup>

#### a) Minority rights

A full-blown system of minority protection is a conglomerate of rules and mechanisms that enables an effective integration of relevant population groups while allowing them to retain their separate characteristics. Such a system rest on two pillars: the prohibition of discrimination, measures designed to protect and promote the separate identity of the minority groups on the other.<sup>76</sup>

Throughout its existence, the UN has, in developing a comprehensive system of rights, emphasized individual rights and carefully avoided granting collective rights – particularly political rights – to groups. Article 27 of the International Covenant of Civil and Political Rights (ICCPR),<sup>77</sup> until recently the principal UN provision on minorities, was drafted to exclude collective rights, and has been narrowly interpreted by most states. But in recent years the UN Human Rights Committee (which supervises the implementation of the covenant) has adopted interpretations of Article 27 recognizing

<sup>74</sup> A brief, but enlightening essay is 'Autonomy and Law' by Natalia Loukacheva (2006) at: [[http://www.globalautonomy.ca/global/article.jsp?index=RA\\_Loukacheva\\_AutonomyLaw.xml](http://www.globalautonomy.ca/global/article.jsp?index=RA_Loukacheva_AutonomyLaw.xml)], Toronto

<sup>75</sup> A comprehensive reflection on the issue: Joseph Marko (1995), *Autonomie und Integration, Rechtsinstitute des Nationalitätenrechts im funktionalen Vergleich*, Böhlau Wien, in particular 'Autonomie: zur faktischen Existenz von Gruppen als Voraussetzung individueller Grundrechts-gewährleistung', p.262–96; See also the Universal Declaration of the Collective Rights of Peoples at: [[www.ciemn.org/pdf/ang.PDF](http://www.ciemn.org/pdf/ang.PDF)]

<sup>76</sup> Kristin Henrard (2004), op. cit., p.40

<sup>77</sup> The text is to be found at: <http://www2.ohchr.org/english/law/ccpr.htm>

that a measure of autonomy and group rights may be necessary for the protection of the cultural rights of minorities.<sup>78</sup> This broader approach is reflected by the Resolution n.47/135 on the Rights of the National, Ethnic, Religious and Linguistic Minorities of the UN General Assembly on 18 December 1992. Unlike the ICCPR, it places positive obligations on the state to protect the identity of minorities and encourage the creation of 'conditions for the promotion of that identity' (Article 1). Autonomy is not explicitly required as a means of protection of minorities, but the declaration lays the foundation for recognizing community rights and the importance of identity. Autonomy can be seen as an instrument for approval for ethnic or other groups to maintain their distinct identity and exercise direct control over issues particularly important for this purpose.

The principal instrument of the Council of Europe is the Framework Convention for the Protection of National Minorities (1998),<sup>79</sup> which obliges the states to facilitate the enjoyment of these rights and recognizes basic rights related to cultural and ethnic identity. There is no proclamation of a right to autonomy, but the exercise of some of these rights implies a certain measure of autonomy. This convention refers to the principle of non-discrimination (Article 4), to the right of minorities to preserve their culture, religion, language and traditions (Article 5) and their right to participate in public life (Article 15). It should be stressed that Article 21 points out that 'nothing in the present Convention shall be interpreted as implying any right to [...] perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States'. The FCNM since 1998 has come into force in 39 European states (out of 47 CoE-member states), while in four states governments had

<sup>78</sup> Still there is no canonical definition of minority. According to the Parliamentary Assembly of the Council of Europe a national minority is: a group of persons in a state who: a) reside on the territory of that state and are citizens thereof; b) maintain long-standing, firm and lasting ties with that state; c) display distinctive ethnic, cultural, religious or linguistic characteristics; d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state (recommendation 1201, article 1). The most commonly used description of a minority in a given state can be defined as a non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population and show, even implicitly, a sense of mutual solidarity focused on the preservation of their culture, traditions, religion or language. See OHCHR, Fact Sheet No. 18 (Rev.1) Minority Rights, at: <http://www.ohchr.org/english/about/publications/docs/fs18.htm>

<sup>79</sup> The text of the FCNM can be found at: [http://www.coe.int/T/E/Legal\\_Affairs/Local\\_Regional\\_Democracy/Regional\\_or\\_Minority\\_languages/Documentation/](http://www.coe.int/T/E/Legal_Affairs/Local_Regional_Democracy/Regional_or_Minority_languages/Documentation/).

put their signature, but parliaments later denied the ratification.<sup>80</sup>

The Copenhagen Declaration of 1990 and statements of principle by the Council of Europe, although not strictly binding, have been used by the Organization for Security and Cooperation in Europe's (OSCE) High Commissioner for Minorities and other mediating bodies as a basis for compromise between contending forces, and have thus influenced practice in which autonomy has been a key constituent.<sup>81</sup> The 'European Charter for Regional or Minority Languages' has been adopted as a Convention by the Committee of Ministers of the Council of Europe on 25 June 1992 and came into force on 1 March 1998 after having been ratified by the first five countries. This so-called 'Language Charter' has so far been adopted by 21 European states, but 10 governments have given their signature without a ratification following it.<sup>82</sup> There are no explicit provisions for territorial or cultural autonomy contained in the Charter, but its principles and provisions form a package which can, at optimum, be implemented in the framework of regional autonomy.<sup>83</sup>

Moreover, several initiatives have been taken in Europe - through the OSCE, the Council of Europe and the EU - to promote the concept of autonomy, although its impact so far is restricted to Europe. This is manifested both in formal declarations and interventions to solve ethnic conflicts in Europe (the Dayton Agreement for Bosnia in 1995, Rambouillet Agreement for Kosovo in 1999). Article 35 of the 'Copenhagen Declaration on Human Dimensions of the Conference on Security and Cooperation in Europe (CSCE)' of 1990 recognizes 'appropriate local or autonomous administration' as one of the possible means for the promotion of the ethnic, cultural, linguistic and religious identity of certain minorities. The Council of Europe in 2003 has approved an official report on 'Autonomy as a source

<sup>80</sup> More about in: Thomas Benedikter (ed.) (2008), *Europe's Ethnic Mosaic – A Short Guide to Minority Rights in Europe*, EURAC, Bozen, available at: [www.eurac.edu/eurasia-net](http://www.eurac.edu/eurasia-net).

<sup>81</sup> All information about the High Commissioner of National Minorities at: [www.osce.org/hcnm](http://www.osce.org/hcnm).

<sup>82</sup> See also the Council of Europe, Information Centre editing the *Minority Website*: [www.humanrights.coe.int/minorities/](http://www.humanrights.coe.int/minorities/). The Council of Europe, Periodical Report on the Implementation of the European Charter of Minority or Regional Languages at: [http://www.coe.int/T/E/Legal\\_Affairs/Local\\_Regional\\_Democracy/Regional\\_or\\_Minority\\_languages/Documentation/](http://www.coe.int/T/E/Legal_Affairs/Local_Regional_Democracy/Regional_or_Minority_languages/Documentation/); For the current ratification of this charter see: <http://www.conventions.coe.int>.

<sup>83</sup> Among the efforts for achieving international conventions to ensure minority rights should also be quoted the draft „Universal Declaration of Language Rights“ (see the full text at: <http://www.ciemen.org/pdf/ang.PDF>)

of inspiration for solving ethnic conflicts in Europe', compiled by the Swiss parliamentarian Andi Gross.<sup>84</sup>

### **b) The fundamental rights of indigenous peoples**

The ILO Convention on Indigenous Peoples, adopted in 1991, expresses a reversal of paternalistic and assimilationist approaches previously adopted by the 1959 ILO Convention.<sup>85</sup> It recognized the 'aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live' (Article 1). Their cultural and religious values, institutions and forms of traditional social control are to be preserved (Article 4). The system of land ownership and the rules for the transmission of land rights are to be protected (Articles 14 and 17).

After more than two decades of debates in September 2007 the UN Declaration on the Rights of Indigenous Peoples<sup>86</sup> was approved by the General Assembly of the UN, which encompasses also their right to self-determination, under which they 'may freely determine their political status and freely pursue their economic, social and cultural development' (Article 3). The principle of self-determination gives them the 'right to autonomy or self-government in matters relating to their internal and local affairs', which include social, cultural and economic activities and the right to control the entry of non-members (Article 31). It recognizes their collective property rights (Article 7) and the right to preserve and strengthen their distinct political, social, cultural characteristics (Article 4).

These ideas have already given rise to several negotiations between indigenous peoples and the state in which they live, giving recognition not only to their land rights (as in Australia and New Zealand), but also to new forms of autonomy (as in Canada). Most Asian and African governments still deny the very existence of indigenous peoples in their states, leaving these legal instruments with little impact.<sup>87</sup>

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84 Council of Europe, 'Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe' (rapporteur: Andi Gross), DOC 9824, 3 June 2003, [<http://www.coe.int/>]. See also [[www.andigross.ch](http://www.andigross.ch)].

85 The text of the ILO Convention on Indigenous Peoples of 1991 can be found at: [<http://www.ciesin.org/docs/010-282/010-282.html>].

86 For the text see: [<http://www1.umn.edu/humanrts/instree/declra.htm>].

87 Yash Ghai, 2000, op. cit., p. 492.

Indigenous people, particularly in North America, also base their claims on two other legal bases: their 'inherent sovereignty', which predates colonization, and hundreds of legal treaties with incoming powers, or what has been called 'treaty federalism'.

### **c) The right to self-determination**

The broadest legal basis for autonomy is the people's (general) right to self-determination.<sup>88</sup> This right, enshrined in the ICCPR, has emerged as one of the most controversial legal concepts in international law. Two issues have been most relevant: a specification of the peoples that are entitled to the right of self-determination, and different forms of its implementation. Recently it has increasingly been asserted in terms of the internal democratic organization of a state rather than in terms of secession or independence. The marked bias of the international community of states against the recognition and use of self-determination as a group right, other than for classically defined colonies, is well known. Nevertheless the greater involvement of the UN or groups of states in the settlement of internal conflict has helped to develop the concept of self-determination in its 'internal application', which means diverse forms of autonomy in appropriate circumstances such as in Bosnia, Macedonia, Georgia and Moldova. This process led to the „increasing acceptance of the internal dimension of the right to self-determination, which does not pose any threat to the territorial integrity of existing states“<sup>89</sup> going hand in hand with a more flexible approach to peoples and minorities solution.

However, the birth of new states, following the collapse of the communist order in the Soviet Union, Eastern Europe and the Balkans, has removed some of the taboo against secession, and the international community seems to be inching toward some consensus that extreme oppression of a group may justify secession (e.g. in the case of Kosovo, South Sudan, Eritrea and East Timor). This position has served to strengthen the internal aspect of self-determination, for a state can defeat the claim of separation if it can demonstrate that it respects the political and cultural rights of

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88 For this section see: Lauri Hannikainen (1998), 'Self-Determination and Autonomy in International Law', pp.79-95, in Markku Suksi (ed.), *Autonomy – Application and Implications*, op. cit.

89 Kristin Henrard (2004), op. cit., p. 52, states: „There is arguably a tendency to recognize a certain right to internal self-determination for minorities in the sense that denying them in principle a right to secession does not mean that self-determination would not exist for them.“

minorities.<sup>90</sup> The fundamental right of peoples to self-determination is a permanent right that cannot be nullified by granting autonomy. In fact, when later autonomy is not respected, secession can come back on the agenda.

Self-determination is a highly controversial concept in international law when it comes to its application. The concept has been much less controversial in the case of former colonies which gained independence from their ruling states in the period after World War II. However, nothing is yet clarified in regard to peoples and territories that are victims of neo-colonial regimes and domination. Former colonial states have occupied and annexed territories by violating international law (e.g. Morocco, Indonesia, China, India, Myanmar). The indigenous peoples' right to self-determination has not yet been accepted. The same can be affirmed with respect to national minorities or ethnic groups, who do not constitute a 'people' in terms of international law. „The right to self-determination tends to enhance the respect for, and acknowledgement and promotion of the group dimension of minority rights, which is a crucial aspect of minority reality and thus of their right to identity.“<sup>91</sup> Hence, it seems justifiable to conclude that individual human rights, minority rights and the right to self-determination are all three needed both separately and in interrelation, for an adequate system of minority protection.

The UN General Assembly resolved that autonomy is a manifestation of internal self-determination, but it failed in affirming a clear-cut right to autonomy, defining in the same moment the conditions and circumstances when this right arises. Therefore constitutional provisions for autonomy are enacted by the free will of states, sometimes under pressure of the concerned minority, a kin-state or the international community.

### 2.4.3 The basis of autonomy in domestic law

Such a view of self-determination has some support

<sup>90</sup> A further, and far-reaching, gloss has been placed on this doctrine by the Canadian Supreme Court, which decided in 1999 that Quebec has no right under either the Canadian Constitution or international law to unilateral secession but that, if Quebec were to decide on secession through a referendum, Ottawa and other provinces would have to negotiate with Quebec on future constitutional arrangements. However, these rules or understandings are far from being accepted everywhere in the world.

<sup>91</sup> Kristin Henrard (2004), *op. cit.*, p. 54

in certain national constitutions, indicating no more than a trend at this stage. Oftentimes, constitutional provisions for autonomy are adopted during periods of social and political transformation, when autocratic regimes are overthrown, or when a crisis is reached in minority-majority conflicts, or when there is intense international pressure (in which case legitimacy is granted rather grudgingly). Propelled by these factors, a number of constitutions now recognize some entitlement to self-government, such as regarding the two provinces (the Cordillera region and Muslim Mindanao); Spain, which in its constitution recognizes the right to autonomy of the Autonomous Communities; Papua New Guinea, which authorizes the provinces to negotiate with the central government for substantial devolution of power; Fiji, which recognizes the right of indigenous people to their own administration at the local level; and recently Ethiopia, which gives its 'nations, nationalities and peoples' the right to seek wide-ranging powers as states within a federation and guarantees them even the right to secession.

The Russian constitution of 1993, in the wake of the break-up of the Soviet Union, provides for extensive autonomy to its constituent parts. The Chinese constitution entrenches the rights of ethnic minorities to substantial self-government, although in practice the dominance of the Communist Party negates their genuine political autonomy.<sup>92</sup> In other instances, the constitution authorizes but does not require the establishment of autonomous areas - with China again as an interesting example (Article 31 of the constitution) - in order to provide a constitutional basis for 'one country, two systems' for the reunification of Hong Kong, Macau and Taiwan. On the other hand, it should also be noted that some constitutions prohibit or restrict the scope of autonomy by requiring that the state should be unitary or by similar expressions. Such a provision has retarded the acceptance or implementation of meaningful devolution in some violence-stricken states, for example France, Sri Lanka, Papua New Guinea and India.

To conclude, who is entitled to autonomy? Only national minorities? Is the territorial component a *conditio sine qua non* of the legitimacy of a minority's claim for autonomy? It is a condition if territorial autonomy is claimed, but other forms of autonomy as 'cultural autonomy' are claimed and practised too.

<sup>92</sup> Yash Ghai (2000), *op. cit.*, p.496

## 2.5 Diverse forms of autonomy

There are many alternative typologies for understanding forms of autonomy. One might classify autonomies according to beneficiaries of autonomy (national minorities, indigenous peoples, regional communities etc.), according to the purpose of autonomy (e.g. conflict settling, protecting a specific identity, transition to independence), according to the special status of a territory within a state (embracing dependent territories, free associated states, trusteeship areas). My approach is a legalistic one, emphasizing both criteria of constitutional law and theory of democracy.

As for the forms of political autonomy, a first distinction should be made between territorial autonomy and cultural (or personal) autonomy. The form of an autonomy is generally granted in response to demands for political self-administration or self-government, but often reflects a compromise solution between the contending powers, the central state and the national minority. Whereas the establishment of territorial autonomy requires the presence of a "titular community" settling in geographically concentrated form, cultural autonomy normally is granted to an ethnic, religious or cultural minority community living dispersed over a larger area of a state or in the entire territory of the state.

In order to distinguish between legislative territorial autonomy and administrative or local autonomy we ought to distinguish between two different types of autonomous public powers, namely legislative powers and regulatory powers. Legislative acts are generally applicable rules either of a national parliament or of a sub-national legislature with exclusive or concurrent law-making powers. Legislative authority entails full regulatory or administrative competence and budgetary powers in the same areas. On the other hand regulatory power has normative character as an enactment decree or refers to administrative decisions in individual cases. Such regulatory powers assume the form of a decree or by-law, conforming to the legislative enactments of the national parliament or to the acts of autonomous legislature. This administrative authority encompasses also budgetary powers. Local self-administration goes beyond the mere cultural sphere, but is limited to regulation of administrative kind.

According to Ruth Lapidoth and Pan/Pfeil<sup>93</sup> three major

types of autonomy can be distinguished:

### 2.5.1 Territorial autonomy

Territorial autonomy in a proper sense not only encompasses administrative powers of local bodies, but requires the existence of a regional parliament with a minimum power to legislate in some basic domains as well as an independent elected executive which implements this legislation in the given autonomous area. Territorial autonomy is to be understood as a special status granted to a territorial unit that enables the residents of that territorial unit to regulate their own affairs through autonomous legislation, government, administration, and in some extent also the judiciary. „An autonomous entity is competent to exercise its public authority only in respect to persons or functions within its jurisdictional area, not outside it.“<sup>94</sup>

No claim to sovereignty associated with territorial autonomy. The autonomous authorities are to be precisely established in the laws of the state. Territorial autonomy must fundamentally include those areas of responsibility necessary for the national minority to maintain its cultural identity, such as the following:<sup>95</sup>

- the regulation of institutional bilingualism within the framework of local self-administration;
- an educational system, including higher education (such as universities), which respects the values and needs of the national minority in question;
- cultural institutions and programmes;
- radio and television and other communication means and media;
- the display of their own emblems and national symbols;
- participation in the settling of the issue of dual citizenship, where applicable;
- the national heritage conservation.

A second range of powers needed to ensure the

*Europe: A Handbook*, Braumüller, Vienna, 2003; and Ruth Lapidoth (1997), *Autonomy, op. cit.*, p.33; these three basic forms of autonomy are also very clearly listed in the *Discussion Document for a Special Convention for !Autonomy Rights of Ethnic Groups in Europe*, May 1994, pp.278–86; see Appendix, Part 1.

<sup>94</sup> André Legaré/Markku Suksi (2008), *op.cit.*, p. 144

<sup>95</sup> Catalonia can be considered one of the most advanced systems of vertical power sharing between the central state and an autonomous region. Its new autonomy statute of 2006 describes the types of powers of the autonomous region in a utmost precise manner and therefore can be considered a kind of "Idealtypus" of power sharing schemes for autonomies worldwide. The scheme is reproduced in section 3.2 on Spain's autonomies. See the text of the new statute at:

<http://www.generalitat.cat/generalitat/eng/estatut/index.htm>

<sup>93</sup> Christoph Pan and Beate S Pfeil (2003), *National Minorities in*

functioning and welfare of the autonomous entity refers to its social and economic regulations, such as:

- the use and control of natural resources;
- the licensing of professions and trades;
- taxation for the purposes of the autonomous area;
- health care and social services, including social welfare;
- transportation such as local roads, ports and airports;
- production of energy;
- environmental protection;
- control of commercial and savings banks and other financial institutions;
- regional and local police;
- urban planning;
- incentives for local economic branches.

These standards have been formulated at a comparatively high level in accordance with some cases of currently well operating autonomy, such as in Åland, Catalonia and South Tyrol. Some operating autonomy systems, such as e.g. the Isle of Man, the Faroe Islands and Greenland, go even further reserving all matters not explicitly retained by the state to the autonomous entity.

However, it should be kept in mind that the minimum level of autonomy is the degree necessary for the preservation of the existence and identity of a national minority, while the optimum is represented by as much autonomy as possible without endangering the territorial integrity of the state. In any case, it must be taken into consideration that in a territorial autonomy, those segments of the population which form a numerical minority within the autonomous area are not discriminated against in their enjoyment of generally recognized human rights and fundamental freedoms.

### 2.5.2 Cultural or personal autonomy

„Personal/cultural autonomy, is an autonomy that applies to all members of a certain linguistic or cultural community which are, however, not resident in a particular territory.“<sup>96</sup> Cultural or personal autonomy is granted to the members of a specific community (ethnic, religious, linguistic) and provides for them to be governed through institutions and/or their own

<sup>96</sup> J. Laughlin and F. Daftary (1999), *Insular Regions and European Integration: Corsica and the Åland Islands Compared*, ECMI, No.5, p.26

legislation. Cultural autonomy is a non-territorial jurisdiction, which “exists when independent public authority is exercised in respect to certain individuals throughout the state irrespective of the fact that those individuals are residing in territorial jurisdictions in which other individuals are subject to similar public authority from territorially delineated jurisdictions.”<sup>97</sup> Therefore, subjects residing on the whole territory of a state are entitled to enjoy the rights resulting from such regulations. Cultural autonomy „.....grants a precisely defined set of rights to individuals on the basis of their membership in a particular group. There is also typically some sort of minimalist legal structure to this set of rights, as representative and administrative bodies.“<sup>98</sup>

This model of autonomy allows minorities a significant degree of autonomy and cohesion even when minorities are dispersed throughout the territory. In contrast to territorial autonomy, in cases of cultural autonomy the autonomous special status is granted not to a unit of area for tending to one’s own matters, but rather to a group of persons which constitutes a form of union or free association, possibly under public law. This form of autonomy is appropriate when national minorities do not form the majority of the population in areas in which they reside or when national minorities, for whatever reasons, do not consider territorial autonomy.

It is important that an association of persons provided with cultural autonomy is sufficiently democratically representative for the targeted cultural minority. Thus it must include at least a substantial portion of those people belonging to an affected national minority, and the autonomous regulations must be carried out by freely elected democratic organs. Cultural autonomy has to address all those matters which are essential to the preservation, the protection and the development of the identity of the national minority, such as:<sup>99</sup>

- general cultural affairs;
- an educational system;
- information media, including radio and television;
- heritage sites, toponyms, the display of the minority’s own national emblems;

<sup>97</sup> Asbjörn Eide, *Cultural Autonomy: Concept, Content, History and Role in the World Order*, in Markku Suksi (ed.), *Autonomy: Application and Implications*, Kluwer Law International, The Hague 1998, p. 261

<sup>98</sup> M. Tkacik (2008), op. cit., p. 375

<sup>99</sup> Suksi understands cultural autonomy „as the right to self-rule by a culturally defined group, in regard to matters which affect the maintenance and reproduction of its culture.“ M. Suksi, *Functional autonomy*, in Int. Journal on Minority and Group Rights, n. 15 (2008).

- additional specialized areas which, in the opinion of the national minority, are useful to the preservation and exercise of the rights of protection to which they are entitled.

According to this concept, cultural autonomy is not necessarily aimed to the protection of ethnic or linguistic minorities only, but also religious minorities can benefit from such regulations as the example of India's Muslims shows.

Yash Ghai defines cultural autonomy as 'non-territorial autonomy' or 'corporate autonomy' when an ethnic group is given forms of collective rights. Rights and entitlements protected under such autonomy can be personal (e.g. access to educational facilities, double citizenship), cultural (e.g. language rights, media) or political (a minimum representation within public institutions). Modern examples of this form of autonomy can be found in Slovenia and the Russian Federation, always related to the national minorities,<sup>100</sup> but the most instructive cases of working cultural autonomies in Europe are all established in the Finno-Ugric states: Finland (Swedes and Sami), Estonia and Hungary.<sup>101</sup>

By devices of cultural autonomy especially educational and other cultural rights and services are extended to ethnic, linguistic or religious minorities. This includes the right to use a minority language vis-à-vis local public authorities, in local legal proceedings, public media and as medium of instruction.

In the view of M. Tkacik „cultural autonomy differs from personal autonomy in that by design and in purpose it extends rights to a particular cultural or linguistic group...Typically, there is some regulatory power inherent here. Cultural autonomy is community-based in nature, rather than extending to all members of a society as individual or personal autonomy.“<sup>102</sup> A separate concept of 'personal autonomy' as asserted by Markku Suksi, referring to the freedom of association as a general civil right belonging to persons of each possible social group, is not very helpful. Autonomy in legal terms should be considered as a group right as its titular subjects necessarily have to be a community.

It should be recalled that elements of cultural autonomy like the self-administration of educational

and cultural affairs by the single ethnic groups living together in the same autonomous region, often form a part of the internal arrangements of autonomous regions (examples include New Caledonia, South Tyrol, Nicaragua's Atlantic Coast). Hence, cultural autonomy can be successfully combined with territorial autonomy. It forms a key element in the construction of peaceful coexistence and fruitful exchange without discrimination in multi-ethnic regions, within which the members of the national majority are also entitled to enjoy all civil and cultural rights.

### 2.5.3 Local or administrative autonomy<sup>103</sup>

According to the European Charter of Local Self-Government (1985/1991), local self-government is the establishment of locally elected assemblies with meaningful powers, lucid territorial boundaries, and financial autonomy in the form of local taxes and duties.<sup>104</sup>

Local autonomy is suitable for those cases in which persons belonging to a national minority reside in isolated dispersion and only form the local majority of the population within single administrative units, such as single districts, municipalities or parts thereof. Generally, it is an expression of decentralization and sets forth a delegation of certain powers but does not include any legislative power exercised by locally elected bodies. Local self-administration of local autonomy represents a special form of territorial autonomy that is limited to smaller administrative units and administrative powers. By means of local autonomy, residents of an administrative unit are guaranteed the possibility of looking after their own (national minority-related) matters themselves, beyond the responsibilities that are normally legally assigned to the administrative unit (district, municipality, or part thereof), and in particular the matters which essentially lie exclusively or predominantly in the interest of the local community.<sup>105</sup> Therefore, it is particularly the

<sup>103</sup> I do not consider a „functional autonomy“ as a separate category, as assumed by Tkacik, intended as an autonomous administrative or regulatory power of a group on just one subject matter. This category may be a subcategory of either cultural or administrative autonomy. A typical case of a so-called functional autonomy is Finland for the Swedish minority regulations. But these are very special regulations of language policy, not forms of autonomy.

<sup>104</sup> For the full text of the Europ. Charter of Local Self Government: <http://conventions.coe.int/Treaty/EN/Treaties/html/122.htm>

<sup>105</sup> See Christoph Pan and Beate S Pfeil (2003), *National Minorities in Europe: Handbook*, Vienna, p.194

<sup>100</sup> Yash Ghai, 2000, p.486; and Ruth Lapidot, 1997, pp.37–40.

<sup>101</sup> See Kössler/Zabielska on „Cultural Autonomy in Estonia“, in Thomas Benedikter (ed., 2009), *Short Guide to Autonomy in South Asia and Europe*, EURAC, Bozen, p. 56-59; Thomas Benedikter, *Hungary's cultural autonomy*, ibidem, p.62, and idem, *Europe's Indigenous Peoples - The Sami and the Inuit*, in: Europe's Ethnic Mosaic, 2008, p.48-52

<sup>102</sup> M. Tkacik (2008), op. cit., p. 371

following responsibilities which fall under the area of competence of local self-administration (local autonomy):

- the regulation of institutional bilingualism within the framework of local self-administration;
- the use of names and symbols specific to the national minority;
- the regulation of local customs and festivals;
- the protection of local monuments and memorials;
- local security and traffic police, health inspectors and building inspectors.

as in either form there isn't any devolution of legislative powers to an autonomous territorial body, but just a limited regulatory power, although mostly related to a distinctive geographic space.

Within the framework of the means available to it by law, local self-administration or autonomy should also include the right to establish and maintain institutions, in particular in the fields of:

- the local education system;
- the local print and electronic media;
- the conservation of traditions;
- the safeguarding of specific economic activities.

In addition, the national minorities should participate in all other administrative matters in proportion to their share of the total population in the area. The issue of local administrative autonomy is important for every autonomous entity of major demographic and geographic dimensions (e.g. Aceh, Catalonia, Jammu and Kashmir, some of the Indian District Councils, Crimea and South Sudan, which is an emerging independent state faced with new challenges of internal autonomies), as these entities are host to various 'internal minorities' claiming protection and fundamental minority rights. A comprehensive analysis of political autonomy would have to include also cultural and administrative autonomy, but due to the lack of space the present text focuses on territorial autonomy.

In conclusion it should be noted that there are also different approaches in distinguishing forms of autonomy. Tkacik argues that all autonomies exist on a spectrum, each entailing greater institutional and perhaps even philosophical coherence.<sup>106</sup> He distinguishes between functional and administrative autonomy. Functional autonomy implies the decentralization of control over a single subject in a „semi-distinct geographic space“. In contrast, administrative autonomy implies a set of functional subjects (e.g. schools, public services, courts, media). Functional autonomy, however, appears as a special case of administrative autonomy,

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<sup>106</sup> M. Tkacik, op. cit., p. 371

## 2.6 Procedures and fundamental rights within an autonomy

### 2.6.1 How is an autonomy established?

In historical experience, there have been four different modes of establishing an autonomy.

- The autonomy systems were established when the state was created in its current form adopting its current constitution (this was the case for Italy's five regions with a special statute; Spain as a 'state of autonomous communities', Denmark and the Faroe Islands, India's ADCs).
- The autonomy system was set up to settle international territorial tensions (Åland Islands, South Tyrol), and the autonomy has been initiated or enhanced by international authorities (League of Nations, UN).
- The autonomy system originated from internal conflicts which were settled by bilateral negotiations with the representative forces of the concerned region, leading to peace treaties or other agreements, including autonomy provisions (Aceh, Mindanao, Bougainville, Nicaragua's Atlantic Coast, New Caledonia, Comarca Kuna Yala, Northern Ireland, Scotland).
- In some cases, autonomy has been established as a result of the transformation of dependent or colonized territories into autonomous regions, legally on equal footing with the rest of the national territory (Netherlands Antilles, Greenland, French Polynesia and New Caledonia).

A special case is Zanzibar, whose autonomy within Tanzania originated from the voluntary union of two former independent states. However, the subjects of autonomy are always a group, national minority, minority people, indigenous people and in a few cases also a population perceiving itself as a regional community with special historical, cultural and geographical features entitling them to autonomy (Madeira, Azores, Sicily, Friuli Venezia Giulia, Scotland, various regions of Spain, etc.).

Thus a fundamental prerequisite of the establishment of an autonomy is the official recognition of the special character of a region given by the presence

of a national minority or minority people as a group entitled to collective rights, or of a regional community with a distinct character compared with the rest of the state.<sup>107</sup>

In some cases there has even been a requirement for regional constituent assemblies, which provide the mandate for negotiations to work out autonomy statutes. This democratic procedure is best completed by a popular referendum on the draft autonomy statute as elaborated by the constituent assembly. On the other hand, a nation-wide referendum on autonomy arrangements for one specific region concerning one specific national minority is dangerous and illegitimate: the autonomy proposal could be defeated by the majority population, if nationalist forces demagogically oppose it. The political leadership of a country has to assume responsibility before the electorate and the constitution, to settle a conflict in a bilateral form with the concerned region's population and their democratically legitimized representatives.

How should an autonomy system be established in order to be accepted by all parties and to gain durability? Autonomy should be arranged before the relations between the majority population in a state and the ethnically distinct group (who are a majority in a specific region), deteriorate considerably. If there is widespread hatred and frustration and if it comes to politically motivated violence, autonomy arrangements are much more difficult to achieve and could eventually fail to calm the strained atmosphere.<sup>108</sup>

Autonomy imposed from above without adequate consultations will most likely be controversial and lack legitimacy. Several systems of autonomy newly imposed as part of a constitutional settlement at the very moment of the state's independence have either been dismantled shortly afterwards, or simply not been implemented at the instigation of the majority community.<sup>109</sup> Autonomy arrangements affect the state's internal structure, but also to a major extent the relations between different ethnic groups in the

<sup>107</sup> But there is a trend towards recognizing collective rights among an emerging triade of public subjects: the group, the state, the international organization. See Hans-Joachim Heintze, *op. cit.*, in Markku Suksi (ed.) 1998, *Autonomy: Application and Implications*, p.16.

<sup>108</sup> This dynamics occurred historically in the regions of Muslim Mindanao, in Aceh and Bougainville, when factions of minority militants went on with claims for independence and military resistance.

<sup>109</sup> Consider in this regard the examples of the first autonomy of South Sudan in 1954 and of South Tyrol in 1948. Also Aceh's first autonomy of 2001 lacked legitimacy.

concerned region, and thus may encounter opposition from within. In principle it is desirable and reasonable to hold comprehensive popular consultations before defining the arrangement. Only later, after approval by the major political factions, the draft autonomy can be submitted to a referendum. Several national constitutions or autonomy laws providing for autonomy require approval by a referendum within the concerned autonomous region (e.g. Spain, Great Britain and Papua New Guinea).

As regards the power to amend the autonomy arrangements, several options are possible. This power may be exclusively reserved by the central state authorities (the national parliament), it may be exercised jointly by the latter and the institutions of the autonomous region, or be the exclusive responsibility of a regional body, giving the central state the right to approve or dismiss it. At the same time, a decision must be taken in advance when certain laws adopted by the legislature of the autonomous entity diverge from the provisions of the constitution or central government legislation. It is also necessary to establish a procedure for preventing any usurpation of the autonomous entity's legislative powers.<sup>110</sup> In this context, it is clearly essential to set up a joint mediation body made up of members of the central government and the autonomous body and the possibility of challenging such laws before the constitutional court.

### 2.6.2 The importance of legal remedies and guarantees

Once an autonomy agreement between a central state and a minority people or a regional community is reached, it cannot be renounced by built-in legal guarantees. In particular, as is the case in federal states, unilateral changes of the rules should be impossible, but only when a consensus with the concerned autonomous region is ensured. In a second step, as a further requirement to full democratic legitimacy, the consensus of other minority groups living within the autonomous region may also be required. The corresponding dispute settlement must be clearly regulated. Consultation bodies with equal composition of state officials and minority representatives must be established, but higher organs of the judiciary have to provide for full neutrality on the appeal level if this first level of mediation fails.

After the establishment of an autonomy, the concerned regions remain part of the respective state, and thus share many general problems and responsibilities, apart from being subject to the politics in the still centrally ruled affairs. Despite a possibly clear separation of powers and responsibilities, some overlap is inevitable in modern states, and coordination not only at the national, but ever more at the international level is required. Apart from dispute settlement and consultation mechanisms, cooperation is in the mutual interest of both parties to solve common problems and thus needs appropriate standing committees.<sup>111</sup>

The best autonomous agreement is worth very little if it not implemented, or if it is continuously violated by the state. Therefore, one of the major concerns in negotiating an autonomous agreement is to structure it in such a way as to minimize future violations and non-compliance by the state. By considering implementation and treaty violation issues up front, future problems may be reduced or avoided in the very phase of establishment, as for instance:

a) Specificity of the agreement: when autonomy agreements are vague or fail to address vital issues. Conflicts tend to arise over the meaning and interpretation of the agreement. It is therefore essential that autonomy arrangements are written with great specificity and clarity.

b) Effect of violations must be addressed up front in the agreement: as a general rule of contract, when a party substantially fails to comply with an agreement, the other party may rescind and terminate the agreement. It is possible to write provisions into an agreement by which the consequences of specific violations of the agreement are spelled out in advance. This can encourage and contribute to compliance.

c) Third party guarantees: it is possible to involve third parties, such as other states, regional organizations (OSCE, ASEAN, AU, OAS, OIS) or the UN, in an agreement by making them mediators or guarantors (examples: Åland Islands and the League of Nations, South Tyrol and the UN and Austria, Muslim Mindanao and the Organization of Islamic States OIS).

d) Peacekeeping as part of the agreement: the 1992 UN Peace Agenda recognizes that peacekeeping is just as important as peace making. It encourages the

<sup>110</sup> Historical examples: the Muslim Bengali settlers in the Chittagong Hill Tracts (Bangladesh), Christian Filipinos in Western Mindanao, Italians in South Tyrol.

<sup>111</sup> In Spain, e.g., regular meetings are held by the central state's and the Autonomous Communities' representatives on a sector level (ministries).

creation of support structures designed to strengthen and solidify peace in order to prevent relapse into conflict. In negotiating an autonomy agreement, it is possible to agree to implementation measures in the form of the creation of specific institutions, processes or mechanisms. For example, it is often helpful to create autonomous institutions such as judiciary, police force, human and civil rights advocacy which are in compliance with international law. Technical assistance and training can be obtained from third parties, such as the UN, single states or non-governmental institutions.

e) International monitoring of the implementation process of an agreement is very important. An agreement can provide in advance for specific monitoring parties, processes and timelines. Knowing that a third party is observing the process and will be reporting shortcomings is a powerful motivation for the parties to implement an agreement.

f) The conflict resolution procedure: an autonomy agreement can also specify a conflict resolution procedure to be used, should either party violate the agreement. This can include international mediation, a process by which a designated third party assists the contending parties to reach an agreement on how to resolve a conflict over implementation of the autonomy. Additionally, a body may be set up with representatives from the contending parties and neutral parties, which are then empowered to resolve the conflict. Alternatively, it could be agreed in advance that conflicts be submitted for a binding decision to a specific regional or UN body.

Provisions on legal remedies in case of violation of the autonomy agreement and the control machinery are crucial issues if the successful implementation of autonomy is to be ensured. In theory, there are two basic forms of legal remedies: one within the domestic legal system and the other based on international law. As for the national legal framework, either state or constitutional law, regional communities and/or national minorities should have the right to be fully involved in the implementation process of an autonomy agreement. This can best occur through a permanent commission composed on equal basis of representatives of the state and the autonomous entity or community. All relevant legal provisions of the state put into effect without a previous favourable opinion by the joint commission may be contested by the ethnic groups before the competent courts.<sup>112</sup>

Generally, national minorities or regional communities should have the right to enter into legal action before the Constitutional Court, when the implementation of the autonomy violates the legal basis of an autonomy as enshrined in state or constitutional law. Also, major delays and flaws in the correct implementation of autonomy should be allowed for complaints.

Provided that the state establishing an autonomy has acceded to bilateral treaties granting autonomy to its national minorities or to international covenant which includes this right, international bodies have to be designated as the instance of both monitoring and receiving complaints by concerned parties. If a relevant element of an autonomy agreement is not applied, or if previously accorded collective rights are violated, the concerned national minority or the autonomous region should be entitled to submit an official complaint to an international instance. The authors of the 'Draft Convention on Autonomy Rights'<sup>113</sup> determine the European Commission of Human Rights and the European Court of Human Rights as the last instance for receiving both state and individual complaints. Groups (e.g. the legislative assembly of an autonomous region) can also be entitled by statute to represent the interests of a regional community or a specific minority. Besides Europe, the equivalent regional organization for the Council of Europe or - in its absence - the UN can assume this role. Furthermore, the states, committed by international or bilateral agreements to grant autonomy to one or more regions, may be compelled to present periodical 'State reports' on the progress of implementation of an autonomy. The major fault in this regard is the fact that most of the working autonomies are entrenched in no more than national or constitutional law.

### 2.6.3 Further crucial aspects of autonomy

When an autonomous entity is established, a number of aspects must be considered to ensure the conditions for its success. Historically, there have been both cases of failed autonomies and of successful experiences with autonomy, which continue to function today. Since the historical, legal and political backgrounds of these experiences are very different, and also the forms the respective operating autonomies take, distilling out the

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Convention for 'Autonomy Rights of Ethnic Groups' (for the full text see Appendix, Part 1). Such joint permanent commissions are successfully working in the Nordic Islands' autonomies, in South Tyrol, in South Sudan and Bougainville.

<sup>113</sup> Ibid., see Article 15 (full text in appendix, part 1).

<sup>112</sup> See Article 14, Paragraph 3, Draft Document for a Special

diverse key factors of success with general validity is a challenging operation. It remains questionable if each factor of success in a specific case of autonomy could be helpful in the rest of today's operating autonomies, let alone in the ongoing self-determination conflicts in the world.<sup>114</sup> It should be stressed that the following aspects cannot be interpreted as a general law, but at best as 'best practices'.

### a) Geopolitical and demographic aspects

The autonomous region's distance or proximity to the central government may determine the political relations between the two entities and the willingness of the centre to enter into negotiations for establishing an autonomy. The more peripheral a region's location and the smaller in size that it is, the weaker will be the central state's resistance to a form of self-rule.<sup>115</sup> Geographical distance is considered to be one of the main factors for the successful occurrence of territorial autonomy regimes. Considering the genesis of a number of currently operating autonomies, distance from the mother country seems to be important in receiving a special status of some kind. Autonomy regimes often operate in remote or otherwise geographically unique locations, such as islands and enclaves.<sup>116</sup>

The autonomous region's territorial limits must be defined precisely. Drawing and changing the borders of the autonomous entity must occur in accordance with the concerned populations and regional institutions, for the sake of the stability of the arrangement and the consensus of all parties. In a state where a national minority represents a substantial part of the population that warrants specific protection, it should be determined whether all these areas can be merged in order to bring the individual parts of the minority population together. This does not mean creating boundaries along ethnic lines, but including all of the members of a specific ethnic group envisaged for a special system of protection by an autonomous arrangement.

Furthermore, it must be determined whether the autonomy need apply to all the inhabitants of the region in question (territorial autonomy), or if only the members belonging to the minority group can be endowed with special rights and benefits of cultural protection. The latter need requires a different

<sup>114</sup> For the ongoing conflicts in 2009 see <http://www.peacereport-er.net>

<sup>115</sup> Consider the cases of New Caledonia in France, Greenland in Denmark and the Netherlands Antilles, which are regions belonging even to a different continent than the mainland.

<sup>116</sup> Stefan Wolff and Marc Weller (2005), op. cit., p. 1; and Maria Ackrén, *Conditions*, op.cit., p. 64

accommodation of rights, based on cultural (personal) autonomy. Territorial autonomy may be an appropriate solution when an ethnic group or a people constitutes a significant majority or large number in a region. When ethnic minorities are dispersed throughout the territory, it is only possible to envisage cultural autonomy. When a national minority is not dominant in a region, but settling in a scattered form, a mixed approach combining cultural and territorial autonomy may be implemented.

The type of autonomy may depend on the region's ethnic composition. Key issues include not only the number and sizes of the ethnic groups or peoples living in the concerned region, but also the internal relations between the titular minority group and other groups, and in particular the persons belonging to the national majority living in the area. Finally, the relation between the local communities and the central government is also of utmost importance.

### b) Democratic participation in the central state

The population of the autonomous region and its democratically elected representatives have to be entitled to participate in the central state's political decisions, especially if their region and autonomy are concerned. Thus, the national minorities and autonomous regions as such have to be appropriately represented at the central level. This will primarily occur through democratic elections to the national parliament with constituencies assigned to the autonomous region according to the size of its population. But if the population is too small to deserve a constituency on its own, special provisions are needed to provide at least one constituency for the region, in order to allow its population to send at least one representative to the national parliament. If by electoral laws there are minimum hurdles for parties to be admitted to the parliament, the political parties representing the national minorities have to be exempted. In addition to that the region could also establish a permanent representation with the central government in the capital.

### c) Social, economic and financial aspects

An autonomous region has to be equipped with sufficient financial resources in order to effectively implement the additional powers conferred by the autonomy status. This aspect is distinct from the legal possibilities of public control of an autonomous entity over its economic resources. Several options can be envisaged:

- The autonomous region can be entitled to own resources mainly consisting of fees, levies and taxes. It should be entitled to the power of tax legislation.
- The autonomous region without powers in local taxation can have a right to a proportion of the tax revenue raised in the same area. Within certain limits, the autonomous region can be enabled to add a percentage on its taxes levied by central public authorities.
- If there are neither powers of taxation nor of sharing the central government's tax revenue in the area, there should be a clear and fair arrangement of transfer of public resources from the centre (state budget) to the autonomous region to allow the latter to exercise its functions. The autonomous region should be granted additional resources compared with other units of the same state in order to cope with particular requirements produced by specific needs of an ethnic or linguistic minority or by the necessity to organize peaceful coexistence in a given area.

With regard to the allocation of economic powers, several approaches can be envisaged. Firstly, the central state might retain all its powers but consult the autonomous authorities before adopting any measure that might impact on the local situation. Secondly, the central state might retain its prerogatives but grant the autonomous authorities the power of initiative and recommendation in the region. A third possibility would be to endow the autonomous authorities with the right to take specific measures with regard to economic development, within the confines of the general policy defined by the central government.

In the area of social affairs, power is usually granted to autonomous authorities in the fields of public health, social security and public assistance. However, in each sector it is necessary to determine whether the local arrangements are completely autonomous or have to conform to the general principles laid down by the central government.

#### d) Cultural and ethnic aspects

Cultural rights are among the core rationales of establishing an autonomy. They are a fundamental element of autonomy – apart from ensuring self-government as internal self-determination – providing the means to protect and develop a minority's specific ethnic-linguistic character. Hence, all rights related to

the preservation of cultural identity deserve particular attention and importance in the framework of the legal design of an autonomy system. The powers related to culture have to encompass education, language rights in all public spheres, bilingualism in general, promotion of cultural activities in all fields and transborder cooperation. The minority language must be used as an official or second official language at all levels of administration located in the autonomous territory. Special provisions for the practical implementation of bilingualism must also be set forth.

Differences in ethnicity are rooted in primordial factors such as language, ethnic origin, cultural traditions and religion. In the scholarly literature it is still disputed whether and to which extent the feeling of belonging to a ethnic group results from social development or stems from a natural tendency of human nature. In social anthropology, ethnicity refers to relationships between groups who think of themselves as being different and who are also seen as culturally different by others. In addition, the concept has its place within other social and cultural disciplines. Within sociology, a similar definition is used, but here the concept has a wider meaning. Besides referring to cultural practise and cultural values, other characteristics such as languages, historical heritages, religions, clothing, and customs are also included.<sup>117</sup>

Ethnicity could also refer to a collective consciousness – a “we-feeling” – that is not followed by the primordial characteristics such as language, religion, heritage and the like. In this sense, ethnicity is determined by some kind of common project with a common future. The experience is according to this definition, a subjective feeling of “we” in contradiction to “the others”. If the group experiences an external threat, then the ethnic consciousness might be strengthened and lead to a struggle for material resources and cultural survival.<sup>118</sup> This concept departs from defining ethnicity just by “objective characteristics” as language and religion and relies on the subjective perceptions of groups.

There are about 5.000 ethnic groups in 160 states, what implies that just 10% of the current states could be considered homogeneous in terms of ethnicity. This also indicates that the borders between different peoples do not follow national borders.<sup>119</sup>

<sup>117</sup> Maria Ackrén (2009), *Conditions*, op. cit., p. 80; and Maria Ackrén/Per Ollausson, *Condition(s) for Island Autonomy*, in: *International Journal on Minority and Group Rights*, 15 (2008), p. 233

<sup>118</sup> Maria Ackrén (2009), *Conditions*, p. 80

<sup>119</sup> According to other sources there are at least 6.000 living lan-

### 2.6.4 Fundamental rights and civil liberties within an autonomous entity

The issue of human rights and civil liberties has an extremely important role to play in the system of autonomous entities. The competent body and the standards to be applied must be clearly defined. When an autonomous entity has been established, the principles of equality and non-discrimination must be respected. This seems self-evident, but especially in post-conflict-scenarios the full respect of human and civil rights is still at risk. The autonomy must guarantee the rights of the ethnic groups that are different from the majority group in the region as well as the rights of the members of the majority group in the state. In order to ensure the effective participation of all groups of an autonomous region, it is important that specific steps are taken to protect the 'minority within a minority', so that the members of the majority population or other minorities do not feel threatened by the measures initiated by the autonomous entity. This is a key aspect of the peaceful coexistence and cooperative attitude of all groups towards autonomy, as the autonomous region will, in many cases, possess exclusive legislative powers in certain areas that might affect the minorities and smaller ethnic groups living in the autonomous territory.

How is respect for fundamental human and civil rights ensured and controlled within an autonomy system? Can an autonomous region opt out of international human rights covenants signed by a given state? Generally no; yet problems of differential treatment arise in the case of 'personal autonomy' of members of different religious or ethnic groups living in an autonomous territory. These are arrangements for members of a community who do not live homogeneously in one part of the state's territory, like the Muslims in modern-day India, or the Jews in European history. Such laws can also create legal problems if enacted by a kin-state for minority members in neighbouring states.

Granting autonomy to a territory and meeting the claims of a regional majority can be perceived as a risk of future discrimination against regional minorities (often the members of the state's titular nation living in that area). The autonomy system in such cases must safeguard the rights of 'internal minorities' and equality in terms of human and civil rights among all inhabitants.<sup>120</sup>

guage groups in 192 states (UN-members).

<sup>120</sup> 'The power relationship in an autonomous territory is reverse. The previous minority takes power, and the power relationship is reverted. Therefore there is always a danger of acts of revenge and one must emphasize that the authorities of an autonomous region

Problems with differential treatment of individuals arise even more clearly in the areas of movement and residence of indigenous peoples or other communities with special civic and criminal laws. These provisions can also affect the rights of citizens outside the community, who may be subject to restrictions that do not apply to 'locals' of the region with respect to residence or employment, for example. New minorities that result from the conferring of autonomy upon a region may need protection against victimization. The interests of this form of 'internal minority' of an autonomous area can be secured through a further tier, that of local government in those areas where they constitute a majority, or through special responsibilities in the form of cultural autonomy and consociational decision-making in all government instances.<sup>121</sup>

In such cases, not only are the mediation and responsibility of the civil society and political bodies required, but all legal remedies are to be provided for ensuring the safeguard of the fundamental rights. In Europe, for example, a triple 'safety net' protects the rights of inhabitants of an autonomous region, at least of the member states of the Council of Europe:

1. The autonomy statute (or state autonomy law), which may not deviate from the national constitution. For this purpose, there are several examples of administrative courts established at the regional level too.
2. The constitution of the concerned state, with all fundamental and civil rights, covers the state's entire territory, and is enforced by the possibility of constitutional legal complaint. Each autonomy statute must be consistent with it.
3. The European Convention on Human Rights offers each citizen of the member states a legal remedy when individual rights are violated.

Provisions recognizing differential values undermine the basic rights of individuals or groups within the community and cause resentment among the rest of the population. Thus autonomy can become a source of conflict rather than a solution to it. If too much importance is placed on accommodating differences and too little attention is given to building on those

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must respect and ensure the human rights of the 'new minority' in particular. This must be seen as a basic rule of any autonomy regulation whatever its nature and an important challenge to the new administration', Hans-Joachim Heintze (2002), *Implementation of Minority Rights*, p.341.

<sup>121</sup> This issue is discussed by the author in: *Regional autonomous democracies: new "ethnic spaces"?* nn: Thomas Benedikter (2009), *A Short Guide to Autonomy in South Asia and Europe*, EURAC, Bozen p.86-88

traditions, values and aspirations which a people share, it can lead to further fragmentation and weaken the sense of solidarity. While acknowledging cultural differences and sensitivities, it is important to emphasize common values and ensure the protection of human rights for all persons.

Democracy involves specific rights and freedoms for the inhabitants of the country. This is specifically important in territorial autonomies since there are often minority groups present. Democratic principles underlie the mechanism allowing participation by minority groups in a country at various levels of governance. In some countries, this takes the form of quota systems within the electoral systems or in others, different mechanisms may be established to secure minorities' participation within political systems.<sup>122</sup> Liberal democracy is a political system which requires the recognition and application of a minimum standard of civil liberties and political rights. This standard includes both the feature of elections and the features of various freedoms according to human rights and civil liberties.<sup>123</sup>

Carsten Anckar (2008), for instance, divides the different definitions of democracy into three categories.<sup>124</sup> The first category is made up of authors who advocate a minimal definition of democracy, which only includes both the electoral dimension. A second category consists of authors who include both the electoral and civil rights dimension. A third group of authors incorporates democratic output into their definitions. Territorial autonomies require for their very definition the existence of at least the first two dimensions: a functional political system where the inhabitants of the autonomous region can freely elect their representatives and stand for election, freely express alternative views, freely gather in assemblies and freely constitute political organisations. A widely used reference of measuring the democratic quality of a given political system is Freedom's House's annually conducted survey on political rights and civil liberties.<sup>125</sup>

Democracy includes the protection of minority rights in political procedures too. Thus the institutions of a territorial autonomy must be representative also of those on whose behalf the autonomy is initially is adopted.

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<sup>122</sup> Maria Ackrén (2009), *Conditions*, op. cit. p.52/53

<sup>123</sup> The fundamental legal convention on political rights is the UN's ICCPR at:  
<http://www.2.ohchr.org/english/law/ccpr.htm>

<sup>124</sup> Carsten Anckar (2008), 'Size, Islandness and Democracy: A Global Comparison', *International Political Science Review*, Vol. 29, No.4, pp.437-438. Quoted from Maria Ackrén (2009), op.cit., p.53

<sup>125</sup> See <http://www.freedomhouse.org/> The methodology of Freedomhouse is a scale running from 1 to 7, where 1 indicates the highest and 7 the lowest degree of freedom. The scores are derived from survey investigations done in the countries.

## 2.7 The institutional framework and scope of autonomy

### 2.7.1 The institutional framework

The institutional framework of an autonomy is based on the general constitutional structure of the concerned state, adding the decisive special element of a power-sharing arrangement with one or some territorial subnational entities, distinct from the rest of these entities of the state. The scope of the autonomy is a flexible terrain of power-sharing, moving between a minimum extent up to an 'optimum'.<sup>126</sup>

By definition, an autonomous entity (region, province, district) must be endowed with its own parliament or assembly, democratically elected by universal suffrage by the region's population.<sup>127</sup> The national parliament does normally not incorporate an official representation of the autonomous entity. Hence, this population must be represented in the national parliament by forming a constituency of its own and by the participation to national elections on an equal basis with the other citizens of a state. By this way, political participation on the part of the autonomous region is ensured at both levels.

Regarding the executive function, an autonomous entity must be vested with a government that is independent of the national institutions, elected either by the regional assembly or directly by the regional electorate. In a genuine autonomy, the central government cannot have any say in the designation of the head of the autonomous executive. The latter may not be endowed with the central government's responsibilities, nor may s/he be a member of the central government offices (principle of distinct responsibilities). However, the central government may delegate the administration of centrally held powers to the regional executive.

In autonomous regions, the voting right (franchise) is not linked to membership in a specific ethnic group, but may only be based upon national citizenship and regional residence. Regarding the latter, a minimum duration of permanent residence in the region may be

<sup>126</sup> The minimum standard of an autonomy will be determined in Chapter 2.10; best practices are listed in Chapter 4.10.

<sup>127</sup> The Lund Recommendation, Article 16, Paragraph 11. The full text is reproduced in the Appendix, Part 2.

required for the active and/or passive franchise. Some autonomous regions have established a minimum share of assembly members belonging to the titular national minority.<sup>128</sup>

If the territorial autonomy is combined with a system or some elements of cultural or personal group autonomy (see also Chapter 2.5), separate institutions can be set up, exclusively elected by the members of the concerned ethnic-cultural group, charged with public enhancement and coordination of cultural affairs. Through these institutions, the respective recognized groups are enabled to regulate their cultural affairs separately from other groups. The best example of such distinct roles and interplay of territorial autonomy (federal regions) and cultural autonomy (cultural-linguistic communities) is the Belgian federal system. Belgium's German Community, which is not yet constituted as a 'federal region', operates as a combination of both roles. Distinct institutions of this kind have been enshrined in the autonomy statutes of the Comarca Kuna Yala (The General Congress of the Kuna Culture), in New Caledonia (the Kanak Customary Senate), and in Aceh (the Wali Nangroe).

History has shown that an autonomy needs a kind of constitutional setting (an autonomy statute or a 'regional autonomous constitution') that provides for both internal political stability and peaceful relations with the central state, possibly covered by international guarantees. The autonomy's institutions and form of government are usually laid down in this statute. The autonomous parliament may be authorized to regulate the composition and functioning of its institutions on its own, as well as other democratic rules (e.g. institutions of direct democracy). If a territorial autonomy is to adopt its own constitution, provision must be made for a constituent assembly. In addition, it must be clarified whether the resulting autonomy statute will require the approval of an organ of the central state, a local referendum or both.<sup>129</sup> Usually, the autonomous legislature cannot be dissolved by the central government, but acts adopted by it can require formal approval from the centre. The main reasons for the rejection of a legal act issued by an autonomous region are the incompatibility with the state's constitution, with international obligations or

<sup>128</sup> In Nunavut at least 15 out of 19 members have to be Inuit. In South Tyrol at least one Ladin must be member of the regional and provincial assembly. In most of India's "Autonomous District Councils" the councils' seats are reserved according to the numerical strength of the titular scheduled tribes of the district.

<sup>129</sup> Ruth Lapidoth, 2001, op. cit., p.22.

national security interests. However, a juridical organ must be determined, which is vested with the role as an appeal instance.<sup>130</sup> A complementary question refers to the mediation between state and autonomous region in case of conflict due to the state's encroachment upon the powers of the autonomous legislature, and vice versa. Conflicts on the delimitation of powers are the most frequent sources of conflict in autonomy systems.

One particular need of autonomy processes deserves separate attention: how to control and oversee the implementation of autonomy arrangements, and how to address and to discuss newly arisen questions? A special kind of institution or joint State-Region organ should be set up to settle disputes, a first approach of mediation before appealing to courts, and the preparation of the revision of the autonomy statute.<sup>131</sup> Its composition should ensure the equal representation of both parties, preferably with a chairman agreed upon by both parties (e.g. the chairman of the Åland Delegation).

Regarding the judiciary, at least three possibilities must be considered:<sup>132</sup>

1. The central state remains in charge of all matters of adjudication.
2. The whole sphere is transferred to the autonomous body.
3. Two parallel systems for the administration of justice are established, one dealing with matters within the competence of the autonomous area, the other linked to the judiciary of the state and handling matters reserved for the central authorities.

In the division of roles in the judiciary the personal element is also a relevant issue, as full neutrality of the courts must be granted. Thus, provisions need to be made to assure the equal composition of the courts at all levels. As the national constitutional judiciary may be biased, there are also some historical examples of judicial bodies with international participation (Cyprus until 1974, Bosnia-Herzegovina since 1996). On the other hand, the possibility of appealing against decisions of the highest instance of the autonomy's judiciary to the Supreme Court of the state must be granted. Finally, a separate instance must be endowed with the

decision of which court system has jurisdiction over a certain dispute. In some autonomous regions even the judiciary is under autonomous administration.

The central government is represented in the autonomous region by an official representative, not a 'Governor', but rather, a kind of 'liaison officer' between the state and the autonomous institutions. However, this central state representative cannot interfere in the autonomous sphere of government and legislation, but only oversee the implementation of politics in the matters reserved to the state. The approval of the local legislature may be required for his appointment. He may not be allowed to form a part of any of the democratically elected regional bodies, but may be in charge of arranging forms of cooperation between the autonomous institutions and the central government.

A future feature of autonomies will be the institutionalized representation of autonomous regions at the international (with international organizations) and interregional level (especially for transborder regional cooperation), either in the framework of diplomatic missions of the state, or in a distinct form by its own missions and representation offices (e.g. some European autonomous regions with the EU in Brussels).

### 2.7.2 The scope of autonomy

One of the core issues of establishing regional autonomies is the scheme of division of legislative and executive powers between the two government levels. According to Article 4 of the European Charter of Local Self-Government<sup>133</sup> "public responsibilities shall normally be full and exclusive. They shall not be undermined or limited by another, central or regional, authority except as provided for by law." This approach mirrors the general principle of subsidiarity.<sup>134</sup>

Since autonomy does not mean full statehood, some basic functions will not be required for a working autonomy in any state that continues to form the core responsibilities of central states: defence, foreign affairs, customs and monetary systems, immigration and citizenship, border control, some

<sup>130</sup> Ibidem, p. 22

<sup>131</sup> A proper term would be the German *Vermittlungsausschuss*, acting as mediation body between the *Bundestag* and the *Bundesrat*, whenever conflict arises between the Federation and the *Länder*.

<sup>132</sup> Ruth Lapidoth (2001), op. cit., p.23.

<sup>133</sup> See the full text in appendix, part 4

<sup>134</sup> "Public responsibility shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy (Art. 4, point 3, Europ. Charter of Local Self-Government)

aspects of international communication and transport, general civic and criminal law, and to a variable extent the macroeconomic policies. Whatever the nature of autonomy may be, there are no fixed rules in international law regulating the establishment and application of autonomy within the domestic framework. There is still no given uniform pattern of how to design a territorial autonomy. Each operating autonomy has been created under specific political and social circumstances, evolving from a unique historical background. The particular form of autonomy depends on various variables: the ethnic majority, the preparedness of the majority to grant autonomy, the presence of a kin-state, the size of the autonomy, the influence of the ethnic minority, the general international environment and some others. Although there is a wide range of constitutional arrangements and legal forms of autonomies, there are also some basic common features which define the scope of a territorial autonomy, as a measure of powers under direct regional control. The scope is different in size and character from cultural and local autonomy:

In practice, powers referring to international relations, defence and the state's unity are generally excluded from regional autonomy. Furthermore, the monetary system and policy, the macroeconomic policy and labour market regulations, the immigration and citizenship regulations, very often also the police and the general civil and criminal law are excluded. Territorial autonomy encompasses a minimum number of autonomous powers up to a maximum just short of defence and foreign relations.

In addition to a legislature and executive full autonomy would seem to imply control over the local judiciary. In most states with working autonomies such powers have not been devolved. Judicial powers are devolved rather in some exceptional cases, mostly referring to the administrative branch.

## The scope of different forms of autonomy

<i>Scope of territorial autonomy</i>	<i>Scope of cultural autonomy</i>	<i>Scope of local autonomy</i>
<p>All powers considered necessary for conducting the affairs of an ethnic group, specifically:</p> <ul style="list-style-type: none"> <li>- Language rights and language policy</li> <li>- The right to the ethnic group's national emblems, use of names and toponyms</li> <li>- The right to settle any question of possible second citizenship</li> <li>- Education, including higher education</li> <li>- Cultural institutions and programmes</li> <li>- Radio, TV, electronic media</li> <li>- Licensing of professions and trades</li> <li>- Use of natural resources</li> <li>- Health care,</li> <li>- Social services and security</li> <li>- Regional transport and communications</li> <li>- Energy production</li> <li>- Banks and other financial institutions</li> <li>- Regional and local police</li> <li>- Taxation for regional purposes</li> <li>- Environmental protection</li> <li>- Urban planning, development programmes</li> <li>- Regional economic policy, incentives for economic branches</li> </ul>	<p>All powers considered necessary for the preservation and development of the cultural identity, specifically:</p> <ul style="list-style-type: none"> <li>- Language rights</li> <li>- Culture</li> <li>- Education system</li> <li>- Information, including media</li> <li>- Use of the ethnic group's national emblems and toponyms</li> <li>- Participation in the settlement of possible second citizenship</li> <li>- Any other matters necessary for preserving and exercising the protective rights they are entitled to</li> </ul>	<p>Regulation of institutional bilingualism within the local self-administration</p> <ul style="list-style-type: none"> <li>- Use of names and symbols specific to the ethnic group</li> <li>- Regulation of local customs and festivities</li> <li>- Protection of local monuments and memorials</li> <li>- Local security and traffic police</li> <li>- Local health and building inspectors</li> <li>- Institutions for local teaching, media, traditions, education, safeguarding economic activities</li> </ul>

Source: 'Autonomy Rights of Ethnic Groups in Europe', Draft Document for a Special Convention, Articles 5, 8 and 10, May 1994 (for the full text see Appendix, Part 1).

Tkacik argues that autonomy forms can be characterized by the aggregate number of issues controlled by the local community (scope), the level of local control over any given issue (depth) and the territorial insularity of the autonomy community.<sup>135</sup> Tkacik, by combining these three variables, asserts to find a measure of the "volume of autonomy". Whereas geospatial specificity (remoteness) is relevant, but not determinative, the depth and scope of autonomous legislative powers definitely is of utmost relevance for a 'strong' or 'weak' or a mere administrative territorial autonomy. The case of Corsica in this regard is very telling, as a large aggregate number of powers (scope) alone is not sufficient to exercise 'genuine autonomy', if the depth is not available. In fact, most of the Corsican Assemblies acts have no binding character. „Had the reforms proposed in 2000 been fully implemented, granting the Corsican Assembly a more significant right to derogate from national laws without the need to request prior permission from the French government, then arguably Corsica might have

crossed the blurry line separating administrative from legislative autonomy."<sup>136</sup> Hence, the issue of depth (legal character of acts of the autonomous assembly) is decisive for the classification of a territorial autonomy, but the issue of scope is most relevant for the quality and efficiency of an autonomy system. As will be discussed in section 5.2 a small range of autonomous powers will severely affect if not jeopardize the fundamental aims of autonomy, the protection of ethnic identities and the regional control of social and economic development.

<sup>135</sup> Tkacik, op. cit., p. 381, relying on Farimah Daftary, Experimenting with Territorial Administrative Autonomy in Corsica: Exception or Pilot Region?, in Int. Journal on Minority and Group Rights 15 (2008), p. 273-312;

<sup>136</sup> M. Tkacik (2008), *ibidem*, p. 369

## Power sharing between the central state and the region in advanced territorial autonomies: the example of Catalonia

Catalonia can be considered as one of the most advanced systems of vertical power sharing central state/autonomous region. Its new autonomy statute (see the full text at: <http://www.gencat.cat/generalitat/eng/estatut/index>), in force since 2006, describes the types of powers of the autonomous region (Generalitat de Catalunya) in the Articles 110-115: exclusive powers, shared powers, executive powers, powers of the Generalitat and European Union rules, promotional activity, territorial scope and effects of powers) in a utmost precise manner and therefore can be considered a kind of „Idealtypus“ of power sharing schemes for autonomies worldwide.

Powers of the central state	Shared powers	Powers of the autonomous entity (Generalitat in the case of Catalonia)
<ul style="list-style-type: none"> <li>- fundamental rights</li> <li>- citizenship, immigration and emigration, asylum law and foreign nationals</li> <li>- foreign affairs</li> <li>- defence and armed forces</li> <li>- judiciary and administration of the judiciary</li> <li>- civil and labour commercial law</li> <li>- penal law and penitentiary system</li> <li>- civil and penal litigation</li> <li>- author's rights and copyrights</li> <li>- framework acts and coordination of the general economic policy</li> <li>- state budget and public debt</li> <li>- framework law on social security and welfare, health, public administration, environmental protection, media and print law, mining and energy</li> <li>- water resources management, if the rivers cross more than one autonomous community</li> <li>- railways and highways whenever crossing more than one autonomous community</li> <li>- public building of national public interest</li> <li>- public security, irrespective of the institution of regional or local police forces</li> <li>- acquisition and recognition of academic and professional titles</li> <li>- authorization of popular referenda</li> </ul>	<ul style="list-style-type: none"> <li>- Civil law</li> <li>- Immigration and communications infrastructures</li> <li>- Stock exchanges and contracting centres</li> <li>- Public works</li> <li>- Promotion and defence of competition</li> <li>- Work and labour relations</li> <li>- Public law on corporations and certified professions</li> <li>- Stock exchanges and contracting centres</li> <li>- Public security</li> <li>- Social security</li> <li>- Healthcare, public health, pharmaceutical regulation and pharmaceutical products</li> </ul>	<ul style="list-style-type: none"> <li>- Agriculture, livestock farming and forestry</li> <li>- Water and hydraulic works</li> <li>- Associations and foundations</li> <li>- Hunting, fishing, maritime activities and organisation of the fishing sector</li> <li>- Savings banks</li> <li>- Trade and trade fairs</li> <li>- Popular consultation</li> <li>- Consumer affairs</li> <li>- Cooperatives and the social economy</li> <li>- Public law on corporations and certified professions</li> <li>- Credit, banks, insurance and mutual benefit societies not included in the social security system</li> <li>- Culture</li> <li>- Geographical and quality denominations and indications</li> <li>- Civil law</li> <li>- Prosecution law</li> <li>- Education</li> <li>- Emergencies and civil protection</li> <li>- Energy and mines</li> <li>- Sport and leisure</li> <li>- Statistics</li> <li>- Public employment and staff in the employ of the Catalan public administration bodies</li> <li>- Housing</li> <li>- Immigration</li> <li>- Industry, craftsmanship, meteorological control and evaluation of metals</li> <li>- Transport and communications infrastructures</li> <li>- Gaming and shows</li> <li>- Youth</li> <li>- Catalonia's own language</li> <li>- The environment, natural areas and meteorology</li> <li>- Stock exchanges and contracting centres</li> </ul>
<p>Newly emerging powers : transregional or crossborder co-operation, international affairs, regional citizenship, control of immigration into the autonomous region, representation in international organizations, innerline permits.</p>		

## 2.8 Advantages of autonomy

What are the main advantages of autonomy mechanisms? This can be best assessed after an empirical appraisal of some basic features of the world's working autonomies, which will be done in Parts 3 and 4. Moreover, advantages can be formulated only on condition that the very purposes of autonomy are shared. But while reviewing the world's operating autonomy systems it should be kept in mind which positive effects and opportunities territorial autonomy can theoretically produce, *vis-à-vis* some risks that may result from autonomy (section 2.9). Generally some of the expected advantages of autonomy are the following:

1. Territorial autonomy ensures minorities, minority peoples or regional communities a minimum measure of state power. Regional communities can determine executive, legislative and judicial powers by electing regional bodies, instead of being merely represented on the national level with little prospect of a share in policymaking or influence on the distribution of resources. Local problems that might otherwise engender a national crisis are dealt with directly by the concerned population. Autonomy enhances the democratic participation of the people

2. Territorial autonomy, in combination with the respect of legal standards of minority protection in a state's national law, offers national minorities a better prospect of preserving their culture, language and identity. It enables minorities to assume primary responsibility for the implementation of their cultural rights and their cultural development. Autonomy is one condition of cultural survival.

3. Territorial autonomy may forestall or terminate demands for secession. The flexibility of this device in terms of division of powers and structure of institutions enables various kinds of accommodation and compromises to be made. Autonomy is a means to avoid secession. Its application is a form of internal self-determination. Provided that the national minority or minority people have enough freedom and means to preserve its identity, no more urgent need for secession is given. Autonomy can allow self-determination without creating new boundaries and states.

4. Territorial autonomy can increase the political integration of ethnic groups and minority peoples. Autonomy increases the opportunities for regional political forces (former militant forces included) to participate in the political system. This political competition can, in turn, accentuate differences within ethnic groups and minority peoples, which can lead to more pluralism within previously monolithic ethnic parties. Territorial autonomy enhances integration in a democratic system (not in the national society).

5. Territorial autonomy contributes to constitutionalism: autonomy arrangements and the mechanism to enforce them emphasize the rule of law, the separation of powers and the role of independent institutions as the judiciary. The institutions and procedures governing the relationship between the centre and the region must be based on a firm legal entrenchment on dispute settlement procedures, on mutual respect and readiness to compromise, thereby strengthening qualities of partnership.

6. Territorial autonomy enables ethnic problems to be solved without fixing ethnicity as the only paradigm, since its focus is on defining a region as a geographic entity and not as an ethnic entity. However, some forms of autonomy may indeed entrench ethnicity, as is the case of reservations, where the cultural dimensions and the need to protect the identity of the group may serve to sharpen boundaries against outsiders. An important qualification of territorial autonomy is that it can function only when a national minority or minority people is concentrated geographically and is a majority (absolute or relative) in that area. The self-perception of being in a majority position with respect to many responsibilities, gives a minority more security. Thus, provided the focus on the territorial dimension, territorial autonomy eases interethnic tensions.

7. Territorial autonomy is a device to enable a regional community to control the regional natural resources. The problem of the exploitation of natural and other resources by state majorities, regardless of interests and livelihood of the concerned regional population, is sometimes the very cause of autonomy claims. The arrangement must include sufficient powers to prevent economic exploitation by non-regional corporations.

8. Territorial autonomy can provide for a transitional solution of minority conflicts (see box before). Yet, even when an agreement is reached and hostilities are ended, tensions can resurface if the autonomy

arrangement is not working, or is not correctly implemented. Even when the arrangements do not last or tensions re-emerge, the end of hostilities provides a breathing space to define issues of difference and consent, and may even provide the framework for future negotiations. This is important, since a frequent problem in many ethnic conflicts is finding a safe framework for negotiation. Sometimes the mere commitment to consider autonomy can serve to defuse tensions, as in South Africa, where the agreement to consider a 'white homeland' secured the participation of hard-line Afrikaaners to the interim constitution.

9. Territorial autonomy also calls for a general participatory right in the modern democratic state,<sup>137</sup> apart from the mere issue of protection of national minorities and ethnic groups living in a unitary state. Regional autonomy provides regional communities with a better chance to participate in politics and to control the political elite. It enables regional bodies and institutions to develop regional economic and social systems that better respond to the needs and interests of the local community. Electoral laws and processes at the regional level can more effectively include hitherto marginalized social and ethnic groups. Special legislative procedures can take account of the interest of regional minorities, which would be excluded completely at the national level. 'Consociational' power-sharing mechanisms can enhance both the participation of minorities and their integration in society. Also, the various means of direct democracy work better at a regional and local level, while popular communication can more easily be organized. In this light, territorial autonomy is beneficial in improving the participatory rights of the entire regional population.

10. There are several other attractive features of territorial autonomy. The general concept of autonomy can comprise a wide variety of arrangements regarding its structure and scope. The flexibility of the autonomy device in terms of the division of powers and the structure of institutions enables various kinds of accommodation to be made. Regarding the procedure of establishing an autonomy, there is no need to find a definitive solution for all questions at just one historical moment, but it allows for a gradually increasing transfer of powers and a dynamic enlarging of the autonomy. It opens up a perspective of gradual 'joint venture' to peaceful coexistence in mutual trust.

To sum up, there are plenty of good reasons to take territorial autonomy into consideration when a state party is faced with minority conflict, but this concept also has some risks and limits. Advantages have to be balanced with risks and dangers against the backgrounds of historical experience and current reality. Some objections to autonomy will be addressed in the next chapter, but a balanced approach is examined in Chapter 5. Is autonomy efficient as a means of settling ethnic tensions? It is becoming more and more apparent that it is. Has territorial autonomy been an effective means for preventing conflict-ridden states from falling apart, as well as for implementing internationally recognized human and minority rights standards in regions with national minorities? Has autonomy the potential to provide for a peaceful coexistence of diverse people or minorities within a given region? As Heintze puts it,<sup>138</sup> autonomy is not automatically a recipe for success; it is only one part of conflict resolution and must be combined with other measures according to the circumstances of the case. Eventually, when measuring the performance of a complex legal-political system it has to be well explained by which criteria and by which standards this is done. There are considerable methodological difficulties along the way, which can not be solved in this volume.

<sup>137</sup> For this argument see also Zelim Skurbaty, 'Introduction', in Zelim Skurbaty (2005), *Beyond a One-dimensional State*, Leiden, p.xlv; and Yash Ghai, 2000, chapter 2

<sup>138</sup> Hans-Joachim Heintze (2002), op. cit., p.342; Fernand De Varennes, 'Lessons in Conflict Prevention: A Comparative Examination of the Content of Peace Accords', in *The Global Review of Ethnopolitics*, Vol. 1, No.3, March 2002, p.53-9.

## 2.9 Objections to and limits of political autonomy

In many cases in recent history, central states involved in ethnic conflict with minority groups or with minority peoples under their sovereignty have resisted autonomy claims over long periods, in some cases attempting to defeat national liberation and autonomy movements by military means and through violent repression. From the viewpoint of the national power centre within a unitary state, conceding autonomy requires a challenging effort of limiting the central powers of political and economic regulation without releasing control of internal and external security and sovereignty within the concerned territory. The minority's political groups and militant organizations must be recognized, power-sharing institutions must be established, resources must be allocated more equitably, negotiations with kin-states must be faced – not easy concessions for states with centralist historical backgrounds. Hence, when envisaging autonomy (or federal settlements) as a conflict solution, the most widespread fears among the central political elite are the following:<sup>139</sup>

- Electoral support among the national and the most nationalist sections of the state's electorate could be lost if responsible state leaders concede too much autonomy.
- The concession of autonomy will be the first step to secession. The minority peoples and national minorities will use the new autonomous powers to expand secessionist efforts.
- A given degree or form of autonomy could be insufficient and tensions could resurface; the autonomy arrangement could be challenged, and violent conflict would recur.
- The establishment of a territorial autonomy may trigger claims for autonomy from other regions and national minorities in a so-called 'domino effect', and the unity of the state's territory would be generally questioned, provoking a serious threat to the very existence of the state.
- The establishment of an autonomy would create new minorities and conflicts within the autonomous region, due to claims for civil and

minority rights from smaller groups.<sup>140</sup>

- The state's loss of control of natural resources and financial revenues would seriously weaken the power of the central government, especially if the concerned region is relatively wealthy.

On the other hand, major objections to autonomy have been raised by the concerned national minorities and minority peoples. Many of them, due to negative historical experience, no longer trust in a domestic political solution, depriving them of the strong cards of some military power vis-à-vis the central state. Especially after years or decades of violent conflict, and in the context of imperfect rule of law and international entrenchment, national minorities find it difficult to rely completely on the government's promises to respect agreements and commitments to fully implement autonomy once the weapons are unsheathed.<sup>141</sup>

Moreover, serious reservations have been expressed by minority representatives and organizations with regard to the legal and political consequences of an autonomy arrangement: Does territorial autonomy require the definitive renunciation of external self-determination? Will autonomy bring about assimilation in the long term? Is autonomy about to sacrifice the national minority's unity when struggling for its collective rights? And again: which instance or power will ensure full implementation? Bitter conflicts have broken out over such irksome issues among resistance movements themselves.<sup>142</sup>

Elsewhere, advocates of unitary states have stated that autonomy undermines the state's unity and consolidates ethnic collective identity, eventually leading to secession.<sup>143</sup>

<sup>140</sup> For example, the Muslims in Sri Lanka's Northeast, the Christians in Mindanao, the Hindus in Jammu and Kashmir; the Romanians in Transylvania.

<sup>141</sup> Indeed, some national minorities and minority peoples in history were tricked out, with autonomy promises never fully kept: Eritrea by Ethiopia until 1968, South Sudan from 1954 to 1983; the Chittagong Hill Tract indigenous peoples since 1999, the Kurds in Iraq in the first autonomy ended by the Saddam Hussein regime in 1980. But even if a central government is not complying with autonomy, violent conflict must not resume, but be definitely transformed into a political struggle as it is happening in Northern Ireland, whose autonomy is hesitating to take off, and in the Basque Country seeking to extend its autonomy.

<sup>142</sup> Again well-known examples are the Chittagong Hill Tracts in Bangladesh, Muslim Mindanao in the Philippines, the Kanaky movement on New Caledonia.

<sup>143</sup> This is the assumption of Svante E Cornell in 'Autonomy as a Source of Conflict: Caucasian Conflicts in Theoretical Perspective', *World Politics*, Volume 54, No.2, January 2002, pp.245–76.

<sup>139</sup> For the pros and the cons see also Ruth Lapidot (1997), *op. cit.*, p. 203–6.

Ideologically cherished concepts of sacred sovereignty and unity of the motherland stand in the foreground, and hard interests to control and exploit land, resources and military assets in the background. In such cases, the highly contrasting concepts of a state clash and apparently insurmountable gaps divide the peoples and ethnic groups living within a given state. For example, if a state majority, represented by its political forces, sticks to the narrow concept of a state as a structure aimed to consolidate and expand the domination of one group over the remaining groups, the sharing of power with minority groups and the reallocation of resources entailed in autonomy – whether the form is an asymmetrical federalism or a special autonomy – is unacceptable. This has actually occurred in Sri Lanka, Turkey and Burma. In such cases, compromises on autonomy are particularly difficult, as they require a serious shift in the central state's ideology and constitutional principles to be adopted by the state's powerful political elite.

The fear of autonomy as a first step to secession is particularly emphasized when a minority people lives in its homeland contiguously with its kin-state, like Kashmir and Pakistan, Tamil Eelam and Tamil Nadu or Turkish Kurdistan and Iraqi Kurdistan. Bilateral agreements can counter this fear by excluding unilateral change of borders. In every circumstance, the consequences of the denial of autonomy and the numerous advantages of autonomy for the stability and beneficial relationship with the neighbour state have to be weighed.

Then, as Yash Ghai puts it, 'government leaders fear that autonomy would inhibit the performance of key state functions'.<sup>144</sup> Autonomy may jeopardize economic and administrative efficiency due to the complexity and duplication of administrative institutions. Autonomy inevitably adds to the cost of running government, as a particular regional administration has to be built up. On the other hand, the theory of decentralization points out the efficiency gains of an administration which can operate 'on the ground', based on the precise knowledge of the local circumstances.

Autonomy may also affect the operation of the economy, especially as there may be regional taxes and restrictions on the mobility of labour or preferences for local capital. Autonomy may retard the state's function of redistribution of resources and thus jeopardize the very 'legitimacy of autonomy'.<sup>145</sup>

A functional comparison of the about 60 working autonomous regions can provide empirical evidence for this assumption or prove the contrary, but in such a discourse the prevailing rationale of an autonomy should not be forgotten: the economic and administrative efficiency of a state cannot be the top criterion, but rather, the respect of individual and collective human rights and minority rights.

One further common argument used by central states is that by establishing autonomy for one minority people or region alone, an endless series of claims for autonomy from other corners of the state would be triggered off. This has particularly been emphasized with regard to self-determination movements in multinational states such as India, Nigeria, Indonesia and Burma, but also by the Russian government when the conflict with Chechnya first broke out in the 1990s. The argument has yet to be thoroughly examined in the light of historical experience, but in the overwhelming majority of the 22 states with working autonomy systems, no such 'domino effect' occurred. And again, in every case of ethnic minority conflict on earth, the legal, political and moral legitimacy of an autonomy claim must be weighed against the central state's legal and political interest to preserve maximum power at the centre.

A frequent objection to autonomy refers to the creation of new minorities within an autonomous region, who may be subjected to discrimination. Such criticism of autonomy comes from an individual-oriented view of human rights. Autonomy frequently originates from the legal concept of group rights, as explained in Chapter 2.5, which potentially leads to discrimination against other individuals and groups sharing the same territory. But even those scholars less committed to an individualist conception of cultural rights have problems with some kinds of autonomy systems. Steiner, valuing the diversity and richness of ethnic groups, has cautioned against autonomy regimes that hermetically divide one community from another, stating that:

Rights given [to] ethnic minorities by human rights law to internal self-determination through autonomy regimes could amount to authorization to them to exclude the "other" [...]. Enforced ethnic separation both inhibits intercourse among groups, and creative development within the isolated communities themselves. It impoverishes cultures and peoples [...]. This means a state composed by segregated regime would resemble more a museum of social and

<sup>144</sup> Yash Ghai (2000), *op. cit.*, p.499

<sup>145</sup> Yash Ghai, *ibidem*.

cultural antiquities than any human rights ideals.<sup>146</sup>

This argument is particularly relevant for the traditional form of reservations for indigenous peoples, the Indian reservations in America in particular. Generally, autonomy is always a compensation for the general structural imbalance and discrimination between the culturally dominant titular nation of a nation-state and single national minorities. Various forms of consociational decision-making within the autonomy system can prevent that risk, but it is ultimately up to the free political process within a national minority or minority people to set the desired equilibrium. In democratic states respecting the rule of law and international covenants, both fundamental human rights and political freedoms are protected against violations by central and autonomous law by the state constitution, as well as autonomy laws or statutes. Generally, autonomy regimes rest on the assumption that cultural differences enrich, more than endanger a society. Differences can only enrich if they are preserved. In the globalizing world, cultural survival is defended by counteracting (Western) homogenization, a pursuit that can be supported by forms of autonomy.

In this regard, Hans-Joachim Heintze points out that:

[...] some criticize that autonomy promotes the separate ethnic identity of a group and the responding minority is singled out as being different. The very existence of such a special status would discourage the development of overlapping and inclusive identities. There is a fear that the concept of all citizens being equal and members of a civic nation would hardly be compatible with singling out specific groups on the basis of ethnicity.<sup>147</sup>

And Svante Cornell warns that the 'ethnic cantonization' of a multi-ethnic state or any form of 'consociational democracy' is not helpful in the long run, because it explicitly discriminates between the groups on grounds such as religion, language or national origin.<sup>148</sup> The concepts of citizenship and cultural identity are opposed to each other, which is open to discussion, but again, the free democratic will of a given community must be fully acknowledged.

<sup>146</sup> Henry Steiner, 'Ideals and counter-ideals in the struggle over autonomy regimes for minorities', *Notre Dame Law Review* 66 (5), p.1552, quoted by Yash Ghai, 2000, p.501. In the very definition of territorial autonomy freedom of movement (everybody's right to freely move out and in the concerned region) forms a criterion. For explanations see also Chapter 2.2.

<sup>147</sup> Hans-Joachim Heintze, 2002, p.340.

<sup>148</sup> Svante Cornell, *Autonomy and Conflict*, Uppsala 2001, p.228.

In other terms: self-determination can take different forms, from internal to external, but a 'determination' must be made by the concerned subject.

Finally, opponents of autonomy solutions frequently point out the historical failures of certain autonomy systems.<sup>149</sup> In fact, the record of the success of autonomy to resolve or manage ethnic conflicts is mixed. There are many instances where it has defused tension, but others where autonomy has failed.<sup>150</sup> However, the precise causes of the failure of historical territorial autonomies must be analysed carefully. Has unilateral action by the state subverting the autonomy caused its failure? Is the failure due to the lack of a true democratic environment and the absence of rule of law? Or has the changing international political framework induced the failure? Finally, have internal factors of interethnic conflicts within the autonomous region and the loss of consociational power-sharing provoked the failure? Or was it perhaps the simple interest of the central state to regain full control over the resources and population of a given area? It is important to draw lessons from historical examples of failures, but keeping in mind all factors that caused that failure. Again there is major evidence, that the issue of secession resurfaced whenever autonomy was either not respected and implemented (Eritrea, South Sudan) or denied or later abolished by the central state (Iraqi Kurdistan, Kosovo).

Many different authors agree with the statement that autonomy is not a panacea.<sup>151</sup> It is just one part of conflict resolution, and must be combined with others. An internal balance between group rights, cultural autonomy and individual rights must be found. This is a long process of weighing individual rights or the rights of minorities with the rights and interests of regional communities as a whole. Not all problems are overcome simply by establishing a legal system of territorial autonomy. But single functional deficits do not question the whole structure of autonomy. When based on subsidiarity rules, an autonomy can always be further improved.

History has shown that autonomy is not automatically successful everywhere. It can fail if the arrangement itself is flawed or inappropriate, or if the conditions are no longer consistent. On the other hand, when

<sup>149</sup> For instance, the autonomies in Kosovo (Serbia), Eritrea (Ethiopia), South Sudan 1954–83, the Memel-Klaipeda region between the World Wars.

<sup>150</sup> Yash Ghai (2000), op. cit., p.505.

<sup>151</sup> Markku Suksi, Ruth Lapidoth, Yash Ghai.

conflict resolution is the aim (as has often been the case in recent history) autonomy has facilitated<sup>152</sup> a compromise, as it is a midpoint of the competing claims of separate statehood and a unitary state. It can provide the basis for a long-term resolution because it can fudge the thorny issue of sovereignty, which has been troublesome in so many conflicts.

The limits of autonomy are also given by the right to self-determination. Self-determination in its external form, leading to the secession of a given territory from the state, is far from being overcome even in the twenty-first century, for three reasons. First, after harsh ethnic conflicts, governments sometimes offer autonomy in order to prevent full secession of the affected part of the country and to bring armed struggle to an end (Aceh, Mindanao, Bougainville, South Sudan, Northern Ireland, etc.). Sometimes this has worked, but in other cases, autonomy arrived too late. Second, autonomy in deep-rooted ethnic conflict is no panacea for a stable solution, as internal self-determination with full recognition of the sovereignty of the state by the respective minority is possible. From a democratic and human rights perspective, a minority people is always to be endowed with the right to choose other options if a power-sharing arrangement does not provide for its durable protection. On the other hand, central states are faced with the choice between territorial asymmetrical arrangements with single minority peoples and regional communities or a centralist power structure, as a permanent issue of conflict.<sup>153</sup> But even movements for self-determination are increasingly becoming aware that secession brings about new problems in multi-ethnic or multi-religious societies, and apart from each kind of settlement, regional cooperation cannot be renounced in an increasingly integrated world.<sup>154</sup>

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152 Yash Ghai (2000), *op. cit.*, p.496.

153 Hurst Hannum, 'Territorial Autonomy: Permanent Solution or Step toward Secession?', in: Zelim A Skurbaty, *Beyond a One-dimensional State*, 2005, p.153–60.

154 See Tim Poties (2003), *Autonomy in the 21st century*, p.10.

## 2.10 Basic criteria to determine modern autonomy systems

Some basic criteria must be defined if today's 'genuine working autonomies' are to be objectively determined and selected for further analysis. The classification of an autonomous region as a 'modern autonomy system' has been possible on the grounds of the following four criteria:

- Being by the national constitution incorporated part of a state with rule of law with an independent judiciary and horizontal division of powers.
- The permanent devolution of legislative powers to freely elected regional assemblies of the autonomous entity.
- A working pluralist democratic system with free and fair elections and civil liberties and democratic freedoms respected.
- The equality of fundamental political and civil rights within the state and the autonomous entity of all citizens legally residing on the territory of the autonomous entity.

### a) Rule of law in the state and autonomous entity

The first dimension regarding the rule of law entails the question whether the autonomous entity is an incorporated part of the state to which it belongs under constitutional and international law. This means that the organs of the central state must be recognized by the autonomous entities as responsible, legitimate state authorities with full sovereignty and integrity. On the other hand, the state must be in full control regarding the external security and military forces of the autonomous territory. Under this criterion, a 'modern autonomy system' is not a region or entity which is de facto controlled by armed forces of a secessionist regime without recognition and democratic legitimacy, even if autonomy is the ultimate goal of the insurgent or secessionist forces. Under this criterion, several territories, today de facto ruled outside existing state borders or break-away regions, are not eligible for an identification as 'modern autonomies', such as Abkhazia and South Ossetia (claimed by Georgia as 'autonomous

regions'), Transnistria (claimed by Moldova, which is offering autonomy), Gorno-Karabagh (which has been de facto annexed to Armenia), Northern Cyprus (which is a self-declared secessionist republic), Somaliland and Puntland (de facto independent states within the former Somalia), some territories of Colombia held by rebel armies under cease-fire agreements (FARC, ELN), some territories of Myanmar/Burma held by rebel armies of minority peoples, some areas of Afghanistan and self-administered tribal areas of Pakistan held by Taliban forces.

A second dimension of the rule of law is the question, whether the autonomy arrangement has been legally set in force. In some conflicts over self-determination of a region, autonomy arrangements have been made between the involved parties, but only on the paper of signed agreements, with no concrete steps taken to implement the accorded arrangement. In such cases autonomy, even if very bland and of a low level, is simply not or not yet working. This is the case in the Chittagong Hill Tracts of Bangladesh, the Cordillera region of the Philippines and Papua and West Papua in Indonesia. On the other hand, if the autonomy agreements have been officially ratified by both conflict parties and the respective legal acts have been approved by the national parliaments and the implementation process has taken off, it does not matter if much ground experience has yet been sampled, as in legal terms the autonomy is established.

A third dimension of rule of law is the status of the autonomous entity under the constitution as a legal part of the sovereign state under its constitution. Hence, neither a dependent territory under Article 73 of the UN-Charter, nor an associate state, nor a military occupied territory can in such terms be a modern autonomy system, but such a region or area has to be an "incorporated part" of the sovereign territory of the concerned state.

Under the criterion of rule of law, autonomy systems can be classified as such even if the arrangement is considered only transitional by both parties, as is the case in South Sudan (referendum on self-determination in 2011) and New Caledonia (referendum possible not before 2014). In both cases, not before five years (Comprehensive Peace Treaty for South Sudan of 2006) and 15 years (New Caledonia's Nouméa Accord of 1999) after the coming into force of the peace treaty, referendums may be held to decide whether full independence or autonomy should be the definitive status. Autonomy in a different meaning can be

established as a transitional settlement projected to a definitive solution by democratic means, always based on the right of self-determination of peoples. This is the case with Palestine, which is halfway between an occupied territory and a fully independent state, and thus cannot be regarded as a genuine autonomy.

### **b) The permanent devolution of a minimum of legislative and executive powers**

The issue of legislative power exercised by freely elected regional assemblies is decisive for the understanding of autonomies. „Making laws is equal to the effective exercise of power over the territory of a state.“<sup>155</sup> The autonomous entity (region or province) must be vested with a minimum of legislative and executive powers. These powers have to be attributed to freely elected legislative councils which must be independent from the national legislature. The executive board or body must be entitled to implement that legislation and must be elected either directly or by the autonomous parliament. Under these criteria again, several formal autonomies or ‘de jure autonomies’ cannot be classified as genuine autonomies, even if they are parts of indisputable democracies. This has been the case with Corsica, due to the lack of real legislative powers of the regional assembly of the Corsican *collectivité territoriale*, which is limited to submitting draft proposals to the central government in Paris. On the contrary, this is not the case with New Caledonia, which is endowed with true legislative powers. Some more formally “autonomous” sub-state entities, which are not vested with legislative powers, are listed in the appendix part 6 under “Regions with autonomy-like arrangements of territorial power sharing”.

Not the sovereignty of the state is devolved to the autonomous entity, but the normative competence on special areas in such a way that the central state and autonomous entity divide or share the powers within the boundaries of an autonomous territory: „In so far as an autonomy arrangement has been vested with exclusive law-making powers, they also constitute a share in the internal self-determination of the entire state.“<sup>156</sup> Legislative powers make the real difference. As Gamper legitimately points out,<sup>157</sup> no genuine regional democracy can be assumed without the power to adopt regional laws. Indeed, legislative powers of a

locally elected body or assembly is a necessary, but not sufficient condition to establish territorial autonomy. „A key variable in determining the existence of legislative autonomy and emphasized by most scholars is the level of independence of the local legislature“.<sup>158</sup> The second one is the implementation of autonomous laws and regulations by a democratically legitimized executive legitimacy.<sup>159</sup>

### **c) Democracy and free elections**

Democracy as a criterion for determining the presence of a modern autonomy system is not generally shared in the scholarly literature as one could suppose. There are differing approaches, one of which considers autonomy from a formal legalistic perspective, whereas others privilege the substance of democratic institutions and procedures. The former means that legislative powers in both the center and the autonomous entity, for establishing an autonomy system, can be exercised also by non-democratic bodies. The latter approach focuses on substantial self-rule by the population of the concerned area, stating that no genuine self-government and self-legislation can unfold without freely elected representatives of the people in the concerned region. As Yash Ghai argues, it is evident that of all autonomy arrangements in liberal societies, communist states and developing countries, the most successful examples are found in liberal democracies.<sup>160</sup>

This criterion is of utmost importance as several states have established various forms of autonomous entities, without having democratic pluralist system. In other cases there are such systems enshrined in democratic constitutions and democratic elections are carried out, but they do not respond to international standards of free and fair elections. Hence, there must be a democratic pluralist system on both the regional and the national level, based on a democratic constitution and operating democracy, including the respect of civil liberties and democratic freedoms with free and fair elections in order to determine a formally autonomous region as a “genuine modern autonomy”. For this purpose one can recur to a widely accepted

<sup>158</sup> Ibidem, p. 384

<sup>159</sup> As some authors rightly remark there are some grey areas between administrative and territorial autonomy. Corsica e.g., has a regional assembly and the ability to consult on national laws, but this power is not binding in nature. It is not allowed to definitely approve regional laws, as this act is reserved to the central government in Paris.

<sup>160</sup> See Yash Ghai (2000), op. cit., p. 16

<sup>155</sup> See André Legaré/Markku Suksi (2008), op. cit., p. 149

<sup>156</sup> Ibidem, p. 150

<sup>157</sup> Anna Gamper 2004), Die Regionen mit Gesetzgebungshoheit, Europ. Verlag der Wissenschaften, Frankfurt, p.383

measuring of democratic standards, continuously observed and registered by the Freedom House.<sup>161</sup> This source can be completed and cross-checked by the “Democracy Index” compiled by the ECONOMIST,<sup>162</sup> which classifies the countries in four categories according to the score matched on the index:

- full democracies
- flawed democracies
- hybrid regimes
- authoritarian regimes

A modern territorial autonomy can operate only under conditions of democracy, hence in both states with „hybrid“ or „authoritarian regimes“ existing autonomous entities - in the absence of a democratic framework - are rather to be considered „autonomy-like arrangements of territorial power-sharing“.<sup>163</sup>

The criterion of democracy is crucial not only for a normative concept of political autonomy, but from a perspective of theoretical consistence of autonomy (autós: oneself; nomos: law): the citizens legally residing in the autonomous region have to be the sovereign subjects of the regional democracy. They must have the right to freely choose their representatives in the legislative and executive institutions. In an authoritarian state, as e.g. China, there are just centrally backed cadres to take political decisions, neither freely elected, nor independent from the central power. They respond to the local branch of the central authority or to the only ruling party, but not to the electorate of the autonomous entity, formally declared as such. In such cases there is no vertical power sharing between the central state and the autonomous region, but primarily between the central level and the peripheral level of the only governing political power structure. Power sharing between party bosses of the centre and those appointed to govern the periphery is not equivalent to a modern autonomy system.<sup>164</sup>

161 See [<http://www.freedomhouse.org>] reports on the situation and development of democracy in all countries. The methodology of Freedom House is a scale running from 1 to 7, where 1 indicates the highest degree of freedom and 7 the lowest one. The scores are derived from survey investigations done in the countries.

162 This Index examines the state of democracy in 167 countries leaving out only some micro-states. See: [http://en.wikipedia.org/wiki/Democracy\\_Index](http://en.wikipedia.org/wiki/Democracy_Index)

163 According to the Democracy Index, concerning states with autonomy systems, Azerbaijan, China, Sudan, Tajikistan and Uzbekistan are authoritarian regimes, whereas Tanzania and Russia are considered “hybrid regimes”.

164 It should not be asserted, however, that just complying with general standards of democracy, e.g. Holding acceptably free and fair elections, does ensure good governance and an acceptable output of the respective political system. The main issue in terms of determining a meaningful autonomy is the democratic constitution

Indeed, there are again with regard to this key element of democratic government in an autonomous region „grey areas“. The general criterion of „local election of political representation“ would require also the executive to be either selected directly by the people (the regional electorate) or by the regional assembly. If the head of the local executive is nominated or appointed by the central government, the independence of the implementation of the given autonomy comes into question. But in some cases as on the Isle of Man, the practises of the centrally appointed chief is not differing from „truly autonomous executive boards.“ Theoretically it must be cleared where the autonomous government’s loyalties lie. South Korea’s province with a special statute, the province of Jeju, cannot be considered a modern autonomy system, as despite the overall democratic system of the state, not only the executive, but even the Jeju legislative assembly is not elected by the provincial electorate.<sup>165</sup>

In some other states with formally autonomous entities elections are held, but democratic procedures and political freedoms are not respected. Under this requirement not only the People’s Republic of China (with its five autonomous regions and other autonomous subjects) has been excluded,<sup>166</sup> but also Uzbekistan with Karakalpakstan, an autonomous province since Soviet times, and Tajikistan with Gorno-Badakhshan.<sup>167</sup> Also Azad Jammu and Kashmir in Pakistan is no autonomous state as it is kept in leading strings by the central state with very questionable democratic standards. A borderline case is Azerbaijan with the autonomous region of Nakhichevan, where serious doubts exist among international human rights organizations and international institutions (Council of Europe) whether parliamentary elections at both the national and regional levels have been free and fair. In Indonesia both forms can be observed: working autonomies as the Province of Aceh, and pseudo-autonomies as Irian Jaya and West Papua, which do not have neither an autonomy accepted by the indigenous population nor regional assemblies elected in a free and fair manner.

and practice.

165 “Many scholars have certain non-negotiable defining points for ‚real autonomy‘,” states M. Tkacik, “Hannum e.g. a locally elected legislative body, a locally selected executive and an independent local judiciary.” See M. Tkacik (2008), p. 372

166 Nonetheless, section 4.5 will deal with forms of territorial autonomy in China.

167 See [[www.eurasianet.org](http://www.eurasianet.org)] and [<http://www.iwpr.net/index.pl>].

#### **d) Equality of civil rights and general citizenship rights (with exceptions)**

The fourth criterion is referred to equality of civil rights of all citizens legally residing in the autonomous territory. This criterion is required to draw a distinction between ethnic autonomies or reservations and modern autonomous regions. In other terms: the reservation of an indigenous people - as there are about one thousand in the Americas - are run by the titular indigenous nations or peoples for these peoples. They do not host only inhabitants of its titular indigenous nation, but other citizens too, who are not entitled to vote for the governing bodies of the reservation. In the same time, the members of the titular nation of this entity do not participate to the national, statewide elections and hence to the formation of the national political will. Although citizens of the same state, they are not vested with the same political rights than the other citizens, whenever they live in a reserve.

In some cases of self-ruled areas their inhabitants are treated differently under autonomous laws, according to their membership to the titular ethnic group or people. For instance they are not obliged to military conscription and tax payments and benefit of special social grants. This is the concept of an "ethnic autonomy", established to ensure internal self-determination to an ethnic group, not of a regional community. Even if we do not question the historical legitimacy and the democratic quality of such arrangements, this form of self-government does not correspond to a "modern autonomy system", which requires legal equality of all citizens living in a certain autonomous entity with regard to fundamental political rights.

The equality of rights of citizens of the autonomous entity and those of the remaining regions of the state must also be ensured at the level of political representation in the centre. The representatives of the autonomous entities should be both elected by general franchise and entitled to vote in the national parliament. In reality, there are some borderline cases of autonomy arrangements: the delegate of the Netherlands Antilles has no voting right in the Dutch parliament, a system which is going to change in 2010.

Three civil rights should be quoted as an example: the right to vote (franchise) of all residents of an autonomous region; the freedom of residence and movement in and out of the region (but with

restrictions); the national duty to military service. Under this criterion a territory like the Athos peninsula in Greece has to be excluded, whose inhabitants are rather comparable to the citizens of the Vatican and the whole peninsula rather to an extended monastery with full internal self-administration, where non-monks are not allowed to settle, let alone women. America's reservations for indigenous peoples must be excluded, as these rights are linked to the personal membership of a recognized tribe or indigenous people, and freedom of residence is not granted.<sup>168</sup>

#### **Application of the criteria for the determination of autonomies**

These four criteria and no one more allow us to clearly distinguish substantial or working modern autonomy systems from autonomies which are autonomous just by name but not in substance, or serve for the purpose of ensuring self-rule just for an ethnic group, but not the whole regional community sharing the same territory. Self-government does not make sense, if the ruled people of a given region are not entitled to freely choose their rulers. On the other hand no criteria are provided by the geographic distinctiveness of a region or territory, e.g. its insularity. Although a number of autonomous regions are indeed islands, the majority of working territorial autonomies are not. Geography however matters as a driving rationale for autonomy, but not as a criterion.

On the basis of these four criteria, it has been possible to filter out from the growing range of existing autonomy arrangements all those entities not sufficiently responsive to a modern minimum standard of territorial autonomy. This selection is like setting a benchmark, which is of decisive importance for both theoretical clarity and political usefulness of the concept of territorial autonomy. Indeed, in case of self-determination conflicts it is neither advantageous for minority peoples, minorities or regions nor for central states and governments if basic concepts and proposals for conflict settlement remain ambiguous. When looking to operating autonomies, both conflict parties should have a shared vision of what 'modern territorial autonomy' in a genuine, modern and comprehensive sense means, which elements and qualities it entails and what their expectations are referred to both on theoretical and empirical grounds.

<sup>168</sup> Special provisions can be enacted for citizens of autonomous regions exempting them from conscription (Åland Island) or limiting military service to the region of provenience (Netherlands Antilles).

## THE WORLD'S MODERN AUTONOMY SYSTEMS

In the following chapter of this volume, about 30 autonomy systems out of a total of 60 autonomies operating in 20 states (as of December of 2009) have been selected for further presentation. As mentioned above, the autonomous entities in Russia, Sudan and China are cases sui generis, as well as the ethnic autonomies or reservations existing in North and South America, which will be discussed in a distinct chapter 4 along with other autonomy-like arrangements of power sharing and the particular legal relationship of free association of a territory, which do not fit into the criteria of modern autonomy systems, but appear important for a comprehensive view of self-rule-regimes.

*Source of the following table on the world's operating modern autonomy systems:*

[[www.istat.it](http://www.istat.it)]; [[www.wikipedia.org](http://www.wikipedia.org)]; [<http://en.wikipedia.org>]; all figures from the last available census dates or the most recent official estimated figures. Note: Some other autonomous regions in other states are autonomous only by name. In Spain there are also two autonomous cities, Ceuta and Melilla. The Netherlands Antilles in Oct. 2010 will shift to different kind of status. The South Sudan is not classified as an autonomous region as the general political context is not democratic. More information on cases of "autonomy-like arrangements of territorial power sharing" under section 4.6

## The world's regions (entities) with territorial autonomy

(in 2009, according to selection criteria explained under section 2.10)

State	Autonomous regions/entities	Capital	Population	Area in km <sup>2</sup>
Italy	Sicily	Palermo	5,037,000	25.711
	Sardinia	Cagliari	1,670,052	24.090
	Friuli-Venezia Giulia	Udine	1,232,000	7.858
	Trentino–Alto Adige	Trento	1,022,000	13.607
	Val d'Aosta	Aosta	127,000	3.263
Spain	Andalusia	Sevilla	8,202,000	87.268
	Catalonia	Barcelona	7,364,000	32.114
	Madrid	Madrid	6,271,000	8.028
	Valencia	Valencia	5,029,000	23.255
	Galicia	La Coruna	2,784,000	29.574
	Castile–Leon	Leon	2,557,000	94.223
	Basque Country	Vitoria/Gasteiz	2,157,000	7.234
	Canary Island	Teneriffa	2,075,000	7.447
	Castile–La Manche	Toledo	2,043,000	79.463
	Murcia	Murcia	1,426,000	11.313
	Aragon	Zaragoza	1,326,000	47.719
	Extremadura	Badajoz	1,097,000	41.634
	Asturias	Oviedo	1,080,000	10.604
	Balearic Islands	Palma	1,072,000	4.992
	Navarre	Pamplona	620,000	10.391
	Cantabria	Santander	582,000	5.321
La Rioja	Logrono	317,000	5.045	
United Kingdom	Scotland	Edinburgh	5,094,800	78.782
	Wales	Cardiff	2,958,600	20.779
	Northern Ireland	Belfast	1,710,300	13843
	Isle of Man	Douglas	80.058	572
	Guernsey	Saint Peter Port	65.573	78
	Jersey	Saint Helier	91.626	65
Finland	Åland Islands	Mariehamn	26,711	1.527
Denmark	Greenland	Nuuk	56,375	2.166.086
	Faroe	Torshavn	47,246	1.399
Belgium	German Community	Eupen	72,000	894
France	New Caledonia	Nouméa	230,789	18.575
	French Ploynesia	Papeete	259.596	4.167
Moldova	Gagauzia	Comrat	171,500	1.831
Ukraine	Crimea	Siniferopol	2,000,192	26.100
Serbia	Vojvodina	Novi Sad	2,031,000	21.500
The Netherlands	Netherlands Antilles	Willemstad	220,000	960
	Aruba	Oranjestad	102,000	
Portugal	Azores	Ponta Delgada	253,000	2.333
	Madeira	Funchal	265,000	964
Canada	Nunavut	Iqaluit	25,000	2.121.000
Nicaragua	Atlantic Region North	Puerto Cabezas	249,700	32.159
	Atlantic Region South	Bluefields	382,100	27.407
Panama	Comarca Kuna Yala	San Blas	47,000	2.347
Tanzania	Zanzibar	Zanzibar	982,000	2.467
Philippines	Aut. Region of Muslim Mindanao	Cotabato City	2,412,159	12.000
Papua New Guinea	Bougainville	Arawa	175,100	9.300
Indonesia	Aceh	Banda Aceh	4,031,589	55.492
India (autonomous districts)	Darjeeling Gorkha Aut. Hills, Bodoland, Leh and Kargil Hill Districts (2), North Cachar Hills, Karbi-Anglong, Khasi ADC, Jaintia ADC, Garo ADC, Tripura Tribal Areas, Chakma, Mara, Lai districts (3)		Min. 8,569.000	
<b>Total number of autonomous regions</b>	<b>60</b>			

## *Part 3*

### Autonomies at work

- 3.1 South Tyrol and Italy's autonomous regions
- 3.2 Spain: a 'state of autonomies' - The Basque Country and Catalonia
- 3.3 Autonomy in the United Kingdom
- 3.4 The Åland Islands (Finland)
- 3.5 Greenland and the Faroe Islands (Denmark)
- 3.6 The German Community in Belgium
- 3.7 Moldova's autonomous region: Gagauzia
- 3.8 The Autonomous Republic of Crimea (Ukraine)
- 3.9 Serbia's Vojvodina
- 3.10 The Netherlands Antilles
- 3.11 The Azores and Madeira (Portugal)
- 3.12 Autonomy in Canada: Nunavut
- 3.13 Nicaragua's Autonomous Atlantic Region
- 3.14 Panama's Comarca Kuna Yala
- 3.15 Zanzibar and Tanzania
- 3.16 The Autonomous Region of Muslim Mindanao (Philippines)
- 3.17 Bougainville and Papua New Guinea
- 3.18 Aceh in Indonesia
- 3.19 New Caledonia and French Polynesia (France)
- 3.20 India's district autonomies

### 3.1 South Tyrol and Italy's autonomous regions

*Italy's "Regions with a special autonomy statute"*

Italy was founded as a unitary state in 1861, assembling under the Savoy dynasty other states and reigns of the Italian peninsula. The territories inhabited by Italians were unified only after World War I, when Trent and Trieste joined the Italian Reign. But at the same time, other regions, with non-Italian populations (South Tyrol, Istria, Dalmatia) were annexed to Italy. In the first period of nation building, the question of regional autonomy was not on the agenda, as the search for national identity and unity was strong. The fascist regime under Mussolini (1922–43) exacerbated this tendency to authoritarian centralism.

After World War II, Italy changed its political system: in 1946, it replaced the monarchy with a democratic republic and in 1948, with the new constitution,<sup>1</sup> it transformed from a unitary into a regionalist state. The democratic constitution of 1 January 1948 recognized the 20 constituent Regions as the most important territorial bodies with legislative and executive powers. Nonetheless, it took the ruling political parties more than 20 years, until 1970, to establish the 15 'Regions with ordinary statute' as territorial entities with democratically elected legislative and executive bodies endowed with a number of autonomous powers. Consequently, new regional statutes were enacted by the national parliament in 1972.

On the other hand, besides its huge economic regional disparities and little-known cultural diversity, Italy had to face some specific situations for historical and ethnic-linguistic reasons. In the North, three regions with ethnic minorities claimed self-determination or at least a special autonomy: the Aosta Valley with its French-speaking population, Friuli-Venezia Giulia with Rhaetoromanian and Slovenian minorities, and South Tyrol, inhabited predominantly by German-speaking Tyroleans. In the South, Sicily first claimed independence, later autonomy along with the second major island Sardinia, which is considered linguistically distinct from the Italian mainland. Hence, five of the 20 regions (Aosta Valley, Trentino-South Tyrol, Friuli-Venezia Giulia, Sicily and Sardinia) were granted a special status, based on constitutional law. Out of these five regions, only the 'Autonomous Province of Bozen' (Südtirol-Alto Adige) will be briefly presented in this volume.



In the 1990s, strong political pressure arose in Italy's Northern, highly industrialized regions, whose economies grew faster than the rest of Italy, but which carried the burden of financing the central state and the less developed South. The richer regions claimed a devolution of power in search of various regional solutions in the North and an easing of the tax burden. The central state was perceived as an unproductive mechanism, and citizens demanded that decision-making with regard to the modern welfare system should be transferred to the regional level.

In 2001, Italy went through an important constitutional reform process that strengthened the role of the ordinary Regions and local authorities, after the approval of the parliament's act on the subject by a popular nation-wide referendum. All Regions and local bodies now enjoy 'equal dignity' and major powers. This reform introduces a new division of legislative powers between the central government and the Regions, reinforcing the Regions' legislative powers. For any matter not explicitly mentioned in the constitution as central state power, the responsibility now is regional. Thus the centre is responsible for

- foreign and defence policy
- coordination of EU policies
- citizenship and immigration
- civil and penal codes
- judiciary local authorities
- protection of environment
- protection of equality of civil and social rights

<sup>1</sup> The Italian constitution can be found at: [<http://www.eurac.edu/miris>]

Concurrent legislative powers are recognized in the sectors of infrastructure, welfare, labour policies, urban and territorial planning, while the rest is fully regional. Referring to international relations the Italian Regions may stipulate agreements with other European regions. The central government no longer exercises control over regional legislation. The regional laws come into force after approval by the Regional Assemblies. The Presidents of the Regions are directly elected by popular vote. The regional statutes are elaborated and approved by the regional councils. In the case of presumed constitutional, regional laws and statutes can be challenged before the constitution.

But on the way towards federalism, or to a 'State of autonomous communities' like Spain, Italy still has a long way to go.<sup>2</sup> Presently, Italy's 'ordinary regions' not only face the task of building up more efficient and comprehensive administrative capacities, but also of increasing their fiscal capacities in order to establish a genuine fiscal federalism. In 2009 with the approval of the State Act No. 42/2009 a breakthrough was achieved in reshaping the fiscal relations between the central states and the regions.

Apart from this general process of regionalisation, Italy's constitution enshrines the protection of linguistic minorities (Article 6). The most important measure adopted by the Italian state for complying with this duty is the territorial autonomy granted to the Regions where such groups live. Obviously, the more developed the self-government, the easier the recognition and the protection of ethnic minorities, because small groups even at a local or regional level are numerically more significant, if not even the majority in its traditional territory, as in South Tyrol, Sardinia and in the Aosta Valley.

This form of protection is less applicable in cases of the smaller and more scattered of Italy's 13 minorities. As a consequence, the most protected minorities in Italy are considered the German Tyroleans in South Tyrol, the Franco-provencal in Aosta and the Slovenians in Friuli-Venezia Giulia. Since 1970, when the Regions with ordinary statute were set up, and since 1999 when the regions were enabled to be more active in protecting ethnic minorities,<sup>3</sup> some smaller minorities have also

become more protected. Piedmont, for example, has passed a law in favour of the Occitan and the Walser speaking group, Veneto for the German and Ladin speakers, Molise for the Albanians and Croats, Calabria for the French-Provencal speakers, and so on. In most cases, these laws have proven ineffective, containing too general, even utopian provisions.

<sup>2</sup> See Francesco Palermo, 'Italy's long devolutionary path towards federalism' in: Ortino, Zagar and Mastny (eds.2004), *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West*, Manchester, pp.182–201 at: [<http://www.eurac.edu/Press/Publications/Monographs/0049635.htm>].

<sup>3</sup> Italian State Law no. 482 of 15 December 1999 ('Norme in materia di tutela delle minoranze linguistiche storiche'). Text at: [[http://](http://www.parlamento.it/leggi/994821.html)

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[www.parlamento.it/leggi/994821.html](http://www.parlamento.it/leggi/994821.html)]

## 1. South Tyrol's autonomy

<i>Population (2009)</i>	500,08
<i>Land area</i>	7,400 km <sup>2</sup>
<i>Capital</i>	Bozen/Bolzano
<i>Official languages</i>	German, Italian, Ladin
<i>Ethnic groups (2001)</i>	Germans: 69.15% Italians: 26.47% Ladins: 4.37%
<i>Autonomy since</i>	1948 (as Region Trentino-South Tyrol)

<http://en.wikipedia.org/>



South Tyrol is located in the very North of Italy on the border to Austria, and covers only 2.4% of the Italian land area. Its major valleys form passageways through an overall mountainous terrain. The route across the Brenner Pass is the most important European North-South connection through the Alps. The population of 500.000 inhabitants (2009) corresponds to just 0.7 per cent of Italy's total population. In 2009, almost 70% of them were German speaking Tyroleans, less than 26% Italians and more than 4% (20,000) Ladin speakers, part of the indigenous Rhaeto-Romanic culture. The majority of the German speakers live in the valleys and rural areas, and the Ladins, too, are concentrated in five valleys in the area of the Dolomite mountains. Due to the particular feature of Italian immigration between 1920 and 1960, the ethnic Italians are

concentrated in four of South Tyrol's major cities.<sup>4</sup>

### 1. Historical background and genesis of the autonomy

The territory of South Tyrol belonged for centuries to the larger Tyrolean entity, which was a part of the Austrian Empire from the thirteenth century until 1919, excluding the years under Bavarian (1806-9) and Napoleonic occupation (1810-14). Italy signed a secret pact in 1915, which led to its entering World War I on the side of Great Britain, France and Russia (the entente). One of the territories promised to Italy as a compensation or 'reward' for joining the war was South Tyrol.

South Tyrol was officially annexed by Italy according to the treaty of St Germain-en-Laye in 1919. According to the last census conducted by Austria before annexation in 1910, 93 per cent of the South Tyrolean population were Germans, 4 per cent Ladins and 3 per cent Italians. Although Italy promised to safeguard the identity of its new linguistic minorities, no measures were taken in practice. In 1922, the Italian Fascists rose to power and ended the hopes of the South Tyroleans for the protection of their language and culture. In the following 20 years, the German character of the region was repressed in all spheres of cultural, political and civil life. German-language schools, trade unions and political parties were forbidden, and even personal names were forcibly changed into Italian. This attempt to assimilate of both national minorities, apart from provoking some underground resistance, created a deep-rooted mistrust of the Italian state. After the annexation of Austria to Nazi Germany in 1938, Hitler and Mussolini signed an agreement to definitively 'close the chapter of German South Tyrol', offering the German inhabitants the option to be either resettled in Germany or assimilated into Italian society. Until the end of 1939, 86 per cent of South Tyroleans chose to resettle, but with the outbreak of World War II, just one-third effectively left their homes. Most of them were allowed to return after the war.

In 1945, the South Tyroleans, now represented by the newly-founded 'South Tyrolean People's Party' (SVP), actively sought self-determination. In 1946, within a few months, 163.777 signatures were collected calling for a plebiscite and in Innsbruck (capital of the Northern part of Tyrol) a huge demonstration was held on 5 May. The Great Powers of the victorious allies had, however,

<sup>4</sup> The most comprehensive introduction into South Tyrol's autonomy is provided by the volume: Jens Woelk, Francesco Palermo, Joseph Marko (eds.), 2008, *Tolerance through Law – Self Governance and Group Rights in South Tyrol*, European Academy Bozen/Bolzano, Nijhoff, Leiden/Boston

already rejected such claims in the autumn of 1945. The only way left for Austria and Italy to resolve the territorial dispute was to negotiate directly for some form of self-government for South Tyrol. To that end, a basic agreement was reached within the context of the peace negotiations in Paris. On 5 September 1946 the 'Paris Agreement' was signed by Italian Prime Minister De Gasperi and Austrian Foreign Minister Gruber and attached to the Italian-Austrian peace treaty, thereby giving the South Tyrol autonomy arrangement international standing. The German minority was accorded 'substantial autonomy', safeguarded by the kin-state Austria and with 'complete equality of rights with the Italian speaking inhabitants within the framework of special provisions to safeguard the ethnic character and the cultural and economic development of the German-speaking element'. The agreement outlines, among other things:

- a school system in minority mother tongue
- equal status of the German and Italian languages in the entire public sphere
- equal rights to access to public employment and public resources for all ethnic groups
- autonomous legislative and executive power for the Province of South Tyrol

Italy fulfilled these obligations by issuing an Autonomy Statute, adopted by the Constituent Assembly on 31 January 1948. Despite strong opposition from the South Tyrolean representatives, the autonomy, which in the Paris Agreement had been foreseen for South Tyrol proper, in this Statute was extended to the Italian-speaking region of Trentino, creating the region of 'Trentino-Tiroler Etschland'. This region, with its overwhelming Italian majority, was provided with far greater powers than the Province of Bozen. Even South Tyrol's few autonomous powers scarcely had any effect (partly because the 'enactment decrees' of the Statute were not issued), so impatience and disappointment of the South Tyroleans rapidly grew.

In 1957, the first bombings occurred, and huge demonstrations took place against Rome's policy. In 1959, the SVP, umbrella party of the two ethnic minorities, left the regional government. In September 1959, the South Tyrol question was brought to the attention of the UN. While South Tyrolean activists launched more bomb attacks, Italian authorities answered with harsh measures of repression. A joint South Tyrolean-Italian commission (called the 'Commission of Nineteen') was set up to work out a compromise. Little by little, a whole package of measures, known as the 'Package', consisting of a

set of 137 concrete measures to establish effective autonomy in South Tyrol, was agreed upon and later approved by a narrow majority of the SVP at its congress on 23 November 1969, and thereafter by the Italian and Austrian governments.

Based upon the Package, a new autonomy statute for the region and the provinces of Bozen and Trent was approved by the Italian parliament and enforced from 20 January 1972. It forms an integral part of the Italian constitution. The Package consisted of 137 measures: 97 of them required implementation through amendment of the 1948 Autonomy Statute by constitutional law, eight through executive measures to the above-mentioned Statute, 15 through ordinary state laws, nine through administrative decrees, and the rest through administrative regulations. After 20 years of intense negotiations, all the important measures contained in the Package were implemented. Notification of the implementation was conveyed by the Italian government to Vienna on 22 April 1992, on the basis of which the Austrian government officially declared before the UN that the conflict had been settled on 11 June 1992.

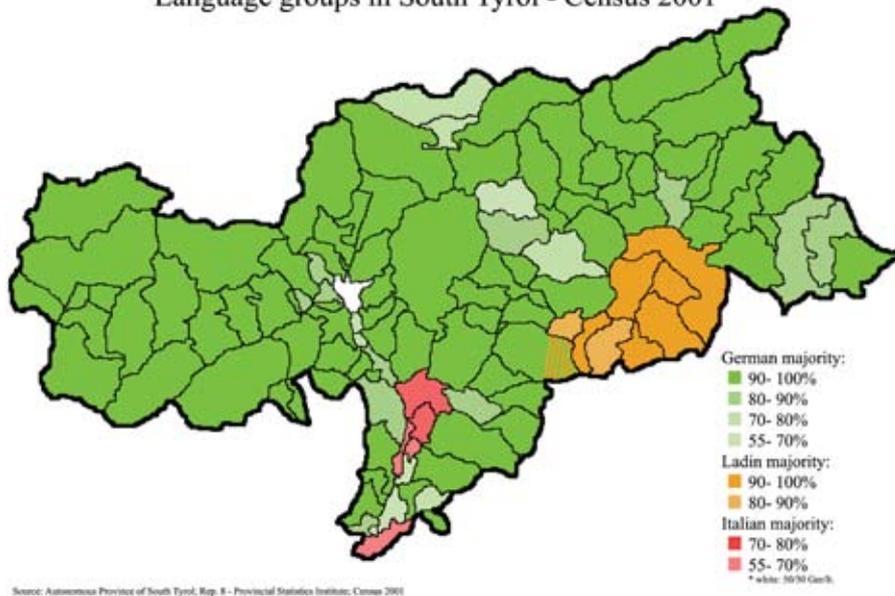
With the second Autonomy Statute (115 articles, divided into 12 chapters) the powers of the Region and the Provinces were redefined, with the powers of the two Provinces substantially increased in comparison with the past. The provisions of the autonomy apply generally to both Provinces in the same way, but South Tyrol has, in addition, special provisions regarding the use of the mother tongue, schools, culture, bilingualism and ethnic proportion in public employment. On the basis of the Paris Agreement, the South Tyrol Autonomy Statute<sup>5</sup> is aimed to ensure the maintenance and cultural development of the German and Ladin linguistic groups within the context of the Italian state. At the same time, however, the autonomy is a territorial one, i.e. the benefits of these enlarged powers of self-government apply to the members of all three official linguistic groups.

But in 1992, the autonomy process remained incomplete. The Autonomous Province of South Tyrol, backed by all the political forces of the Germans and Ladins and even some Italian autonomous parties, has ever since been eager to further enrich autonomy with new responsibilities, defining the concept of 'dynamic autonomy'.

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<sup>5</sup> For the full text of the Autonomy Statute see: [[http://www.provinz.bz.it/lpa/autonomy/autonomy\\_statute\\_eng.pdf](http://www.provinz.bz.it/lpa/autonomy/autonomy_statute_eng.pdf)] and further sources in the 'References'.

Language groups in South Tyrol - Census 2001



The formal settlement of the South Tyrol conflict between Austria and Italy in 1992 did not mean an end to further development of the autonomy and power-sharing regulations. The Autonomous Province representatives sought to improve and extend the regulations of the 1972 statute further in order to increase the province's autonomy. From the mid-1990s onwards, the Province was granted an extension of its powers in the sectors of education, employment, energy, transport, finance, privatisation of state-owned properties and European integration.<sup>6</sup>

In 2001, a very important constitutional reform towards a more federal system was enacted, also affecting the position of the regions with special autonomy (Trentino-South Tyrol, the Aosta Valley, Sicily, Sardinia and Friuli-Venezia Giulia). There is a clause declaring that only 'more favourable provisions' are applicable to their autonomy systems. The reform, the most important and extensive amendment since the second Autonomy Statute in 1972, led to the third Autonomy Statute. This constitutional law (no.2 of 31 January 2001) strengthened the status of the two provinces of South Tyrol and Trentino while further weakening the position of the region. South Tyrol and Trentino no longer constitute subordinate units of the region of Trentino-South Tyrol and have individually more legislative and administrative powers than the region itself. In particular, the following new regulations have enlarged the autonomy of both provinces:

- The revised version of 2001 now explicitly

recognises the internationally guaranteed nature of South Tyrol's autonomy. By nature of its being a constitutional law, the new autonomy statute gives an even firmer guarantee for the inviolability of South Tyrol's autonomy status.

- All legislation in relation to elections is now in the competence of the provinces, allowing them to determine, for example, whether the president of the provincial government should be elected directly or not.
- The provincial legislation no longer requires approval of the government commissioner.
- Amendments of the autonomy statute can in future also be developed by the two provinces, without involvement of the region.
- If the Italian parliament intends to change or amend the current statute, representatives of the province have to be consulted, instead, as was previously the case, of the region.
- Members of the provincial government can be appointed with a two-thirds-majority in the provincial assembly, without having to be its members.
- Representation of the Ladins in the presidency of the regional and provincial assemblies and in the regional government is now a part of the power-sharing arrangement, and members of the Ladin ethnic group can be co-opted into the South Tyrol provincial government.<sup>7</sup>

<sup>6</sup> See Stefan Wolff (2004), 'Settling an Ethnic Conflict through Power-Sharing', in: Ulrich Schneckener/Stefan Wolff (eds.) *Managing and Settling Ethnic Conflicts*, Hurst&Company, London

<sup>7</sup> In addition, for the first time ever, the term "South Tyrol" has been officially incorporated in its German version in the Italian constitution as part of the Constitutional Law on federalism, which was adopted in March 2001.

This third revision of the autonomy statute shows that the real strength of the South Tyrol consociation derives from the flexibility of its implementation process. "With the increased and formalised participation of the Ladin ethnic group, the 2001 reforms also indicate that the province has moved beyond the traditional Italian-German dichotomy and that institutions are now more than ever truly representative of the ethnic demography of the province while at the same time serving the interests of the population as a whole rather than the particular interests of one or other individual ethnic group."<sup>8</sup>

Hence, embedded in Italy's hesitant devolution process, the further improvement of South Tyrol's 'dynamic autonomy' remains unfinished.

## 2. Anatomy of South Tyrol's autonomy

The desire to conduct one's own affairs on the basis of independent and clearly defined responsibilities and through independent, and democratically elected representatives in a regional constituency can generally be regarded as a basic need of ethnic minorities. South Tyrol's autonomy satisfies these aims through its key features: autonomy in legislation and administration, proportional representation of all ethnic groups and a strict commitment to bilingualism in the whole public sphere. Eventually, the provision for a solid financial basis for running the autonomy is certainly not of secondary importance.

The second Autonomy Statute provides the Province of South Tyrol (and the Province of Trento) with an advanced level of self-government vis-à-vis the Region and the state. Its autonomous powers are quite relevant, not only when compared to other minority situations, but even with regard to its northern neighbor North Tyrol, which is a member state of the Republic of Austria.

The Province has a threefold competence: primary competence includes the power to freely regulate a given matter by simply obeying the Italian constitution, the international treaties and the fundamental principles of Italy's legal framework. When legislating in the field of secondary competence, the Province must respect the relevant national general frame

laws, while the integrative legislative competence has a subordinate character by regulating implementation features.<sup>9</sup> Only some basic legislative sectors still rest exclusively with the central state, such as foreign affairs, defence, internal security, monetary and fiscal policy, civil and penal law. Since the constitutional reform of 2001, the central government has no longer possessed veto power over the provincial legislation. Instead, Rome can only challenge a provincial law before the national Constitutional Court if it is deemed incompatible with the constitution or with other limits set by the Autonomy Statute. On the other hand, the Region of Trentino-South Tyrol has only modest powers, most of which are now administered by the two Provinces.

With regard to judicial powers, it should be mentioned that there is a special section of the administrative court in South Tyrol composed of an equal number of Italian and German judges. The Provincial Council members may challenge any administrative act found to be in violation of the principle of equality of the citizens because of their belonging to a particular language group. Whenever a draft-law is judged to be in violation of the rights of a group, every member of the local parliament can request for a separate vote by the single official language groups. The 'minority veto' is a kind of emergency brake mechanism in case the normal parliamentary procedure fails to bring about a compromise. It is applicable for acts deemed incompatible with the principle of equality of the language groups.

In South Tyrol, the German and Italian languages have equal standing in the Region's and in the Provinces' public spheres (Articles 99 and 100 of the Autonomy Statute), and all regional and provincial laws are thus published in both Italian and German. In order to comply with the objective of a bilingual public administration, all public officials in the Province must pass a compulsory language test to prove their knowledge of both Italian and German. In the Ladin areas, three official languages must be mastered.

<sup>9</sup> The most important powers of the Province of South Tyrol are: place naming, protection of objects of artistic and ethnic value, local uses and customs, planning and building, protection of the countryside, common rights (for pasturage and timber), the regulation of small holdings, crafts and handicrafts, public housing, fairs and markets, prevention of disasters, mining, hunting and fishing, alpine pastures and the protection of fauna and flora, public works, transport, tourism and the hotel trade, agriculture and forestry, expropriations, employment exchanges, public welfare, nursery schools, school buildings and school welfare, vocational training; restricted powers apply to teaching in primary and secondary schools, trade and commerce, hygiene and health, sport and leisure (Autonomy Statute, Chapter III, Articles 8–10, Competencies of the Provinces).

<sup>8</sup> Stefan Wolff (2004), *Settling an Ethnic Conflict through Power-sharing: South Tyrol*, p. 72

Residents in the province of Bozen also have the right to use their mother tongue before all courts, the police and all public institutions, regardless of whether they belong to the municipalities, the Province or the state. Only the army personnel and the government representative in Bozen are exempted. Bilingualism, as can be experienced by each visitor of the region, is a basic rule of daily life, strictly obeyed by public bodies.

The second peculiarity of South Tyrol's autonomy is the 'proportionality principle' in accordance to the numerical strength of the three official linguistic groups in the province. One must distinguish between the application of this calculation key to all public commissions and bodies as a basic means of 'consociational decision-making' in administration and government, along with the interethnic cooperation in democratic life, and on the other hand, its use as an allocation mechanism of public resources, such as subsidized housing funds, social assistance in some sectors and all civil service jobs which are attributed according to the respective share of each group on the total population as registered in the general census.

To understand the reason of the proportionality principle it should be recalled that since the annexation of South Tyrol to Italy, the local public administration and public enterprises have generally undergone deep Italianization, while the minority members suffered exclusion and discrimination. This kind of policy was carried out even in democratic Italy until 1972. Hence, 'ethnic proportionality' was introduced by the Autonomy Statute of 1972 to gradually reverse Italian dominance in public service and to act as a neutral device for allocating public resources between the ethnic groups and for ensuring proportional representation of the linguistic groups in all public offices. In this scope, it is made a legal duty for every resident of the Province to submit his or her 'declaration of affiliation to a language group' during the general population census. This formal declaration is a condition for the right to run for public office, to public employment and to be given grants for social housing. It has lifetime validity, as long as a resident citizen does not wish to change. The representation of language groups in their respective proportions has not been achieved in all these areas as originally scheduled, within 30 years of implementation of the second Autonomy Statute (namely by 2002) due to the cutting of public jobs in the state sector and the lack of German and Ladin candidates due to the flourishing private labour market.

Education is a crucial issue in each minority question. As already established by the 1946 Paris Agreement as a fundamental principle of the future autonomy, elementary and secondary education should be provided in the mother tongue of the child. Consequently, instruction in South Tyrol is given in separate German and Italian schools (Article 19 of the Autonomy Statute) and language instruction in the second language of the province is mandatory. Furthermore, all teachers must be native speakers of the language of instruction in order to guarantee the character of the school and the efficiency of the lessons. The Ladin school system follows a different model, combining the two major official languages as instructional languages, with Ladin relegated to a very secondary role.

How is the South Tyrolean autonomy financed? The Autonomy Statute also includes detailed provisions for the financial resources available to the Province (Articles 69–86 of the Autonomy Statute), but the decisive financial regulations are contained in an ordinary state law.<sup>10</sup> Although the Province itself has only limited powers to impose taxes, it is entitled to receive 90 per cent of almost all taxes levied in the province back from the state, while 70 per cent is similarly devolved to the Province from the VAT. The province also receives funds from various EU sector funds (social, structural, agricultural funds). This kind of financial regulation has brought about a quite advantageous situation for the Province, although it has few taxation powers. It enjoys budgetary freedom regarding its expenditures, while the burden of collecting taxes lies mainly with the central state.

One particularly important issue is the regulation of the relations between the three ethnic groups. At the provincial level, the German and Ladin speakers are a numerical majority, and the Italian speakers (who also consider South Tyrol their homeland) increasingly feel like a minority. Hence, a complex and highly differentiated legal system has been created, which calls for a mix of rotation, parity and proportional representation, and which might be characterized as a 'consociational form of government' or 'tolerance established by law'.<sup>11</sup> The main ingredient of the

<sup>10</sup> State Law no. 386 of 30 November 1989. This Act is going to be replaced by a new provision, stipulated in December 2009 between the central government and the Autonomous Province, to be enacted in 2010.

<sup>11</sup> Jens Woelk, 'Südtirol: ein Lehrbeispiel für Konfliktlösung?' in *Die Friedens-Warte*, 1/2001, S.101–24; and the same, 'Reconciliation impossible or (only) undesirable? South Tyrolean experiences' at: [[http://www.peaceproject.at/Ppdocs/South\\_Tyrol\\_study\\_Woelk.pdf](http://www.peaceproject.at/Ppdocs/South_Tyrol_study_Woelk.pdf)].

system is power-sharing among all ethnic groups, which relies on four main elements:

1. Participation of the representatives of all official ethnic groups in the government through jointly exercising governmental power, for instance, an 'ethnic coalition cabinet'. The composition of the South Tyrolean government must be proportional to the ethnic groups in the Council; the presidency of the Council rotates between members of the different groups.
2. A high degree of autonomy for the groups, especially for cultural and educational issues. The principle of cultural autonomy (Article 2 of the Autonomy Statute) states that the parity of rights of citizens of all language groups is recognized, and 'their ethnic and cultural characteristics are protected'. In other words, the differences between the three cultures and the value of this diversity are recognized. The cultural autonomy and the provisions for the protection and promotion of cultural characteristics, including the system of separated schools, are typical expressions of group protection. All decisions in these fields require a broad consensus only within the concerned group.
3. The 'proportionality rule' as the basic system of political representation, public service appointments and allocation of public funds. As seen earlier, the Autonomy Statute provides a system of proportional allocation of public jobs among the language groups and of financial funds for cultural activities of the groups, as well as for social welfare and social services (e.g. housing).
4. The minority veto as the ultimate weapon for the protection of vital interests of a group, but only on issues of fundamental importance: the principles of equality of all residents, regardless of their group affiliation, and the right of members of the regional parliament to request separate voting by the language groups in the regional or Province Council whenever a draft-law is retained to be in violation of the parity of rights of the cultural characteristics of one group. The ultimate means available to the language groups is legal action before the Constitutional Court, founded on the same motivation. These are,

however, just emergency mechanisms, which have never been used so far.

### 3. The process: negotiations and special procedures

A remarkable feature of the South Tyrolean autonomy process of particular relevance and usefulness for other situations, is the creation of procedures for negotiations, enabling both sides to jointly elaborate solutions for ongoing conflicting issues between the concerned regional community and the central state.<sup>12</sup> Even though the detailed pre-established time frame for enactment of the Autonomy Statute (the so called 'Operational Calendar') could only be realized in much longer times than the period originally scheduled, the enactment decrees worked out in special joint commissions had the effect of trust and confidence-building measures. During some years of political tensions, the enactment process came to a halt due to the political relationship between the respective majority parties in Bozen and Rome, but later sped up again.

Within those joint commissions for the negotiation of the implementation of autonomy, the representatives of the state and of the province were equal in number and standing. The enactment decrees are formally a part of ordinary law, but they did not need any debate or approval by the national parliament. Therefore, the decisions of the joint commissions could be kept outside of normal political business, and experts from both sides could be involved in their elaboration. Due to the special procedure and agreement character of these decrees, they cannot be amended unilaterally by the state. This is linked to the possibility of bringing disputes to the Constitutional Court, an important guarantee of the legal framework of South Tyrol's autonomy.

This particular negotiation process, lasting 20 years from 1972 to 1992, was embedded in guarantees on an international level, especially due to the presence of a 'kin-state', Austria, which contributed decisively to keep Italy's interest high in the fulfilment of obligations. The necessity of a formal declaration of conflict settlement – by both Austria and South Tyroleans – after the implementation process had been concluded, was an important incentive to Italy to

<sup>12</sup> Jens Woelk (2002), 'Reconciliation impossible or (only) undesirable? South Tyrolean experiences', at: [[http://peaceproject.at/Pp-docs/South\\_Tirol\\_Woelk.pdf](http://peaceproject.at/Pp-docs/South_Tirol_Woelk.pdf)].

settle the conflict.

Thus, in settling the South Tyrol conflict, various procedural factors were positively linked to each other: the representatives of the minority – organized predominantly in one single political party, the South Tyrolean People's Party – and the representatives of the central government, representatives of the local Italian minority in South Tyrol and Austria as kin-state came together, ensuring that the autonomy process could be pushed further ahead. The process gained a long-term orientation, and the last link of the chain, the concrete implementation, was not destroyed. In addition, the process also left the possibility of flexible adaptation and does not obstruct the further evolution of the autonomy.

A peaceful coexistence was established or a kind of cohabitation of the groups by following a step-by-step policy. Since the beginning, however, the Autonomy Statute did require cooperation or contact between the groups. Whereas in the past, emphasis was placed above all on the aspects of minority protection, today there is the possibility of a more flexible and functional interpretation in the future, based on the principle of territoriality, or better still, of 'normal governance'. This combination of minority protection (persons and groups) and the principle of territoriality has led to a unique institutional mix and balance of the principles of segregation and integration under international guarantee.

What is particularly relevant for other minority related conflicts is the successful process of internationalized conflict de-escalation, and the joint transformation of a conflict into a positive process with peace and stability as direct and sustainable results. The single procedures can also offer interesting examples for other conflicts: the operational calendar with its detailed, pre-established time frame, the institutionalized negotiations in special joint commissions, a special procedure for the enactment decrees, which cannot be changed unilaterally by the state and, finally, the international guarantees.

#### **4. The effects of the autonomy**

Having analysed the basic features of the South Tyrolean autonomy system as it has functioned since 1972 when it came into force or since 1992 when it was fully implemented, which have been its most important effects?

##### **4.1 The restoration of the social and cultural position of the South Tyroleans**

Before the second Autonomy Statute of 1972, the national minorities of South Tyrol were in a perilous position. The Province of Bozen was among the poorest of Italy's provinces. South Tyrol's serious economic and social problems were not being addressed. Much had to be done to reclaim their cultural identity. The Italian political elite was unsympathetic to their problems and eager to cast the South Tyroleans as Nazis, if only to cover their own deplorable past and treatment of ethnic and religious minorities. There was a strong inducement for German-speaking South Tyroleans to seek self-determination. More than 34 years after the enactment of the second Autonomy Statute, the situation has been greatly transformed. Although the region of Trentino-South Tyrol continues to exist de jure, South Tyrol (and the province of Trentino too) has become the core part of the autonomy system. The Germans and Ladins have ceased to be strangers in their own land.

##### **4.2 Economic and social welfare**

Based on a well-balanced distribution of economic activity and a very favourable geographical position in the European Union, between the most dynamic industrial areas of central Europe (Southern Germany and Northern Italy), South Tyrol's economy is flourishing with steady growth of GDP consistently higher than Italy's average growth rate, and among the lowest rates of unemployment in Europe. The economy is pushed by a stable attraction of the country for millions of tourists mainly from the neighbouring states, but also from steady growth of the public budget, namely the expenditures of the Autonomous Province of Bozen. The Province's cultural life is flourishing too, with the establishment of a Free University, a very well-articulated education and vocational training system as well as research institutes and museums. A wide range of media in all official languages is a normal part of South Tyrolean daily life. Not only German language programmes are broadcast on radio and television from the Italian state network RAI in Bozen, complemented by a wide range of private TV and radio stations in all local languages, but the whole province is also covered with the technical facilities to receive radio and TV programmes from Switzerland, Germany and Austria.

### 4.3 Dual character of the autonomy: equality and segregation

A striking example of the dual character of the Statute framework is the provisions on the use of the language. These are, in part, individual rights formally reserved to the members of the national minority as enshrined in Article 100 of the Autonomy Statute: 'German speaking residents of the Province are entitled to use their language'. The territorial dimension, on the other hand, is expressed in Article 99 of the Autonomy Statute, which prescribes the equal standing of both languages, Italian and German, in public life. Consequently, the enactment decrees on the use of language do not distinguish between members of the minority and other residents, so that everyone has the free choice between German and Italian, the official languages along with Ladin.

Regarding the public administration, the combination of both principles is visible even in the system of proportional representation, which was adopted as a repair mechanism, correcting historical inequalities and disadvantages in order to reach a higher representation of Germans and Ladins in public administration and services. A higher proportion of German speakers did, of course, contribute to the objective of a bilingual administration, too. The mandatory language test for all new public servants is another clear expression of this basic requirement of public administration in a multilingual context.

### 4.4 South Tyrol: an autonomy for all

A territorial autonomy is normally created due to the presence and rights to protection of national or ethnic minorities or historical regional communities. But once established, not only must it guarantee individual and group rights of national minorities, but also ensure that all citizens residing in the autonomous territory benefit from its provisions. After all, most Italians living in South Tyrol are third- or fourth-generation 'Altoatesini', as the majority prefer to define themselves, and South Tyrol is their homeland too. All three linguistic groups are sharing the government and administration of their province and have priority in employment; their languages are put on equal footing and have to be learned by all other groups. This inclusiveness has ensured that the three groups are drawn closer by appreciating that the autonomy is for all of them, and becoming aware of the contribution that each can make to life in the Province. The fact that approval by

Rome is no longer needed for provincial legislation is an encouragement for greater political responsibility. The fundamental consociational character of the institutional design has built a framework where every citizen as a member of one ethnic group can feel represented with his specific cultural identity.

Apart from the equality principle there are some basic features of the autonomy allowing for a segregation of the groups. Although intertwined with public life, ethnicity and language differences have brought about a form of parallel societies, supported by an ever more distinct settlement structure. Rural areas are inhabited almost exclusively by Germans, whereas the Italians are concentrated in the four major towns (Bozen, Meran, Brixen, Leifers). The German, Ladin and Italian group have built up their own organizations and societal subsystems. Kindergartens, schools, political parties, trade unions, public libraries, youth clubs, sports clubs, media and churches are mono-ethnic. There is little contact between the groups, for structural reasons (urban-rural antagonism and divided economic structure) and due to linguistic difficulties, fluency in both languages has not yet been generally reached, especially with the older generations. The reality is therefore characterized by freely chosen 'parallel societies', often described as different 'clubs' in the same house. This segregation is, at least in part, counterbalanced by the consociational character of political decision-making. Participation, integration and co-responsibility are achieved through equal standing of all citizens and participation to power of all ethnic groups. South Tyrol is one of Italy's most efficiently governed regions and regularly ranks at the top level in terms of public service performance and standard of living.

### 4.5 Stability in the framework of an integrated Europe

The political progress towards an ever more integrated Europe has played its part in the rising fortunes of South Tyrol's autonomy. The process of European integration is based, among many other things, on the recognition of borders and the transfer of various fields of common policies to the EU. This has contributed significantly to South Tyrol's political stability and economic prosperity. The majority of the members of the national minorities accept their Italian citizenship, but are embedded in the broader framework of the European integration and linked to the condition of the strongly developed form of territorial autonomy.

This process has been fostered by various additional institutions of cross-border cooperation at a regional level, embracing the southern and northern neighbours Trentino and the Austrian Bundesland of Tirol. The European international organizations alone – the Council of Europe, OSCE, EU and NATO – do not always provide a sufficient background for a peaceful settlement of minority conflicts, as the experiences of Spain's Basque Country and Northern Ireland show, but definitely enhance a solution. The actual interpretation of the 'official South Tyrol' is that self-determination as a principle is always in force, even for a national minority like the South Tyroleans. But this fundamental collective right can be granted in an internal version too, within the borders of a state providing efficient territorial and cultural autonomy.

## 5. Main factors of the success of South Tyrol's autonomy

The basic features which have brought about a certain success of South Tyrol's autonomy can be summed up as follows:

### 5.1 The relatively peaceful genesis and the negotiation process

The elaboration and approval of South Tyrol's autonomy took a rather long time, from 1948 to 1972, with a major reform of the Autonomy Statute in 2001, and from 1972 to 1992 for the implementation process of the Statute. Continuous, stubborn work in the joint state-province committees brought about a compromise in legal terms in scores of individual matters. In addition, there has been much flexibility among all three groups in the implementation and operation of the autonomy statute as South Tyrol's autonomy is a juridical architecture of more than 20,000 pages of laws and legal provisions, which is still growing. After years of struggle and some political violence against state institutions and representatives, both sides eventually gave up their extreme positions: the Italian state the assumption that it could ever assimilate the German minority, and the South Tyroleans the hope to gain self-determination leading to secession and annexation to Austria.

### 5.2 The favourable international context

The South Tyrolean autonomy is enshrined not only in the Italian constitution, but also in an international peace treaty signed by Italy and Austria. The UN saw

it as a matter of conflict which was officially concluded in June 1992. Italy has always recognized Austria's role and legitimacy as a kin-state, and in this way the international entrenchment of the autonomy solution has been ensured. On the other hand, both states are members of the EU, which is offering an overarching political and legal framework.

### 5.3 The basic concept of a 'territorial autonomy' with a comprehensive transfer of powers to the provinces

Basically, South Tyrol's autonomy is a territorial one. South Tyrol has been accorded a large amount of power, which allows a high degree of self-governance. The Autonomous Province can legislate and administer almost all internal affairs, simply respecting the Italian constitution and the fundamental legal framework of the Italian state. The classic functions of a central state are still retained by Rome, such as foreign affairs, the judiciary, civil and criminal law, defence, monetary and fiscal policy. Also, the police and the judiciary are still a dominion of the central authorities. However, the interference of the state in the cultural, social and economic development of the South Tyrolean society is limited and decreasing.

### 5.4 The relatively united political representation of the ethnic minorities

The high degree of political consensus among the German- and Ladin-speaking population has played a major role in the success of the South Tyrolean autonomy. Since 1945 there has been one major political party, the South Tyrolean People's Party (Südtiroler Volkspartei, SVP) which continuously wins more than 80 per cent of the minority members' votes. This is probably not a healthy situation regarding internal democracy and pluralism, but makes for comfortable and effective relations with outside actors: Rome and Vienna can always talk to and rely on just one political partner, the SVP, like having a minority speaking with a single voice.

### 5.5 Complex consociational forms of power-sharing within the autonomous province

The principal scope of South Tyrol's autonomy is definitely the protection and substantive granting of equal rights to the national minorities, the German

and the Ladin group. Within the province, since 2001 the Germans and Ladins have had a majority of 74 per cent of the total population and, under conditions of majority democracy, could easily rule themselves, sidelining the Italian group. This does not happen, because, for one thing it would trigger new ethnic tensions; on the other hand, it is prevented by the provisions of the Autonomy Statute. Each ethnic group must be represented not only in the provincial parliament and government, but also in most of the administrative commissions and semi-public bodies. At all levels of decision-making, it is a general principle to involve every ethnic group to which the municipality councils and governments are also obliged. This contributed to bring about a decreasing level of inter-ethnic tensions and a growing cross-communal loyalty to the autonomous institutions. At the national level, the President of the Province must be invited to every session of the Italian government when issues concerning South Tyrol are on the table.

### **5.6 Substantial equality of rights**

Equality of civil and social rights means not only the absence of discrimination by ethnic criteria, but a situation which allows every citizen to enjoy equal rights and chances. If the whole administration is working in the national language and continuously privileging one group at the expense of the other, equal chances are just theory, and exist only on paper. Previous discrimination against minority members in all public jobs has brought about the introduction of a strict ethnic quota system called proportional rule. This method has allowed for the correction of past discriminations (in the period before the application of the Autonomy Statute in 1972), and has acted as an impartial device for dividing public resources.

### **5.7 Bilingualism in the whole public sphere**

Bilingualism (or 'trilingualism' in the Ladin area) in the public sphere is definitely a major key to ensuring equality of civil rights of all citizens of the region. The two major languages spoken in the province of South Tyrol, German and Italian, and to a lesser extent, the Ladin language spoken in the various Ladin settlement areas, have equal rank and standing in the public sphere, and every citizen is entitled to address every part of the public administration in his or her mother tongue, including the judiciary and the police. It took quite a long time, and a certain stubbornness,

to achieve this situation, particularly to enact the standard rule of bilingualism for all public employees. Today, this concept and practice has fully entered public consciousness, even in terms of 'consumer and clients' rights'.

### **5.8 A solid financial system to govern the social and economic development in an autonomous way**

A solid financial system and a sound economic policy has been the necessary underpinning of the success of the autonomy. Even a far-reaching autonomy could not work, if not endowed with sufficient financial means. Although South Tyrol has fairly limited powers of taxation, it can spend almost 90 per cent of the tax revenue collected within its territory. This allows the Province to manage a budget which in proportion to the population is higher than most federal entities in neighbouring countries, and has nearly the highest per capita spending of Italy's Regions, second only to the Aosta Valley. Moreover, the Province holds all important powers regarding control of economic policy in the Province, except taxation and social security.

### **5.9 Segmental cultural autonomy of each official ethnic group**

The education system and the cultural activities are quite strictly segregated. Each ethnic group has its own school system exclusively based on that language as the medium of instruction. But the respective other language is compulsory as a subject, namely the 'second provincial language'. Theoretically, every inhabitant of South Tyrol who has grown up in the Province should be fluent in both languages or in all three (including Ladin). Bilingualism, opening up to more foreign languages, is making steady progress in South Tyrol. The cultural system by definition is open to everybody; it acts as an integrating factor. Basically, although in daily contact and exchange, the two communities coexist but do not merge.

### **5.10 An autonomy projected to the future (the concept of 'dynamic autonomy')**

There is the possibility of further enriching and expanding the autonomy in a continuous negotiation process between the Autonomous Province and the central government. A system projected for the future,

is South Tyrol a 'workshop of multiculturalism'? Other, similar labels have been used to describe South Tyrol, but real life is less idealistic than some scientists and politicians may project it to be. In reality, the autonomy ensures a solid legal framework for internal self-determination and self-governance to a respectable extent. The ethnic minorities are protected and have full cultural autonomy; all citizens enjoy equality of rights in substantial terms. The system as a whole is developing against the background of an ever more decentralizing Italy and integrating Europe.

In addition to these factors, Stefan Wolff enumerates some important factors of success relating to the international context:<sup>13</sup>

In Italy:

- two level negotiation approach of the Italian government, including both the South Tyrolean and the Austrian Government in the settlement process;
- greater preparedness to compromise after the swift containment of violence;
- acceptance and gradual full implementation of a comprehensive settlement with a double arbitration mechanism;
- development of an asymmetric framework of regional structures and different autonomy statutes across Italy.

In Austria

- commitment to continue settlement efforts despite the difficult bilateral relationship with Italy;
- encouragement of the political leadership of the SVP to settle for an inner-Italian solution;
- constant consultation with representatives of the German-speaking minority during the negotiation process and subjection of any agreement to their consent;
- policy of strict non-interference once a settlement has been reached, except in areas where the settlement provided for Austrian engagement.

In the international context:

- bilateral commitment to finding a mutually acceptable solution;
- sensitivity towards the constraints within which each side was operating;
- international encouragement to settle the conflict peacefully;
- built-in guarantees for international

mediation in case of disputes over the implementation of the settlement.

- Opportunities offered by Europe integration and Austria's accession to the European Union.

## 6. Minority protection through territorial self-governance

In South Tyrol, the combination of two tiers of minority protection – i.e. the recognition and protection of personal and group rights and the principle of territoriality – has led to a unique mix and balance of the fundamental principles of segregation and integration under international guarantee.<sup>14</sup>

The conflict in South Tyrol has been successfully 'settled', but there is still a long way to go in order to reach reconciliation. A number of open but substantial issues are currently under discussion, but the incentives for change simply do not seem strong enough. Political interests in a consociational form of government still prevail among all concerned groups, because change could mean less control over the distribution of abundant resources, which determine the political control of respective group.<sup>15</sup> Given the fact that territorial arrangements – in most cases – not only concern the minority group but the whole regional population, the issue of a functional territorial autonomy is important for all the Province's inhabitants, but also for the perception of pluralism as a basic value.

The recent changes indicate that South Tyrol today is no longer surrounded by 'enemies' (the Italian state for the German/Ladin minority and Austria as a threat to the integrity of the Italian nation), but by partners with whom it can cooperate in managing certain functions of governance. In this light, it makes sense to think of changing some principles and rules of cohabitation which still express a defensive attitude and substitute them with other, more flexible and function-oriented principles that no longer stress ethnicity as the main distinctive criterion. A shift of balance towards the

<sup>14</sup> For some more lessons to be learned from the case of South Tyrol see: Joseph Marko (2008), Is there a South Tyrolean 'Model' of Conflict Resolution to be exported?, in: Jens Woelk, Francesco Palermo, Joseph Marko (eds.), *Tolerance through Law – Self Governance and Group Rights in South Tyrol*, European Academy Bozen/Bolzano, Nijhoff, Leiden/Boston, p. 371-388

<sup>15</sup> Jens Woelk, 2002, p.15, and: Melissa Magliana (2000), 'The Autonomous Province of Bolzano-Südtirol: A Model of Self-Governance?', *Quaderno/Arbeitsheft* No. 20, European Academy Bozen/Bolzano

<sup>13</sup> See Stefan Wolff, *Settling An Ethnic Conflict through Power-Sharing – South Tyrol*, in Ulrich Schneckener/Stefan Wolff (eds.), 2004, *Managing and Settling Ethnic Conflicts*, Hurst&Company, London, p. 74-75

territorial principle is needed in order to succeed in the transformation from a post-conflict situation to a society which not only accepts the presence of different groups in the same region as a matter of fact, but appreciates plurilingualism as an enriching factor.

Externally, South Tyrol's autonomy is firmly entrenched in a bilateral peace treaty, in the Italian constitution and is further sustained by a long-term evolution of Italy's political system towards federalism. South Tyrol is ritually presented as a 'model for the solution of minority conflicts' by both the host state (Italy) and the kin-state (Austria). Internally, there is an overwhelming majority of the population who endorse this autonomy with a high level of consensus, with political parties supporting the further evolution of the system. Nevertheless, a significant minority among the Italian population of the province remains skeptical and adopts more centralist or nationalist positions, due to the feeling of having lost control and the leading role in the Province, while a strong minority of the German group remains inclined towards a solution based on self-determination.

The danger of assimilation of the German national minority today seems to be nothing but a shadow of the past. South Tyrol in cultural terms forms a part of the German-speaking area in Central Europe and is, also due to intense integration at the European level and modern means of communication, fully developing its cultural identity in close exchange with the Italian culture, sharing the same territory. There is even some space for a mixed culture, as in Luxembourg, with its context-related bi- and trilingualism, but a combination of monolingual territoriality, cultural group autonomy, bilingualism in the public sphere and consociational policy rules.

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## 3.2 Spain: a 'state of autonomies' - Catalonia and the Basque Country



<http://en.wikipedia.org/>

With the end of the Franco era (1975), Spain embarked on a process of regionalization which has evolved into a quasi-federal political structure designed to accommodate the historically based demands of smaller nations such as those of the Catalonians, the Galicians and the Basques. Other regions with historical legitimacy and different linguistic and cultural features, such as Valencia, Navarra, the Balears and Canary Islands, Asturias and Cantabria supported the process of moving from power-sharing towards more regional autonomy. The rest of Spain, in a process spearheaded by Andalusia and completed by 1985, carved itself into 14 additional Autonomous Communities by drafting their own Statutes of Autonomy.

Between 1978 and 1983, all of Spain's regions engaged in this process of regionalization so that the Spanish state today is divided in 17 regions or 'autonomous communities' and two 'autonomous cities' with different levels of autonomy. The present constitution,<sup>1</sup> promulgated in December 1978, recognizes the right to autonomy of the 'nationalities' (not nations) and regions and contains provisions for the process of further regionalization. In its early years the Spanish state organized each regional autonomy separately through bilateral negotiations, which led to constitutional agreements to establish specific autonomy systems. The Basque Country, Galicia, Catalonia and Andalusia went through this entire process. Later, Spain changed

its policy to build up its internal structure, seeking to complete the process of regionalization all at once. By May 1983, all the designated regions had acquired autonomous status, but the continued gradual expansion of the autonomy has not yet come to an end.

After 2003 there has been a round of amendments to the various Statutes of Autonomy (notably, alongside Catalonia's, those of Aragon, the Valencian Community, the Balearic Islands and the Canary Islands). The Spanish Constitution of 1978 declares that Spain is an indissoluble nation that recognizes and guarantees the right to self-government of the nationalities and regions that constitute it. Catalonia, alongside Basque Country and Galicia was set apart from the rest of Spain as a Historical nationality and given the ability to accede to autonomy automatically, which resulted in the 1979 Statute of Autonomy of Catalonia.

Is Spain a disguised federation? The Spanish constitution of 1978 purposely omits any reference to this form of the state. It describes Spain as neither a centralized, federal nor a regional state. But after the failure of the Second Republic (1931-9) and Franco's (almost) 40 years of a highly centralized government, consensus determined that the Spanish state had to transform into a system of territorial power-sharing. The framers of the 1978 constitution had before them the difficult task of resolving the 'regional question' without creating a full-fledged federal state. The framers of the constitution met this challenge not by defining the new system, but instead by establishing a procedural framework to achieve differentiated autonomy. The constitution established an 'optional autonomy system', referring to a procedure that can, but must not be followed. Thus, certain groups of regions, provided that they had common historical, cultural and geographic characteristics, each had the right to decide whether or not to become an 'Autonomous Community'. If they opted to do so, they had to choose which powers, listed in the constitution, they wanted to be in charge of. In Spain, this procedure was labelled 'autonomy a la carte'.<sup>2</sup> In the case of conflict over which tier should be assigned a given matter, the state norms would prevail over those of the Autonomous Communities.

Lastly, the Spanish constitution allows the central state to control the Autonomous Communities in some fields. In practice, however, none of these provisions has ever

<sup>1</sup> Violeta Ruiz Almendral, 'Fiscal Federalism in Spain: The Assignment of Taxation Powers to the Autonomous Communities', *European Taxation* (IBFD), Volume 42, No.11, November 2002, pp.467-75.

<sup>1</sup> The Spanish constitution can be found at: [<http://nhmccd.cc.tx.us/contracts/lrc/kc/constitutions-subject.html>].

been invoked. Instead, the numerous conflicts have been solved through agreements. Since 1970, this process has led to a form of state that, while still not quite defined, probably falls under the category of an asymmetrical 'de facto federation'. But officially, Spain is a 'State of Autonomies' – the only one in the world.

### 3.2.1 Catalonia's autonomy



<http://en.wikipedia.org/>

Three of Spain's Autonomous Communities are considered „historical nationalities“ with a longstanding tradition of regional self-government: Catalonia, Galicia and the Basque Country. Catalonia, the most populous of these historical autonomies, has enjoyed a far reaching autonomy during the second Spanish Republic, from 1931 to 1939, before being deprived of any power of self-rule by the fascist and centralist Franco-regime after the Spanish Civil war 1936-39. The Autonomous Community of Catalonia is just one of four autonomous regions of Spain populated by Catalans. It can be considered the „Catalan mainland“, whereas the Catalan language and culture is also widely present and deeply rooted in Valencia, the Balearic Islands and Aragon, and outside Spain is spoken also in France, Italy and Andorra.

With a population of 7,248,300 (January 2009) Catalonia is the major European nation without a state. Although a majority of Catalans is considering Catalonia „a nation“, its autonomy is not linked to ethno-linguistic affiliation. First of all Catalonia is a territorial body and

whether a citizen belongs to one or another nationality or speaks Catalan as mother tongue is simply not a matter of legal interest. In Spain autonomy first of all is a territorial concept and what is legally registered and relevant is not a citizen's affiliation to one of the recognized nationalities (peoples, minorities or ethnic groups), but his residency in one of its municipalities. The national character of an Autonomous Community like Catalonia - and alike for the Basque Country, Asturias, the Balearic Islands, the Canary Islands etc. - results from the ethnic, historical or cultural self-identification of the majority of its population and the concrete application of the autonomy in education, language, culture, media and other domains.

Catalonia's first autonomy was established in 1931 during the Second Republic. Hence, along with the Basque Country and the Åland Islands, Catalonia was pioneering this historically new form of territorial power sharing within a state. The experiment was brutally broken off in 1936 when the Spanish army under General Franco launched the Spanish Civil War lasting until 1939. In 1939 the first Autonomy Statute was abolished by General Franco, as Catalonia's population was mostly opposing the fascist forces. During Franco's rule, the language rights of Catalans and Catalonia's entire system of self-government were suppressed. After the restoration of democracy in 1978 Catalonia's second autonomy statute was approved in a referendum in 1979 and enshrined in the Spanish constitution. After 25 years this statute had to be thoroughly amended to meet new political, social and cultural changes and to further expand the scope of the Catalan autonomy.<sup>3</sup> Major shortcomings of the statute itself, increasing centralist tendencies and recurrent conflict over financial issues ushered into a process of comprehensive reform of the autonomy.

Whereas Catalonia's major party, Convergència i Unió, a moderate nationalist force, had governed in Barcelona for 20 years, in 2003 three new parties gained a majority in Catalonia's regional assembly and set their priority in elaborating a new statute in order to expand the authority of the Generalitat de Catalunya, Catalonia's government, strengthened the competences and finance system of the Autonomous Community and redefined the rights and obligations of the citizens of Catalonia. After two years of debate the new (third) Statute of Autonomy was approved by a 90%-majority of the Catalan Assembly and in

<sup>3</sup> See Xabier Arzo, *The Autonomy of Catalonia*, in: Thomas Benedikter (ed.), 2009, *Solving Ethnic Conflict through Self-Government*, EURAC, Bozen, p. 24-28

a popular referendum on 18 June 2006. It became effective on 9 August 2006.<sup>4</sup> With a relatively low voter turnout of 48.85%, 73.24% were in favour of the new Statute, 20.57% against. In 1979 59.7% of Catalonia's electorate had cast their vote, from which 88.1% voted favourably. Subsequently, the new Catalan Statute was approved by a majority of the Spanish Parliament, with the Partido Popular (PP, Spanish Conservative Party) voting against.

The Preamble of the 2006 Statute of Autonomy of Catalonia defines Catalonia as a nation, whereas the Spanish Constitution recognizes Catalonia's national reality as a "nationality". However, the Preamble of the Statute lacks legal value, thus the constitutional status is the same as it was in 1979, which is an Autonomous Community. 120 delegates of all parties out of 135 members of Parliament, with the exception of the 15 delegates of the PP, approved the definition. From the perspective of the Spanish Government this definition has a mere „declaratory“, but no legal value, since the Spanish Constitution recognized the indissoluble „unity of the Spanish Nation“. Subsequently, the PP, along with the neighbouring Autonomous Communities of Aragon, the Balearic Islands and the Valencian Community, contested the Statute before the Spanish Constitutional Court. The objections are based on various topics such as the disputed cultural heritage, but especially on the Statute's alleged breaches of the principle of „solidarity between the regions“, which is enshrined in Spain's Constitution for educational and fiscal matters. The Constitutional Court at the end of 2009 has not yet issued its verdict on the new Catalan statute.<sup>5</sup> Hence, possible stumbling blocks for the expansion of Catalonia's autonomy are still there. On the opposite side, Catalan left-wing parties, such as ERC or C.U.P. opine that the new autonomy statute doesn't give Catalonia enough self-government.

They cite the high abstention as proof that Catalans wanted further self-government, but felt disappointed with the statute.

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<sup>4</sup> For the full text of the statute see: <http://www.gencat.cat/generalitat/eng/estatut/index.htm>

<sup>5</sup> "Today still we do not know how the Constitutional Court will judge on the appeal of unconstitutionality of the new Catalan statute. Probably it will determine more exactly how the statute shall be interpreted, if it is to be kept in the Constitutional limits. The Court traditionally is biased to a more "centralist view" and will set the limits of how far the statute and the autonomous policy can be further developed. The Spanish government is already applying the new statute, but in a rather restrictive way, especially when it comes to transfer the new political and economic powers established by the statute." From an interview of the author with Aureli Argemí, president of CIEMEN Barcelona in May 2009.

## Catalonia's new autonomy statute

Catalonia's new autonomy statute embraces 223 articles instead of 57 of the previous one. The most important innovations concern the introduction of new rights and duties for Catalan citizens and of new principles orienting the public policies of Catalan institutions. These innovations include the establishment of new competences and the controversial introduction of legal techniques to define precisely and to protect Catalan competences from erosion and centralisation by the state legislative and executive; new finance regulations, new instruments for cooperation with the state and for participation in state organs and in state decision processes that deal with European matters or affect Catalan interests, the regulation of the official status of the Catalan language and of the language rights and duties of Catalan citizens, and, last but not least, symbolic aspects concerning the identity of Catalonia as a sub-state nation.<sup>6</sup> The new autonomy statute of 2006 enlarges considerably the scope of Catalonia's autonomy, particularly in the following sectors:

- the regulation of its institutions
- territorial planning
- public infrastructure
- transport and public mobility
- agriculture and husbandry, fishery and forestry, crafts
- environmental protection
- regional incentives for the regional economy
- museums and libraries, protection of the national heritage
- tourism and sports, leisure activities
- health and social services
- education
- cultural and language policy

Generally the Spanish constitution does not set an unequivocal pattern of power sharing, but overlapping powers gave often rise to state-region conflicts. Basically, Spain's Autonomous Communities are allowed to assume all powers not explicitly attributed to the central state by the Constitution (article 149, paragraph 3). But the power of regulation of the Communities can be exercised in the legislative framework given by the central state. No wonder that also in the case of Catalonia the Constitutional Court frequently had to intervene in solving conflicts, mostly deciding in favour of the central institutions.<sup>7</sup> From a detailed analysis of the Constitutional Court's

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<sup>6</sup> Xabier Arzoz (2009), op. cit., 2009, p. 25

<sup>7</sup> For a detailed analysis of these issue see: Xabier Arzoz (2009), op.cit., p.24-28

case law over the 25 year application of the former Autonomy Statute, one can observe that state legislative and executive acts encroached rather arbitrarily on autonomous powers. The new autonomy statute defines with extreme precision every single section and subsection of autonomous powers.<sup>8</sup> This new approach – probably a shining example for many autonomous entities in the world – is meant to prevent legal conflicts between Barcelona and Madrid and will ensure much more legal security for the Catalan legislators when approving new laws.

### Some basic features of the Catalan autonomy

As in all Spain's regional autonomies Catalonia's basic concept of autonomy is the territorial element. Thus, there is neither any registration of their inhabitants along their ethnic or linguistic affiliation, as it happens in other European and Indian autonomous regions, nor an attribution of resources according to ethnic quotas. Catalonia's population is a mix of citizens with very different origins, while there is a nucleus of the population which has for centuries shaped the collective historic characters. Catalans are those people, born in Catalonia or immigrated from other countries, who identify themselves with the Catalan national community. They are willing to integrate into the Catalan people, as its language and culture. The concept of national identity therefore is both allowing for pluralism and inclusion. Due to the impact of the massive migration of recent decades the Catalan society is already now a multilingual and multicultural one.<sup>9</sup> However, the Catalan language and culture should be the common shared features of the whole community, where the diversities meet and coincide.<sup>10</sup>

How is the Catalan autonomy statute entrenched and which guarantees are given against a unilateral amendment by the central state? As other autonomy statutes the Catalan statute is nothing more than State acts, but in the case of an amendment also the consensus of the concerned Autonomous Community is required. Theoretically the autonomy is safeguarded by the special way it is put into force. Nobody is

allowed to amend them unless both parliaments, the Catalan and the Spanish one, agree. The Constitutional Court gives a verdict on how the autonomy statutes are to be interpreted. There are only hypothetical assumptions about a possible power of intervention of International Courts whenever the rights of Autonomous Communities would be violated. The last word has to be spoken by the people with a popular referendum. But again, the Spanish Parliament is in the position to determine the modalities of such a referendum and the Constitutional Court is called to interpret it. By that way the people's sovereignty is restricted by the highest Court, as this Court is allowed to amend the Statute even after its approval by a popular referendum.

Catalonia has got some powers also in the civil law, which is different from that in force in other regions. But whenever a provision of the Catalan civil right is diverging from the Spanish one, it is up to the Courts to set the limits.

Catalonia's new fiscal system is not the same as in the Basque country called 'concerto economico'. This means that the autonomous government is entitled to levy the taxes and manage its own resources while both parties, the central government and the Autonomous region have to come to terms regarding the amount of taxes to be paid to the State for covering the cost of the state's public services displayed in the concerned region. However, there is a major financial autonomy now of the Catalan government with a major scope for regional taxes and negotiation on the share of resources to be annually devolved to the Centre. Again, this new rights of Catalonia have been contested by the Spanish Conservative Party PP before the Constitutional Court.

The Catalan language policy even at international level is considered one of the boldest with regard to the recognition and the legal position of the autochthonous language. The Catalan language now has been declared the "lengua propia" of Catalonia, its main or "original" language, and since 2006 every citizen of Catalonia has the duty to learn this language. The new statute affirms that to know Catalan is not just a right, but also a duty. Recently the Parliamentary Assembly of the Council of Europe has hailed the Catalan system of linguistic immersion and the forms of positive discrimination applied in order to save the Catalan language. This 'immersion' is requested for operating against dividing the society, as Catalan is Catalonia's own language and also the language of social inclusion. Catalan and Spanish in Catalonia

<sup>8</sup> For the scheme of power sharing in Catalonia see section 5.2.

<sup>9</sup> 15% of the registered total population of Catalonia (7.248,300 inhabitants) has not the Spanish citizenship, as they have migrated to Catalonia in recent times, mostly after 2000. In Spain as a whole the resident population without Spanish citizenship accounts for about 16%.

<sup>10</sup> From an interview with Aureli Argemi, op. cit.

are co-official languages. The public administration is obliged to serve all citizens in their languages. But on a practical level the Spanish language in daily life is still dominant. Thus major efforts are required to strengthen the role of Catalan and to operate a positive discrimination in order to make Catalan the normal language of all aspects of social life. The students can freely choose in which language they want to give their SLC. The autonomous administration on regional and municipal level is preferentially using Catalan for all official acts, but all acts and laws are promulgated in both languages. The public officials have to be fluent in both languages, which is ascertained in special exams. In the judiciary and in some state services, however, Spanish is still the dominant language.

The Basques and the Catalans had a decisive role in pushing forward the Spanish autonomy process from the late 1970ies until the present time. The 2006 Catalan autonomy statute has set a high standard of autonomy for the whole country, paving the way for further improvement of the whole system of Spanish autonomies. Initially disputed institutions and provisions have been incorporated into the reformed autonomy statutes of other autonomous communities, such as, e.g., the recognition of civil rights and civil duties, the proclamation of programmatic principles, references to historical rights, the enlargement of rights of the Autonomous Communities to participate in the state-wide decisions of central institutions whenever regional interests are concerned, the extension of the scope of autonomous powers, stricter financial obligations of the state vis-à-vis the Communities, the decentralization of the judiciary. All such provisions have contributed to enhance constitutional progress for the regional autonomies.

<b>Population (2005)</b>	2,124,846
<b>Land area</b>	7.234 km <sup>2</sup>
<b>Capital</b>	Vitoria-Gasteiz
<b>Official languages</b>	Basque, Spanish
<b>Autonomy since</b>	1979

The Basque Country<sup>11</sup> is located in Spain's north-east, at the western corner of the Pyrenees Mountains. The concept and delimitation of the Basque Country is not a peaceful one. Traditionally, the term 'Basque Country' has referred to the Basque-speaking populations and, subsequently, to the lands occupied by them. However, the influence of Latin languages gradually reduced the Basque-speaking area over the last ten centuries. Today, the Basque Country is considered to be composed of all the political or historical communities where the Basque language (Euskera) and culture have remained alive in some way:

1. the Provinces of Biscay (Bizkaia), Gipuzkoa and Alava, which together form the Basque Autonomous Community in Spain;
2. a part of Upper Navarra, which is part of the Autonomous Community of Navarra in Spain;
3. the Northern Basque Country, a part of the French Département of Atlantic Pyrénées (part of the region of Aquitaine).

The current population of the whole Basque Country is 2.8 million, but only 2.1 million live in Spain's autonomous Basque Country.



The 7 historical Basque provinces

### 3.2.2 The Basque Country



<http://en.wikipedia.org/>

<sup>11</sup> Eduardo Ruiz and Markko Kallonen (2004), 'Territorial autonomy and European national minorities: South Tyrol, the Basque Country and the Åland Islands', EURAC working papers, Bozen; and Daniele Conversi (2000), *The Basques, the Catalans and Spain, Alternative Routes to Nationalist Mobilization*, University of Nevada Press, Reno.

In this cultural-historical sense, the seven historical provinces of the Basque Country cover about 20,000 km<sup>2</sup>, but the Basque Autonomous Community (Euzkadi) covers little more than one-third of that. Recently there has been a significant movement within the Northern Basque Country claiming the creation of a new Basque department. However, in this text, only the Basque Autonomous Community in Spain will be considered.

About one third of the current population of the Autonomous Community of 2.1 million moved into the Basque Country from different Spanish regions, especially during the 1960s and 1970s. Only a third of the Basque population has native grandparents and actively speaks Basque in daily life. Significant Basque communities have also settled in the Americas.

### The genesis of the Basque autonomy

The Basque are an ethnically distinct people whose roots date back to pre-Roman times. Since then, the Basques have preserved an ancient language, unrelated to any other European tongue. From 1200 to 1800, each of the Basque provinces enjoyed its own separate relationship with the Kingdom of Castile, having its own *fueros* (or charters) guaranteeing extensive autonomy and including control over its own financial, legal and administrative structures. Furthermore, no province was required to supply troops to the royal army, and they could even conduct their own relations with foreign powers.

When Spanish nationalism evolved during the nineteenth century, the age-old autonomous Basque region with the ever recognized autonomy rights of the '*fueros*' came under pressure. Laws enacted in 1839 and 1876 suppressed the most important powers of this semi-independent political system. In the latter part of the nineteenth century, the Basque population itself developed a nationalist movement, leading to the creation of the political party *Eusko Alderdi Jeltzalea* (EAJ-PNV),<sup>12</sup> which gained ground rapidly and is today still the strongest political party of the Basque people.

In 1931, following the proclamation of the second republic of Spain, the constitution allowed some 'historical nations of Spain' to establish autonomy. The Basque Country (without Navarra) elected its first autonomous government in 1936, but as soon as a year

later it was suppressed by General Franco's insurgent troops in the Spanish Civil War. The subsequent Franco regime, which lasted until his death in 1975, was characterized by savage suppression of Basque national and cultural identity. In reaction to the decade-long repression, leftist nationalist groups developed armed resistance forces against the dictatorship. ETA (*Euzkadi ta Askatasuna*, 'Basque fatherland and freedom') was founded in 1962, and is still struggling for the external self-determination of the entire Basque Country in its historical extension. In Spain, during the last 40 years almost 1,000 people have lost their lives in the conflict on the Basque issue. Finally, in April 2006, the ETA declared a permanent cease-fire.

While the armed struggle seems to have ended, the current Basque conflict is focused on the scope of the autonomy and the right to self-determination. The present system of autonomy of the Southern Basque Country is based on the Spanish constitution of 1978, and the historical rights (*fueros*) of the four traditional Basque territories (provinces).<sup>13</sup> The provinces of Alava, Guipuzcoa and Vizcaya were given the right to form the autonomous region of the Basque Country (Euzkadi). The 1979 Act on Autonomy of the Basque Country was passed by the Spanish parliament and approved in a referendum by the Basque population.

Navarra was given the option to join this province through its own referendum, but preferred to constitute an Autonomous Community of its own. In 1978 the new Spanish constitution failed to win majority support among the population of the three Basque provinces, as it had done in the rest of the state, due to the lack of response to the Basque claims of reunification of all historic Basque provinces. The separation of Navarra constitutes a major point of conflict, since the majority of the population of the Basque Autonomous Community regards Navarra as a substantial historical part of the Basque country and culture. But only some areas north-west of Navarra show a high percentage of Basque speakers. However, the Basque peculiarity was recognized by the 1978 constitution, which led to a greater attribution of powers to it than the rest of the Autonomous Communities, as provided by Title VIII of the constitution.

The current efforts of the major Basque political forces aim to replace the existing autonomy statute, strengthening the powers of the autonomous region

<sup>12</sup> *Partido Nacionalista Vasco*: the name is different in Basque and Spanish versions, meaning respectively 'Basque Party of God and Old Laws' and 'Basque Nationalist Party'.

<sup>13</sup> Both statutes, the Statute of Guernica of 1979 and the new statute rejected in 2005 can be found at: [<http://www.lehendakari-tza.ejgv.euskadi.net>], the website of the President of the Basque Country.

to self-government in each policy sector, adding rights to a better representation at the national and international levels. The right of the Basque people to self-determination is reiterated. As expected, the Spanish parliament in Madrid rejected the statute, previously approved by the Basque parliament, in January 2005.

Economically the Spanish Basque Country is one of Spain's richest areas in terms of GDP per capita.<sup>14</sup> There is a very powerful industrial area around Bilbao, which made the region attractive to hundreds of thousands of migrant families from poorer regions of the peninsula. This immigration came to a halt in the 1970s, with the decline of the older industrial sectors, such as steel work and ship building.

### The Basque autonomy system

The current Statute configures the autonomous community as a federation of the three constituent provinces. Legislative power in the Basque Country is exercised by the Basque parliament, consisting of 25 representatives from each of the three provinces, elected proportionally through universal and direct suffrage for a four-year term. The three provinces of Alava, Gipuzkoa and Biscay are equally represented in the Basque parliament regardless of their population (Article 26 of the Autonomy Statute) although Alava has only one-fifth of the population of Biscay. This composition originates from Basque political tradition, but today serves as a means of decentralization of a significant share of powers to the single provinces. However, the Basque parliament is vested with the most important legislative powers, acts and decisions. The right to initiate legislation is in the hands of the members of parliament, the governing council and the institutions of the historic territories.

The Basque parliament must exercise its budgetary and legislative function without prejudice to the three provinces (historical territories). The representative bodies of the three provinces, also elected by direct suffrage on the basis of proportional representation, draw up and approve their own budgets and govern municipal boundaries, property rights and the electoral system. They are responsible for implementing the provisions in matters entrusted to them by the Basque

parliament.

There are no provisions for a special representation of the Basque Country in the central government, while the Basque electorate may elect its deputies to the Cortes, Spain's parliament in Madrid, like the rest of the Spanish citizens. The only established permanent joint committee works solely on the matter of tax laws and finances.

The Autonomy Statute provides for the participation of the Basque government in the appointment of judges and the administration of justice in the region. A superior tribunal, called 'The High Court', has been established with exclusive jurisdiction in the entire territory of the Basque provinces. The High Court is the court of final appeal. It is structured in accordance with the principles of the Organic Law of the Judiciary. The President of the High Court is appointed by the King. The Autonomous Community and the Spanish Ministry of Justice must maintain necessary collaboration to ensure the orderly management of the jurisdiction assumed by the Basque Country.<sup>15</sup>

The executive responsibility for the Basque Country is vested in the President of Basque Country (lehendakari), who is elected from the Basque parliament. He heads a governing council, appointed by the King of Spain. The Basque President may suspend the governing council.<sup>16</sup>

Self-governance in the Basque Country is reflected in a long list of legislative and executive powers which place this autonomy among the most far-reaching autonomy arrangements not only in Spain, but in all Europe. Under the Autonomy Statute of 1979 the Basque Country has exclusive power over agriculture, forestry and land-use planning, fishing, water resources management, environmental protection, health and hygiene, regional transportation, social assistance, social security and some more policy matters.

The Spanish state, vis-à-vis the Basque Country and other Autonomous Communities, still retains exclusive control over international relations, defence and armed forces, passports and visas, customs, border controls and immigration, the postal and telecommunication systems, currency and monetary policy.

The autonomy statute also confers the Basque Country its own police forces, called Ertzaintza. But it was not

<sup>14</sup> For statistics on the Basque Country see: [[http://www.eustat.es/document/en\\_cifras\\_i.html](http://www.eustat.es/document/en_cifras_i.html)] (statistics of the Basque autonomous government); [<http://www.map.es/po-autonomica/casocioeco/principv.htm>] (statistics from the Spanish government).

<sup>15</sup> See International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, 1999, p.36-37; and Hurst Hannum, 1996, op. cit., pp.272-3.

<sup>16</sup> [<http://www.lehendakaritza.ejgv.euskadi.net>]: website of the President of the Basque Country.

until 1989 that the Basque government reached an agreement with Madrid to transfer full responsibility for internal security to the Basque police force. The persistence of the Spanish state police has ever since been an irritant to the Basques because of its role in the political repression under the Franco regime. In certain circumstances, the state police are still authorized to intervene in maintaining public order in the Basque Country.

The Basque Autonomy Statute renders the Basque government the only regional government in Spain entitled to levy all taxes. Part of those taxes is allocated to the central state, after annual negotiations on this 'tribute'. This reflects the traditional tax independence of the 'historical territories', enshrined in the *fueros*. In this sense, each Basque territory has its own treasury and is in charge of collecting taxes from citizens. After tax collection, the provinces provide for funding the budget of the Autonomous Community first and then for that of the state for the powers exercised by the state inside the Basque Country. This system allows, in practice, an independent (although coordinated) functioning of the Basque treasury with respect to the state treasury. As the economic situation evolves better in the Basque Country than in Spain and the autonomous administrations manage tax revenues better than the central treasury, the Basque Country obtains the benefit of an autonomous tax administration, although it still lacks the legislative power to shape an autonomous tax system.

Great importance is given to the cultural and educational issues among the Basque autonomous powers. Education and the use of the languages in education are effectively under the control of the Basque Country government, which can regulate the use of language and undertake policies to support and strengthen the Basque language. The Basque government has control over all cultural matters without any consultation with the Spanish government.<sup>17</sup> It has some powers in the media sector, such as establishing its own public television and radio broadcasting stations. Today several channels in the Euzkera language are broadcast with a daily full programme. Scores of films are also dubbed in Euzkera.

Castilian Spanish and the Basque language in the Basque Country are co-official languages (Article 6, Autonomy Statute). Language has long been a key issue in Basque identity and the struggle for autonomy.

In the Basque Country, according to a recent study,<sup>18</sup> out of a total population of 2.1 million, only 667,000 people (in 2003) actively used the Basque language in daily life. There is no clear distinction between the Spanish speaking population and the 'native Basque speakers'. But knowledge of the Basque language has gained ground in the socialization of the younger generation since the establishment of the autonomy in 1979. Linguistic differences do not mark particular social and political frictions, as national identity in the Basque region has been created around ideological issues rather than the objective criteria of knowledge of the language.

Today the Basque education system is mixed. Parents and children can choose between a school with Spanish as medium language (model A), Basque language as medium (model D) or a combination of medium languages (model B). Although Basque is still a minority language within the region, the vast majority of the parents request model A or D for their children's primary education, whereas the bilingual system is being phased out.

In the Basque Country, everybody is entitled to use either of the official languages in his relations with any public administration and the judiciary. However, every Spanish citizen can use Spanish in relations with the public administration throughout Spanish territory. The Autonomy Statute of the Basque Country follows a territorial model, including some areas of Navarra, but hitherto the legal circumstances has not allowed the full implementation of this provision. Especially those sectors of the administration still under Madrid's control are very reluctant to facilitate the use of Euzkera in their offices.

What legal guarantees are given to the Basque autonomy regime? The Spanish constitution recognizes, under Article 2, the right to autonomy of the nationalities that make up the 'Spanish nation', but there is no list or map of autonomous communities with a specific guarantee to single territories, nor is there any international entrenchment of the Basque autonomy. The Basque country has no kin-state.

How can the Basque Autonomy Statute be amended? Article 1 of the Statute states that 'the Basque are entitled to accede to self-government and constitute an autonomous community within the Spanish state under the name of Basque Country or Euzkadi, in

<sup>17</sup> International Committee of Lawyers for Tibet (1999), *Forms of Autonomy*, New York, p.43.

<sup>18</sup> See Susanne Tümler (2004), *Zur sprachlichen und sprachpolitischen Situation im Baskenland* in *Europa Ethnica*, pp.75–81.

accordance with the Spanish constitution and the Statute of autonomy. Its political status can be changed only through amendment of its Autonomy Statute. Such amendments are initiated by the Basque parliament by the proposal of one-fifth of its members, with the Basque government or the Spanish parliament. The Spanish parliament must approve any amendment by means of organic law, and it must then be submitted to the Basque citizens via popular referendum. This procedure is required when the object of the amendment affects the relations of the Basque Country with the state of Spain. Nevertheless, in February 1989 the Basque parliament unilaterally passed a resolution proclaiming the right of the Basque people to self-determination and to decide freely on their political, social, economic and cultural status.<sup>19</sup>

### Recent political evolution

The original aspiration of the Basque nation was the recognition for Basque national identity and the right to self-determination of the Basque people. This overarching value on the side of the Basque nationalist movement contrasts with the national unity of Spain as enshrined in the Spanish constitution. In the case of the Basque Country, these somewhat contradictory political aspirations and the claim to further extend the autonomy has engendered political conflict. Also, Basque nationalism and its resistance against Madrid's centralism has deep roots, as the repression began under the Carlist kings in the nineteenth century, continued under the dictatorship of Primo de Rivera (1923-9), and deteriorated into full-fledged oppression under Franco (for nearly 40 years, 1937-76). Taking inspiration from smaller European nations which have recently gained independence (Estonia, Slovenia, Kosovo, Montenegro, all of them with less inhabitants than the Basque Country), various Basque political forces still hold full-fledged statehood as a long-term goal. From this perspective, the present autonomy is seen as a transitional phase.

Basque nationalism is a strong element in the modern socialization and community building of the Basque Country, and this is supported not only by elder (PNV) and younger political parties (Herri Batasuna, Euska Alkartasuna), but also by a wide web of cultural activities, sport, leisure, church associations, alternative media, community activities, gatherings and many

other issues to support the sense of community and identity. The autonomy is likely to flourish as long as it can contain and give free expression to all these activities.

In the Basque Country, the use of violence, especially by the ETA, has affected not only the ongoing political debate, but also the everyday life of the common citizens. In March 2003, the supposed political branch of the ETA (Herri Batasuna), which usually collected some 10 per cent of the votes of the Basque electorate, was banned by the Spanish Supreme Court under a new act by political parties passed by the Spanish parliament in 2002, a law opposed by the Basque national parties. The act was challenged before Spain's Constitutional Court on the grounds of violation of freedom of association and political rights, but to no avail. Although the support for political violence has continuously decreased in the Basque Country in recent years, the ETA still enjoys strong sympathy. In March 2006, the ETA announced a permanent and definitive renouncement of violence.

Hence, three different and very distinct groups can be observed in Basque politics today: defenders of the right of self-determination in a form of extended autonomy, opponents of this right with some resistance to further extension of the autonomy and a sector advocating external self-determination. Thus, there is a lack of consensus on the whole political framework. While for the Spanish parties the statute is basically the final point of Basque self-government and the limit of possible autonomy, for the Basque parties the Autonomy Statute is only a step forward in the process of self-governance, without any prejudice to the right of self-determination.

Thus, the actual autonomy arrangement, apparently in crisis, is far from a definitive solution, and the Basque conflict continues to be of major concern for Spain's domestic politics. For the Spanish state, there are already many elements of asymmetry in awarding autonomy to the 17 Autonomous Communities of the country. Conceding further 'privileges' to the Basque Country and Catalonia in the perspective of the national parties could lead to claims from other communities to get the same level of self-governance. Three scenarios of the future political status are possible:<sup>20</sup>

1. maintenance of the current status quo;
2. creation of a higher level of self-government for the Basque Country inside the Spanish state;
3. secession from Spain and creation of an independent Basque Country.

<sup>19</sup> Daniel Elazar (1991), *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements*, Longman Group, UK, p.235.

<sup>20</sup> Ruiz and Kallonen, 2004, p.39-43

The status quo would be linked to instability, and this affects the institutional relations between Madrid and the Basque Country. The creation of a new framework of stronger self-government within the Spanish state could gain support of some leftist Spanish national parties. But even if a new Basque statute could be established, there would be a conflict over how to draw the borders, since the Northern part and Navarra would remain excluded from a hypothetical Basque state.<sup>21</sup>

Since 1990, various Basque parties and organizations have launched a range of proposals to solve the problem, but most of them have been abandoned due to the defensive positions of the central government. Since 2003, the basic intention of the Basque political forces, guided by Basque President Juan José Ibarretxe, has been to replace the current Autonomy Statute of 1979. The Basque government, formed by the parties Partido Nacional Vasco (PNV), Eusko Alkartasuna (EA) and the United Left (EB-IU), launched on 25 October 2003 a proposal for a new autonomy statute for the Basque country which provides far-reaching rights of self-governance and a relationship of free association with the Spanish state. The main national parties, the Spanish Socialist Party (PSOE) and the Popular Party or Partido Popular (PP) reproach the Basque government that this proposal violates a range of articles of the Spanish constitution and continues to divide the country.<sup>22</sup>

On 30 December 2004, the Basque parliament voted in favour of the Ibarretxe plan (39 pro and 33 votes against), which provides the possibility of a referendum on independence. The autonomy plan calls for a separate judiciary, police force, financial system and a distinct citizenship for those with Basque ancestry. The Basque Country would maintain only loose ties with the rest of Spain (a 'free association' or associated statehood). Also, representation within international

<sup>21</sup> For more information on the Basque politics see: Edoardo Ruiz Vieytez, *Recent Developments in the Autonomy of the Basque Country*, in: Thomas Benedikter (ed.), 2009, *Solving Ethnic Conflict through Self-Government*, EURAC, Bozen, p. 41-45

<sup>22</sup> In the Basque elections of 17 April 2005, the governing PNV, headed by the *Lehendakari* Ibarretxe lost four seats, but remained the major party in the regional parliament. Ibarretxe is still negotiating to build a coalition government with the Basque regional section of the national PSOE (Socialist Party) and with the PCTV-EHAK (*Partido Comunista de Territorios Vascos*). This party has offered a new haven to the electorate of the *Herri Batasuna* party which has been banned in 2003 and the subsequently banned organization *Aukera Guztiak* (AG). PCTV-EHAK for the first time entered the Basque parliament and is still suspected to sympathize with ETA, but could not be excluded any longer.

bodies as in the EU is scheduled. The PP and PSOE are both strongly opposing the plan, and as expected, the parliament in Madrid rejected the new Autonomy Statute in January 2005 with 313 to 29 votes.

### 3.2.3 Experiences with autonomy in Spain

The Spanish democratization process was tightly linked with the accommodation of minority aspirations.<sup>23</sup> Democracy was initiated with the first democratic elections in post-Franco Spain's on 15 June 1977.<sup>24</sup> In 1980, approximately 88 per cent of public expenditures passed through the central government, 1.3 million public employees worked for the state, and just 350,000 for the Regional and Local Communities. In 1996, the 17 Autonomous Communities could control 26 per cent of public expenditures and were in charge of 600,000 employees. The political landscape in Spain has profoundly changed since 1980, but the 17 Autonomous Communities still have a very different level of self-governance and used their legal potential in different ways, leading to a growing asymmetry in both legislative production, administrative performance and building of institutions. Still, there are conflicts over financial funding between the central government and the regions, as well as between the richer and poorer regions.

Due to the establishment of the autonomous communities there has been a kind of reproduction of public administration structures on the regional and local levels. In this way, many old deficiencies, such as lack of efficiency, overlapping competencies, fragmentation and lack of responsibilities have also been copied. There is no coherent and homogenous result of the performance of the Autonomous Communities. Since 1990, all of these Communities are in a suitable condition to fulfil the expectations of their electorate. In 1978, nearly half of the Spanish people preferred a centralist state to the system of autonomous regions. In 1998, only 13 per cent maintained this position, whereas 70 per cent preferred to keep or even expand

<sup>23</sup> The Basques, the Catalans and the Galicians usually refuse to be labelled as 'ethnic minorities' preferring terms like 'minority peoples' or 'historical nations'.

<sup>24</sup> Joan Subirat (1998), 'Balanc de 16 anys de funcionament de l'Estat de les autonomies' in *Catalunya y Espana, Las relaciones historicas, culturales y politicas*, Fundació Ramon T Fargas, Barcelona, pp.122-145.

the existing autonomies. The general opinion is that Spain's conversion to a state of autonomies has been a positive experience, which was not guaranteed given the authoritarian and centralist traditions.<sup>25</sup> But Spanish citizens are also more critical regarding the output of their autonomous institutions. They would like to assist better public services to accompany the increase of public expenditures and employees. Again, the evaluation cannot be a general one, but must refer to each Community individually. Moreover, there are deep-rooted differences in economic development between Extremadura and Andalusia on the one hand and Catalonia and the Basque Country on the other. The perception of inequality has increased significantly over the years since the take-off of the autonomies.<sup>26</sup> Catalonia in particular is considered privileged by the central government, followed by Andalusia and the Basque Country.

There is a growing identification among the citizens with their own regional community. More than half of Spanish citizens perceive themselves at least to the same degree members of their respective communities as citizens of Spain. When it comes to evaluating the global impact of establishing the autonomous communities, there is a profound difference. In a 1996 opinion poll on the development of the state of autonomies, 45 per cent of Spain's citizens mentioned that the autonomy regime had contributed positively to interregional coexistence, while 33 per cent saw some positive elements. 40 per cent of the citizens were of the opinion that the autonomies had reinforced separatism, while 38 per cent disagreed.<sup>27</sup> Nearly 93 per cent of Spaniards believed that the Autonomous Communities have been worth the effort. It can be asserted that the model of autonomous communities has had a consolidating effect in the last 15 years. Nonetheless, there is a general demand to have a greater correspondence between responsibilities and financial means, and a general perception that the regional autonomies should act like governments, collecting taxes and deciding expenditures under their own responsibility.

Subirat comes to the following conclusions:<sup>28</sup>

1. The Autonomous Communities today are fully institutionalized and are separate from the central administration. They manage the lion's share of the public services in Spain and are in charge of huge

resources in terms of personnel and financial funds. Notwithstanding this, there is still not enough freedom for them to manage matters such as health, education and social assistance with full autonomy.

2. With regard to the legislative production, the Autonomous Communities have affirmed their distinct political preferences and orientations in various policy sectors. The single-policy schemes depend largely upon the respective context of social and economic development, and are therefore quite different between Extremadura and Catalonia.

3. The Autonomous Communities in Spain's state structure today have outstanding importance in both normative and financial regards. They have exclusive power over public health, education, social assistance and building of infrastructure, which require the major part of their regional resources. The role of the Communities vis-à-vis the population and the various interest groups has gained much more importance, and does much to define political priorities.

4. After 20 years of the new institutional order establishing three main governance levels - central state, autonomous communities and municipalities - there is a perception of major fragmentation of government functions. Still, no optimal structure for the allocation of powers has been found. There remains an overlapping of responsibilities and legal provisions, and the levels of government continue to compete for scarce public funds.

5. But all these years have shown that the conflicts among the government levels do not form a pathology of the system, but are simply inherent to a more complex governance system. The relationship between the central state and the Autonomous Communities has shifted from legal conflict to sector cooperation. Several interregional sector conferences have been established, and various forms of bilateral cooperation have been tested in order to manage better the political dynamics of the new allocation of power. The results have not yet proven absolutely acceptable. They may be positive in the sector of health assistance, but are much less so in the field of scientific research. However, the system works much better where the central state chose to influence the politics in a partnership rather than imposing choices through hierarchical superiority.

6. Some Autonomous Communities have been able to present themselves as privileged central actors for some basic policy functions, assuming the role of core

<sup>25</sup> Joan Subirat (1998), op. cit., p.136.

<sup>26</sup> *ibidem*, p.137.

<sup>27</sup> *ibidem*, p.138.

<sup>28</sup> Joan Subirat, op. cit., p.145.

decisions-makers for the strategic requirements of a society. Thus, the autonomous administrations are today 'competence centres' in some important sectors. There is therefore an increased demand to link with the accrued political importance for setting the rules and laws, including the full financial responsibility.

7. The Autonomous Communities, by exercising their autonomous competencies for the last decades, have won substantial acceptance from the local population. Public opinion, experts and the political and social elite generally recognize their existence as positive. The social structure of the Communities has been reinforced due to the autonomous institutions, in some cases to build upon and express a distinct cultural identity, in other cases also due to the recognition of the legitimacy of self-government in the context of a historical region. Even in regions without experiences of self-governance, polls show a high degree of acceptance of their respective autonomies.

8. On the other hand, these 20 years have highlighted the differing degrees of capacity of self-governance of the Autonomous Communities. Some Communities have enacted very innovative legislation in their range of responsibilities, adopting policies targeted specifically to their particular social realities. They have been able to benefit more from their autonomous resources in order to strengthen their social, infrastructural and productive capacities. It has simply been easier to build up a 'community' when a majority of the population already conceives of itself as being members of a distinct regional community.

9. Spain's economic inequalities among the single Autonomous Communities have deepened in the last 15 years, while differences in the average family income have decreased. Not all of this phenomenon can be attributed to self-government, but regional autonomy has certainly reinforced the potential of more developed regions to create new opportunities for growth and wealth. Due to the mechanisms of interregional solidarity, the differences regarding the quality of life have not grown significantly. However, the general perception is that inequalities throughout Spain have increased, and that there is 'a group of winners' in the new era of decentralization of political power.

10. The Autonomous Communities have created intermediate administrative levels that have improved the level of information of the citizens and users of services. But a lot remains to be done, since many overhauled administrative structures must still be

dismantled or reformed. The building up of human resources has taken longer than expected.

11. The public opinion generally hails the increase of self-governance in regional and municipal level. The public would also expect more financial autonomy and the transfer of additional powers to complete the set of autonomous responsibilities, e.g. regarding the environment and industrial development.

12. For the last 15 years, the Autonomous Communities have essentially relied on financial transfer from the central states. Although they have a significant sphere of autonomy in spending these funds, their capacity for collecting funds is quite limited. The citizens still pay their taxes to a level of administration different from the administration that handles most of the important services for daily life (education, health, public works, environment, social assistance). Thus, a kind of 'fiscal illusion' is developing, because to a large number of taxpayers the share of the cost of the autonomous institutions is much less tangible than that of the central state and municipalities.

13. Recent agreements to transfer 30 per cent of the income tax revenue to the Autonomous Communities linked to a limited legislative competence on fiscal matters will slightly increase the level of fiscal responsibility and reduce this 'fiscal illusion'. Still unknown are the effects of these measures on the per capita 'spending capacity' of the Autonomous Community.

In Italy, there is a general perception that the established regionalist decentralization has not yet been implemented properly due to the lack of coordination, lack of transfer of financial responsibility from the central state, reproduction of inefficient administrative structures at the regional level duplicating expenditures and waste of resources without real innovation in politically responsible self-governance. In Spain, 20 years of experience with autonomies is not yet enough to set a definitive balance, but all the difficulties noted by observers of Italy's development into a regionalist state also apply to Spain, though the variety of national identities is much less accentuated in Italy. Conflict between the state and regional communities and minority nations still exists in Spain, but it can be regulated and managed better in the framework of the new Autonomous Communities. On the other hand, these Communities have reinforced the efficiency of the public administration as such vis-à-vis the single citizen. This is not only a general perception, but is also

confirmed by the inequalities of living standards in the various regions. So far, the Autonomous Communities have partly met the expectations, but at the same time some Communities still consider others privileged, be it in terms of economic development or public funds. The situation is thus much better than in the centralist Spain of 1980, and there is a need to both further strengthen the efficiency of the state functions in the production of services, and also to create an even more autonomous framework for regional differentiation according to the political preferences of the respective polities and communities.

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## 3.3 Autonomy in the United Kingdom

### 1. The British devolution

In the United Kingdom, regional autonomy was not adopted until 1998 when three 'devolution acts' were approved by the Westminster parliament: the Scotland Act, the Government of Wales Act and the Northern Ireland Act. The reasons for granting autonomous status to three of the four countries that make up the United Kingdom are different. Still, England has no special status, and there is no plan to reshape the entire kingdom's architecture into a 'state of autonomies' like that of Spain. By this devolution process, Scotland and Wales were enabled to obtain self-governance while maintaining their membership in the Union. In Northern Ireland, the long interethnic conflict could be solved with the 1998 'Good Friday agreement', which made membership in the United Kingdom acceptable for the Catholic parties, but on the other hand opened a perspective of consociational self-government in the short term and self-determination in a later phase. The autonomy arrangements for Northern Ireland have been suspended since 2002 due to difficulty in forming a common government.

Generally speaking, the UK is a unitary state made up of England, Wales, Scotland and Northern Ireland. Wales was conquered in 1282 and annexed to England in 1536. Only in 1707 were the hitherto separate Kingdoms of Scotland and England united to form the 'United Kingdom of Great Britain'. The 'United Kingdom of Great Britain and Ireland' (the latter was annexed in 1800) lasted only until 1921, when most of Ireland broke away to form the Republic of Ireland. While there are only two major islands in the British archipelago, four separate nations have historically existed there. Precisely this factor explains the regional autonomy established in 1998. The distinct cultural and linguistic identities of Greater Britain had been dominated by the Anglo-centric power structure, but the Celtic regions, excepting Cornwall and the Isle of Man, managed to retain their cultural essence. After World War II, the British state was organized in a centralist manner, with English as the only national language and Westminster as the only parliament.

After decades of neglect, the minority languages have gained ground, and a growing number of people

consider themselves English, Welsh, Scotch, Ulster or Irish rather than 'British'. Cultural awareness has nurtured claims and proposals for increased self-governance, a process first embarked upon in Ireland, where Catholicism is prevalent and the pressure for 'home rule' was strongest. After the independence of the Republic of Ireland in 1921, Northern Ireland obtained a form of home rule only in 1972 under the label of 'devolution'. This system failed, however, since it did not take into account the division within the province of Ulster, and allowed one party, representing only the Protestant majority of Northern Ireland, to ignore the interest of any other group. Widespread discrimination of Catholics and the antagonism between the Catholic community and the predominantly Protestant Unionist community brought about the end of this kind of autonomy. From 1972 to 1998, Northern Ireland was governed from London by what was known as 'direct rule'.

In the 1960s, the idea of devolution spread to Wales and Scotland, which developed strong regionalist movements. A first step towards greater autonomy for these historical regions was taken in 1978, but the referendums held that the proposals were not yet backed by a majority of the population, so the legislation could not be enacted. Devolution was conceived as the delegation of central government powers to the regions without the relinquishment of supremacy by the central legislature based in London, Westminster. Devolution encompasses the transfer of legislative and the corresponding executive powers to regional parliaments with regional governments answerable to them. But in contrast to a federal system, the powers are only 'devolved' or delegated by the UK parliament, which can repeal or amend the devolution arrangements at any time.

The three different historical and political backgrounds of Scotland, Wales and Northern Ireland resulted in three different types of devolution systems. England was not taken into consideration within this constitutional rearrangement, nor has its population ever been asked for approval of the devolution to the other constituent units. Referendums on the devolution proposals were held several times in Scotland, Wales and Northern Ireland, but not in England. There is neither a constitutional obligation to hold such referendums nor for the national parliament acknowledge them. But there were plenty of valuable political reasons to get legitimacy for the devolution process by asking the concerned electorate.

## 2. The genesis of Scotland's autonomy

Scotland is a distinct state in the United Kingdom of Great Britain and Northern Ireland.<sup>29</sup> It occupies the northernmost part of the British Isles, to the north of England and Wales. Scotland was united with England and Wales by the Treaty of Union in 1707. Under this treaty, Scotland retained a separate legal system, established church, national bank, a fixed percentage of representation in the British parliament and was granted home rule with respect to local government, education and social functions, as well as the right to its own flag and currency.



<b>Population (2001)</b>	5,062,011
<b>Land area</b>	78,782 km <sup>2</sup>
<b>Capital</b>	Edinburgh
<b>Languages</b>	English, Scots, Gaelic
<b>Autonomy since</b>	1998

<http://en.wikipedia.org/>

Although the basic administrative powers of Scotland has, since 1707, been under the exclusive responsibility of the British government, and the Westminster parliament has been the sole source of legislation for Scotland, the distinctive Scottish legal

system and Scottish law were guaranteed by the Treaty of Union (1707). Since 1885, Scotland has had its own Secretary of State (a UK government minister), and since 1926 it has had a seat in the cabinet. At the same time, a special UK government department, the 'Scottish Office', was created for that purpose. Executive powers were gradually devolved to the Scottish Office, based in Edinburgh and London, which was appointed to devise, execute and administer policies of the UK government in a Scottish context.<sup>30</sup> In addition, the different legal system required statutes that applied only to Scotland and had to be passed by Westminster. This was a system of executive devolution, which enabled Scotland to maintain the appearance of a separate yet constituent part of the union state. Scotland maintained a separate justice system, education system and Scottish radio service under the Scottish Office, although most matters of economic policy and major decisions were undertaken by the United Kingdom parliament in Westminster. In July 1978, the United Kingdom parliament promulgated the Scotland Bill, which provided for a Scottish referendum on a directly elected assembly in Edinburgh. The Scottish referendum was held concurrently with a referendum in Wales for a direct assembly in Cardiff. In March 1979, 33 per cent of Scotland's voters voted in favour of devolution, but a minimum 40 per cent vote was required to pass the legislation. Only 20 per cent of Wales' electorate voted in favour of devolution in Wales. Both of the projects failed.

In 1987, Scottish and Welsh members of parliament entered into parliamentary alliance to force the path of constitutional, economic and social reforms in Scotland and Wales. The representatives agreed to work together toward their constitutional demands: independence for Scotland and self-government for Wales. In October 1990, a constitutional convention was held in Scotland to outline a general plan for a Scottish parliament within the United Kingdom, excluding control of defence, foreign affairs, social security and some monetary, fiscal and income tax matters.

During the 1970s and 1980s, most pressure for devolution in Scotland came from outside the government and parliament. The Conservative government was opposed to devolution, but had weak electoral support in both Scotland and Wales.

<sup>30</sup> Patricia Leopold, 'National and regional experiments with autonomous arrangements' in Zelim A Skurbaty (ed.), 2005, *Beyond a One-dimensional State: An Emerging Right to Autonomy?*, Leiden, p.506.

<sup>29</sup> International Committee of Lawyers for Tibet (1999), *Forms of Autonomy*, New York, p.450–52.

Thus, Scottish and Welsh interests at that time did not count much in London. The difference between the party orientation of the people of Scotland and Wales and the political orientation of England towards the Conservative Party increased the pressure from Scotland and Wales for devolution. The Labour Party, in contrast, was committed to substantial constitutional reforms to implement regional autonomy. With that agenda, the Labour Party under Tony Blair won the 1997 elections and adopted the new Devolution Acts.

In 1997, under the Referendums (Scotland and Wales) Act, a referendum was held on the devolution of Scotland and Wales. 74.3 per cent of Scottish voters voted in favour of the devolution and 25 per cent against. Electors were also asked to decide whether or not the Scottish parliament should have tax varying powers. 63.5 per cent voted for and 36.5 per cent against. Therefore in 1998 the Scotland Act was passed, paving the way for the establishment of a separate Scottish parliament for the first time since 1707. At the same time, a Welsh Assembly was formed to give the population of Wales more control over internal affairs.

The results of the 1997 referendums in Wales and Scotland were different because their ethnic-national background is diverse: whereas in Wales only slightly more than half of voters backed autonomy, nearly three-fourths of those who voted in Scotland were in favour of devolution. Wales has a much stronger linguistic identity, but Welsh speakers are a minority and concentrated in the western and northern part of the region. In Scotland, there are few Gaelic speakers left, but the sense and self-perception of a separate nation is widely present in the population.

The Scotland Act provides for a Scottish parliament with law-making powers over a wide range of matters affecting Scotland. A Scottish executive, headed by the First Minister, holds executive power and is accountable to the directly elected Scottish parliament. The government is responsible for health, education, local government, social work, economic development, law and home affairs, including most civil and criminal law and criminal justice, environment, agriculture, sport and statistics. The United Kingdom reserves powers relating to foreign policy with Europe, defence and national security, economic stability, common markets of UK goods, employment legislation, social security and most aspects of transport safety regulations.

Under the Scotland Act of 1998, Scotland remains an

integral part of the United Kingdom, and the Queen of England continues as its head of state. The Scottish parliament, elected for the first time in 1999, has been fully operational since the year 2000.

The three devolution schemes of 1998 for each of the historical regions had to take into account their different circumstances, starting from the constitutional recognition of subnational identities within the UK. Especially in Northern Ireland, with its population divided along ethnic-religious lines, several special provisions had to cater for the need of power-sharing, representation of all groups and consociational government. There are some fundamental similarities in the three systems, mainly regarding the electoral systems, the subordination to Westminster and the legal remedies for human rights violations.

All three systems of autonomy are ruled by one legislative chamber, called 'Parliament' in Scotland and 'Assembly' in Wales and Northern Ireland (Stormont). None of the three autonomous regions has the same electoral system as the classic UK system, with majoritarian rules, preferring a combined system with one part of the seats attributed by proportional system and the rest by majoritarian rule. This system enhances the efforts and needs for coalition governments. In Northern Ireland, a special mechanism has been established to provide additional 'checks and balances' between the nationalist and unionist communities: all major parties of both communities should be involved in a broad and stable coalition under a joint 'cross community leadership'.

The bases of the devolution are ordinary UK acts, without any special status. The autonomous powers are delegated by the centre to the regions without relinquishment of sovereignty. Therefore, acts approved in the regional assemblies may be overturned by the courts if they exceed the institution's legislative competence. The Devolution Acts of 1998 for Scotland and Northern Ireland make it clear that Westminster retains the principal power to legislate in all devolved matters. The details of the division of powers are contained in a series of written, but non-binding agreements, which state that Westminster 'normally' will not legislate in these matters. But in exceptional cases Westminster may take back these powers. The Welsh autonomy is the most imperfect: the Welsh Assembly does not have legislative power, but primary legislation is still provided by Westminster. Wales can adopt only secondary legislation on devolved matters, but has an executive which acts as the government of

Wales, entitled to implement that secondary law.

One major scope of the autonomy arrangement was and is the preservation of the distinct cultural characters and needs of the three regions subject to devolution. The cultural (or even ethnic) identity is not shared by the entire population of the respective regions. Especially in Northern Ireland, there is a major cleavage along ethnic-religious lines. Language is one particularly important feature of cultural heritage, as non-English languages are spoken in different degrees in each region, at least by a considerable minority of the population. The devolution has allowed the autonomous regions to give greater support in both financial and practical terms than was earlier the case. In order to develop Gaelic language and culture in Scotland, 'Comun na Gaidhlig' was established in 1984 as a government-funded agency. In 1987, this body recommended passing legislation to ensure the equality of Gaelic in all public business and the administration of justice. This could not be enacted yet, but the Scottish government has strengthened the role of Gaelic as a medium language in public education in certain areas: 'A statutory instrument made under the standards in Scotland's Schools Act (2000) includes as one of the five national priorities in education the promotion of equality with particular regard to Gaelic and other lesser used languages'.<sup>31</sup>

### 3. Recent developments in Scotland

In May 2007 a new parliament was elected in Scotland, assigning a landslide victory to the Scottish National Party SNP, which leads the new governing coalition. The Scottish Government launched in August 2007 a consultation manifesto entitled: *Choosing Scotland's Future: a National Conversation*,<sup>32</sup> in which the government sought to establish and set a change in the context of questioning the significant powers that are currently reserved to the United Kingdom Parliament. This national conversation, as the government states in the document, will allow the people of Scotland to consider all the options for the future of the country and make informed decisions. This paper invites the people of Scotland to sign up for the national conversation and to suggest how the conversation should be designed to ensure the greatest possible participation. In the Scottish Government's view there are three choices:

a) First, retention of the devolution scheme defined by the Scotland Act 1998, with the possibility of further evolution in powers, extending these individually as occasion arises.

This is an option that does not really stand as there is a serious commitment from all stakeholders and concerned people that devolution has been very successful and rewarding to the people of Scotland and that there is no way that can or should be kept static or reversed.

b) Second, redesigning devolution by adopting a specific range of extensions to the current powers of the Scottish Parliament and Scottish Government, possibly involving more enhanced autonomy, but short of progress to full independence.

In this option, attention is given to exploring many of the policy areas currently reserved to the UK Parliament and UK Government under the Scotland Act and how increased benefits can be gained from transferring such powers into the Scottish Parliament and Scottish Government: power to legislate and exercise executive responsibility in these reserved areas, which include matters such as fiscal policy, social security, employment law, health and safety law, regulation of certain professions, energy policy, company law, competition law, firearms, broadcasting, elections and equal opportunities. It is believed that 'enhanced devolution could clarify responsibilities and increase the accountability and effectiveness of Government and Parliament'.<sup>33</sup> This option seems to attract most attention among diverse stakeholders such as politicians, academics, civic bodies and the Scottish population. Most people and stakeholders feel that the initial devolution experience deserves to be enhanced and progressed beyond the present settings as the Scotland Act left gaps and restrictions that should be rectified through seeking more powers for the Scottish Parliament and the Scottish Government (executive).

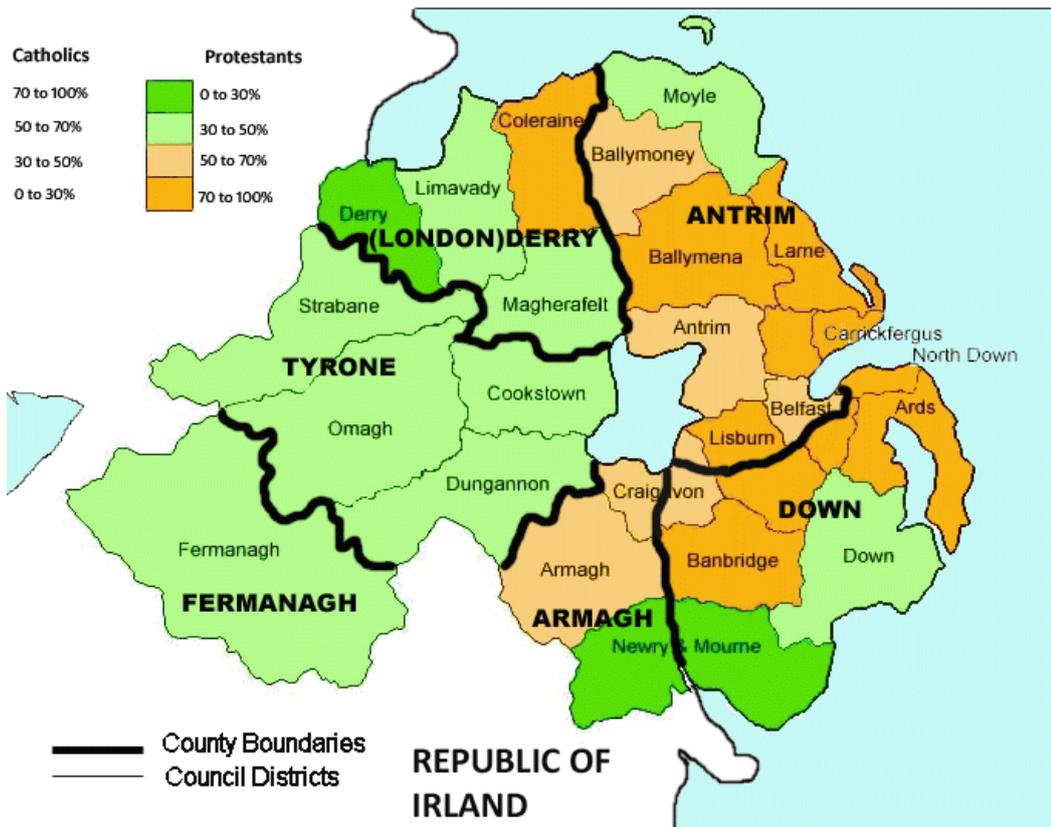
c) Third, which the present Scottish Government in power favours, extending the powers of the Scottish Parliament and Scottish Government to the point of independence.

<sup>31</sup> Patricia Leopold, 2005, op. cit., p.521.

<sup>32</sup> See Scotland Office Departmental Report, Cm 5120/2001, par. 3.2, p.10

<sup>33</sup> <http://scotlandoffice.ov.uk/Resource/Doc/194791/0052321.pdf>

## NORTHERN IRELAND - COMMUNITIES - 1991 CENSUS



### 4. Northern Ireland

<i>Total area</i>	13.843 km <sup>2</sup>
<i>Population (2008 estimate)</i>	1.789.000
<i>Capital</i>	Belfast
<i>Official language</i>	Irish, English, Ulster Scots
<i>Autonomy since</i>	1998

<http://en.wikipedia.org/>

Northern Ireland consists of six of the traditional nine counties of the historic Irish province of Ulster. It was created as a distinct subdivision of the UK on 3 May 1921 under the Government of Ireland Act 1920, though its constitutional roots lie in the 1800 Act of Union between Great Britain and Ireland. For over 50 years it had its own devolved government and parliament. These institutions were suspended in 1972 and abolished in 1973. Repeated attempts to restore self-government finally resulted in the establishment of the present-day Northern Ireland Executive and Northern Ireland Assembly. The Assembly operates on consociational democracy principles requiring cross-community support.<sup>34</sup>

<sup>34</sup> Deep insight in such mechanisms is provided by: Brendan O'Leary, Complex Power-sharing in and over Northern Ireland: A Self-determination Agreement, a Treaty, a Consociation, a Federacy, Matching Confederal Institutions, Intergovernmentalism, and

Northern Ireland was for many years the site of a violent and bitter ethno-political conflict („The Troubles“) between those claiming to represent Nationalists, who are predominantly Roman Catholic, and those claiming to represent Unionists, who are predominantly Protestant. Unionists want Northern Ireland to remain part of the United Kingdom, while nationalists wish it to be politically united with the rest of Ireland. In general, Unionists consider themselves British (or „Ulstermen“) and Nationalists see themselves as Irish, though these identities are not necessarily mutually exclusive. Since the signing of the Belfast Agreement (or „Good Friday Agreement“) in 1998, most of the paramilitary groups involved in the Troubles have ceased their armed campaigns.

In recent years there has been noticeable changes to classification of nationality of people living in Northern Ireland. Since the start of the Peace Process it has appeared that a growing share identity of Northern Irish is beginning to emerge from the usually British/Irish nationality cleavage. The terms seems to show a coming together of both British and Irish tradition to create a tradition of which is both noticeable of British and also of Irish origins. Other traditions like

a Peace Process, in: Marc Weller/Barbara Metzger (eds), 2008, Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice, Amsterdam, Nijhoff, pp. 59-124

the Scotch Irish, Ulster Scots, and Ulster Irish have appeared in areas where there is close cultural ties with Scotland or the Irish Republic, most notable through history, culture, identity, and language.<sup>35</sup>

## 5. Wales



<b>Total area</b>	20.779 km <sup>2</sup>
<b>Population</b> (2008 estimate)	3.004.600
<b>Capital</b>	Cardiff
<b>Official language</b>	English, Welsh
<b>Autonomy since</b>	1998

<http://en.wikipedia.org/>

Wales (Welsh: Cymru) is a country that is part of the United Kingdom, is officially bilingual, with both Welsh and English having equal status. Originally (and traditionally) a Celtic land and one of the Celtic nations, a distinct Welsh national identity emerged in the early fifth century, after the Roman withdrawal from Britain. The 13th-century defeat of Llewelyn by Edward I completed the Anglo-Norman conquest of Wales and brought about centuries of English occupation. Wales was subsequently incorporated into England with the Laws in Wales Acts 1535–1542, creating the legal entity known today as England and Wales. However, distinctive Welsh politics developed in the 19th century, and in 1881 the Welsh Sunday Closing Act became the first legislation applied exclusively to Wales. In 1955 Cardiff was proclaimed as national capital and in 1999 the National Assembly for Wales was created, which holds responsibility for a range of

devolved matters.

The head of state in Wales, a constituent part of the United Kingdom, is the British monarch Queen Elizabeth II, (since 1952). Executive power is vested in the Queen, and exercised by Her Majesty's Government at Westminster, with some powers devolved to the Welsh Assembly Government in Cardiff. The United Kingdom Parliament retains responsibility for passing primary legislation in Wales, but since the Government of Wales Act 2006 came into effect in 2007, the National Assembly for Wales can request powers to pass primary legislation as Assembly Measures on specific issues. The National Assembly is not a sovereign authority, and the UK Parliament could, in theory, overrule or even abolish it at any time.

The National Assembly was first established in 1998 under the Government of Wales Act. There are 60 members of the Assembly, known as „Assembly Members (AM)“. Forty of the AMs are elected under the First Past the Post system, with the other 20 elected via the Additional Member System via regional lists in 5 different regions. The largest party elects the First Minister of Wales, who acts as the head of government. The Welsh Assembly Government is the executive arm, and the Assembly has delegated most of its powers to the Assembly Government. The new Assembly Building designed by Lord Rogers was opened by The Queen on St David's Day (1 March) 2006.

After the National Assembly for Wales election, 2007 Welsh Labour and Plaid Cymru, the Party of Wales, which favours Welsh independence from the rest of the UK, entered into a coalition partnership to form a stable government with the „historic“ One Wales Agreement. As the second largest party in the Assembly with 15 out of 60 seats, Plaid Cymru is led by Ieuan Wyn Jones, now the Deputy First Minister of Wales. In the British House of Commons, Wales is represented by 40 MPs (out of a total of 646) from Welsh constituencies. Welsh Labour represents 29 of the 40 seats, the Liberal Democrats hold four seats, Plaid Cymru three and the Conservatives three. A Secretary of State for Wales sits in the UK cabinet and is responsible for representing matters that pertain to Wales. The Wales Office is a department of the UK government, responsible for Wales.

<sup>35</sup> Retrieved from: <http://en.wikipedia.org/>

## 6. The Isle of Man and other “Crown dependencies”

The „Crown Dependencies“ are possessions of The Crown in Right of the United Kingdom, as opposed to overseas territories or colonies of the United Kingdom. They comprise the Channel Island bailiwicks of Jersey and Guernsey and the Isle of Man in the Irish Sea. Being independently administered jurisdictions, none forms part of the United Kingdom or of the European Union. All three Crown dependencies are members of the British-Irish Council. From 2005, each Crown dependency has a Chief Minister as head of government. However, as they are possessions of the British Crown they are not sovereign nations in their own right, and the power to pass legislation affecting the islands rests ultimately with their own legislative assemblies, with the assent of the Crown (Privy Council). These Crown dependencies, together with the United Kingdom, are collectively known as the British Islands. They are treated as part of the United Kingdom for British nationality law purposes. The Isle of Man is situated in the Irish Sea between Great Britain and Ireland, and the bailiwicks of Jersey and Guernsey are situated in the English Channel to the west of the Cotentin.

### 6.1 The Isle of Man



<b>Total area</b>	572 km <sup>2</sup>
<b>Population (2008 estimate)</b>	80.058
<b>Capital</b>	Douglas
<b>Official language</b>	English, Manx
<b>Status</b>	Crown dependency since 1765

<http://en.wikipedia.org/>

The Isle of Man has been connected politically to the British Crown since the 16<sup>th</sup> century, but for centuries has enjoyed a high degree of self-government. The island is located in the middle of the Irish Sea. The population on the island is a mix of Manx persons and persons from Great Britain and Ireland. The language is English, but there is also a rising interest in Manx Gaelic. Until recently the language was on the point of extinction; in fact the last native speaker died in 1974. Recently there has been a revival of interest in the cultural heritage of the island. Manx Gaelic, closely related to Irish and Scottish Gaelic, has been officially recognized as a legitimate autochthonous regional language under the European Charter for Regional and Minority Languages.

The Isle of Man’s regional assembly, called Tynwald, claims to be - after the Icelandic Althing - the world’s oldest continuously ruling parliament in continuous existence, dating back to 979. It consists of a popularly elected House of Keys and an indirectly elected Legislative Council, which may sit separately or jointly to consider pieces of legislation, which, when passed into law, are known as „Acts of Tynwald“. The Legislative Council consists of the Lieutenant Governor, a President, the Lord Bishop of Sodor and Man, the Attorney General and eight members elected by the House of Keys. The House of Keys is comprised of 24 members who are directly elected by universal adult suffrage for five-year terms. The candidates for the Tynwald assembly often stand for election as independents, rather than being selected by political parties. There is a 10-member government headed by a Chief Minister.<sup>36</sup> The Isle of Man has a local government, though the Queen’s representative is present in the person of the Lieutenant Governor: „Although the autonomous regions’ chief executive official is not always beholden to local interests, it may still be that the local government, the branch that executes law, does in fact primarily serve local interest.“<sup>37</sup>

The recent history of autonomy of the Island started in 1866 when first steps toward a restoration of the internal self-determination were taken. The Parliament’s Isle of Man Customs, Harbours, and Public Purposes Act of 1866 separated the revenues of the Isle of Man from the ones of the UK, and the Tynwald’s House of Keys Election Act of 1866 transformed the House of Keys (the popularly elected and legislative house of Tynwald). The members of the House of Keys has

<sup>36</sup> See Maria Ackrén 2009), *Conditions*, p. 210

<sup>37</sup> M. Tkacik (2008), *op. cit.*, p. 386

previously been nominated by the existing members and appointed by the governor, but now they were elected by public suffrage. In 1957 the governments of the Isle of Man and the UK agreed to abolish the UK government's control over the Manx customs revenues, and the Tynwald has since then been in control of the island's finances and customs duties.

The Isle of Man is a Crown dependency under Her Majesty the Queen of the UK as the Head of State. The Lieutenant Governor, who is appointed by the Crown and is a largely ceremonial post, has the right to amend the Constitution of the Isle of Man.<sup>38</sup> In 2005, it was decided in the Isle of Man to replace the Lieutenant Governor with a Crown Commissioner, but this decision was reversed before it was implemented. All „insular“ legislation has to receive the approval of the „Queen in Council“, in effect, the Privy Council in London, with a UK minister being the Privy Councillor with responsibility for the Crown dependencies. Certain types of domestic legislation in the Isle of Man, however, may be signed into law by the Lieutenant Governor using delegated powers without having to pass through the Privy Council.

Under the British Law, the Isle of Man is not part of the UK as it has never been formally incorporated. However, the UK takes care of defence and foreign affairs and other legislative powers. There is an independent police force. Citizenship of the Isle of Man is governed by UK law. The island is not a part of the EU. Like some other of the European autonomies, the Isle of Man has been granted a special relationship with the EU. The Isle of Man's special relationship stems from Article 3 of the UK's Treaty to Accession to the European Community. This provides for the free movement of goods into and out of the Isle of Man, but not of people, services and capital. Of course this allows the Isle of Man to protect its small economy from certain forms of competition, yet reap the benefits of free trade. Given the generally small size of the economies of the autonomies, states have often been willing to make such exceptions, at least on a temporary basis.<sup>39</sup>

## 6.2 Jersey and Guernsey

The Bailiwick of Guernsey is a Crown Dependency under the Queen of the UK, similar to the Isle of Man. Guernsey includes the island of Guernsey, Sark, Alderney, Herm

and other islands. The parliament of Guernsey is called the States of Deliberation. The government on the islands is conducted by Committees appointed by the „States of Deliberation“, which consist of 12 counselors, who are indirectly elected by the States of Election, a 108-member body comprising local political and judicial officers. In addition there are 33 people's deputies directly elected for a 4 years term.<sup>40</sup>

Within the Bailiwick of Guernsey, autonomy is exercised by Sark, a feudal (but democratising) state under the Seigneur, whose legislature is called the „Chief Pleas“, and by Alderney, whose legislature is also called the States, under an elected President. There are few political parties: candidates generally stand for election as independents. The Crown is represented by a Bailiff. Guernsey has its own right to amend its constitution.

The Bailiwick of Jersey consists of the Island of Jersey and its uninhabited dependencies. The parliament is the States of Jersey. The Legislative Assembly consists of 12 senators who are elected for six-year terms, half of senators retiring every three years.<sup>41</sup> The States of Jersey Law 2005 introduced the post of Chief Minister of Jersey, abolished the Bailiff's power of dissent to a resolution of the States and the Lieutenant Governor's power of veto over a resolution of the States, established that any order in Council or act of the UK, that it is proposed, may apply to Jersey shall be referred to the States in order that the States may signify their views on it. In Jersey, provisional legislation of an administrative nature may be adopted by means of triennial regulations (renewable after three years) without requiring the assent of the Privy Council. Much legislation, in practice, is effected by means of secondary legislation under the authority of prior laws or Orders in Council.<sup>42</sup>

Jersey and Guernsey have their own legal and healthcare systems as well as their own separate immigration policies with „local status“ in one Bailiwick having no jurisdiction in the other. They exercise bilateral double taxation treaties. Since 1961 the Bailiwicks have had separate courts of appeal, but generally the Bailiff of each Bailiwick has been appointed to serve on the panel of appellate judges for the other Bailiwick.

As the Isle of Man also the two Channel Islands Guernsey and Jersey chose not to join the EEC in 1973.

<sup>40</sup> See the constitution of the States of Guernsey at: <http://www.gov.gg/ccm/navigation/about-guernsey/constitution?textonly=yes>

<sup>41</sup> Maria Ackrén (2009), *Conditions*, op.cit., p. 211

<sup>42</sup> See <http://www.statesassembly.gov.je/frame.asp>

<sup>38</sup> The Constitution of the Isle of Man at: <http://www.gov.im/is-leofman/constitution.xml>

<sup>39</sup> M. Tkacik (2008), op. cit., p. 399

Although the three islands are in strict theory subjected to the authority of the UK Parliament, in practice this is restricted to defence, international relations, customs, postal services, wireless telegraphy, fishery and civil aviation. The three islands all deny the rights of the UK-Parliament to legislate for them without the consent of the local parliaments. Since the relations between the three islands and the UK-Parliament are mainly regulated by common law and customs, the distribution of power is vague. This could be exemplified by the OECD report of 2000 where 35 tax havens, damaging free trade, were mentioned, including the Isle of Man and the Channel Islands. Although the UK government welcomed the report, nothing significant has changed since 2000.

### 6.3 British Overseas Territories

Unlike the British Crown Dependencies, the “British Overseas Territories”<sup>43</sup> are not to be considered autonomy systems under the definition explained in chapter 2.2 and 2.10. Executive authority is vested in a governor appointed by the Queen (various colonies of the UK are governed by this formula), but most of these territories have an legislative council or assembly elected with adult suffrage. In order to state whether these territories could be classified as “autonomy systems” it has to be taken into account that in most cases the appointed governor has the right to amend the legislation and even the constitution of the respective territory. The degree of self-government is quite different from case to case.

In Gibraltar – a British Overseas Territory – the Governor is not involved in the day-to-day administration. His role is largely as a ceremonial representative of the head of state. The government of Gibraltar is elected for a term of four years, headed by a Chief Minister. The unicameral parliament consists of 17 elected members. Gibraltar is a part of the EU. For now it remains on the UN-list of Non-Self-Governing Territories, as it was nominated by the UK in 1947, considered annually by the UN-Committee on Decolonization. On the other hand both the British government and Gibraltar government wish to see it removed citing that Gibraltar effectively has been decolonized.

Bermuda is internally self-governing with an elected

bicameral Parliament and a Prime Minister, thus a mature regime of self-government, but its status is not that of an incorporated part of the UK. The UK remains responsible for the island’s external affairs, defense, and internal security, including the police. British interests are represented by an appointed governor. The latter may make amendments at any time within a 12 month period after the commencement of the Bermuda Constitution Order. The Legislature in Bermuda has authority to amend, repeal or revoke any existing law.<sup>44</sup>

The same applies to the Falklands, Pitcairn, Montserrat, Turks and Caicos Islands, and St. Helena and Dependencies, which all are British Overseas Territories.<sup>45</sup> The Falkland’s executive authority is vested with the Queen’s governor, who is also chairing the executive council, which rather has a consultative function to the Governor. Under the Falkland’s constitution there is a Legislative Assembly, but there is no autonomous executive.

In the Cayman Islands the governor appointed by the British Crown, has sole responsibility for external affairs, defense, judicial, public service, and internal security matters. The governor also serves as the chairperson of the Executive Council which is comprised of three appointed ex officio members including a chief secretary, and five elected representatives drawn from the Legislative Council. The latter five serve as ministers.<sup>46</sup> The Governor has the right to amend any laws and constitution relating to the islands. The same regulations apply to the British Virgin Islands. The same applies to Anguilla where the Queen always reserves the right to make laws for the peace, order and good government of the island including amendments to its constitution.<sup>47</sup>

Hence, in the case of the British Overseas Territories two important issues impede a classification as „modern autonomy systems“. First, most of these territories are not a constitutional part of the UK territory, but still included in the list of dependent territories. Second,

<sup>44</sup> Bermuda Constitution Order 1968, available at: <http://www.ubp.bm/downloads/BermudaConstitutionOrder1968.pdf>

<sup>45</sup> The Montserrat Constitution Order 1989 at: [http://www.opsi.gov.uk/si/si1989/UKSI\\_19892401\\_en\\_4.htm](http://www.opsi.gov.uk/si/si1989/UKSI_19892401_en_4.htm) ; the Pitcairn Islands Order 1970 at: <http://www.government.pn/Laws/PitcairnLaws.html> ; the St. Helena Constitution Order 1988 at: [http://www.opsi.gov.uk/SI/si1988/Uksi\\_19881842\\_en\\_1.htm](http://www.opsi.gov.uk/SI/si1988/Uksi_19881842_en_1.htm)

<sup>46</sup> The Cayman Islands Constitution of 1972 at: <http://www.gov.ky>

<sup>47</sup> Anguilla Constitution Order 1982 at: <http://www.gov.ai/imagenes%20Const.pdf>

<sup>43</sup> Bermuda, Anguilla, British Virgin Islands, Cayman Islands, Falkland, Gibraltar, Pitcairn, Montserrat, St. Helena and dependencies, Turks and Caicos Islands.

even if endowed with a democratically elected local assembly in charge with some legislative powers, there is no executive independent from the central state, the UK government.

## 7. Perspectives on territorial autonomy in the UK

The process of gradual enlargement of regional autonomy in the United Kingdom continues, spurred by growing popular support. In Scotland, according to recent polls not less than 75 per cent of the population would prefer a Scottish parliament and government with more powers.<sup>48</sup> The Welsh electorate too, accepts or the existence of an autonomous assembly supports by 80 per cent with a narrow majority in favour of an increase in its powers. Hence, Scotland and Wales are likely to claim more autonomous power; in particular, Wales will seek a degree of devolved power equal to Scotland's. There is still strong concern that the laws regulating the composition of the new autonomous institutions may themselves prevent consociational government. Intercommunal relations seem to have improved more in the political sphere than among the communities. The time factor has also proven important. All the devolved institutions have taken time to get into their stride. The potential to comply with the needs and interests of the local population seem to have improved.<sup>49</sup> The devolution process in Northern Ireland is more complicated, since it depends strongly on the political dynamics within the distinct communities and the feasibility of consociational government forms. Still, there is major opposition to the 1998 Belfast 'Good Friday agreement' from the Protestant-Unionist side.

Since 1998, there has been a certain 'lopsidedness' in the state structure of Great Britain,<sup>50</sup> as three regions benefited from a devolution of power, whereas the largest and wealthiest region, England, continues to be governed centrally. The devolution reforms enacted

48 This presentation draws upon Rami Ousta, 'Devolution in Scotland, moving forward', in: Thomas Benedikter (ed.), *Solving Ethnic Conflict through Self-Government*, EURAC, Bozen 2009, p. 17-23

49 This opinion is shared by Michael Keating, John Loughlin and Kris Deschouwer (2003) in *Culture, Institutions and Economic Development: A Study of Eight European Regions*, Elgar, Cheltenham, Chapter 6, pp.142-75.

50 C Jeffery and D Wincott, 'Devolution in the UK: Statehood and Citizenship in Transition' in *PUBLIUS, The Journal of Federalism* 2006, at: [<http://www.publius.oxfordjournals.org/cgi/content/full/36/1/3>].

by the Labour government since 1997 are a radical break from the traditionally centralized government system of the UK. But this power has never been used to create a territorially uniform state as, for instance, in France.<sup>51</sup>

Through devolution, different sets of territorial responsibilities, formerly exercised from within the central government by its own territorial offices, were transferred to separate devolved, democratically elected institutions, the assemblies and governments of Scotland, Wales and Northern Ireland. Thus, the accountability for the policies carried out shifted to democratic institutions and processes in the respective regions, while the state retained its responsibility for the UK-wide state of affairs along with England's specific functions.<sup>52</sup> Thus, from the very beginning, the devolution had an asymmetrical nature, which Jeffery and Wincott call the 'the lopsided nature of the British state'.

The autonomous territories together account for not more than 15 per cent of the UK's population and GDP. The majority of the population, living in England, remains governed by the UK's central government. In this regard, Great Britain much more closely resembles Denmark, Finland and Portugal, with their respective autonomous regions, than Spain or Italy, which established different categories of regional autonomy. Since 1998 the parliaments of Scotland and Northern Ireland have exclusive legislation in most fields of domestic policy.

These powers in Scotland embrace even local police and the administration of justice, which will soon be extended to Northern Ireland. The Scottish parliament alone was given a limited scope to vary the UK standard rate of income tax by 3 per cent. Scotland's parliament, from 1999 to December 2005, has approved 89 acts, while the Northern Ireland assembly has been less active, being suspended since 2002. In contrast, the Regional Assembly of Wales has no primary legislative powers and depends on case-by-case empowerment by Westminster to enact secondary legislation. Recently, pressure has mounted to increase these autonomous powers, moving towards the Scottish model.

There are no plans for an English parliament equivalent to the devolved legislatures in other regions. The 'GLA' (Greater London Area) remains only a modest form of

51 For a comparison with other experiences of devolution see John Hopkins (2002), *Devolution in Context: Regional, Federal and Devolved Government in the European Government*, Cavendish, London

52 Jeffery and Wincott, 2006, op. cit., p.2.

devolution consisting of two institutions: a directly elected mayor and a small, directly elected assembly. It must be recalled that in the EU member countries, many devolved political responsibilities have an EU dimension as well, such as economic development, environment, agriculture, fishery, transport policies, and in Scotland, justice and home affairs. Thus, intergovernmental coordination is necessary even between the three levels of government.<sup>53</sup>

What are the open questions regarding devolution in UK? There has been some difficulty in implementing the devolution of the three regions, especially regarding Northern Ireland. But even in Wales and Scotland there remain some open questions about the 'devolution settlement':<sup>54</sup>

1) The coherence of the devolution settlement: Will new intergovernmental relationships evolve? In the post-devolution era, fiscal abundance is coming to an end, and future conflict about the distribution of resources is likely. The 'post-devolution UK-state' lacks a clear normative underpinning. How will the public support the devolution process in future? In all three regions there is a clear demand for farther-reaching devolution. In England, there is skepticism about a major territorial divergence resulting from devolution.<sup>55</sup>

2) The equilibrium of devolution settlement: As long as the UK retains a single economic market, a common welfare state and a single area of security, decisions taken by the UK government or England will have spill-over effects for the whole UK. In other terms: the autonomy of a single region in EU-member states is limited by national and supranational legal and constitutional frameworks. The size of the block of financial grants to Scotland, Wales and Northern Ireland is determined by the UK government decisions for England. If spending in England fell – for instance, if private health care were given a major role – this would also decrease the devolved funds (a spillover effect of devolution).

3) Which are the boundaries of asymmetrical devolution in the context of shared statehood? The

<sup>53</sup> See also Stijn Smismans, 'Vertical and Horizontal Decentralization in European Governance: Discourse, Reality and Strategy' in Roberto Toniatti, Francesco Palermo and Marco Dani (ed.), *An Ever More Complex Union*, EURAC-ITC-Nomos, Baden-Baden, 2004, pp.57–84.

<sup>54</sup> Wincott and Jeffery, 2006, p.6.

<sup>55</sup> *Ibid.*, p.7.

UK has no systematic constitutional codification, so constitutional changes can be introduced by a simple majority in an ordinary legislative act. Such constitutional flexibility is necessary in Northern Ireland to find a complex consociational arrangement. Wales is already pressing for a review of its powers based upon the Scottish model. Scotland is interested in having more powers to regulate its own taxation. It remains unclear, however, in the absence of a clear normative underpinning, where the limits of asymmetrical devolution are.

4) Is there a risk of engendering a 'fragmenting citizenship' by pressing ahead with the devolution? Are public policy differences emerging regarding social rights and benefits? Many differences stem from pre-devolution structural differences. There is little evidence that devolution has resulted in a 'fundamental divergence' in the quality of social citizenship and public services through the UK as a whole. Some variations have already existed (as is the case in Spain and Italy). The crowning achievement of the post-war welfare state remains the National Health Service. The post-war UK-state sought to even out territorial inequalities and regional disparities, but while these distinct developments in single sectors, enhanced by autonomous political choices can affect the uniformity of social performance, they cannot affect the 'common citizenship'.

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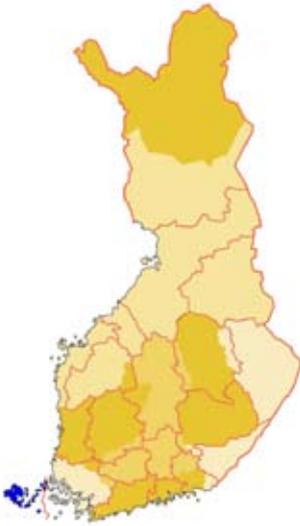
[<http://www.gov.je/>]: official website of the Bailiwick of Jersey

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[<http://www.gov.im/isleofman/constitution.xml>]: The Constitution of the Isle of Man

## 3.4 The Åland Islands (Finland)



<b>Population (2005 estimate)</b>	26,711
<b>Land area</b>	1527 km <sup>2</sup>
<b>Total area</b>	6784 km <sup>2</sup>
<b>Capital</b>	Mariehamn
<b>Official language</b>	Swedish
<b>Autonomy since</b>	1920

<http://en.wikipedia.org/>

The Åland Islands are a monolingual Swedish-speaking group of islands in the Baltic Sea between Finland and Sweden. Not less than 6,554 islands form the archipelago, only 50 of which are permanently inhabited. Nearly 40 per cent of the 27,000 Ålanders live in Mariehamn, the administrative centre and only city on the Islands. The Åland Islands have their own flag, but they use the same currency as Finland, the Euro. The official language is Swedish.

While the Åland Islands have been part of the Swedish cultural area since ancient times, in 1809 they came into Russian possession by historical coincidence. At the end of the Czarist Empire in 1917, the Åland Islands' inhabitants were denied self-determination and became a part of the newly independent Republic of Finland. Sweden disputed this change in status, and the issue was settled by the League of Nations in 1920, when Finland recognized the Ålanders' right to maintain their culture, language and traditions and

to enjoy a demilitarized and autonomous status.<sup>56</sup> The Autonomy Act of 1921 established the first official territory with autonomous status in Europe.

### 1. History

After a long period of Swedish rule (1157–1809) the Åland Islands were lost to imperial Russia along with Finland. From 1809 to 1917, Åland belonged to the Grand Duchy of Finland, which formed an autonomic entity as a part of the Russian Empire. Russia fortified Åland during the Crimean War of 1853–6. Afterwards, the Islands were demilitarized under an international treaty signed by the countries involved in the conflict. Finland declared itself independent in 1917 as a consequence of the Russian Revolution and the breakdown of the Russian Empire.<sup>57</sup>

Defensive fortifications did not prevent Åland from being occupied during World War I, first by Sweden and then by Germany. During the chaos of the Russian Empire's collapse in 1917, a movement took shape in the Åland Islands seeking reunification with the Swedish motherland out of the fear of losing their language and culture as a possession of independent Finland. Sweden, which saw foreign rule of the Islands as a security threat, reacted supportively. Two unofficial petitions organized by the Ålanders in 1917 and 1919 yielded an overwhelming majority in favour of reunification. The Ålander aspirations were not accepted by Finland, putting the relations between Sweden and Finland under strain. The Finnish parliament adopted a first 'Autonomy Act' for Åland on 6 May 1920, which was rejected by the Ålanders, who invoked self-determination. Moreover, the question of Åland had an international dimension due to the aforementioned treaty on demilitarization of the Islands. The question was addressed by the League of Nations in 1920, and Finland and Sweden were prepared to accept the UN decision on the matter as a basis for the future of Åland. In June 1921, the League of Nations recognized that the Åland Islands were a matter of international concern, but rejected Åland's claim for self-determination because of the opinion

<sup>56</sup> Agreement between Finland and Sweden to Guarantees in the Law of 7 May 1920 on the Autonomy of the Åland Islands, 27 June 1921; the text is to be found in Hurst Hannum, *Autonomy: Documents on Autonomy and Minority Rights*, Dordrecht, 1993, p.141–3.

<sup>57</sup> For Åland's history see, for example, James Barros, 'The Åland Island Question: Its Settlement by the League of Nations' in Harry Jansson and Johannes Salminen (eds.), 2002, *The Second Åland Islands Question: Autonomy or Independence?*, Mariehamn.

that minority groups did not have the right to demand separation under international law. Åland would remain part of Finland, which was obliged to provide Ålanders with broad self-government, protection and guarantees for the maintenance of their culture and also to accept the demilitarization and neutralization of the Islands in an international treaty.<sup>58</sup>

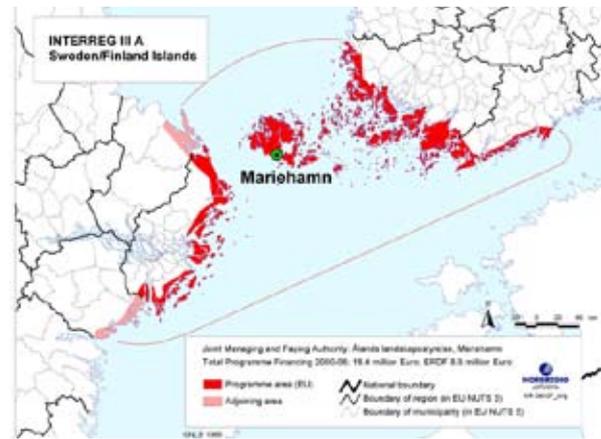
Finland undertook a series of commitments concerning the language of instruction in schools, the limitation of the sale of land to non-residents, financial matters and supervisory function for the Council of the League of Nations. These guarantees reached by agreement between Sweden and Finland and approved by the League of Nations on 27 June 1921, were incorporated into the Finnish legal system by the 1922 Åland Guarantee Act.<sup>59</sup> On 9 June 1922 Åland's first elections of the Lagting were held, giving rise to Åland's official holiday of celebration of the autonomy.

The autonomy of Åland has been expanded through two major revisions to the Autonomy Act in 1951 and in 1991. The first revision was initiated after World War II, when a new generation of politicians came to power in Finland. The 1951 revised Autonomy Act introduced the specific 'right of domicile' (a kind of regional citizenship), although elements had already been included in the previous Act. National symbols were created (a flag, stamps and a national museum). A regional movement to reinforce the existing autonomy developed in Åland over the following decades, leading to the approval of the third Autonomy Act on 16 August 1991, n.1144 (in force since 1 January 1993).<sup>60</sup> The aims of the 1991 revision, enacted with the mutual consent of both the Finnish government and the Åland legislative assembly, was to more clearly define the legislative responsibilities of the state and of the provincial authorities, to transfer additional areas of responsibility to Åland and to provide for later transfer of increased authority in other areas, expanding the autonomy into the economic sphere. Satisfactory knowledge of Swedish was added as a requirement for regional citizenship.

<sup>58</sup> Harry Jansson and Johannes Salminen (eds.) 2002, *The Second Åland Islands Question: Autonomy or Independence?*, Mariehamn, p.36–7.

<sup>59</sup> This agreement is often quoted as an example of a long-standing bilateral treaty. However the Åland Agreement was not a legally binding treaty. Later it developed into international customary law obliging Finland to safeguard the Ålanders' autonomy. For the text, see Hurst Hannum (ed) (1993), *Documents on Autonomy and Minority Rights*, Dordrecht, p.141–3.

<sup>60</sup> Act on the Autonomy of Åland (1991) at: [<http://www.finlex.fi/pdf/saadkaan/E9911144.PDF>].



## 2. Institutional arrangements of the autonomy<sup>61</sup>

The Åland Islands have a locally elected legislative assembly (Lagting), a provincial government (Landskapsstyrelse), as well as a Governor who is the direct representative of the Finnish government. He is appointed by the Finnish government after agreement with the speaker of the Lagting. In addition to the Islands' internal administration, despite their tiny population of 27,000, the Islands form a single electoral district for Finnish national elections in which Åland citizens fully participate.

The unicameral Lagting, consisting of 30 members, is elected every four years by means of proportional ballot. Only regional citizens of Åland may vote and stand for election. The Åland government, the Landskapsstyrelse, consists at presents of eight members and is appointed by the Lagting. A minority government cannot be appointed. The chair of a member of the government is called the Lantrad. The government is assisted by an administration consisting of a central board and six departments. It exercises its administrative authority in all spheres that devolve unto the Åland authorities under the Autonomy Act.<sup>62</sup>

Legislative as well as administrative authority is divided between the centre and the province, but despite clarifications in the 1991 Autonomy Act, the division is not always clear. The Lagting has legislative responsibilities in the following spheres: education,

<sup>61</sup> A good overview is given by Farima Daftary (2000), 'Insular autonomy: a framework for conflict settlement? A comparative study of Corsica and the Åland Islands', ECMI working papers, Flensburg, p.13–22.

<sup>62</sup> See also Maria Ackrén (2009), *Conditions*, op. cit., p. 140

culture and preservation of the ancient monuments, health and medical services, social welfare, promotion of industry, internal communications, housing, tenancy and rent regulation, lease of land, municipal administration, additional tax on income, public order and security, the postal service, radio and television, farming and forestry, fishing, protection of the environment and mining rights. The Lagting may legislate on all matters affecting the Åland Islands except those specifically reserved for the central state: namely constitutional law, foreign relations, general taxes and payments, criminal and most civil law, the judiciary, social insurance, navigation, aviation and communication, and customs and monetary services. Besides passing laws, the main duty of the Lagting is to adopt the Åland budget.

The division of powers is actually quite flexible, as some powers may be transferred from the state to the province or vice-versa. For example, Finland and Åland may agree to transfer to Åland some powers which normally lie within the competence of the state, e.g. population registers, trade and shipping registers, pensions and other social insurance, banking and credit services. In some instances, the Åland government may hear appeals against administrative decisions by the Finnish state. Even in matters reserved for the state, Åland's interests are represented. This is guaranteed by a representative for the Islands elected to the Finnish parliament and by the Åland Delegation. Furthermore, the Lagting may submit initiatives on matters within the legislative or administrative power of the state to the Finnish government, which must then present them to the Finnish parliament for consideration.

The Lagting is subject to clear but limited legislative supervision from the centre. All laws that it passes must be submitted to the President of Finland for approval within four months. He may impose his veto in only two cases: if the Lagting has exceeded its legislative competence or if the laws affect the external or internal security of the country. In order to minimize the number of such occurrences, before a draft law is presented to the President, it must be presented to the Åland Delegation, which gives its opinion on the matter. The Åland Delegation may also be dissolved by the President after consultation with the Speaker of the Lagting. Finally, the Åland Delegation is a joint organ of Åland and the Finnish state. Chaired by the Governor, it consists of two legal experts appointed by Finland and two appointed by the Lagting. Its duties are to carry out the 'equalization', the annual fiscal

adjustment (also called tax retribution).

Whereas the President of Finland is empowered to appoint a Governor in all 12 constituent provinces of Finland, constitutionally the appointment of a Governor of the Åland Islands can only be made by the President of Finland after consultation with the Speaker of the Åland Lagting. The gubernatorial nominee is selected from the largest party in the Lagting. He must follow a three-step procedure in attempting to form a ruling coalition. First, he must try to assemble a broad-based Executive Council, or *Landskapsstyrelsen*, composed of the major parties in the Lagting. If this attempt fails, then he may try to put together a narrow majority government.

Regarding the judiciary, the Åland Islands do not have a separate judicial system and rely upon the Finnish system of municipal and district courts as well as the Supreme Court in Helsinki for the administration of justice and the appeal instances.

Although the 1991 Autonomy Act does not include any special provisions for the settlement of disputes between Finland and the Åland Islands, it contains numerous safeguards. In the legal sphere, an appeal against the legality of a provision of the Åland government may be brought to the Supreme Administrative Court of Finland. Any dispute between the State and the province in other spheres must be settled by the Supreme Court in Helsinki. Finally, according to the current mediation system, Åland draft laws must first be discussed by the Åland Delegation before being submitted to the Finnish President.

The finances of the Åland Islands are managed by the Lagting and the joint Åland Island Commission. The autonomous islands bear most of the cost of self-government and possess the authority to levy taxes on income. The Lagting determines the annual budget, and raises the needed revenues through taxes and charges for the use of government facilities. The joint Åland Island Commission determines the amount of monetary transfer from Helsinki to the Åland government for its performance of services or functions carried out elsewhere by the Helsinki government. Finland levies usual national taxes and customs on Åland, but a lump sum of 0.45 per cent of Finland's total revenues are drawn back to Åland. The Lagting can freely allocate this so called 'equalization sum' to cover the costs of autonomy as annual budget of the islands. Regularly expenditures for social assistance, health care, education and culture constitute the lion's share of the budget. There is also a provision for tax

retribution which allows Åland to receive a share of the gains if income and property tax levied in the islands exceeds 0.5 per cent of the corresponding tax in the entire country. Due to its autonomy and solid finance system, Åland has a stable economy and high living standard.

### 3. Language and culture policy

The Åland Islands are 94 per cent Swedish-speaking, and form a unilingual Swedish-speaking province of Finland that recognizes two official languages: Finnish and Swedish.<sup>63</sup> The Åland Islands' Swedish language and traditions stem from their 650 years of Swedish rule, and are strongly protected by the provisions of the Autonomy Act. Swedish is the only official language in use, and all state officials must know Swedish. Official letters and other documents sent to Åland by the Finnish state must also be written in Swedish.<sup>64</sup> Åland has extensive autonomy in the field of education. The medium language of teaching in all publicly financed schools is Swedish. While English is a compulsory subject, Finnish is only optional. Since opportunities for tertiary education are limited, most of those who wish to pursue a university degree leave to study in Sweden or Finland, and are less likely to return afterwards.

The inhabitants of Åland have a strong sense of identity and, when asked whether they consider themselves Swedish or Finnish, they reply that they feel like 'Ålanders'. Whether or not they constitute a separate minority from the rest of the Swedish speakers in Finland is subject to debate. Because of their isolation, however, a strong Ålandic identity developed to distinguish them from the Swedish-speaking population in the mainland of Finland, which strongly identifies itself with Finland.<sup>65</sup> Over time, the Ålandic identity has evolved, and today many Ålanders describe themselves as Europeans, Nordic, Finlanders and Ålanders.

<sup>63</sup> International Committee of Lawyers for Tibet, *Forms of Autonomy (1999)*, New York, p.12–3.

<sup>64</sup> See Daftary, 2000, p.14–5.

<sup>65</sup> The Swedish minority in Finland amounts to almost 300,000 persons or 6 per cent of the population. The linguistic rights of the Swedish speakers are guaranteed in Section 17 of the Finnish constitution and by the 1922 Language Act. The majority of Swedish speakers in Finland live in bilingual municipalities but there are also monolingual Swedish municipalities in Ostrobothnia and in the South-west of Finland. A municipality is bilingual when there are at least 8 per cent or 3,000 Swedish-speaking persons. For the text of the new constitution, in force since 1 March 2000, see: [<http://www.vn.fi/vn/english/index.htm>].

As for the language policy, as early as 1899, in its first 'Language Act', Finland declared both Swedish and Finnish to be official state languages, attributing a privileged position to the Swedish language. This led to an advanced system of bilingualism in many areas with the Swedish-speaking minority in Finland. On the Åland Islands, however, the official language is Swedish, and the administration is monolingual Swedish. Åland's civil servants must by law be fluent in written and spoken Swedish. The schools use Swedish as a medium and English is a compulsory subject, while Finnish, German and other languages are optional 'foreign languages'.

### 4. Regional citizenship and international relations

Most important in protecting the specific identity of the islands is the concept of regional citizenship. Indeed, it is necessary to possess Åland regional citizenship in order to vote and to stand for office in the Lagting, Åland's Legislative Assembly, to win and hold real estate and to operate a business.

To acquire regional citizenship, a person must be Finnish citizen, must have resided in the Åland Islands for five years and must demonstrate a satisfactory knowledge of Swedish (Section 7, Autonomy Act). Non-Åland citizens may be denied the right to purchase land and the right to exercise commercial activity. A child may also acquire regional citizenship at birth if one parent already possesses it. Regional citizenship may be withdrawn if a person has resided outside of Åland for more than five years. Its citizens' passports mention 'Åland'. This citizenship can also be awarded by the Autonomous Government, provided that the applicant demonstrates a sufficient understanding of Swedish. The Åland Islands citizens however, possess dual (Åland and Finnish) citizenship and are subject to Finnish law, but they are exempt from compulsory Finnish military duty.

There are about 1,100 native Finnish speakers on Åland or 5 per cent of the population of the Islands. Although certain concessions were made for them regarding language rights (for instance, before the courts or in communication with state officials in Åland), questions have been raised at the national level whether Finland has violated anti-discrimination provisions.

Although Finland is responsible for foreign affairs, Åland enjoys a certain international voice, especially

in the European and Scandinavian context.<sup>66</sup> Since 1975, Åland has been a member of the Nordic Council on an equal footing with the Scandinavian states and the autonomous islands in Denmark<sup>67</sup>. Thus, the Landskapsstyrelse participates in the work of the Nordic Council of Ministers. Åland also has a representative in the Finnish Permanent Mission to the EU in Brussels, acting not as an ambassador but as a contact link. Moreover one of Finland's representatives in the EU Committee of the Regions is from Åland.

According to the provisions concerning international treaties in the Autonomy Act, the government of Åland may propose negotiations on a treaty with a foreign state. Furthermore, the Åland government must be informed about negotiations on a treaty with a foreign state if the matter is a part of its autonomous powers, and it may even participate in the negotiations. If Finland contracts an international treaty containing a provision falling under the Åland sphere of responsibility, the consent of the Lagting is required for the treaty to apply to Åland as well. When Finland joined the EU in 1995, part of the legislative power of the Finnish state and of Åland had to be transferred to EU institutions. Thus, Åland had to give its consent via referendum before Finland could accede into the European Union. Subsequently, the 1991 Autonomy Act was amended to include a new chapter on the participation of Åland in EU matters. The relationship of Åland and the EU is determined in a separate protocol of Finland's document of accession.<sup>68</sup> Certain exemptions were decided upon and included in a separate protocol to the accession treaty. Still, some EU provisions, such as the customs union, are not in force on Åland, which can freely opt out of single EU regulations. Åland has been demilitarized for many decades: no military bases may be installed, nor can any military personnel be stationed on the islands.

## 5. Lessons from the Åland case

Today the attitude of most Ålanders towards autonomy

<sup>66</sup> See also Sören Silverström, *The Competence of Autonomous Entities in the International Arena – With Special Reference to the Åland Islands in the EU*, in: *International Journal on Minority and Group Rights*, Vol.15, No.2-3, 2008, pp. 259-271

<sup>67</sup> The Nordic Council, formed in 1952, is a forum for interparliamentary cooperation. Its members are: Norway, Sweden, Finland, Iceland, Denmark, Faroe Islands, Greenland and Åland Islands.

<sup>68</sup> See Sören Silverström, *The Competence of Autonomous Entities in the International Arena – With Special Reference to the Åland Islands in the European Union*, in: *Int. Journal on Minority and Group Rights* 15 (2008), pp. 259-271

is positive, and both the Finnish and the Åland governments present this autonomous region as one of Finland's successful policies for safeguarding the rights of minorities in Finland. The region has always been very peaceful, and while calls for independence were heard for the first time in the political debate during the 1999 election campaign, the prospects of a separatist movement developing in the near future are highly unlikely.

The preservation of the identity of the Swedish-speaking minority in Finland has largely been achieved. The combination of wide-ranging provisions in the spheres of language and education, as well as regional citizenship aiming at the protection of the cultural peculiarity of Åland, has contributed to allaying fears that the language and identity of the Ålanders would be lost through eventual assimilatory state policies or immigration processes. Ever since 1921, the political and institutional situation has been stable. By clarifying the division of powers and increasing economic autonomy, the effectiveness of the institutions has been enhanced.

The Åland Islands can be considered a successful case of conflict regulation through the gradual development of autonomy based on compromise between the conflict parties, although in its early years the establishment of autonomy did not always go smoothly. While the arrangements of 1921, 1951 and 1991 contain many elements of minority protection, the territorial aspect of the autonomy is the main concern on Åland. To sum up, what are the basic features of the success of Åland's autonomy?<sup>69</sup>

1. Strong guarantees are given that the specific character of the autonomous region will be preserved (language, education, cultural activities and regional citizenship).
2. There was a strong consensus among the local population, facilitated by the fact that the population is quite homogeneously Swedish. Although the majority initially wanted re-unification with Sweden, the population backed the autonomy solution.
3. There is an open attitude of both the central and Åland politicians, which has facilitated discussions and enabled the statute to be improved over time. The initial Åland conflict was limited to a well-defined territory, and did not threaten to spill over to other

<sup>69</sup> See Kallonen and Ruiz, 2004, pp.26–8; Daftary, 2000, p.44; Hurst Hannum, 1996, p.374–5; and Lars Ingmar Johansson (1995), *The Autonomy of Åland: Background and Present Situation*, Åland Peace Society, Mariehamn.

Swedish-speaking regions of Finland. This made it easier for Finland to make important concessions to the Åland Islands.

4. The autonomy of Åland was created within the framework of a constitutional system that recognizes the equality of Finnish and Swedish speakers (Finland's 1919 constitution and Section 17 in Finland's 1999 constitution).

5. The flexibility of the autonomous regime allows for the transfer of administrative authority from the central state to the autonomous region and vice-versa.

6. The possibility of evolution of the autonomy is ensured. The autonomy provisions have been amended several times, always with the assent of Åland's authorities. The introduction of changes requires an act of the Finnish parliament, as well as approval of the Lagting by at least a two-thirds majority. Revisions do not necessarily mean failure of the previous statute, but might also reflect constant improvement based on increasing the practical political experience. This step-by-step-process and the conditions under which the statute may be revised seem to have worked well, although some consider them too slow.

7. The obligation to consult with the autonomous authorities (reinforced in the 1991 Åland Autonomy Act) in all matters which affect it, and the existence of other mechanisms aimed at ensuring that Åland's interests are represented, even in spheres which do not lie directly within its competence (EU matters for instance).

8. The existence of an official organ between the Finnish government and Åland, which is not enough to settle serious conflicts, but can serve as a permanent discussion forum (the 'Åland Delegation').

9. The involvement of international agents. Without the involvement of the League of Nations and other international agents, Finland in 1920 would hardly have agreed to a special status for Åland.

10. The attitude of Sweden, which shares its cultural and language features with Åland, contributed to the success. Sweden renounced to the Åland Islands both in the 1921 agreement and after World War II, when the Ålanders expressed their wish to reunify with Sweden. Sweden, which remains a party to the agreement, has continued to contribute to the stability of Åland's autonomy regime by refraining from criticizing Finland's handling of the Åland question.

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## 3.5 The Faroe Islands and Greenland (Denmark)

The Danes are the heirs to a tradition of local self-government that dates back to the Viking era, when every community within the kingdom was organized as a self-contained civil-military unit, an oath-society of equal subjects. Monarchic centralization in the Viking power structure a millennium ago did not eliminate local self-government, but imposed a quasi-feudal hierarchy upon it that has substantially weakened local control. Still, it was not until the nineteenth century and the emergence of the centralized Danish state that a truly different constitutional order was imposed – one that has been partially reversed in the post-war period. The Danish constitution has been amended to place the administration of almost all domestic activities under local government control, with the state government setting the general political framework and providing the necessary revenues to the local bodies. Beyond that, Denmark has established far-reaching territorial autonomies with a very specific juridical relationship with its two distant island territories – the Faroe Islands and Greenland.

### The Faroe Islands



<i>Population (2004)</i>	44,228
<i>Land area</i>	1399 km <sup>2</sup>
<i>Capital</i>	Torshavn
<i>Official language</i>	Faroese, Danish
<i>Autonomy since</i>	1948

<http://en.wikipedia.org/>

The Faroe Islands is a group of 18 islands, 16 of which are inhabited, located between Scotland and Iceland. The capital of Torshavn is located on the island of Streynoy. The Vikings first settled on the Faroe

Islands in the ninth century. The Islands came under Norwegian control in 1035. With the merging of the Danish and Norwegian crowns in 1360, they became a province of the Danish Kingdom. The Napoleonic Wars dissolved the Norwegian-Danish union, and what remained of the Kingdom of Norway in the Atlantic Ocean (Faroe, Iceland and Greenland) came under Danish sovereignty.

When Denmark became a constitutional monarchy in 1849 each of the three Atlantic provinces underwent a different development. Greenland was run like a colony until its incorporation into Denmark when the Danish constitution was revised in 1953, and it eventually obtained autonomy only in 1979. Iceland gradually detached itself from Denmark, becoming an independent republic in 1944. The Faroe Islands remained a Danish county until April 1940, when the Nazis occupied Denmark and the British responded by taking control of the Faroe. After the war, the British returned the Islands to the Danes. Following the referendum of 1946 on the Faroe, as a compromise solution the Danish Folketing granted full internal self-government to the Islands through the Home Rule Act of 1948. The Faroe Islands have their own flag. The official language on the islands is Faroese – the smallest Germanic language, which is derived from old Norse – along with Danish. The Faroese consider themselves a distinct people, since they have their own language and cultural traditions and possess a highly developed sense of unity.

### 1. The autonomy arrangement

The 1948 Home Rule Act recognizes the Faroe Islands as a “self-governing community within the Kingdom of Denmark”. Specific fields of responsibility may accordingly be devolved to the Faroese Lagting while other matters remain entrenched within the Danish Parliament. The 1948 Act lists those areas for which the Faroese Lagting would, upon request, assume entire legislative, fiscal and administrative responsibility. These include agriculture, fisheries, education, culture, all taxation, health and social services, all planning matters and internal administration. In addition, a number of other areas are recognized as matters for which the Faroese Logting could assume responsibility after negotiations with the Danish government.<sup>70</sup> These include state church, police, trade controls, state radio and aviation and mineral rights. Some of these areas

<sup>70</sup> See Maria Ackrén/P. Olausson, op. cit., p. 240-242

have been devolved to the Faroe Islands in 1991.<sup>71</sup> On the Faroe Islands, the executive authority is vested in the Landsstyre, or Cabinet, headed by the Lagmadur, or Prime Minister. The government typically comprises between three and six ministers elected by and from the Lagting. It has full administrative control of island affairs. The Danish government is represented in the Faroe Islands by a High Commissioner.

Legislative authority is vested in the unicameral Lagting, which was created in 1852. Its 32 members are elected proportionally from seven constituencies, while five supplementary seats (included in the 32) are used to balance uneven voter turnout in the constituencies. Representatives serve a four-year term. The Faroese population also elects two representatives to the Danish Folketing directly, who serve for four years.<sup>72</sup>

In 1948, the Faroe Islands government was granted the authority to administer 'specified local matters', which today include electoral rules, municipal institutions, sanitation, local schools, social services, trade laws and local taxation. The Faroe autonomous institutions can freely regulate the local economic policy, relating to land use planning, agriculture, industry and fishery, water and marine resource management. The autonomous powers are mainly financed by revenue from income tax, VAT, indirect taxes and a bloc grant from the Danish finance ministry. The Faroese have the power to levy taxes, including import tariffs.

All Danish legislation must be submitted to the Landsstyri before coming into force in the Faroe Islands. The Danish government retains control over defence, foreign affairs and the judicial and monetary systems. But nevertheless, the Faroe Islands' government can conduct negotiations with foreign countries on trade and fishery agreements, and there is a special advisor for Faroese affairs attached to the Danish foreign ministry. Any disputes involving the powers of the autonomous institutions and national authorities are referred to a joint committee.

The Faroe Islands maintain several local courts for hearing minor civil and criminal cases. More consequential cases of the first instance and appeals from the local courts may be made to the High Court in Torshavn. The court of final appeal is the Danish

Superior Court in Copenhagen.

The legal definition of an inhabitant of the Faroe Islands contains no mention of ethnic or linguistic criteria. The recognition of the specific nationality of the Faroese is reflected by the Faroese passport. Faroese is also recognized as the principal language spoken on the Islands, but Danish can be used for all public purposes. Under the Home Rule Act, responsibility for all cultural matters is transferred to the autonomous institutions.

## 2. Recent developments

Settled by Norse colonists seeking to maintain their traditional independence after the establishment of centralized rule by the kings of Norway, the Faroese maintained institutions that were both traditional and republican. The Faroe Islands joined the European Free Trade Association in 1967 as a 'commercially autonomous Danish island area', but left that association on 1 January 1972 after Denmark decided to join the European Community (EC). The Faroe Islands did not join the EC together with Denmark in 1973, but have since that time negotiated a series of favourable bilateral trade agreements with EC members and the European Union.

Of the six parties that won seats in the November 2004 Lagting elections, only the left-wing Republican Party (RP) – which was established in 1948 in protest against the limited autonomy of the islands – advocates outright secession. Of the 32 parliamentary seats eight are held by the RP, which supports social democratic solutions to political issues.<sup>73</sup> Two other parties advocate greater political autonomy within the Danish state. Notwithstanding these demands for increased autonomy or even independence, any change in the status of the Faroe Islands puts to risk the large annual subsidies flowing to the Islands from Denmark.

The Faroe Islands are part of the Danish sovereign state as an autonomous territory. Under the Home Rule Act, the Islands have no authority to unilaterally alter this relationship with Copenhagen. Nonetheless, since June 1998 a process towards independence has been on the agenda for the Islands. This democratic process encompasses four stages:<sup>74</sup>

<sup>71</sup> See Hurst Hannum, *Possibilities for Increased Faroese Autonomy* (1999), available at: <http://www.macmeekin.com/Library/Jurids/Faroe%20Islands.htm>

<sup>72</sup> See International Committee of Lawyers for Tibet (1999), *Forms of Autonomy*, New York, p.128–31.

<sup>73</sup> See [[www.tinganes.fo](http://www.tinganes.fo)] and [[www.logting.fo](http://www.logting.fo)] and International Committee of Lawyers for Tibet, *Forms of Autonomy*, June 1999, p.135–47.

<sup>74</sup> *Ibidem*, p.132.

- 1) an agreement upon overall political objectives
- 2) preparation of relevant reports and discussion papers
- 3) negotiations with the Danish authorities and
- 4) a parliamentary ratification and people's referendum.

After having completed the first two steps negotiations between Faroe and Copenhagen are ongoing. The Faroe Islands are supposed to take over more responsibilities with the exception of those areas deemed to be strictly connected to sovereignty as the legislation of the state, citizenship, supreme court, foreign, security and defence policy and currency policy.<sup>75</sup> The act of 2005 granted the Faroese authorities full control over all areas not explicitly retained by Danish authorities who in fact retained very little control.<sup>76</sup> This process should be completed according to a timetable by 1 January 2012 at the latest, after which sovereignty will be decided upon via a referendum. Danish political forces are generally inclined to accept the independence of the islands. However, at the same time, they have made it clear that independence would mean that the economic support would stop within a period of 4 years, whereas the Faroese government claims economic grants to phase out over a period of 15 years.

The goal today is to develop towards more autonomy within the islands, maturing into either a freely associated state or a federal form of government. Recent development show more international involvement, as the Faroe have struck agreements with Iceland and Russia. Negotiations with the EFTA are also underway. This has been possible due to new legislation between Denmark and the Faroe Islands, which give the Faroe the right to enter into international agreements and organizations.

### 1. The genesis of Greenland's autonomy

Greenland's population of about 56,000 is composed of 47,000 Inuit and 9,000 Danes. Ethnically and linguistically, the Inuit of Greenland are closely related to the Inuit of Canada, Alaska and Siberia. The majority of them reside in the south-west and west of the island.

<sup>75</sup> See Ackrén/Olausson (2008), op. cit., p. 242.

<sup>76</sup> Act No 79 of 12 May 2005 on the Assumption of Matters and Fields of Responsibility by the Faroese Authorities, Section 3

Greenland was originally settled by North American Inuit, and in the eleventh century by Scandinavian Vikings. It came under the united Danish-Norwegian Crown in 1380, and under sole Danish sovereignty after the Napoleonic Wars, along with the Faroe Islands and Iceland.



<i>Population (2005 estimate)</i>	56,375
<i>Land area</i>	2,166,086 km <sup>2</sup>
<i>Capital</i>	Nuuk
<i>Official language</i>	Inuktitut, Danish
<i>Autonomy since</i>	1979

<http://en.wikipedia.org/>

The island remained under Danish control from 1814, as a colony, until the Nazi occupation of Denmark in April 1940, when the United States assumed responsibility for the island's defence and administration. After the war the island was returned to Denmark and incorporated as an integral part of the kingdom. Its colonial status ended with the new Danish constitution of 1953, which granted the Greenlanders equal rights as Danish citizens, but contained no provision for self-determination of the Inuit.

In the 1960s and 1970s, among the Inuit population political awareness of national identity and political rights rose, and consequently, there were demands for fundamental changes in relations with Denmark. In October 1972, 75 per cent of Greenland's residents voted against EC membership, but as a result of mainland Danish support for the proposal, Greenland was forced to join. This led to the appointment of a joint Greenland-Denmark commission in 1975 to find ways of granting autonomy or home rule to the island while preserving Danish sovereignty.

The proposal for a new 'Home Rule status' (autonomy) allocated nearly all Greenland's internal matters to the local political bodies, an assembly and a government. The Home Rule Act of 1979 underwent a general referendum on 1 May 1979. It was approved by a majority of 70.1 per cent of the Greenlanders. The autonomy officially entered into force in May 1979 with

the Danish Folketing's ratification of the Greenland Home Rule Act, and hence, Greenland is presently an autonomous region under the Danish Crown. In April 1979, Greenland elected its first autonomous parliament.<sup>77</sup>

The new autonomy provided Greenland with a major measure of autonomy in its foreign trade relations. Thus, in February 1982 Greenland held a referendum on its EC membership. A total of 53 per cent of Greenland's electorate voted against membership to the EC, and consequently, with effect from 1 January 1985 Greenland altered its relationship with the EC to that of an overseas territory.

## 2. Greenland's autonomy

Greenland's internal governmental system is a parliamentary democracy with a structure nearly identical to that of the Faroe Islands. Its legislative authority is vested in the 27-member Landsting, which is proportionally elected from three constituencies. Representatives serve four-year terms. Greenland also has two representatives in the Danish Folketing who are directly elected and also serve four-year terms.

As part of the devolution process, Greenland's home rule government has received full authority over local taxation, fisheries, planning, cultural and religious affairs, nature conservation, education, social welfare and labour. Greenland has its own flag, but shares the currency used by Denmark (the Danish Krone). The most commonly spoken language is Inuktitut, an Inuit language, which is the official language along with Danish.

The executive authority is vested in the Landsstyre, or Executive Council, which is headed by the Lagmadur, the Prime Minister. The Landsstyre comprises between three and six members, elected by and from the members of the Landsting. The Landsstyre has full administrative responsibility for Greenland's internal affairs. Since 1979, Denmark has been represented in Greenland by a High Commissioner.

Regarding its judiciary, the island is divided into 18 court districts, which use lay assessors. For most cases, these lower courts are responsible for the first instance, and appeals must be directed to the Landsret, the higher Court in the capital of Nuuk, which is the only court with a professional judge. This court

hears the more serious cases in the first instance, and appeals of these cases must be made to the High Court in Copenhagen.

The Home Rule Act was enacted by the Danish parliament as an ordinary state law, and can be changed at any time with a simple majority of the parliament in Copenhagen. In the Danish Folketing, Greenland is represented by two deputies. Although still a part of Denmark, Greenland has its own legislation for its territory and many Danish national laws do not extend over Greenland. The legal situation shows many special issues, such as customary rules, differences in the judiciary system and exemptions in international agreements concerning Greenland.

The Greenland government is allowed to be involved in international negotiations when Greenland is concerned. The most striking example for such a reservation is the bilateral agreement between the EU and Greenland on the use of Greenland's fishing grounds. Furthermore, Greenland has the right to stipulate agreements with foreign states, and became a party to several international organizations, such as the 'Inuit Circumpolar Conference'.



*Greenland's ice cover is receding, its autonomy expanding*

Under this provision, in 1984 Greenland became a

<sup>77</sup> For the legal basis of Greenland's home rule, see Sven Wulff, 'The Legal Bases for the Inughuit Claim to their Homelands', in *International Journal of Minority Affairs and Group Rights*, no. 12/1, 2005.

member of the Nordic Council and established the 'West Nordic Collaboration' with Iceland and the Faroe Islands, aiming to control the fishing resources of the North Atlantic Ocean. Greenland also established a 'Foreign and Security Policy Committee', which reflects the efforts of the regional assembly to become fully involved in foreign affairs. The government in Nuuk will hear the committee's opinion before entering into agreements concerning external relations, especially in questions regarding demarcation of water territories, the defence of Greenland, and treaties that include Greenland. According to the principle of sovereignty, Greenland cannot be a member in international organizations that only accept sovereign states. On the other hand, under the Danish Home Rule Act Greenland is able to station its representatives in Danish embassies in neighbouring countries such as Canada. Furthermore, Greenland's government is represented in the Danish delegation in a variety of international organizations.<sup>78</sup>

### 3. Recent developments

There are currently three main parties in the parliament:<sup>79</sup> the Siumut ('Forward'), Atassut ('The connecting link') and Inuit ataatigiit ('Inuit brotherhood'). Siumut, a strong advocate of the autonomy, favoured withdrawal from the European Community and promotes Greenland's ownership of the island's resources, which are still under Danish sovereignty. Atassut believes that political and economic development in Greenland can be best achieved through partnership with Denmark, and thus favours the status quo, though with the influence of the Inuit in Greenland affairs. Inuit ataatigiit does not accept the autonomy arrangement, considering it a colonial legacy. It promotes the total independence of Greenland.

There are several options for the extension of the autonomy: Siumut advocates the current autonomy system, but seeks to achieve a comprehensive transfer of rights to resource exploitation to Greenland. This demand can be regarded as being equal with the right to the Greenlander's traditional land rights. The 1991 International Labour Organization (ILO) Convention on indigenous peoples emphasizes their right to their

traditional lands and waters.<sup>80</sup> A ratification of the Convention by Denmark would provide the legal basis for granting the demanded right.

In November 2008, Greenland, the world's biggest island and under Danish sovereignty since 1775, decided to opt for more autonomy. 76% of Greenland's 39,000 voters approved the extension of the existing territorial autonomy, which had been established through a popular referendum on 1 May 1979 (70.1% votes in favor). The island's inhabitants are overwhelmingly ethnically Inuit.

Greenland's existing autonomy already encompasses many powers, such as local taxation, fisheries, economic planning, cultural policy and religious issues, environmental protection, the education system and the labour market. As of June 2009, its legislative powers will also cover the judiciary, the police and coast guard and other policy sectors.

The Danish State, which has been present in Greenland since 1979, is represented by a High Commissioner. The new autonomy, approved by the regional assembly and the Danish Parliament, entered into force on 21 June 2009, Greenland's national festival day, exactly 30 years after the first statute.

In the November 2008 referendum, all parties in Greenland, save the "Democrats", have given their "aap" (yes) to the new autonomy. The whole package of reform for the autonomy has taken 4 years of negotiations between Denmark and Greenland, and has tackled the particularly tricky issue of the island's future financial system. The Greenlanders count on increasing revenues from pumping oil from the icy ground of the island and its offshore waters in order to reduce financial dependency on Copenhagen. The scheme for sharing oil revenues gives Greenland the first 75 million Kronen (about 10 million Euro), whereas the rest is to be divided by a 50:50-key between Greenland and Denmark. On the other hand, the Danish government's current annual subsidies of not less than 375 million Euro, or not less than 2/3 of the island's current GDP, will fade out progressively.

Over the medium term, all three major Inuit parties strive for independence, which, according to the chief minister Hans Enoksen, should be obtained by 2021. Greenland's second major party, "Inuit Ataatigiit"

<sup>78</sup> International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, June 1999, pp.181–92.

<sup>79</sup> [[http://www.ulapland.fi/home/hkunta/swalter/essays/autonomy\\_greenland.htm](http://www.ulapland.fi/home/hkunta/swalter/essays/autonomy_greenland.htm)].

<sup>80</sup> The text of the ILO Convention on Indigenous Peoples of 1991 can be found at: [<http://www.ciesin.org/docs/010-282/010-282.html>].

(Inuit Brotherhood) stands most strongly for this goal and also advocates renegotiating leasing treaties with the USA for military bases. The major party, "Siumut" ("ahead"), pledges a progressive extension of autonomy, but in the long term all Inuit parties favour full-fledged independence.

Offshore oil drilling Greenland has not revealed any major reserves, but the appetite for more is roused, which could bring about considerable risks for the island's environment. An independence primarily based on this resource could imply the temptation to overstretch the pumping of oil. On the other hand, there are several micro-states around the globe that depend economically on very narrow range of resources, and whose right to self-governance and self-determination cannot just depend on the mineral resources they may or may not happen to possess. Those who are now warning against the overexploitation of oil resources in Greenland should not forget that for many decades the USA, Canada and Russia have been pumping millions of gallons of oil out of the frozen earth north of the Arctic Circle without taking much interest in the ecosystem. This happens in almost all areas in which the indigenous inhabitants do not have a voice, with exception of Canada's autonomous region of Nunavut. In an independent Greenland at least its native inhabitants would decide whether and how much fossil fuel resources are to be produced. Today, the Inuit are well aware of the effects of the climate change undermining the ice-shield of their island, which is melting with increasing speed. Thus, with the new autonomy they will face new difficult decisions, but they can take them by their own.

A second issue of strategic importance is the NATO-states, and particularly the USA's, use of Greenland for military purposes. After the establishment of the first autonomy in 1979, Greenland's politicians were urged to revise these military activities, motivated by the general anti-militarist tradition of the Inuit people as well as by fears of the environmental pollution caused by military bases. In particular, the US-base of Thule repeatedly caused a threat of nuclear contamination, when US-air force planes crashed near the coast. In 1983, Greenland's assembly approved a resolution in Nuuk to declare the island a nuclear-free zone. Ever since the political institutions have been bringing legal contentions against the Danish defense ministry and Danish military interests in order to control and reduce all risks to the security and health of Greenland's population.

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## 3.6 The German Community in Belgium



<i>Population (estimated 2005)</i>	72,000
<i>Land area</i>	894 km <sup>2</sup>
<i>Capital</i>	Eupen
<i>Official languages</i>	German/French
<i>Autonomy since</i>	1973–1994

<http://en.wikipedia.org/>

### 1. History

The German-speaking community of Belgium (Deutschsprachige Gemeinschaft Belgiens) is the main part of the so-called East Canton of Belgium, which is a part of the Belgian province of Liège. Almost all of the 72,000 inhabitants of the nine municipalities have German as their mother tongue. The East Cantons consist of the German-speaking Community and the municipalities of Malmedy and Waimes (Weimses), which belong to Belgium's French-speaking Community. This region was part of the Rhine Province of Prussia in Germany until 1920 as the 'Counties of Eupen and Malmedy', but was annexed by Belgium following Germany's defeat in World War I and the subsequent Treaty of Versailles. Thus, they also became known as the cantons redimés (redeemed cantons) or later as 'Eastern Belgium' or 'German Belgium'.

The peace treaty of Versailles demanded the 'questioning' of the local population about their political status. This process was not carried out as an anonymous referendum. Instead, those locals who

were unwilling to become Belgians, and who wanted the region to return to Germany, were required to register their full name and address. In this way the Belgian military administration prevented a free and fair referendum, as many locals feared reprisals or even expulsion after enlisting.

In the mid-1920s negotiations between Germany and Belgium were held, and the kingdom of Belgium seemed to be inclined to sell the region back to Germany. At this point, the French government, fearing for the overall post-war order, intervened at Brussels, and the Belgian-German talks were called off.

The new Cantons had been part of Belgium for just 20 years when, in 1940, they were retaken by Germany. The majority of the population of the East Cantons welcomed this, as they considered themselves Germans. Following the defeat of Germany in 1945, the Cantons were once again annexed by Belgium, and as a result of their alleged collaboration with Nazi Germany, an attempt was made to 'un-germanize' the local population by the Belgian and Wallonian authorities.<sup>81</sup>

### 2. The autonomy arrangement

The German Community forms an autonomous entity of public law within a precisely defined territory of Belgium. Like the Nunavut in Canada, the German Community represents an asymmetrical element of the federal structure of the Belgian state, established to accommodate the interests of the smallest ethnic group, the approximately 72,000 'German Belgians' (about 0.7 per cent of Belgium's total population). Belgium consists, at present, of three Regions (Flanders, Wallonia and Brussels), which are roughly equivalent to states in a federal state. Parallel to this, the German state is subdivided into three 'Communities', the German, the Flemish and the French community (under Article 2 of the Belgian constitution). The three Communities possess far-reaching powers in all the 'culture and person-related-services' of education, cultural policies, conservation of cultural sites, family and social assistance, health and in youth and employment services.

<sup>81</sup> [[http://en.wikipedia.org/wiki/German\\_speaking\\_community\\_in\\_Belgium](http://en.wikipedia.org/wiki/German_speaking_community_in_Belgium)]

<i>Powers of the Communities ('person-related services')</i>	<i>Powers of the regions</i>
Cultural and language policy	Urban planning
Media	Environmental and energy policy
Education	Housing
Health assistance	Local economic policy
Social assistance	Employment and labour market services
Youth services and protection	Transport and communications
Fundamental research	Agriculture
Inter-community cooperation	Local administration and control of municipalities
	Local economic development
	International trade

Article 4 of the constitution states that 'Belgium comprises four linguistic areas: the French, the Dutch, the German and the bilingual area of the capital Brussels'. The German area comprises nine municipalities in the east of the Region of Wallonia. In all areas, by general legal principle the official language of public administration, schools and judiciary is that provided by the territorial attribution, and Brussels is bilingual. There are special language provisions in the German Community for French speakers in private corporations, and in the two neighbouring French-speaking municipalities for German speakers. Responsibility for the medium language in education was transferred to the German Community under the 1997 constitutional amendment.

The well-defined autonomy of the German Community has been established only within the framework of the transformation of the Belgian state from a unitary state into a federal state from 1973 to 1994. The first provisions of official use of languages date back to 1962-3, but the German Community as such was established only with the first state reform, in 1973. In 1974, the first parliament of the German Community was elected. The second state reform (1980-3) expanded the powers in the cultural sector and person-related services. Since that time, the parliament has directly formed the government of the German area. With the third state reform, the German Community became fully responsible for the entire education

system. With the fourth state reform of 1993-4, the Belgian system of national parliament was reformed, offering Germans direct representation in the Senate. In addition to these 'person-related' services, the German Community can exercise regional territorial powers equivalent to a part of the powers of the federal regions of Wallonia and Flanders in urban planning, employment and local economic policies, some powers in foreign relations for stipulating treaties for interregional cooperation. In 2005, the German Community took charge of controlling and auditing the municipalities.

### 3. The political representation

All three Communities of Belgium, autonomous entities of the federal state, have their own parliament, government and ministries to exercise their political powers. Hence, the Germans of Belgium are represented at three levels:

1. The German linguistic territory forms a common constituency with a Walloon constituency of Liège. Hence, at this time no German member of the Belgian parliament has been elected. That is why the Germans now claim a guaranteed seat in parliament to be voted from an own constituency. The parliament of the German Community appoints one member in the second chamber of the Belgian parliament, the Senate (71 members). There is no directly elected German member of the Senate, as there are an insufficient number of German voters.
2. At the regional level, the German Community is represented in the Walloon regional parliament with three members, but there is no special constituency for the German voters. In the Province of Liège, the Germans are currently represented by six members of the Provincial Assembly.
3. The democratically elected parliament of the German Community in Eupen represents the German Community in the overarching commissions of coordination with the parliaments of the other communities.

In addition, the German Community forms a constituency for the election of the European parliament.

At the same time, the autonomy of the German Community was enlarged. Now it is also vested with social assistance, conservation of cultural heritage sites, labour market services and politics, and the financing of local bodies as well as audit and control of municipalities. In 2001, the system of financing the

German Community was profoundly changed.

Today, Belgium's German Community demands greater autonomy and wants, in the long term, to be recognized as an 'equal Region' in federal Belgium, like Wallonia and Flemish region. The chief Minister of the Community, Karl-Heinz Lambertz, announced that he had opened negotiations with the French-speaking Region of Wallonia. The German Community claims additional powers in the urban planning policy, housing and highways as well as in agriculture. This follows a strategy that was unanimously endorsed at the end of 2001 in the Council of the German Community. There, it was decided to go 'further step by step, along the way to an increase in our autonomy'. For now, however, Wallonia has rejected the German demands for a fourth Region as a 'state in the state', and is rather reluctant to enlarge the powers of the German Community, fearing complete secession.

It should be remarked that if the German Community were to advance to the status of a full-fledged Belgian federal Region, it would gain equal standing with the existing three Regions - Flanders, Brussels and Wallonia - as one of the four constituent entities of a federal state. Subsequently, it would no longer qualify as a 'territorial autonomy'.

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### 3.7 Moldova's autonomous region: Gagauzia



<b>Population (2001)</b>	171,500
<b>Land area</b>	1,831.5 km <sup>2</sup>
<b>Capital</b>	Comrat
<b>Ethnic composition</b>	82.5% Gagauzians, 5.2% Bulgarians, 4.4% Moldavians, 4.6% Russians, 3.3% Ukrainians, 1.3% other ethnic groups
<b>Official languages</b>	Gagauzian, Moldovian (Romanian), Russian
<b>Autonomy since</b>	1994

<http://en.wikipedia.org/>

#### 1. The genesis of the autonomy

The Republic of Moldova is a multi-ethnic state in Eastern Europe faced with various ethnic conflicts. The Gagauzians are a people of Turkic origin and language who fled the continuous Russian Ottoman wars in the Eastern Balkans in the eighteenth century.<sup>82</sup> Today,

82 For all general information on the Gagauz people and culture see: Harun Güngör and Mustafa Argunsah (2001), *The Gagauz: A Handbook*, London; and [<http://www.miris/country/moldova>].

among all Turkic peoples, only the Gagauzians and the Chuvash in Russia have adopted orthodox Christianity. The Gagauzians have lived in Bulgaria for centuries, where they adopted orthodox Christianity. As the area of today's Moldova was annexed to Russia, most Muslim inhabitants of that region had to leave, while the new Russian rulers lured settlers from neighbouring countries with privileges like tax and military service exemptions and land. This brought the Christian Gagauzians to fill the vacuum. Today, of Gagauzia's 171,500 inhabitants (3.8 per cent of Moldova's total population) 82.5 per cent are ethnic Gagauzians. 92 per cent consider Gagauz their native language, but 73 per cent use also Russian as second language, whereas only 4 per cent speak Moldovian, a form of the Romanian language.<sup>83</sup> The Gagauz language has been heavily Russified, especially during the Stalinist period. Since 1957, the Cyrillic alphabet has been used for written Gagauzian.

The Gagauzians first claimed autonomy in 1989, but the Soviet Republic of Moldova repressed it. The Moldovan nationalists, spearheaded by the Popular Front of Moldova, had advocated the Romanian language as a state language since 1989, and even pressed for unification with Romania. On 30 August 1990, the Moldovan language was declared the official state language by constitutional amendment. While Russian was put on the same footing as Romanian, Gagauzian was declared an official language along with the two national languages in every area with a predominantly Gagauz population.

Nonetheless, the non-Moldovan ethnic groups, not less than 35 per cent of the country's population, perceived this language policy as a threat to their political and cultural development. The two regions with the densest settlements of non-Moldovans - Gagauzia and Transdnistria - fiercely opposed the nationalist and centralist tendencies, claiming autonomy and self-government. Generally, not only the language issue has generated Moldova's internal conflicts of the 1990s, but also deep-rooted fears of the national minorities tracing back to the period when Moldova was a part of Romania between the World Wars.<sup>84</sup>

83 Priit Järve (2005), 'Autonomy of Gagauzia: A Post-Soviet Experience' in Zelim A Skurbaty, *Beyond a One-dimensional State: An Emerging Right to Autonomy*, p.429, Leiden and Boston. Moldovian is a form of the Romanian language which is labelled as such to underline the separate statehood of Moldova.

84 A brief analysis of the genesis of the autonomy is given by Ted R Gurr and Michael L Haxton, 'The Gagauz of Moldova: Settling an Ethnonational Rebellion', S. 218-222, in Ted R Gurr (ed.), 2000, *Peoples versus States: Minorities at Risk in the New Century*,

After Moldova attained independence in August 1991, fears arose among Gagauzians that Moldova's nationalists, spearheaded by the pro-Bucharest Popular Front, would seek unification with Romania. In Transdnistria, where the relative majority population is Russian, Moldova was even faced with a brief armed conflict, fostered by the presence of the Fourteenth Russian Army Division.

Not only in Transdnistria, but also in the southern Gagauzian hill region, the tension rose and the Gagauzians built up a popular common front. In March 1994, at a consultative referendum over 90 per cent of the population of Moldova voted in favour of an independent Moldova, rejecting the project to merge with Romania. In July 1994, Moldova's new constitution was established, containing no autonomy provision for Gagauzia.

As the newly constituted Republic of Moldova approved a nationalist language regulation centred on the Moldovan language, the Gagauzians in Comrat proclaimed their own miniature Soviet Republic. While many observers feared the outbreak of a second frontline including bloody confrontation with separatist militants, both parties – the leadership of the Gagauzian people and the government of the Republic of Moldova – agreed to engage in a political negotiation process to find a bearable compromise. The chances of resolving the conflict by peaceful means in Gagauzia were much higher than in Transdnistria, since the occasional armed clashes did not escalate and the mainstream of the self-proclaimed Gagauz leadership never questioned the territorial integrity of the Republic of Moldova, except in the case of the latter's occasional union with Romania.

This threat was eased when President Mircea Snegur emphasized the separate identity of the Moldovan people and systematically pursued an independent minded policy to reject any attempt for unification with Romania. The newly formed government, which consisted of the anti-unionist Democratic Agrarian Party and the former Communist Party, was much more attentive to the concerns of the two breakaway regions than the previous one.

On 23 December 1994, the Moldovan parliament approved the 'act on the special juridical status of Gagauzia (Gagauz Yeri) in the Republic of Moldova'. The core issue of the law was the constitutional concession of internal self-determination for the Gagauzian

people of Moldova as an autonomous territorial unit 'with particular juridical position which, as a form of self-determination of the Gagauzians is a part of the Republic of Moldova'. According to this autonomy act of 1994, the territory of Gagauz Yeri consists of all those localities where the proportion of the Gagauz population exceeds 50 per cent.

On that basis, in March 1995 a referendum was held in all areas of Southern Moldova where Gagauzians lived to decide whether or not to join the new autonomous territory. 30 municipalities decided to become part of Gagauzia on 1 January 1996. Along with the Autonomous Republic of Crimea, Gagauzia was the only case of a territorial autonomy to accommodate an ethnic conflict in Central Eastern Europe.

On 14 May 1998, the Gagauz People's Assembly passed a basic law for Gagauzia. This code of Gagauzia or regulation, was intended to specify the rules laid down more broadly in the 1994 autonomy statute. A referendum on the basic law was scheduled parallel to the parliamentary elections of March 1998, but the Moldovan Supreme Court blocked it, and the referendum never took place. In 2003 the amendments to the Moldovan constitution formalizing Gagauzia's status were passed by the Moldavian parliament.

## 2. The autonomy arrangement

The content of the territorial autonomy of Gagauzia is set forth in the 'law on the special legal status of Gagauzia (Gagauz Yeri)', which can be amended only by a 3/5 majority of the Moldovan parliament.<sup>85</sup> Article 1 of the organic law stipulates that:

1. Gagauzia (Gagauz Yeri) is an autonomous unit with a special status as a form of self-determination of the Gagauzes, which constitutes an integral part of the Republic of Moldova.
2. Gagauzia shall, within the limits of its competence, resolve questions of political, economic and cultural development in the interests of all its population by itself.
3. All rights and liberties defined in the constitution and legislation of the Republic of Moldova shall be guaranteed in the territory of Gagauzia.
4. In the case of a change of the status of the Republic of Moldova as an independent state,

Washington.

<sup>85</sup> Priit Järve, 2005, p.435; for the full text see also: [<http://www.miris/country/moldova>].

the people of Gagauzia shall have the right of external self-determination.

The fourth point is also of paramount interest for other minority-related conflicts. It accords the Gagauzian population the right to external self-determination whenever Moldova would seek unification with Romania, which is opposed by Gagauzians, Russians and other minorities.

Also of particular interest is the definition of the territorial extension of Gagauzia. According to Article 6 of the autonomy law, Gagauzia shall include all those localities in which Gagauzes constitute over 50 per cent of the population. All localities, in which Gagauzes constitute less than 50 per cent of the population, may be included in Gagauzia on the basis of the freely expressed will of a majority of the electorate, revealed during a local referendum conducted on the initiative of no less than one-third of the electorate of the corresponding locality. On the other hand, localities included in Gagauzia shall also have the right to secede from Gagauzia as a result of a local referendum conducted at the initiative of at least one-third of the electorate, but not before one year after it was included in Gagauzia.<sup>86</sup>

Gagauzia's supreme representative authority is the 'People's Assembly', endowed with legislative powers within the limits of its competencies. This assembly is directly elected for a four-year term, with at least one deputy from each Gagauzian municipality. Article 12 of the organic law lists the fields of competencies of the Assembly:

1. science, culture and education
2. housing, management and urban planning
3. health services, physical culture and sports
4. local budget, financial and taxation activities
5. economy and ecology
6. labour relations and social security

The Gagauzian autonomy establishes three official languages in the region (under Article 3): Moldovan, Gagauz and Russian, with Moldovan and Russian as the languages of correspondence among the public administration authorities.

Regarding powers in the economic field, Chisinau devolves all control pertaining to economic issues to the Gagauz People's Assembly. These include the regulation of property, the determination of structure and policies of the national economy and the execution

of the annual budget. According to Article 18 (2), the relationship between the budget of Gagauzia and the state budget is established in conformity with the laws of the Republic of Moldova.

The Chief of the Department of National Security of Gagauzia and the Chief of the Department of Internal Affairs of Gagauzia are both appointed and dismissed by the corresponding central authorities on the recommendation of the Bashkan, the Chief of the Executive and President of the autonomous region, with the approval of the People's Assembly. The local authorities coordinate the municipal police and policy commissariats, while the carabineer troops (interior forces) are the responsibility of the central authorities.

The Tribunal of Gagauzia, which examines the most complicated civil administrative and penal cases coordinates the judiciary. Judges and judicial bodies are appointed by decree of the President of Moldova at the recommendation of the People's Assembly. The Chairman of Tribunal is, at the same time, an ex-officio member of the Supreme Court of Justice. Similarly, responsibilities and competencies are shared by the Attorneys of Gagauz Yeri, the Prosecutor of Gagauzia and subordinate prosecutors.

Further competencies of the Gagauzian parliament include the territorial organization of Gagauzia, its participation in the national Moldovan politics when Gagauzia is concerned, the structure of the local administration, the electoral rules and local referendums, and the regulations and symbols of Gagauzia. Two further powers regard emergency situations: it can request the national Moldovan parliament to declare the state of emergency in Gagauzia and introduce by that a special form of administration. If legal acts of the central authorities infringe upon the competencies of Gagauzia, its Assembly is entitled to appeal to the Constitutional Court in Chisinau. Moreover, the Gagauz Assembly may also participate in formulating Moldova's internal and foreign policy.

The head of the executive is the Governor, the bashkan, who is directly elected by the population of Gagauz Yeri for a 4-year term by a universal, equal, direct and secret vote. The government of Gagauzia, according to Articles 6 and 17 of the autonomy law, defined as the 'Executive Committee of Gagauzia', is appointed by the Gagauz Assembly upon proposal of the Governor,

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<sup>86</sup> Article 8(6) of the Code of Gagauzia restricts this right of secession only to those localities where the Gagauzians constitute less than 50 per cent of the population.

and is vested with the following powers:<sup>87</sup>

1. the implementation and observance of the constitution and of the laws of the Republic of Moldova and of the enactment of laws of the People's Assembly;
2. participation in the functioning of specialized central administrative authorities of Moldova in matters pertaining to the interests of Gagauzia;
3. the regulation in conformity with law of property rights and the management of the economy, social and cultural development, social security, remuneration and local taxation;
4. the definition of the framework and priorities for economic development and scientific and technical progress;
5. the working out of programmes of economic, social and national-cultural development and of environmental protection, and their implementation;
6. the drawing up of the budget of Gagauzia, its submission to the People's Assembly for approval and its execution;
7. ecological security, the rational use, protection and regeneration of natural resources, the setting of quarantines, and the declaration of zones affected by natural disasters;
8. the drawing up and carrying out of programmes in the areas of education, culture, public health, physical cultural or sports, social security, as well as protection and use of historical and cultural monuments;
9. equal civil rights and liberties, national and civic harmony and protection of legality and of public order;
10. the drawing up and promotion of a scientifically valid demographic policy, as well as a programme of urban development and housing management;
11. the use and development of the national languages and cultures in the territory of Gagauzia.

Moreover, the Executive Committee also has the right to initiate legislation in the People's Assembly, and based on that procedure the Assembly has, since 1995, unfolded an articulated autonomous legislation approving more than 100 laws.

<sup>87</sup> Priit Järve, 2005, p.438; Jeff Chim and Steven Roper, 'Territorial Autonomy in Gagauzia' in *Nationality Papers* 26 (1998), pp.90–91.

A particular feature of Gagauzia's autonomy is its participation in the Moldovan government. The Governor of Gagauzia, by appointment of the President of Moldova can become a member of the national Moldovan government. In addition, the members of Gagauzia's executive committee can become members of the board of the corresponding Moldovan ministries. In this way there is a strong form of co-optation and coordination with the leading personalities of the state and autonomous entity, which has not always functioned.

There is also a right enshrined in the autonomy law to take part in Moldova's foreign relations. Based on its ties with Turkish culture and ethnicity, Gagauzia maintains close contacts with Ankara, and there is growing economic cooperation. Gagauzia has also signed cooperation agreements with the neighbouring Ukrainian province of Odessa, and seeks similar agreements with Russian provinces. The Ukraine and Turkey have also played a major role by promising investments and development assistance. The visit of Turkey's President Demirel in 1994 proved decisive for the passage of the autonomy law in Chisinau, and he revisited it in 1998, affirming that the Gagauzian population was a bridge of friendship between the two countries.<sup>88</sup> In fact, Turkey has played the role of a surrogate kin-state of Gagauzians and thus, by promising investments and development assistance for the region, played the role of 'midwife' for Gagauzia's autonomy. Turkey is also financing the only university of Gagauzia at Comrat, as well as the major information and culture centre, the Comrat-TIKA, with the Atatürk library. There is a radio station in Gagauzian, along with several news magazines.

From a Gagauzian point of view, there were two particularly important sections of the 'Autonomy Act'. First, the Gagauzian people are identified as the subject of the autonomous region of Gagauzia (Gagauz Yeri). Hence, the Gagauzians are not only labelled as a 'minority' or an 'ethnic group', but as a people. Secondly, the act of autonomy took into account the historical anxiety of Gagauzia that its territory could once again be merged with neighbouring Romania, as was the case during 1918–40 and 1941–4.<sup>89</sup>

The Gagauzian autonomy enjoys a high degree of

<sup>88</sup> See [<http://www.ecmimoldova.org/>]: News on Gagauzia from the European Centre of Minority Issues, Flensburg.

<sup>89</sup> The article means: 'In the case of changing the status of the Republic of Moldova as an independent state, the people of Gagauzia have the right to external self-determination.' This means the right to secession and to create an own state.

legitimacy by the electorate. In the referendum held in March 1995 with a turnout of 79 per cent, all three cities and 26 municipalities of Gagauzia opted to approve the autonomy law.

### 3. Problematic issues

Some problems arose on the same day that the law on the special status of Gagauzia was adopted, as the parliament in Chisinau also passed the resolution 'on implementation of the Law on the Special Legal Status of Gagauzia (Gagauz Yeri)', which charged the government with the urgent task of harmonizing the legislation of Moldova with the law on the special status of Gagauzia. However, the government has not brought its own enactment into accord with this law. This legislative passivity has created serious problems in the relations between Chisinau and Comrat. The Gagauz leadership was under the impression that Chisinau was deliberately ignoring the special status of Gagauzia, trying to lower it to the level of an ordinary county of Moldova.<sup>90</sup>

Major disagreements between Chisinau and Comrat persisted, dividing competencies in property regulations and taxation. Articles 6 and 18 of the Autonomy Law states that 'the land, mineral resources, water, flora and fauna, other natural resources, movable and real property situated on the territory of Gagauzia shall be the property of the people of the Republic of Moldova and at the same time shall represent the economic basis of Gagauzia'. But a new Gagauzian property law claims that Gagauzia could also hold property rights outside its own territory, and even in other countries and regions. Article 18 of the Autonomy Law regulates Gagauzian's budget powers in the following way:

- 1) The regional local budget shall include any type of payment fixed by legislation by the Republic of Moldova and by the People's Assembly.
- 2) The mutual relationships of the budget of Gagauzia and of the state budget shall be established in conformity with the laws of the Republic of Moldova on budgetary system and in the state budget in the form of fixed payments out of all form of taxes and payments.

It was unclear from which sources the Gagauzian regional budget should be formed: all taxes and payments collected in the autonomous region including customs and excise taxes? But how should VAT and

customs collected for goods consumed in Gagauzia be estimated? The Moldovan government was not eager to concede a special treatment to Gagauzia in financial terms, but the Gagauzian side insisted that the Autonomy Law would impose exceptions to the ordinary finance and tax legislation of Moldova, attributing additional financial means and revenues to an autonomous entity rather than to the ordinary counties. These skirmishes led to the establishment of a permanent commission composed of seven Gagauzian members and 12 government representatives to settle conflicts at an early stage. But the crisis continued. On 11 September 2001, the People's Assembly adopted a resolution on 'Sociopolitical, Financial and Economic Situation in Gagauzia' which states that the highest leadership of Moldova 'deliberately does not implement' the resolution of the Moldovan parliament of 23 December 1994 on 'the implementation of the Law on the Special Legal Status of Gagauzia (Gagauz Yeri)'.<sup>91</sup> The resolution deplored that the amendments to the constitution on the division of the powers between Comrat and Chisinau had still not been released, and consequently Gagauzia suffered considerable financial and economic losses every year.

At the end of 2001, Gagauzia finally obtained the right to collect excise taxes within its own territory, but the global transfer of funds from Moldova's Ministry of Finance to Gagauzia was simultaneously reduced, keeping the autonomous resources low. Moreover, the central government did not implement a series of other provisions contained in the Autonomy Law and in the autonomy's implementation, as the administration of justice. In other areas, such as communication and media, health and social services, minority rights and education, the autonomous powers cannot be unfolded properly due to the lack of resources, which can ultimately be attributed to disagreements over the finance mechanism of the autonomy.

In 1989, 87.5 cent of the Gagauzian population claimed Gagauz their native language, but in 1998 it was ascertained that only 37.8 per cent of the adult population were able to write Gagauz, and only 44.1 per cent used it as their family language. Concerning the medium language in the Gagauz education system 80.6 per cent<sup>92</sup> preferred Russian, but only 7.2 per cent preferred to have Gagauz only or in combination with other languages as medium languages in the

91 [[http://ecmi.de/cps/documents\\_gum\\_case\\_case.html](http://ecmi.de/cps/documents_gum_case_case.html)]: Documents on Gagauzia of the European Centre for Minority Issues, Flensburg.

92 Priit Järve, 2005, op. cit., p.440.

90 Priit Järve, 2005, op. cit., p. 440.

schools. The written form of Gagauz, introduced only in 1957, had obviously failed to establish itself as the main language of the Gagauz, and is still facing huge difficulties in this regard. Actually, in Gagauzia there are three languages used as medium languages: Russian, Moldovan and Gagauzian, accompanied by other foreign languages. With this overload of languages, the overall quality of instruction seems to be impaired. The results obtained in the field of general cultural development appear to be better.

A major crisis broke out in 2002, when the leading party of Moldova, the Communist Party, did not fulfil its promises to the Gagauzian parliament. Leading up to the general elections for the national parliament in 2001, this party had formally declared to do the following:

- to enshrine the autonomous status of Gagauzia in the constitution
- to ensure the participation of Gagauzians in all state levels
- to clarify the division of powers between Chisinau and Comrat
- to protect the Gagauz language
- to elevate Russian to the status of second official state language
- to pursue a peaceful solution of the Transdnistria conflict.

Based on these promises, in the 2001 elections the Communist Party collected 80.57 per cent of the votes cast in Gagauzia, and a majority of votes in Moldova as a whole. Nevertheless, shortly afterward, the new government began to ignore the central promises to the autonomous Gagauzia. The 19-member State-Gagauz Yeri Commission, in charge of dealing with all current autonomy issues, was not able to solve the conflict. Its Gagauzian members stepped down. In a context of rising tensions with Transdnistria and a reorganization of the territorial structure of Moldova in districts, perceived by the Gagauzians as infringement in the autonomy, the Gagauzian autonomy was seriously threatened to be sidelined. Due to international mediation in 2002 (High Commissioner on National Minorities of the OSCE), an escalation of the conflict could be prevented, but the central government in Chisinau succeeded in toppling and replacing the Gagauz Governor with a member of the ruling Communist party.

The prospects of the Gagauzian autonomy for the future will depend considerably on how Chisinau and Comrat can defuse chronic disagreements over

compatibility of national laws with the 1994 law on the special status of Gagauzia. While Chisinau tried to incorporate the autonomy of Gagauzia into the constitution, not very convincingly, for the Gagauzian side, Gagauzia proposed to transform Moldova into a federation. But this draft constitutional law was rejected. So the main interest of the Gagauzian side remained the clear underpinning of the autonomy in the constitution of Moldova and legal guarantees for its implementation and further development.

#### 4. Concluding remarks

What effects has the autonomy had? Has Gagauzia's autonomy created a precedent for the whole of Eastern Europe, where governments have been so far opposing territorial autonomy for national minorities? No, the Gagauz example did not lead to an upsurge of demands for autonomy.

Despite some frictions, the main Moldovan political forces maintain that the autonomy solution is a success. The autonomy statute of Gagauzia today is no longer questioned by even the majority of the non-Gagauzian population of Gagauzia. Whereas outside the autonomous area, according to Moldova's language laws, all leading positions in politics, enterprises, media and administration require full mastery of Moldavian Romanian, Gagauzia is trilingual. No wonder the Bulgarian minority in the south-western part of Moldova now also claims territorial autonomy. However, the case of Gagauzia endorses the assumption that every autonomy solution must be exactly tailored to the specific case and conditions of interethnic relations reigning in the concerned region. A successful form of autonomy can work in one case, but other conflicts can require a different approach.

The autonomy of Moldova's Gagauz Yeri is of paramount importance for Central and Eastern Europe, as after 1990 strong nationalist political forces resurfaced in most post-Communist states. While minority protection was earlier a secondary issue in state policy, now new reinforced politics of assimilation led to tensions. A broad number of minorities felt ever more frustrated and threatened being treated as 'second class citizens', sometimes even used as scapegoats for social and economic backwardness. Few attempts were made to promote minorities to equal partners and autonomy was and is often understood as an attack on the integrity of the state. Gagauzia's autonomy sets an example of both territorial autonomy and of minorities'

collective rights, for the first time in Eastern Europe since the fall of Communism.

When Moldova's President Voronin visited Gagauz Yeri on 19 November 2005, he labelled this autonomy a 'European example how conflicts over territories with national minorities can peacefully be solved'. The model could serve to end the Transdniestrian conflict. But Tiraspol rejects an 'asymmetric federation' and wants an envisaged federation to be based on two equal subjects.<sup>93</sup>

In the case of the two autonomous regions established in the 1990s in Eastern European states - Gagauzia in Moldova and the Autonomous Republic Crimea in Ukraine - one must take account of the special circumstances of the transition from a Communist to a democratic state.<sup>94</sup> There is a triple transformation to be tackled by those states in a parallel way - to the rule of law, to market economy and to a democratic system. This overlapping process is putting societies and state elites under stress. The lack of a democratic civil society, of economic prosperity and the disintegration of the monopoly of political power often turned politics to an orientation along ethnicity and nationalism. But against the multinational background of a society like that of Moldova or Macedonia, Ukraine, Georgia, Bulgaria and Romania, ethno-nationalist rhetoric of majorities often provoked defensive reactions of national minorities, especially when compactly settling in their traditional homelands (Turks in Bulgaria, Hungarians in Romania, Albanians in Macedonia, Abkhazians and South Ossetians in Georgia, Russians in Moldova). The Gagauzians, instead of turning to armed insurgency for secession, came to terms on the basis of autonomy, which was until 1990 an unknown concept in post-war Eastern Europe (with the exceptions of Serbia in the Vojvodina and Kosovo and Romania, where some districts of Transylvania possessed administrative autonomy from 1952-68).

In addition, under conditions of declining economic performance and crisis of the state in generating resources for public services, there is strong pressure to centralize state functions and avoid power-sharing with regions. This is an unfavourable context for power-sharing and territorial autonomy. That's why

<sup>93</sup> For a recent analysis of such a solution see: Benedikt Harzl, *The Gagauzian Model of Autonomy: A perspective for Transdniestria?*, in: Thomas Benedikter (ed.), *Solving Ethnic Conflict through Self-Government*, EURAC, Bozen 2009

<sup>94</sup> Stephan Troebst, *'From "Gagauz Halki" to "Gagauz Yeri": The movement for autonomy of the Gagauz in Moldova 1988-1998'* in: *ETHNOS-Nation* 7 (1999), pp.41-54.

the experience of Gagauzia is even more remarkable. Since its independence in 1991 not only has Moldova been a 'weak state', faced with an ethno-nationalist secession in Transdniestria, but along with Albania, it is the poorest country in the continent of Europe. The creation of the Gagauzian autonomy in this scenario came up not due to noble democratic ideals, but to avoid further splitting up of the country.

Another lesson of these first years of Gagauzian autonomy is that interaction between Gagauzia and Transdniestria has remained an important factor in Moldova's domestic politics. In 1994, the bloodshed of Transdniestria was a painful experience that inspired the Moldovan authorities to create the Gagauz autonomy. Later, it was ineffective enforcement of the law on the special legal status of Gagauzia that gave Transdniestria reason for refusing to negotiate a similar, insufficiently entrenched autonomy. If a federal arrangement needs to be introduced in Moldova to finally accommodate the crisis with Transdniestria, the Gagauzian autonomy may benefit again by becoming a unit of the federation.

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Links

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## 3.8 The Autonomous Republic of Crimea (Ukraine)



<b>Population</b> (2002)	2,000,192
<b>Land area</b>	26,100 km <sup>2</sup>
<b>Capital</b>	Siniferopol
<b>Ethnic composition</b>	Russians: 1,180,000 (58.3%) Ukrainians: 492,000 (24.3%) Crimean Tatars: 243,400 (12%), smaller ethnic groups: 5.4%
<b>Official languages</b>	Russian, Ukrainian, Tatar
<b>Autonomy since</b>	1994

<http://en.wikipedia.org/>

Crimea is one of the few cases in Eastern Europe where an autonomy has been established within a unitary state. In Crimea, three different, even antagonistic forces had to come to terms: Ukrainian nationalism, Russian irredentism (as Russians make up the absolute majority of Crimea's population) and the Crimean Tatars, who claim to be the most indigenous ethnic group on the peninsula, and who suffered brutal collective deportation by Stalin's regime in May 1944.

On a symbolic, literary and historical level, Crimea is marked by multiple identities:

Crimea occupies very different places in different national mythologies. To the Ukrainians, it was the Cossack's outlet to the sea; to the Russians it was the jewel in the crown of the empire and a site of military glory - or at least glorious defeat, the most emotive symbols in all of the former Soviet territory that Moscow lost in 1991. To the Crimean Tatars, it is

their historical homeland.<sup>95</sup>

The Crimean Tatars have no real kin-state. Even the autonomous republic of Tatarstan in Russia cannot politically take charge of such a role, although there are cultural relations. Around the world there is a large Tatar diaspora of about 6.5 million people, who seek to influence international politics. Although Russia previously made irredentist or even secessionist claims on Crimea, it later accepted a role as kin-state for the 'national minority' of Russian Crimeans, a population with a long history of continuous settlement.

### 1. The genesis of the autonomy

The peninsula of Crimea, the southernmost part of the Republic of Ukraine, has a long history as a multinational polity. The Tatars are among the first groups settling on the peninsula, but not the first. Despite many myths and legends, the Tatars invaded Crimea along with the Mongolian 'Golden Hordes' in the 1230s and mixed with other ethnic groups settling in that region. In 1441, the independent Crimean Tatar Khanat was founded, which repeatedly fell under Ottoman rule, definitively in 1745. In 1783, the Russian Empire occupied and annexed Crimea. In the nineteenth century, Crimea underwent a protracted process of Russification, which drove thousands of Tatars in emigration.

The emigration accelerated after the Crimean War 1853-6, which the Ottoman Empire lost. This war devastated the economic and social structure of Crimea. The Tatars had to leave their homeland en masse, forced by the conditions created by the war, as well as persecution and land confiscation. Those who survived the emigration, famine and diseases resettled in Dobrogea (Anatolia), and other parts of the Ottoman Empire. For the first time since the thirteenth century, the Tatars became a minority in their own land of Crimea, with the majority living in the diaspora. Finally Russia decided to stop the process, as agriculture began to suffer from the desertion of fertile land. During the Russian Civil war from 1917-20, Crimea was a stronghold of the anti-Bolshevik White Army, and it was in Crimea that the Russian 'Whites', led by General Wrangel, made their last stand against

<sup>95</sup> A Wilson (2002), *The Ukrainians: Unexpected Nation*, New Haven, Yale Nota Bene, quoted in Bill Bowring, 'The Crimean autonomy: Innovation or anomaly?' in Marc Weller and Stefan Wolff (ed.), 2005, *Autonomy, Self-governance and Conflict Resolution*, Routledge, p.75.

the Red Army in 1920.

After the October Revolution in Russia, the Bolsheviks created the 'Crimean Autonomous Soviet Socialist Republic' (CASSR) within the Russian Federation (RSFSR). In the 1920s, the Tatars were accorded many government positions in Crimea and were allowed to develop their language and culture, but Stalin reversed that policy brusquely. During World War II, Crimea was the scene of some of the bloodiest battles in Eastern Europe. In summer 1941, the German army occupied most of the peninsula, with only Sevastopol holding out until 4 July 1942. In 1944, Sevastopol was liberated by the Red Army.

Crimean society was traumatized shortly after: in only four days, from 18 to 21 May 1944, the entire population of the Crimean Tatars, 190,000 people, were deported from their homes to Central Asia, causing nearly half of them to die of hunger and cold. On 21 May 1944, the ethnic cleansing of Crimea was complete. Russians from the mainland filled the empty homes of the deported Muslim Tatars, one of the various peoples who were victims of genocide under Stalin's regime. The 'Crimean Autonomous Soviet Socialist Republic' was abolished in 1945 and transformed into a Crimean Oblast as a part of the Russian SFSR. But perhaps to gain stronger support from the Ukrainians within the USSR, in 1954 Krushchev granted Crimea to the Ukraine, although the Russian population was in clear majority. In 1967, the Crimean Tatars were rehabilitated, but were banned from legally returning to their homeland until the last days of the USSR.

After the collapse of the Soviet system in 1991, the Russian majority on the peninsula tried to turn the clock back to 1954, declaring a 'new autonomous Crimea' and seeking annexation to Russia. In January 1991 a referendum was held, and 93 per cent of the electorate voted in favour of restoring the 'Autonomous Republic of Crimea' which should be entitled to move for secession. In June 1991, the Crimean Tatars reacted by reconvening their own ethnic parliament, the Medjlis, which continued to be the main representative body of Crimean Tatars. On 24 August 1991, the Ukrainian parliament proclaimed independence, causing the definitive collapse of the USSR in December 1991, but Ukraine's new constitution was adopted only on 28 June 1996.

The early 1990s saw a continuous tug-of-war between Moscow and Kiev, each seeking full control of the peninsula. The 'Russian Bloc', the political force in

Crimea favouring secession from the Ukraine won the majority of the Crimean parliament in 1994. In the political struggle between Moscow and Kiev over Crimea, its population was divided: Ukrainians, Tatars and other minorities backed permanence within the Ukraine, the majority of the Russians favouring a 'return to Russia'.

Only in summer 1994 could the Russia-friendly Ukrainian President Leonid Kutchma ease the tension and curb Russian separatism in Crimea. Yeltsin recognized Kutchma's integrity and signed a treaty of friendship and cooperation with Ukraine. In autumn 1995, Crimea adopted a new constitution enshrining its autonomous status and recognizing itself definitely as an 'inseparable constituent part of Ukraine'. The final version of the Crimean constitution was only approved by Ukraine on 23 December 1998.<sup>96</sup> An important role in achieving this compromise was played by the High Commissioner for National Minorities of the OSCE and other international organizations.<sup>97</sup>

## 2. Ethnic relations in Crimea

The demographic development of Crimea does not favour Russian dominance.<sup>98</sup> The share of ethnic Russians in the Crimean population has declined from 65.6 per cent in 1989 to 58.3 per cent in 2001. On the contrary, thousands of Crimean Tatars returned from Uzbekistan to their homes after more than 50 years of exile, 41,000 only in 1991. Since then, the number of returning Tatars declined, and the tensions about the autonomy of Crimea prevented the speeding up of remigration to their homeland. Whereas in 1989 just 1.9 per cent of the population were Crimean Tatars, their number rose, particularly in the 1990s, to about 250,000 today. Following this trend in Crimea, in 2011 there will no longer be a Russian ethnic majority. The lease of the port of Sevastopol for the Russian Black Sea fleet will end in 2017. In Uzbekistan there remain some 188,000 Crimean Tatars, at least 73 per cent

<sup>96</sup> Bill Bowring, 'The Crimean autonomy: Innovation or anomaly?' in Weller and Wolff (ed.), 2005, p.83.

<sup>97</sup> Not less than four international organizations have tried to intervene for a peaceful solution in Crimea and by that acted as a midwife for the new-born autonomy: the UNDP, the OSCE (mostly through its High Commissioner for National Minorities), the Council of Europe and the EU through its relations with Ukraine.

<sup>98</sup> In 1991, Ukraine adopted a 'zero option' with regard to the citizenship of Ukraine: all those resident in the Ukraine on 13 October 1991, when the law came into force, who were not citizens of another state and rejected Ukrainian citizenship automatically became citizens of the Ukraine, regardless of their origins or any other distinction.

of whom wish to return to Crimea. But poor housing, high unemployment and difficult general living conditions prevent them from returning. Nearly half of Crimean Tatars are unemployed, and 41 per cent do not have their own homes. The Crimean Tatars, who today account for about 12 per cent of Crimea's total population, refuse to be considered a 'national minority'.

The Crimean Tatars claim indigenous status under ILO Convention Number 169 of 27 June 1989 concerning Indigenous Peoples and Tribal Peoples in independent countries, which also recognizes collective rights of a people. Regarding cultural development, the Tatars of Crimea are threatened by assimilation by Russians. 90 per cent of their children have no other choice than to attend public school with Russian as the language of instruction. The Ukrainians, in turn, still fear the supremacy of Russia in many fields of the economy, politics and culture, and remain diffident vis-à-vis the Russian hegemony in Crimea. But studies show<sup>99</sup> that most Russians in Ukraine support Ukraine's statehood, and that claims of secession in Crimea cannot anymore raise a majority support among the million-odd Russians.

### 3. The autonomy arrangement

The Autonomous Republic of Crimea (ARC) is entitled to adopt its own constitution, which must be approved by the Ukrainian parliament. One particular and essential issue of the genesis and legitimacy of Crimea's autonomy is not only the Ukrainian-Russian conflict, but also the historical crimes against the traditional inhabitants of the peninsula, the Tatars and others. The constitution ensures 'the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine' (Article 11).

Article 134 of the Ukrainian constitution states that 'The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the constitution of Ukraine'. Crimea's constitution, as stated in Article 135, must be approved by the Ukrainian parliament and may not contradict the Ukrainian constitution or laws. The Ukrainian constitution enshrines the Crimean constitution and democratic institutions, but also upholds the Ukrainian President's power to intervene severely in its autonomy: he can suspend

any legislative act of the Crimean parliament until a verdict is given by the Ukrainian Constitutional Court.

In addition, the Ukrainian President may directly control and monitor Crimea's politics through his official representative in Crimea, a quite powerful figure. Thus, Crimea's autonomy is established by a formulation that imposes clear limits. The 'basic guarantees' of the ARC are 'legal, organizational, financial, property and resource independence (autonomy) within the limits established by the constitution of Ukraine, guaranteeing the existence of the competence of the ARC and the duty on the part of the Ukrainian government to take into account the specialities of the ARC as foreseen by the constitution of Ukraine, when taking decisions relating to the ARC'.<sup>100</sup>

Article 137 circumscribes the autonomous powers as follows: 'The Autonomous Republic of Crimea exercises normative regulation on the following issues:

1. agriculture and forestry;
2. land reclamation and mining;
3. public works, crafts and trades, charity;
4. city construction and housing management;
5. tourism, hotel business, fairs;
6. museums, libraries, theatres, other cultural establishments, historical and cultural preserves;
7. public transportation, roadways, water supply;
8. hunting and fishing;
9. sanitary and hospital services'.

Further areas of responsibility of the ARC are detailed in Article 138. They include the holding of local elections and referendums, managing property belonging to the ARC, formulating the budget of the ARC on the basis of the uniform tax and budget policy of Ukraine, developing programmes for socio-economic and cultural development and environmental protection in accordance with national programmes and 'ensuring the operation and development of the state language and national languages and cultures in the Autonomous Republic of Crimea' as well as 'participating in the development and realization of state programmes for the return of deported peoples' (Article 138). In number, the largest deported people are the Crimean Tatars, but despite this historical reference, there is no explicit mention of the Crimean Tatars or of specific indigenous peoples, although there are three references to indigenous peoples elsewhere in the constitution.

<sup>99</sup> Bill Bowring, 2002, p.78.

<sup>100</sup> Bill Bowring, 2002, op. cit., p.89.

The Supreme Soviet (parliament) of the ARC, according to Article 22, is to be composed of 100 deputies each elected for a four-year term. Under the terms of Article 23, they must be citizens of Ukraine with the right to vote, over 18 years old and living in the Ukraine for not less than five years. The responsibility of the ARC parliament comprises 'decisions of questions on the guarantee of the functioning and development of the state, Russian, Crimean Tatar and other national languages and cultures in the ARC'. 14 seats of the parliament are reserved for representatives of the Crimean Tatars, and one seat for each of the other former forcibly displaced peoples, such as ethnic Armenians, Bulgarians, Greeks and Germans.

The political representation of Crimea's Tatars has improved over time since the establishment of the autonomy. But between 1994 and 1998, all 14 seats reserved for Tatars were also occupied. On the other hand, nearly 1,000 Crimean Tatars were elected to council members of all levels: The Deputy Chairman of the Medjlis became the Vice-Speaker of the Crimean parliament, three Crimean Tatars became members of the Crimean government, and Edip Gafarov became the Vice Prime Minister of Crimea.

#### 4. Crimea's language policy

Crimea's language regulation is a particularly sensitive issue, as there are at least three major languages spoken on the peninsula: Russian, Ukrainian and Tatar. Several crucial provisions of Crimea's constitution deal with the question of language, but Crimea's constitution accords a special importance to Russian which 'as the language of the majority of the population and a language admissible for the interethnic communication is used in all spheres of life' (Article 10).<sup>101</sup> Thus, Russian and Ukrainian (as the state's language) are generally used as effective official languages, whereas Tatar can be used only upon request. The right to education in their mother tongue in pre-school educational institutions is guaranteed, as well as education in Russian, along with Ukrainian at all school levels.

The official documents on the status of the ARC citizens are to be completed in Russian and Ukrainian and – on request – also in the Crimean Tatar language. Under Article 12, the language of court proceedings and

legal advice must be Ukrainian, except where a party to proceedings requests Russian 'as the language of the majority of the population of the ARC'.

This tendency is further exemplified in Article 13, which provides that in all spheres of service to the citizen (communal services, public transport, health service and others and in the enterprises, institutions and organizations connected with them) the Ukrainian or Russian languages accepted by the parties will be used. Again, Russian in practice is privileged over Crimean Tatar or other languages.

The Crimean Tatar language may be used for state documents (Article 11), but not in a wide range of court and other proceedings. Also, in the sphere of other public services like transport, health and social services, Ukrainian and Russian are used, but no specific mention of Tatar is made.<sup>102</sup>

The Crimean Tatars could successfully lobby to add an Article 11 with an explicit reference to 'indigenous peoples':

The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.

Notwithstanding these provisions, little has been done concretely in legal terms either to protect the rights of indigenous peoples or to recognize the Crimean Tatars who also deny being a 'national minority' within Crimea.

#### 5. Concluding remarks

Despite the serious problems and potentially explosive issues of previously deported peoples and the emigration of Russians there has still been scarcely any violence in Crimea's autonomy process. Despite the unclear constitutional settlement, the budget

<sup>101</sup> Article 10 provides for the 'Guarantees for the functioning and developing of the state language, Russian, Crimean Tatar and other national languages in the ARC'.

<sup>102</sup> Regarding the language issue, the constitution of Ukraine in Article 10 provides that 'The State language of Ukraine is the Ukrainian language. The State ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine. In Ukraine, the free development, use and protection of Russian and other languages of national minorities of Ukraine, is guaranteed. The State promotes the learning of languages of international communication. The use of languages in Ukraine is guaranteed by the constitution of Ukraine and is determined by law.'

disputes, the partial exclusion of Crimean Tatars from the autonomy arrangements, the initial lack of popular support for the Crimean constitution and the continuous wrangling between Crimea and the central government, the autonomy of the peninsula is still holding and consolidating. But in 2003, the Ukrainian Constitutional Court intervened, ruling that several articles contested by the central government were declared constitutional. Thus, the status of the ARC could no longer be called into question, and the ARC was recognized in its administrative-territorial integrity, its rights to collect taxes and duties, and its rights to an emblem, flag and anthem.

Crimea today can be considered a multinational region with special status within the unitary state of Ukraine. The threat of Russian irredentism is weakening. The autonomy arrangements are still unique in Ukraine, and additional decisions by the Constitutional Court have further entrenched Crimea's autonomy. However, some issues still remain unresolved: the aspirations of the Crimean Tatars, both those who have returned to their homeland and those still waiting abroad to come back, have not yet been met. Their representatives are still working hard at every political level to gain full legitimacy and dignity as one of the 'titular nations' of the ARC. If the grievances of the Crimean Tatars could peacefully be overcome, Crimea's autonomy is to gain durability despite its weak institutional design and some juridical ambiguities born out of political compromise.

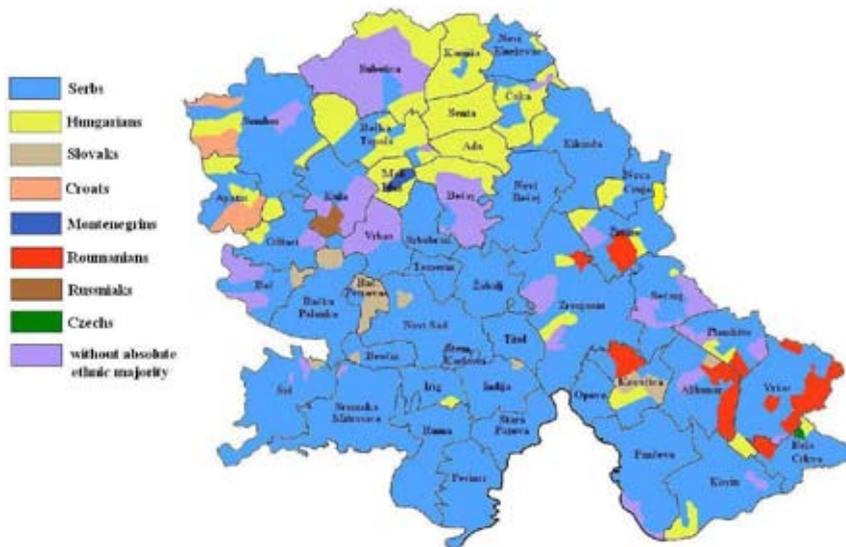
Ukraine's unusual experiment in autonomy within a unitary state may have helped to solve and prevent conflict. But it is now sufficiently established, after nearly ten years, for a provisional judgement to be made. Ukraine's experiment has proven much more durable than first expected. The re-creation of the Crimean autonomy was primarily a response to the threat of irredentism by a part of the still predominant Russian population. On the other hand, Russia had no interest in fostering irredentism, being interested in keeping Ukraine as a close ally in the region. These arrangements are still unique in Ukraine, and no other Ukrainian region has expressed similar demands for greater autonomy.

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### Links

- [<http://www.crimea-portal.gov.ua/>]: Crimea portal in Ukrainian, Russian, English.
- [<http://aspects.crimeastar.net/english/>]: Online news service in English.
- [<http://www.undp.crimea.ua/eng/links/>]: UN Crimea Integration and Development Programme.
- [<http://www.kmu.gov.ua/en/publish>]: Official website of the Crimean government.
- [<http://www.tatar.net>]: updated information on the Tatar world.
- [<http://www.krimtatar.net>]: many articles about Crimean Tatar history and culture.
- [<http://old.ucipr.kiev.ua/english/rupdate/2002/05/27052002.html>]: Research update: Crimean Tatar issue and recent election results.



Author: Vladimir Varjadic

[http://upload.wikimedia.org/wikipedia/commons/2/25/Vojvodina\\_ethnic2002.jpg](http://upload.wikimedia.org/wikipedia/commons/2/25/Vojvodina_ethnic2002.jpg) [18.12.2009 10:57:43]

### 3.9 Serbia's autonomous province of Vojvodina

<b>Population</b> (2002 census)	2.031.992
<b>Total area</b>	21.500 km <sup>2</sup>
<b>Capital</b>	Novi Sad
<b>Ethnic composition</b>	Serbs (66,80%), Hungarians (14,28%), Yugoslavs (2,45%); Croats (2,55%), Montenegrins (1,75%), Romanians (1,5%), Gypsies/Roma (1,5%), smaller groups.
<b>Autonomy since</b>	1974-1990; 2009

<http://en.wikipedia.org/>

The multiethnic region of Vojvodina, situated in the northern part of the Republic of Serbia, bordering Hungary, Croatia and Romania, until 1990 was an autonomous province of the People's Republic of Serbia within the federal state of Yugoslavia. From 1945 to 1990 it enjoyed autonomous status along with the province of Kosovo. As for more than eight centuries the Vojvodina was a part of the Hungarian kingdom, it is deeply influenced by Hungarian culture and for long periods had a Hungarian population majority. Already under the Habsburg rule the region was granted some autonomy as a border bulwark against the Turkish empire and later against the Balkan states. The Peace Treaty of 1918 after World War I gave the Vojvodina to the Kingdom of Serbs, which encouraged the settlement of Serbs.

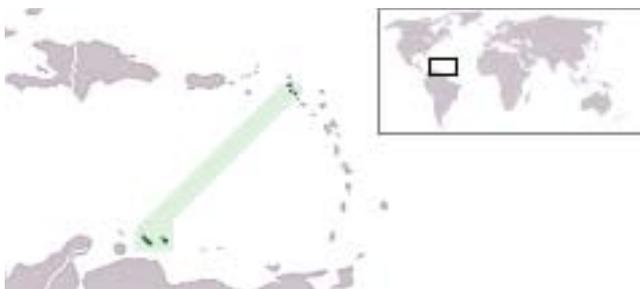
The Vojvodina gained extensive rights of self-rule under the 1974 Yugoslav constitution, which granted both Kosovo and the Vojvodina a de facto veto power

in the Serbian and Yugoslav parliaments, as changes to their status could not be made without the consent of the two Provincial Assemblies. Under the rule of the Serbian president Slobodan Milosevic, both Vojvodina and Kosovo lost their autonomy in September 1990. Although still referred to as an autonomous province of Serbia, most of Vojvodina's autonomous powers were taken over by Belgrade, leaving the province its almost powerless parliament and government. The fall of Milosevic in 2000 created a new climate for reform on Vojvodina.

Following talks between the political parties, the level of the province's autonomy was increased by the omnibus law in 2002. This Agreement on Self-Government constituted a peculiar combination of Hungarian personal autonomy, territorial autonomy of municipalities inhabited by a majority of Hungarians and the autonomy of Vojvodina as such. The Agreement contains provisions for the future status of Vojvodina, its powers, procedures and composition of organs, but, as a draft proposal articulating just the claims of the Hungarian minority of the region, it was no final autonomy arrangement resulting from negotiations between Hungary and Serbia.<sup>103</sup> On 15 October 2008 the Vojvodina provincial assembly adopted a new Statute. 89 out of 120 councillors voted in favour of the bill, while 21 voted against. This Statute, partly amended was approved by the Parliament of Serbia on 30 November 2009 with 137 votes in favor and 24 against. The Statute was officially proclaimed in Novi Sad, the capital of the Vojvodina, on 14 December 2009. Thus, 19 years after losing its autonomy, the multi-ethnic province regained its autonomy.

<sup>103</sup> See Maria Ackrén (2009), *Conditions*, op.cit, p.45

### 3.10 The Netherlands Antilles



<b>Population (2005)</b>	219,958
<b>Land area</b>	960 km <sup>2</sup>
<b>Capital</b>	Willemstad
<b>Official languages</b>	Dutch
<b>Other languages spoken</b>	English, Spanish, Papiamentu
<b>Autonomy since</b>	1954

<http://en.wikipedia.org/>

The Netherlands Antilles, geographically part of the Lesser Antilles, until 2010 formed an autonomous part of the Kingdom of the Netherlands Antilles. These group of islands will be dissolved as a unified political entity on 10 October 2010. The five constituent islands will then attain a new status with differing relationship with the mainland. The idea of the Netherlands Antilles as a state never enjoyed the full support of all of the islands, and political relations between islands were often strained. The island of Aruba seceded from the Netherlands Antilles in 1986, and formed a separate entity (status aparte) within the Kingdom of the Netherlands.

The Netherlands Antilles consisted of two separate island groups in the Caribbean Lesser Antilles: one, off the northern coast of Venezuela, includes the islands of Curacao and Bonaire (and until 1985 of Aruba), and the other comprises the much smaller islands of St Eustatius and Saba as well as the southern part of St Maarten. All these islands are part of a single governmental district, and were formerly administered as colonies jointly with Suriname. The larger islands have been under the political control of the Netherlands since 1634, and the entire Antilles group has been under Dutch rule since 1790. The relationship of those territories with the Netherlands is regulated by the Charter of the Kingdom of the Netherlands that came into force in 1954.

The Netherlands Antilles were administered as colonies until 1937, when they became 'territories'. This brought little political change, although a representative body first created in the mid-nineteenth century was expanded. At the end of World War II, advisory committees and later, an 'Advisory Council' to the Dutch Governor were established in the Netherlands Antilles and Suriname to develop new political arrangements for those overseas territories. This coincided with the expansion of local suffrage to include women and eliminate minimum income requirements, as well as with the establishment of administrative councils responsible to elected local representative bodies. However, formal control still remained in the hands of the Dutch Governor.



*Curacao and Sint Maarten in 2010 shift to the "status aparte", already accorded to Aruba in 1986*

During the post-war period, distinctions were drawn between internal and external affairs, with the gradual devolution of internal powers to the representative bodies of the islands. In 1954, the three countries agreed on a 'Charter for the Kingdom of the Netherlands', which was designed to permit internal autonomy to the Netherlands Antilles and Surinam (and the Netherlands itself), while maintaining a link under the Dutch crown. As a result of this new political situation, the UN General Assembly removed the Netherlands Antilles and Suriname from its list of 'Non-self-governing territories'<sup>104</sup> and ended the Netherlands' reporting obligations under Article 73 of the UN Charter regarding the status of dependent territories.

Suriname became fully independent in 1975. Hence, the 'Charter for the Kingdom of the Netherlands' was

<sup>104</sup> For the definition and the complete list of the world's dependent territories, see the Appendix, Part 4.

revised so that it referred only to the Netherlands and the Netherlands Antilles. A further revision took place when separate status was sought and obtained by Aruba in 1985, which decided to opt for associated statehood. The key to the relationship between this tiny group of Caribbean islands and the Netherlands is strategic. The islands provide the Netherlands with an important trading port and, previously, a strategic defence position in the Atlantic Ocean. Accordingly, the main powers retained by the Kingdom relate to economy, foreign affairs and defence issues.

## 1. The current autonomy

Within the current autonomy system of the Netherlands Antilles, in force until 10-10-2010, 'federal matters' are denominated as the internal affairs of the islands, while 'kingdom affairs' fall essentially within the power of the Netherlands mainland government, with the participation of the representative of the Netherlands Antilles. The Netherlands Antilles are represented by a 'Minister Plenipotentiary' at both the executive (Council of Ministers and Council of State) and at the legislative levels (in the national parliament, called 'States-General' in The Hague). There is no provision for the unilateral termination of the Kingdom relationship between the Antilles and the mainland by any of the parties, as agreed when Suriname withdrew from the Netherlands in 1975.

Legislative power is retained by the Dutch parliament on behalf of Kingdom affairs. Kingdom affairs include the maintenance of the independence and defence of the Kingdom, foreign relations, Netherlands nationality, regulation of orders of knighthood, the flag, regulation of vessels, provisions governing the admission and expulsion of Netherlands nationals and aliens, extradition and other matters declared to be Kingdom affairs by mutual consent.

In the Netherlands, there is no separate legislature overarching the mainland and the former colonies. The Netherlands parliament constitutes the legislature for the whole Kingdom and has no members from the Netherlands Antilles.<sup>105</sup> The national legislature is bicameral: the Netherlands' population selects the First Chamber of the parliament by direct election, while members of the provincial states elect the Second Chamber. The head of state is the ruling monarch

of the Netherlands, represented in the Netherlands Antilles by a Governor.

In all other matters, legislative power is vested in the Netherlands Antilles unicameral parliament, the Staten. The Staten comprises 22 members who are elected by popular vote to serve for a four-year term. Election is based upon proportional representation, and each island forms a separate electoral district. Curacao is entitled to 14 seats, Bonaire and St. Maarten to three each, while Saba and St. Eustatius both have one seat. The Netherlands Antilles parliament regulates the police, communications, monetary affairs, health and education. It levies its own taxes, prepares its own budget and operates its own postal and communications service. The legislative branch is two-layered. Delegates of the islands are represented in the parliament of the Netherlands Antilles, but each island has its own government that takes care of daily public affairs on the islands. These authorities are comparable with municipalities and boards.

The Council of Ministers can initiate bills, which are then sent to the First Chamber of the parliament for approval. The Council of Ministers sends each bill also to the Dutch Council of State for an advisory opinion. If the parliament approves, or amends and approves the bill, it proceeds to the Second Chamber. After deliberations, the Second Chamber approves, amends and then either approves or rejects the bill. The bill then proceeds to the First Chamber, which has the power to either approve or reject it, but no power to make amendments. If the First Chamber approves the bill, which it usually does, the bill proceeds to the King. The King and one of the Ministers or under-secretaries of state sign the bill before it becomes law.<sup>106</sup>

The Kingdom Charter declares that the Netherlands Antilles are represented at both the executive (Council of Ministers and Council of State) and legislative levels (the parliament 'States-General') by a so-called Minister Plenipotentiary, But generally the Netherlands Antilles conduct their internal affairs autonomously. However, any proposed amendment to the Netherlands Antilles constitution that relates to the powers of the Legislative Council, the distribution of seats in the Council, the regulation of island territories, or fundamental human rights must also be approved by the Kingdom government. Other amendments to the constitution may be adopted by a two-thirds vote of the Legislative Council of the Netherlands Antilles.

<sup>105</sup> In this respect, the political status of the Netherlands Antilles resembles that of Puerto Rico, which is not represented in the US Congress, although its inhabitants are US citizens.

<sup>106</sup> International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, June 1999, p.308.

The King or the Dutch government also may suspend federal legislation or administrative measures on similar grounds, but such suspension must be confirmed within a year by Kingdom resolution.

Executive powers regarding Kingdom (Netherlands) affairs are exercised by the Governor, the King's representative in the Netherlands Antilles. The Governor's powers and duties in this representative capacity are determined by Kingdom statutes or ordinances. These powers include the promulgation of Kingdom laws and overseeing 'the general interests of the Kingdom' in the Netherlands Antilles. The Governor may not promulgate a local ordinance if he is of the opinion that the ordinance or the resolution is in conflict with the Statute (Charter), an international regulation, a Kingdom law or a Royal resolution containing general enactment, or is in conflict with an interest whose protection or guarantee is a matter of the Kingdom.

The Netherlands Antilles judiciary consists of a Supreme Court of Justice, and such other courts as may be established by federal ordinance. The judges of the Netherlands Antilles Supreme Court and the Attorney General are appointed by the King after consultation with the Governor. Private and commercial law, civil procedure, criminal law and procedure, and other specific matters are governed by federal ordinance 'as much as possible corresponding with existing laws in the Netherlands'. Any proposal for the drastic amendment of such laws must first be sent to the Netherlands government for its comments. The jurisdiction of the Supreme Court of the Netherlands over cases in the Netherlands Antilles is determined by Kingdom statute, although the Netherlands Antilles may request the addition to the court of an advisory or extraordinary member.

## 2. Foreign affairs and language

The Netherlands Antilles Minister Plenipotentiary may participate in foreign policy whenever the particular interests of the Netherlands Antilles are involved, or arrangements are contemplated that may have important consequences for the islands. Moreover, the Netherlands Antilles are a member of a number of international organizations in its own right, including the Caribbean Economic Community.

In respect of defence, the Netherlands Antilles Minister Plenipotentiary is entitled to participate in issues that

affect the defence of the Netherlands Antilles territory. The Kingdom maintains Navy, Air Force and National Guard Corps on the islands. The military age is 20, although Netherlands Antilles nationals cannot be compelled to serve in the armed forces unless provided for by a Netherlands Antilles statute. Nonetheless, the armed forces maintained for the defence of the islands consist of, whenever possible, persons residing in the islands. The constitution further provides that conscripts serving in the ground forces cannot be sent abroad without their consent in the absence of an authorizing federal ordinance. The extent of the provisions in the Charter dealing with the military and defence illustrate the important strategic role of the islands for the Kingdom's security.

The official language in the Netherlands Antilles is Dutch. English and Spanish are widely spoken by the entire population. Papiamentu, the indigenous language of the Leeward Islands, based on a combination of Dutch, French, Spanish and Portuguese, is also spoken. The education system is based on the Dutch system, and schools comply with the same standards applied in the Netherlands. The University of the Netherlands Antilles offers degrees in law, engineering and business administration. All teaching is in the Dutch language.

## 3. Perspectives of the future political evolution

During the 1975 UN debate on the question of relieving the Netherlands of its reporting obligations under Article 73 of the UN charter, doubts were expressed as to the actual extent of autonomy obtained by the Netherlands Antilles. In effect, the powers of the Netherlands Antilles in the Kingdom affairs are indeed sparse. The 'Kingdom affairs' (mainland affairs) are determined by the Netherlands, and it is doubtful whether the Minister Plenipotentiary of the Netherlands Antilles can exert a particular influence in those matters within the Dutch government.

With respect to internal autonomy, the Netherlands-appointed Governor also retains substantial powers of veto and appointment rights within the Netherlands Antilles. In addition, the determination of the scope of internal affairs is made by the Netherlands, acting through the Governor, the King and Council of Ministers. Thus, the scope of the Netherlands Antilles' autonomy, in force until 2010, appears rather limited. A fairly broad degree of autonomy appears to have been applied in matters such as education,

social services and the local economy as well as for international economic and financial agreements. In accordance with international agreements entered into by the Netherlands. If real power rests in the locally elected Council of Ministers, the autonomy of the Netherlands Antilles may be much greater than suggested by theoretical limitations imposed upon it, thus lending support to the principle that substance is more relevant than formal structures.

In 2004, a joint commission of the governments of the Netherlands Antilles and the Netherlands recommended the revision of the statute of the Kingdom of the Netherlands in order to dissolve the Netherlands Antilles. On 28 November 2005, an agreement was signed between the Dutch government and the government of each island. In a certain sense, only this act completed the political autonomy of the remaining Netherlands Antilles, as the head of the regional government now is democratically elected instead of being appointed by the Netherlands. Based on this agreement two new associated states within the Kingdom have been formed, Curaçao and St Maarten. Meanwhile, Bonaire, Saba and St Eustatius remained under direct rule of the Netherlands as 'Kingdom Islands'.<sup>107</sup> Two new associated states within the Kingdom of the Netherlands would be formed, Curaçao and Sint Maarten, along with the already existing Aruba. 'Associated statehood' means that there would not be any democratic representation of the population of these islands in the Dutch central institutions (the parliament and the government of The Hague).

Meanwhile, Bonaire, Saba, and Sint Eustatius would become a direct part of the Netherlands as special municipalities (*bijzondere gemeente*), a form of "public body" according to article 134 of the Dutch Constitution. These municipalities will resemble ordinary Dutch municipalities in most ways (they will have a mayor, aldermen and a municipal council, for example) and will have to introduce most Dutch law. Residents of these three islands will also be able to vote in Dutch national and European elections. The Dutch province of North Holland has offered the three new municipalities the opportunity to become part of the province. The special municipalities would be represented in the Kingdom Government by the Netherlands, as they can vote for the Dutch parliament.

The Netherlands has proposed that the Treaty of Lisbon allow the Netherlands Antilles and Aruba to opt

for the status of Outermost Region (OMR) also called "Ultra Peripheral Region" (UPR), if they wish. The three islands will also have to involve the Dutch Minister of Foreign Relations before they can make agreements with countries in the region. There are, however, some derogations for these islands. Social security, for example, will not be on the same level as it is in the Netherlands, and it is not certain whether the islands will be obliged to introduce the Euro. The status of an „autonomy system“, however will cease with 10-10-2010.

A similar legal position in the framework of the "Commonwealth of the Netherlands" is attributed to the island of Aruba, which separated from the Netherlands Antilles on 1 January 1986, in order to become a distinct member of the Netherlands Commonwealth. Substantially now Sint Maarten and Curaçao have acquired the same status as Aruba has since 1986 (free association).

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<sup>107</sup> See [<http://en.wikipedia.org/>] and [<http://www.miami.com/mld/miamiherald/news/13271891.htm>].

## 3.11 The Azores and Madeira (Portugal)

### 1. Autonomy due to islandness

For many decades, Portugal was regarded as a country without national minorities or minority languages. Despite the 'discovery' of the Mirandes speakers (a Castilian dialect) close to the Spanish border and the presence of some large groups of gypsies (Romany), autonomy in Portugal was not accorded to minorities defined by ethnic-linguistic categories, but rather by geographic categories: the two island groups of Madeira and the Azores. The first is located about 100 km south of the Portuguese mainland, while the Azores lie in the mid-Atlantic, halfway between Europe and North America. The Azores comprise three groups of islands, while Madeira consists of four islands.



<b>Population of the Azores (2005 est.)</b>	253,500
<b>Land area</b>	2,333 km <sup>2</sup>
<b>Capital</b>	Ponta Delgada, Horta
<b>Official language</b>	Portuguese
<b>Autonomy since</b>	1976

<http://en.wikipedia.org/>

Both the Azores and Madeira were first discovered by the Portuguese between 1335 and 1342. The islands were not settled, however, until the reign of Henry from 1433–60. The explorers' interest in plumbing the southern reaches of the West African coast, combined with the exigencies of the West African slave and gold

trade led to Madeira's development as a convenient stopping point for ships to and from Portugal.

Like Madeira to the south, the Azores Islands were the last frontier for European expansion before the New World to the West. The Spaniards first discovered the Azores in the 14<sup>th</sup> century, but only the Portuguese colonized the before uninhabited islands during the 15<sup>th</sup> century. During the years of Portuguese exploration in the New World, the Azores were used as a final checkpoint before sailing across the Atlantic. By the end of the age of exploration, and with Portugal's incorporation into Spain in 1580, the Azores became a place of refuge for political exiles until the 1920s. The inhabitants of the Azores are mainly of Portuguese origin, but there are minorities, mainly from other Portuguese colonies, which were brought into the islands as slaves. The language spoken on the islands is a dialect of Portuguese, but some nationalists argue that Azorean must be considered a separate language.<sup>1</sup>

The first demands for autonomy in the Azores were raised during the 1820s when liberals rebelled against the central authorities that in those times were situated on the island of Terceira: "It was not autonomy from the mainland Portugal, but more a protest against the central Azorean government, and the Portuguese government agreed to divide the island into three districts."<sup>2</sup> The autonomy of the Azores was finally institutionalized in 1895 through the decree of the government during the regime of Hintze Ribeiro, thus it can not be considered a 'modern autonomy system'. Suffering from constant setbacks due to the lack of interest among the parliament and government of the mainland and constant additions of responsibilities without resources to exercise them, the autonomy plunged in crisis and during the 1930s was finally abolished.

After the restoration of democracy in Portugal in 1974 the Constituent Assembly decided to reestablish also the two autonomous regions of the country., "partly since it was propitious for innovation, rejecting all the policies of the deposed regime, partly in fear of the threat of Azorean separation that had risen in the aftermaths of the revolution".<sup>3</sup>

<sup>1</sup> C.P. Amral (1992), 'Identification of an Autonomous Region – The Azores', in *The Political Administrative Systems of the European Island Regions* (Secretariat Regional da Administracao Interna, Ponta Delgada, pp. 3-4, quoted by Maria Ackrén/P. Olausson, op.cit., p.239

<sup>2</sup> Ibidem, p. 239

<sup>3</sup> Amaral, op.cit., pp. 39-47, quoted by Ackrén/Olausson, op. cit.,

Under the Portuguese constitution of 1976 the Azores and Madeira were granted special constitutional status as 'Autonomous Regions'. The Portuguese constitution declared at article 227 that the special political and administrative arrangements of the Azores and Madeira are based on 'their geographical, economic and social constitutions and on the historic aspiration of the people to autonomy'.<sup>4</sup> It was stipulated that this autonomy should in no way affect Portugal's full sovereignty, and would be exercised within the limits of the national constitution. During the 1970s there was a small independence movement on the island, but the activities have declined since the implementation of the autonomy.

The Constitution lists those areas for which the Azores and Madeira are responsible. Other matters are regulated in the regions' own statutes which they are allowed to elaborate and approve.

## 2. The autonomy arrangements

The regional assemblies are empowered to legislate on matters of special interest to the region, to exercise executive authority over regional legislation, to draw up regional economic plans, and to participate in the preparation of the national development plan. The regional governments also have the power to levy taxes and tariffs and to spend 95 per cent of their internal revenues. The members of the unicameral regional assemblies on Madeira and the Azores are directly elected for four years.

Executive authority in the two Autonomous Regions is delegated by the Portuguese President and a five-person advisory committee to the minister of the Republic. The minister's authority with regard to most internal affairs is further devolved to the regional governments in the Azores Islands and Madeira. The regional governments are each headed by a President who is elected by and from the regional assembly and officially nominated by the minister of the Republic. The President of the region, in turn, appoints the ministers of the regional government. The government remains responsible to the regional assembly and may be dissolved by a vote of no confidence.

For political and administrative purposes, the Azores

p. 239

<sup>4</sup> The Portuguese constitution is to be found: [<http://nhmccd.cc.tx.us/contracts/lrc/kc/constitutions-subject.html>] (supported by the Kingwood College library): The constitutions of the world.

Islands are divided into three districts, each sending its representative to the Chamber at Lisbon (three deputies in all). Madeira and Porto Santo are officially designated the District of Funchal, which sends two deputies to the Lisbon parliament. The judicial system of the autonomous regions is under the auspices of the Portuguese system with District Courts and a Court of Appeal located in each region. The final appeal is to the Portuguese Supreme Court. The 1976 Portuguese constitution grants Autonomous Regions the right to participate in the negotiation of international treaties and agreements that may concern them. The official language of the islands is Portuguese.



<b>Population of Madeira (2003)</b>	265,000
<b>Land area</b>	964 km <sup>2</sup>
<b>Capital</b>	Funchal
<b>Official language</b>	Portuguese
<b>Autonomy since</b>	1976

<http://en.wikipedia.org/>

Madeira and the Azores, unlike Greenland, are full members of the EU, as these autonomous regions have no powers in international affairs. The Azores rely economically on the cultivation of tea, tobacco and oranges, and serve as the main intermediate port in the Northern Atlantic. Since 1913, the Azores have hosted the American airbase of Terceira. They have frequently been hit by earthquakes and volcano eruptions. Also, during the period of Portugal's colonial expansion, Madeira served as an important naval base. Today the most important income resource of the island is tourism, especially from Great Britain.

### 3. Developments in the Azores

The Azores Islands are divided into three widely separated groups, San Miguel and Santa Maria lying furthest to the east; 100 miles to the north-west is the central cluster of Terceira, Graciosa, San Jorge, Pico and Faial; 150 miles south-west are Flores and Corvo. In the 1970s there has been some guerrilla activity in the Azores, an apparent attempt to accelerate the process towards greater autonomy. The most active 'liberation group', the Front for the Liberation of the Azores (FLA), is strongly anti-Communist and is supported by some of the wealthiest ruling families in the islands.

A dispute between Portugal and the Azores Islands in autumn 1986 resulted in the re-emergence of the FLA, which threatened violent resistance. FLA leader Almeida advocated the resumption of the armed struggle for independence, claiming that 60 per cent of the Azores population supported independence, and demanded a referendum to decide the issue conclusively. The conflict developed over the provisions in a new autonomy statute granting the Azores a flag and an anthem. Portugal's chief of staff claimed that if a new flag and anthem were introduced, the country's national unity would be directly challenged. Thus, President Soares vetoed the legislation, but later the conflict over symbols was resolved, and the Azorean autonomy was extended.

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## 3.12 Autonomy in Canada: Nunavut



<b>Population</b> (2007 est.)	30,95
<b>Land area</b>	2,121,103 km <sup>2</sup>
<b>Capital</b>	Iqaluit
<b>Ethnic composition</b>	85% Inuit, others
<b>Official languages</b>	Inuktitut, English
<b>Autonomy since</b>	1999

<http://en.wikipedia.org/>

<http://www.statcan.ca>

### 1. The genesis of Nunavut

The Inuit (sometimes called 'Eskimo') comprise about 130,000 people living in the Arctic regions of Canada, Russia, Alaska and Greenland. Approximately one quarter of the Inuit population lives in Canada. The Inuit inhabited the Northwest Territory of Canada for at least 2,000 years in small communities along the northern Canadian coast as well as on the Arctic islands. Their livelihood was, and largely still is, based upon hunting and fishing. Due to the harsh environment, the Inuit were largely isolated from Western civilization until recent times. Nunavut lies entirely north of the 60<sup>th</sup> parallel, much beyond the Arctic Circle. The boundaries of Nunavut largely follow the Inuit traditional land use and occupancy area in the Canadian Central and Eastern Arctic.<sup>5</sup>

<sup>5</sup> The 130,000 Inuit are internationally represented in the ICC, the

During World War II, the construction of airfields, radar stations as well as mining exploration and development of oil and gas reserves brought Canada's Inuit into closer contact with outsiders. In the 1950s, the Canadian government undertook a programme to relocate the Inuit to government-built villages as part of the government's efforts to assimilate the Inuit into Canadian mainstream society. The cultural and social upheaval caused by this relocation led to high rates of alcoholism, suicide, family violence and other social problems within the Inuit villages.

Conflict over land has been a key issue of the political history of Canada's Inuit since the colonization. The Royal Proclamation of 1763 established the British policy toward the native inhabitants of Canada. It reserved all lands outside of established areas to the Canadian government for the exclusive use of the Indians, and placed such lands under the King's protection. Other citizens of Canada were prohibited from purchasing or taking possession of these lands. The power to negotiate with the Inuit was reserved for the government, which prevented the sale of Inuit lands to non-indigenous citizens.

Inuit representation within Canadian political bodies was largely nonexistent until recently. The Inuit had no right to vote in Canadian elections until 1962. But in the 1970s, the Inuit became politically active, entering into negotiations with the Canadian government to establish forms of autonomous self-government. A new Inuit leadership lobbied to allow their people to return to their original homes in order to develop their native skills, to revive the Inuktitut language and culture, to establish Inuit schools, and to initiate alcoholism therapy and prevention programmes. In 1993, an agreement in principle was reached with the Canadian government for the division of the former Northwest Territory and the creation of the Nunavut Territory, the "Nunavut Land Claims Agreement"<sup>6</sup>, aimed to settle the outstanding land and political claims of the Inuit of the Northwest Territories. This agreement later led to the Canadian Nunavut Act. Nunavut means 'our home' in Inuktitut.

The Nunavut Act of 1993 is the product of nearly 20 years of negotiations by Inuit representatives with Canada's federal government in Ottawa. It was ratified by the inhabitants of the Northwest Territories

Inuit Circumpolar Conference.

<sup>6</sup> Cf. Indian and Northern Affairs Canada, *Nunavut Land Claims Agreement* (Government of Canada, Supply and Services, Ottawa 1993)

in 1992, signed into law by the Canadian Prime Minister in 1993, and enacted in 1999. Under this act, the eastern part of the former Northwest Territories, roughly 20 per cent of Canada's total area, became the new territory of Nunavut, inhabited by just 25,000 people, mostly Inuit. Although Nunavut remained subject to federal control in various respects, the new regional government and assembly were vested with a significant level of autonomy. The inhabitants of Nunavut have the same rights as other Canadian citizens under the Canadian federal constitution and Charter of Rights and Freedoms, including the right to seek redress from the Canadian court system in case of violation of individual rights.

The transfer of autonomous powers over local matters to the Nunavut government began on 1 April 1999, and is expected to be completed by 2008. By that time, the Nunavut territory will have essentially the same status and rights as the other Canadian provinces, integrated with some particular provisions. Since April 1999 there has been a Nunavut legislature, elected democratically by its citizens, as well as a Nunavut government and territorial justice system.<sup>7</sup>

Nunavut land claims, first acknowledged as legitimate by the Canadian government in 1973, were codified in the Constitution Act of 1982. The subsequent 'Nunavut Land Claims Agreement', codified as 'The Nunavut Act', is protected under the Canadian constitution as one of the cornerstones of Nunavut's autonomy. Under the Nunavut Land Claims Agreement (Nunavut Act), the Inuit ceded ownership and control of nearly 80 per cent of their ancestral lands. The title to all other surface and subsurface property in Nunavut is retained by the Crown. Nunavut's inhabitants have exclusive fishing and hunting rights within their autonomous territory.

The Inuit also receive annual monetary transfers of more than 1 billion Canadian dollars from Canada's federal government. Moreover, under the autonomy act, the Inuit were guaranteed participation in central government decisions on environmental and natural resource matters regarding the territory, as well as various government subsidies for the establishment of the Nunavut local government and social programmes.

## 2. The Nunavut Act

The 278-page Nunavut Land Claims Agreement, the basic document for the establishment of autonomous Nunavut, can be broken down into the following main areas:

1. Clarification of ownership and use-rights for the land. 352,240 km<sup>2</sup> of land is granted to the Inuit, held in trust by Tungavik Inc. and Regional Inuit Associations for the benefit of the Inuit. 36,260 km<sup>2</sup> of mineral rights are also transferred to the Inuit and retained by Tungavik Inc. The government of Canada retains the legal title to the mineral rights for the remaining portion of land.
2. Participation of the Inuit in government decision-making with respect to water and land management and conservation in the whole territory of Nunavut.
3. Wildlife harvesting rights on the land and waters are transferred to the Inuit.
4. As financial compensation, payment of 1.14 billion Canadian dollars over a 14-year period are accorded. These funds are transferred to the Nunavut Trust Fund to be used for the benefit of the inhabitants of Nunavut. The Trust Fund is controlled by regional Inuit organizations.
5. Participation of the Inuit in issues of economic opportunity. The Agreement provides for the sharing of government royalties from oil and gas and mineral development on lands retained by the Canadian government, the creation of three new national parks, and the right of the Inuit to negotiate with industry for resource development of lands to which they own surface title.
6. Economic self-reliance, cultural development and social well-being of the Inuit. The region of Nunavut is authorized to establish a form of self-government. The Nunavut Social Development Council is in charge of promoting Inuit social and cultural development as well as the Inuit Heritage Trust for the restoration and protection of Inuit archaeological sites.

The transfer of power to the Nunavut government is the responsibility of the Nunavut Implementation Commission (NIC), which was also responsible for establishing the procedures for the first election of Assembly members, establishing and funding of training programmes.

<sup>7</sup> See the official websites of the government and the assembly of Nunavut: [<http://www.gov.nu.ca>] and [<http://assembly.nu.ca>].

### 3. The autonomy arrangement

The Nunavut Act establishes the Nunavut legislative body, which consists of the Commissioner and the Legislative Assembly. Each of the 19 members of the Legislative Assembly is elected democratically by the legal residents of Nunavut, composed of 85 per cent Inuits. 15 of the 19 members of the Assembly must be Inuit. As the total population comes to a mere 30,000 people, one major mining settlement with temporarily residing settlers would drastically alter the composition of the electorate. Hence, regarding election the Nunavut Act provides that all but four members of the Assembly must be Inuit.

The Nunavut Act outlines the legislative powers conferred on the autonomous legislature, distinct from those matters subject to acts of the Canadian federal parliament. The Nunavut legislature may make laws of general application regarding the population of Nunavut, laws for the implementation of the Inuit Land Claims Agreement, and laws regarding the importation of intoxicants into Nunavut. It also has exclusive power to determine who is an Inuit for the purposes of the implementation of the Nunavut Land Claims Agreement and the rights and benefits contained in this act. However, general immigration and citizenship issues continue to be regulated by the Federal Department of Citizenship and Immigration.

The power of Nunavut's Legislative Assembly is limited in three ways. First, the Canadian constitution divides legislative authority between the federal and the provincial parliament. Thus, defence, postal service, Canadian broadcasting and telecommunication, banking regulations and currency as well as the monetary policy, and the system of taxation are part of the exclusive federal institutions, the Canadian parliament and government. Secondly, the constitution of Canada is the supreme law of the country. Any Nunavut law inconsistent with constitutional provisions has no force and effect. Thirdly, the federal parliament of Canada may create legislation that affects the Inuit adversely if such legislation is deemed unconstitutional.

Therefore, Nunavut has no powers related to foreign policy, defence and naval services. There are no separate Nunavut passports, and customs and borders are generally controlled by the Canadian government. Persons other than Inuit are not permitted to enter or remain on Inuit land without the consent of the Inuit, with certain exceptions. Use of land for military

manoeuvres is permitted after a negotiation with the appropriate Nunavut agency and the conclusion of an agreement.

Nunavut is governed by a Chief Executive Officer. The Executive Council of Nunavut is appointed by the Commissioner on the recommendation of the Legislative Assembly of Nunavut. Before the establishment of Nunavut, the Inuit were governed by the Commissioner of the Northwest Territory and the Department of Indian Affairs and Northern Development. The Nunavut Act changed this structure by creating a chief executive officer of Nunavut, vested with executive powers. This political figure is appointed by the Governor in Council. The Executive Council of Nunavut is appointed by the Commissioner based upon the recommendation of the Legislative Assembly of Nunavut. Nunavut's first Chief Executive Officer was a 34-year old lawyer, Paul Okalik, appointed on 1 April 1999, who is still in office.

The administration of the huge territory is managed through ten different remote communities, whereas overall coordination is granted by the central government in the capital 'city' of Iqaluit. The Nunavut public governance is not based on ethnic criteria, and is oriented to all citizens of Nunavut on an equal footing. But due to the Inuit majority and the increasing involvement in the administration of public services (85 per cent of all government jobs should be reserved for Inuit), it can be argued that the Nunavut system of public governance is a 'virtual Inuit self-governance'.<sup>8</sup>

The Nunavut Act establishes the Supreme Court of Nunavut and the Court of Appeal of Nunavut as superior courts of the autonomous territory. Judges of the superior courts of Nunavut are appointed by the Governor in Council. The Canadian Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction in Canada.

To whom is the right to change the political status of Nunavut attributed? Nunavut's status as an autonomous territory is determined by the Canadian parliament, and any significant change in the structure or status of Nunavut requires legislation and approval by the federal parliament. The Nunavut Land Claims Agreement provides that nothing in the Agreement shall '...be construed so as to deny that Inuit are an aboriginal people of Canada or, subject to Section 2.7.1, affect their ability to participate in or benefit

<sup>8</sup> Natalia Loukacheva (2006), 'Autonomy and Law', Toronto, to be found at: [[http://www.globalautonomy.ca/global1/article.jsp?index=RA\\_Loukacheva\\_AutonomyLaw.xml](http://www.globalautonomy.ca/global1/article.jsp?index=RA_Loukacheva_AutonomyLaw.xml)], p.24.

from any existing or future constitutional rights for aboriginal people which may be applicable to them' (Section 2.7.3).

Like the other member units of the Canadian Federation, Nunavut elects representatives to the Canadian parliament, the House of Commons and the Senate. The Nunavut Land Claims Agreement also provides for Inuit participation in federal decision-making regarding the resource management of Inuit lands. The impact of their participation on federal policy has yet to be determined.

As an exception to Canada's federal powers on the taxation system, certain Nunavut lands are subject to real property taxation for the purpose of funding local government services, including schools and water. But basically, the cost of Nunavut's autonomous administration is covered by the federal government. Its annual contribution to Nunavut amounts to more than ten times the amount in dollars per resident, compared with the amount given to the country's 10 ordinary provinces.<sup>9</sup>

As in Greenland, one major issue in all negotiations of the Nunavut's responsible leadership with the federal government and third parties has been the control and exploitation of natural surface and mineral resources.

A second particular issue, in contrast to Greenland, is the fact that the autonomy arrangement does not embrace Inuit judicial powers or an independent legal system. However, Inuit representatives and prominent scholars are advocating aboriginal justice and reform of the existing legal mechanisms, which are often alien and ignorant of traditional indigenous forms of social control. Still, there would not be any formal obstacle to the creation of an Inuit justice system within the autonomous governance, and this could be favourable to the political autonomy of Greenland and Nunavut.<sup>10</sup>

For now, the Inuit of both autonomies have had to adopt European and Canadian legal systems. They were denied the means of participation in the creation and management of their lives in the traditional Inuit legal system, but territorial autonomy opened new opportunities for Inuit involvement in the administration of justice and incorporation of Inuit legal beliefs. It is

<sup>9</sup> On financial and economic issues consult [<http://npc.nunavut.ca/>]: The Nunavut Planning Commission.

<sup>10</sup> This is the opinion of Natalia Loukacheva (2006), 'Autonomy and Law', Toronto, to be found at: [[http://www.globalautonomy.ca/global/article.jsp?index=RA\\_Loukacheva\\_AutonomyLaw.xml](http://www.globalautonomy.ca/global/article.jsp?index=RA_Loukacheva_AutonomyLaw.xml)].

still not clear to what extent Inuit legal traditions have survived the imposition of foreign legal systems.

## 4. Last developments

In 2009 Nunavut celebrated the 10<sup>th</sup> anniversary of its existence as an autonomous entity in Canada. In these 10 years it has become an interesting example for many indigenous peoples aspiring to greater internal self-determination in the form of modern autonomy systems. There have been three general elections to the Nunavut Parliament. Nunavut's administrative functions, departments and agencies are working on daily routine: "Canada has always maintained that the new Territory would spark a renaissance for Inuit people by enabling them to gain control over their political destiny."<sup>11</sup>

"However, beneath its shell of political autonomy, Nunavut faces enormous challenges: high birth rates, a young work force with high levels of unemployment and dependence on social assistance, low educational levels, high costs for goods, inadequate public services and public housing, poor health conditions, escalating rates of substance abuse, violence, suicide and incarceration."<sup>12</sup> The Nunavut Act gave the Inuit the legal jurisdictional and political tools to confront the social challenges of Inuit society. The NCLA remains the most far-reaching land, resources, and self-determination agreement negotiated between an Aboriginal group and the Canadian government, but the real test lies in its implementation.<sup>13</sup> However, Nunavut's fiscal dependency on Canada and its weak economy have harmed the successful implementation of the 'Nunavut Project'. Nunavut today is a financial pariah unable to alleviate its social issues. The socio-economic crisis confronted by its inhabitants is made worse through the shortcomings of both land claim implementation commitments and the lack of financial resources made available by Canada to the government of Nunavut to comply with its obligations.

Some argue that the only real success of the 'Nunavut Project' to this day has been the Inuit reassertion of their collective identity. But the ultimate challenge for Nunavut is also to develop a sound economy so as

<sup>11</sup> See T. Molloy, 'Negotiating the Nunavut Agreement – A View from the Government's Side', 21:3 Northern Perspectives (1993), pp. 9-11, quoted by André Legaré, Canada's Experiment with Aboriginal Self-Determination in Nunavut: From Vision to Illusion, in: International Journal on Minority and Group Rights, Vol.15, No.2-3, 2008, p.336

<sup>12</sup> André Legaré, op. cit., pp. 366-367

<sup>13</sup> Ibidem, p. 367

to provide better programmes and services to all its inhabitants. However, developing a healthy economy in a region where communities have little economic bases, high living expenses, lack of qualified labour, absence of markets, difficulty in obtaining raw resources and punishing transportation costs makes such a task next to impossible.<sup>14</sup>

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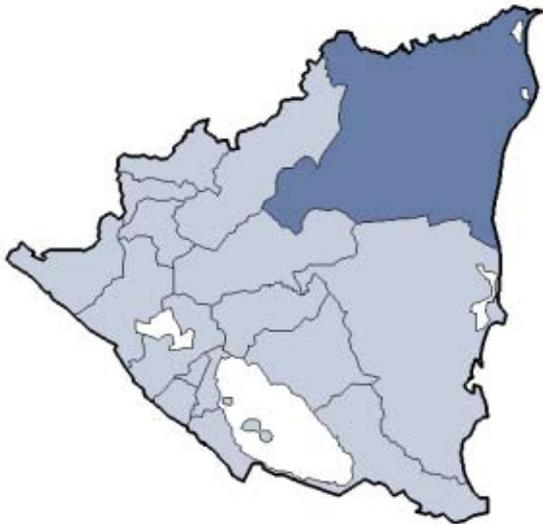
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<sup>14</sup> Ibidem, p. 366

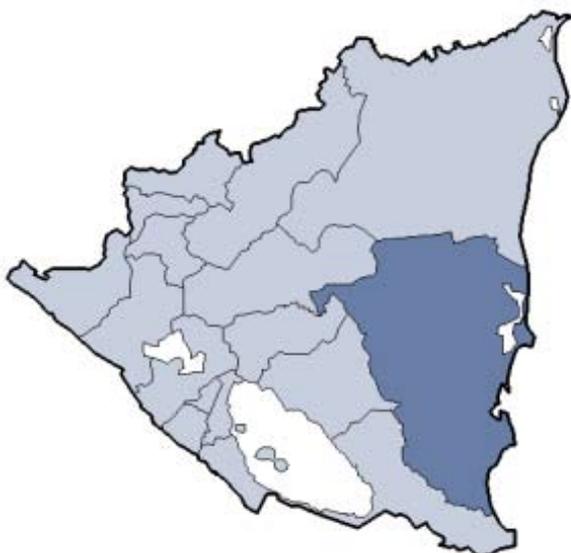
### 3.13 Nicaragua's Autonomous Atlantic Region



Región Autónoma Atlántico Norte (RAAN)

<b>Population (2004)</b>	249,700
<b>Land area</b>	32,159 km <sup>2</sup>
<b>Capital</b>	Puerto Cabezas (Bilwi)
<b>Official language</b>	Spanish, Miskito
<b>Autonomy since</b>	1987
<b>Ethnic composition (2004) - RAAN and RAAS combined</b>	72.5% Mestizo, 18% Miskito, 6.2% Creole, 2.45% Mayangma, 0.4% Garifuna, 0.3% Rama

<http://en.wikipedia.org/> and INEC, Managua, July 2004



Región Autónoma Atlántico Sur (RAAS)

<b>Population (2003)</b>	382,100
<b>Land area</b>	27,407 km <sup>2</sup>
<b>Capital</b>	Bluefields
<b>Official language</b>	Spanish
<b>Autonomy since</b>	1987

<http://en.wikipedia.org/>

Nicaragua's North Atlantic Region comprises over 51 per cent of the total land area of Nicaragua, but less than 12 per cent of its total population. Its population (631,795 in 2004) is composed of three major ethnic groups: the native American Indian groups (Miskito, Sumu, Rama, Mayangma), two groups descending from African slaves (Garifuna and Creole) and the Spanish-speaking Mestizos. The Southern part of Nicaragua's Atlantic Coast (RAAS) is more populated and has a larger proportion of Mestizos than the Northern part (RAAN).

#### 1. The genesis of the autonomy

The region, also known as the 'Mosquito Coast' is isolated from western Nicaragua by rugged mountains and a dense rainforest. There are still no paved roads between Nicaragua's central area and the Caribbean region, so it has never been fully integrated in Nicaragua's economy and mainstream society. The indigenous peoples - Miskito, Mayangma, Sumu and Rama - have preserved their distinct ethnic and cultural identities. In the North Atlantic Region, the Miskito comprise the majority of the population and usually speak Miskito first and Spanish as second language. This largest indigenous group is linguistically related to the Chibcha of South America, but today their culture reflects a deep influence of European colonists. These contacts date back to the seventeenth century, when French, English and Dutch intruders settled in that coastal area.

During the colonial period, the Miskito, allied with Britain, became the dominant group in the Atlantic coast of Nicaragua. A Miskito monarchy, established over the regions with British support in 1687, endured into the nineteenth century. In the mid-nineteenth century, the US replaced Britain as the colonial power, and a series of treaties marked the British Empire's withdrawal. Not until 1894 did the entire region come under direct Nicaraguan administration, and even then, US influence in domains of commerce and missionary activities prevailed over the Hispanic influence from central and western Nicaragua. As a result, many native people of the region never came to consider themselves Nicaraguan at all, instead recalling the years of semi-sovereignty under British and American protection as a period of autonomy and prosperity. Most Miskitos are Protestant, generally Moravians, and those who became Roman Catholic did so under the influence of US missionaries rather than of those from Spanish Nicaragua.

The 1860 'Treaty of Managua' granted Nicaragua's sovereignty over all its present territory including the Atlantic Region. It also recognized the Miskito monarch, the Rey Mosco (created by the British) and stated that he was to be under the sovereignty of Nicaragua. In 1905, the Harrison-Altamirano Treaty signified the end of the British claims to the territory and, although abrogated by the earlier recognition of the Miskito monarchy, it also included certain concessions, such as special tax exemptions and respect for Miskito land titles. Although the US dominated the region from this time until shortly before the 1979 revolution, other international commercial interests were present. This traditional orientation of the Atlantic Coast toward the US and foreign markets further isolated the Atlantic Coast from the rest of the country cultural, economically and socially.

In 1979, the Sandinista National Liberation Front (FSLN) freed the country from the Somoza regime and brought a general sense of optimism to the Atlantic Coast. Although little revolutionary activity took place on the Atlantic Coast and the peoples there did not seem to embrace the revolutionary principles and ideology, the Sandinista government sought to incorporate the coast into its new national development process. One element of these efforts was the launch of a major literacy campaign. The peoples of the Atlantic Coast sought to represent themselves through the creation of MISURASATA ('Miskito, Sumo, Rama, Sandinista, working together') in 1979. It was formally recognized as a mass organization representing the Atlantic Coast peoples in the national Council of State.

As MISURASATA gained political support, it began to make indigenous demands on the central government in Managua. Among the demands was for the Sandinista literacy campaign to be conducted in Miskito and English as well as in Spanish. Further demands included the construction of roads, health centres and basic grain storage facilities as well as assistance in the development of agricultural crops, continuation of the literacy campaign in native languages and bilingual education for children. These demands were, in general, very similar to those of other mass organizations in the Pacific coast.

More problematic, however, was MISURASATA's demand for special treatment based on an emerging sense of indigenous rights, especially the recognition of indigenous land ownership. These claims, oftencouched in terms of self-determination, sovereignty or nationhood, added to the growing threat

of counter-revolution perceived by the Sandinista government. Across the border in Honduras, the CIA supported the mounting 'CONTRA' guerrilla forces, exacerbating existing tensions. The Sandinista government feared that MISURASATA could become the vehicle for a separatist movement or an anti-government insurgency. From mid-1981 to the year's end, tension increased as some leaders of MISURASATA were arrested and later fled to Honduras. At the end of 1981, the Sandinistas began a mass evacuation of villages along the Coco River and carried out the systematic destruction of houses and livestock. Later, the Sandinistas would admit that these actions of resettlement were an 'error' and gave rise to grave human rights abuses. From 1982 to 1984 the military conflict between the Miskito guerrillas and Sandinista forces deepened. Some of the indigenous groups were linked to the US-supported CONTRA.

In September 1984 the Sandinista government, led by President Ortega, changed its approach. With the increasing threat of US invasion and the failure of the resettlement camps, the government, to garner support from the Miskito people, opted for a political settlement through negotiations between Managua and MISURASATA, which were held from October 1984 to May 1985. MISURASATA claimed the recognition of Miskito, Sumo and Ramas as indigenous sovereign peoples, endowed with the natural right to freely determine their own political, economic, social and cultural development in accord with their values and traditions. MISURASATA proposed the creation of an autonomous territory within the framework of the Nicaraguan state. Only in April 1987 did the Ortega government approve the autonomy proposals. The treaty affirms the inherent right of the Atlantic Coast peoples to self-determination. But its scope and the entrenchment of the new autonomy still had to be defined precisely.

As early as December 1984, the government appointed two national autonomy commissions with the task to elaborate an autonomy statute for both Regions of the Atlantic Coast. Finally, the autonomy of Nicaragua's Atlantic Coast was established in 1987 after a 5-year conflict between armed indigenous units linked with the CONTRA (mostly Miskito) and the Sandinista government.

## 2. The autonomy arrangement

In 1990, the Autonomy Statute<sup>15</sup> created two regional councils and their respective executive administrations for the Northern (RAAN, Región Autónoma Atlántico Norte) and Southern (RAAS, Región Autónoma Atlántico Sur) Atlantic Region. Both autonomous regions are 'an indissoluble part of the indivisible state of Nicaragua and their inhabitants enjoy all the rights and responsibilities which correspond to them as Nicaraguans, in accordance with the Constitution' (Article 2, Autonomy Statute). The statute grants equal political representation in regional councils to the different ethnic groups. Article 5 of the Autonomy Statute provides that both Spanish, the official state language, and the languages of the Communities of the Atlantic Coast will have official status in the Autonomous Region.

The Regions, within the framework of the constitution and the 'relevant aspects of the national policies, plans and orientations' have the following general faculties (Article 8, Autonomy Statute):

1. to effectively participate in the preparation and implementation of plans and programmes for national development with the region, in order to bring them into harmony with the interests of the communities of the Atlantic Coast;
2. to administer programmes for health, education, culture, supply and distribution of goods, transport, community services, etc. in coordination with the corresponding State Ministries;
3. to promote their own economic, social and cultural projects;
4. to promote the rational use and enjoyment of the communal waters, forests and lands and the defence of their ecological system;
5. to promote the study, fostering, development, preservation and dissemination of information about the traditional cultures of the Communities of the Atlantic Coast, as well as their historical, artistic, linguistic and cultural heritage;
6. to promote national culture in the Communities of the Atlantic Coast;
7. to foster the traditional trade with the nations and peoples of the Caribbean, in accordance with the national laws and procedures established for this purpose;
8. to promote connections with the intra- and

interregional market, thereby contributing to the consolidation of the national market;

9. to establish regional taxes in accordance with the laws established for this purpose.

An additional clause is of utmost importance as the Atlantic Coast is home to three indigenous peoples: "The right to own communal land shall be recognized in the rational use of the mineral, forest, fishing and other natural resources of the Autonomous Regions, and said use should benefit the inhabitants equitably, by means of the agreements between the Regional and the Central government' (Article 9).

Article 11, concerning the rights of the inhabitants of the Communities of the Atlantic Region outlines the double scope of the autonomy of Nicaragua's Atlantic Coast to establish a territorial autonomy for all while preserving fundamental rights of the different ethnic minorities:

1. to safeguard the absolute equality of rights and responsibilities, regardless of the size of their population and level of development;
2. to preserve and develop their language, religions and cultures;
3. to use, enjoy and benefit from the communal waters, forests and lands, within the plans for national development;
4. to freely develop their social and productive organizations, in accordance with their own values;
5. to be educated in their mother tongue as well as in Spanish by means of programmes which include their historical heritage, their value system, and the traditions and characteristics of their environment, all in accordance with the national education system;
6. to communal, collective or individual forms of property, and the transfer of said property;
7. to elect their own authorities, or be elected as such by the Autonomous Regions;
8. to scientifically safeguard and preserve the knowledge of natural medicine accumulated throughout their history, in coordination with the national health system.

The text of the Autonomy Statute repeatedly emphasizes the right of the ethnic communities to 'define and decide upon their own ethnic identity' (Article 12), but also their responsibility 'to defend life, justice and peace for the development of the Nation' (Article 13). Recalling the tragic history of the CONTRA war period, supported by the CIA against the

<sup>15</sup> For the whole text of the statute see [[http://www.calpi-nativeweb.org/doc\\_3\\_english\\_english.html](http://www.calpi-nativeweb.org/doc_3_english_english.html)].

Sandinista revolutionary regime, the inhabitants of the Atlantic Coast are accorded 'priority in the defence of sovereignty in these regions' (Article 14).

From the perspective of the Sandinista government, three elements composed the basis for the autonomy system:

- the recognition of universal citizenship rights as well as specific group rights granted to ethnic communities;
- the recognition of the multi-ethnic and multicultural character of Nicaragua, but also of national unity;
- the promotion of new social values such as fraternity, solidarity, equality and respect among the communities in order to create a democratic inclusive society.

The indigenous peoples of the Atlantic Region under this constitutional setting entered a process of political negotiations for the implementation of the autonomy in 1989. This meant that there was a wide and firm consensus among the ethnic communities that fundamental rights could be pursued through the existing democratic political setting of the territorial autonomy established in 1987. The recognition of specific group rights (i.e. land rights, control of natural resources, education in one's mother tongue, official status of indigenous languages) as well as territorial self-governance have facilitated the creation of peace and reconciliation. But the full implementation of autonomy rights has not yet been attained, as some basic features of the autonomy have been seriously challenged by the neo-liberal governments in power in Managua since 1990. Since then, internal political conflict in the Atlantic Regions and the subordination of autonomous authorities to the national governments have hampered the full enactment of the autonomy.<sup>16</sup>

The indigenous peoples and Afro-Caribbean communities in particular are losing ground in a continuous struggle against the neo-liberal agenda of the central government. Nevertheless, constitutional reforms enforcing the rights of the Regions were approved in 1995, and relevant secondary legislation passed the National Assembly in 2003. The following steps of implementation have been set:

<sup>16</sup> This is the opinion of Miguel Gonzalez, 'Territorial Autonomy in Mesoamerica: With or Without State Consent. The case of the Zapatista Autonomous Territories in Chiapas, Mexico, and of the Autonomous Regions in Nicaragua', paper for the Workshop on Social Movements and Globalization: 'Resistance or Engagement', University Consortium on the Global South, York University, Toronto, 2004.

1. The Indigenous Land Demarcation Law<sup>17</sup>
2. The 'enactment decrees' (reglamentaciones) or operational procedures for the application of the Autonomy Statute
3. Granting of veto power to the regional autonomous Councils over concessions given by the national government to exploit natural resources on the territories of the Atlantic Coast.
4. The decentralization of both education and health systems.

Another major success in the field of education has been achieved with the establishment of two community-based regional universities: the URACCAN and the BICU, with important educational outreach to the needs of the local communities in developing schemes of resources, management, economic initiative and cultural empowerment. However, these innovative institutions in the context of all of Central America had to face shrinking state funds for higher education.<sup>18</sup>

### 3. The institutions of the autonomous regions

Each of the two Regional Councils is composed of 45 members respectively, elected by universal suffrage in direct and free elections. All the ethnic communities of the respective Autonomous Regions must be represented. Also, the representatives to the national parliaments of Nicaragua from each Region are, by statute, voting members of the respective Regional Council, which increases its number to 47 and 48 respectively. To qualify for election to political office, one must be either a native of the Atlantic Coast or the child of a native of the region, and have resided for at least five consecutive years immediately prior to the election. The right to vote is restricted to natives of the coast or, 'when they are Nicaraguans from the other Regions of the country who have resided for at least one year in the respective Region immediately prior to the election' (Article 22, Autonomy Statute).

The Chairman of the Autonomous Region's executive committee, called 'Regional Coordinator', according to Chapter II and IV of the Autonomy Statute is

<sup>17</sup> Asamblea Nacional de Nicaragua (2003), 'Ley de Régimen de Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de las Regiones Autónomas de la Costa Atlántica de Nicaragua y de los Ríos Bocay, Coco, Indio y Maíz', La Gaceta Diario Oficial, no.16, 23 Enero 2003, Managua.

<sup>18</sup> For information on URACCAN's programmes visit: [<http://www.uraccan.edu.ni>].

responsible for:

1. defining the administrative subdivisions of the municipalities in its region;
2. preparing draft legislation concerning the rational use and conservation of the Region's natural resources;
3. requesting reports from, or questioning the delegates from the State Ministries and agencies operating in the Region;
4. electing a Board of Directors from the members of the Regional Council;
5. receiving and accepting, when necessary, all resignations tendered by its members, or those of the Board of Directors;
6. promoting the integration, development and participation of women in all aspects of the political, social, cultural and economic life in the Region;
7. drafting and passing its own internal regulations;
8. All other faculties assigned by this Statute and other laws.

The electoral clauses of the Statute, however, could not preclude that a growing share of the Regional Council is attributed to representatives of the Mestizo majority due to two factors: internal demographic development and migration from central and western Nicaragua. This is clearly shown by the results of the elections. Only 20 out of 48 counsellors of the RAAN Regional Council in the 2002-6 legislature are indigenous and 27 are Mestizos, whereas from 1990-94 the indigenous numbered 28 and the Mestizos 18. The development in the RAAS Regional Council has been even more dramatic: while from 1990-94, 13 out of 47 members were indigenous, in the 2002-6 legislature only ten indigenous counsellors remained. The number of Creole and Mestizo counsellors, meanwhile, had risen to 37.<sup>19</sup> Nevertheless, today in the RAAN with Hurtado Baker (YATAMA) a Miskito runs the government, supported by YATAMA and the Sandinista party.

#### 4. New challenges for the Autonomous Regions

At least formally, the Nicaraguan Atlantic Autonomous Regions have been represented as one of the most advanced experiences of internal self-determination in Central and South America. In effect, collective property rights over land claims have been officially granted in

the national constitution, territorial self-government at a regional level for ethnic minorities has been instituted, intercultural educational programmes in various indigenous languages have been implemented and decentralized health and educational programmes are in the process of negotiation and realization. Overall, these autonomy rights contrast with other experiences in similar circumstances in Central and South America, where in the best case barely a limited degree of self-governance on municipal level and some cultural group rights have been granted to the indigenous peoples, a process that still faces strong opposition from governments and the ruling elite.

Some important laws on natural resources, land claims and transfer of powers in basic public services have been enacted, but some critical obstacles to the full implementation of the Atlantic Coast's autonomy remain:

1. The diminishing degree of political representation and participation of indigenous peoples and Afro-Caribbean communities

Since 1989, when the armed conflict ended, the Region witnessed a demographic shift due to the immigration of Mestizos who now make up almost 70 per cent of the Autonomous Region's total population. This has resulted in a decrease in representation of indigenous communities at the political level, which is most striking in the Regional Council of the RAAS. The Mestizo majority initiated increasing decisions regarding autonomy rights, including such crucial issues as indigenous people's and Afro-Caribbean communities' access to land and natural resources. Hence, the Region's quality as a territorial autonomy is now challenged to establish forms of democratic inclusion for all groups in political power and consociational governance.

2. No complete legalization and demarcation of collective property rights of the indigenous peoples  
Although specific laws on indigenous land claims were passed in 2003, the Nicaraguan government has not done enough to ensure the full demarcation and legalization of the indigenous collective property on territories. This brought the main indigenous-based political force of the region, YATAMA ('descendants of Mother Earth') to launch a process of self-demarcation to identify all lands which have traditionally been under their control. This 'autonomous land demarcation' could lead to an improved capacity of the indigenous peoples to oppose the unilateral acts of the national governments or compensate the lack of legal action

<sup>19</sup> Miguel Gonzalez (2004), 'Territorial Autonomy in Mesoamerica: With or Without State Consent. The case of the Zapatista Autonomous Territories in Chiapas, Mexico, and of the Autonomous Regions in Nicaragua', paper for the Workshop on Social Movements and Globalization: 'Resistance or Engagement', University Consortium on the Global South, York University, Toronto, p.10.

by the autonomous bodies. But this new movement from below also demonstrates that a major pillar of the autonomy is not yet fully entrenched.

### 3. Strengthening the Autonomous Council's decision making and government capacities

Due to the lack of constructive cooperation of the central government in Managua and of sufficient financial means, the efficiency of the autonomous government is limited. But internal conflicts have also severely hampered the activity of both the legislature and the autonomous administration. The autonomous government has nearly no fund-raising powers, and depends on the centre and foreign NGOs for its budget.

### 4. Growing poverty

According to the United Nations Development Programme (UNDP), the Caribbean Coast of Nicaragua has one of the most acute human development gaps in the country.<sup>20</sup> The incidence of poverty has particularly increased in rural areas, and education, health and other basic social services remain inaccessible to large sectors of the regional population. On the other hand, not surprisingly, the Atlantic Coast contributes significantly to national wealth through exports of seafood (lobster, fish and shrimps), timber and various minerals (particularly silver and gold). Its participation in the national agricultural sector (including livestock) is also crucial, and its community-based, subsistence economy provides livelihood to hundreds of rural communities. It is not easy for the autonomous regional governments to cope with the challenges of growing inequality, human development gaps and over-exploitation of natural resources on their own. Considering the institutional weaknesses of regional authorities due to limited coordination capacity over public programmes, the lack of implementation in the Autonomous Regions and, most remarkably, minimal support from the national government, the problems to be tackled are enormous.

## 5. Conclusions

During the 1980s, the Sandinista government learned the lesson that imposing a model of national top-down integration that denies the aspirations of ethnic minorities for self-government was fruitless. The inauguration of the autonomous regime in 1987 created the basis for building up trust, mutual

understanding and a new framework for a positive relationship between the Nicaraguan state, the indigenous peoples and Afro-Caribbean communities in the Atlantic Coast.

Throughout the 1990s, a new conservative-neoliberal political majority in the central parliament tried to undermine the autonomy rights of the Atlantic Coast, enshrined in the 1987 autonomy statute, in part by curtailing the financial basis of the two Autonomous Regions. The neo-liberal governments in Managua have continuously attempted to grant concessions of exploitation of natural resources to foreign corporations, overriding local authorities. Consequently, the autonomy of the Atlantic Coast is at risk of being bypassed, as the central government is not fully recognizing the internal sovereignty of the local and regional communities. Self-governance, including full autonomous control of resources, seems to be incompatible with a neo-liberal agenda of national economic development by opening up every corner of a country to foreign capital.

Nearly 20 years after the enactment of the Atlantic Coast autonomy, important advances in autonomy rights have been secured in national legislation. The recognition of the rights of indigenous peoples and reconciliation with the majority population has made considerable progress. These achievements, given the broad consensus on which they are based, have counterbalanced the neo-liberal offensive imposed by national governments since 1990. However, the effective implementation of autonomy rights contained in the Statute remains the most pressing issue for the Miskito, Rama, Suma and Afro-Caribbean communities, who face a threatening trend in population make-up due to Mestizo migration and consequent Mestizo hegemony in the regional governance.

The autonomous regime, as the normative framework in which universal citizenship and group-differentiated rights are to take place, is still challenged by the struggle of indigenous peoples and their organizations for their rights. These organizations have become aware of the need to secure their autonomy rights in the face of growing *mestización* as well as their weak political representation and participation in the autonomous governance bodies.

Hence, there are two major challenges for Nicaragua's Atlantic Region today: first, how to fully implement and improve the autonomy rights against neo-centralist tendencies in Managua; and second, how to defend

<sup>20</sup> UNDP (2002), *El Desarrollo Humano en Nicaragua 2002*, Managua, p.32.

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autonomous choices for the Autonomous Regions in economic and social politics. This tension will shape the prospects of democratic politics in the region and the consolidation of autonomous regimes in general.

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### 3.14 Panama's Comarca Kuna Yala

<b>Population (2001)</b>	47,000
<b>Land area</b>	2,347 km <sup>2</sup>
<b>Capital</b>	San Blas
<b>Religions</b>	native religions
<b>Official languages</b>	Kuna, Spanish
<b>Autonomy since</b>	1938/1953

<http://en.wikipedia.org/>

The American Indian people of the Kuna live on a strip of the Atlantic Coast of Southern Panama as well as on 36 of 360 very small islands on an archipelago known as 'Comarca' (county or district) of Kuna Yala. Once named 'Comarca de San Blas', today the autonomous territory is called 'Kuna Yala' by its people. Its population of 47,000, more than 90 per cent of them ethnic Kuna, live in 49 communities (13 on the mainland, the rest on islands) and make up 0.8 per cent of Panama's total population. About 1,000 Kunas live in a kind of reservation in the Colombian province of Antioquia.

The Comarcas Wargandí and Madugandí, also inhabited by Kuna, have obtained a similar autonomous status recently. All the lands inhabited by the Kuna are known as 'Kuna Nega' (the 'House of the Kuna'), whereas the rest of the country is called 'Abya Yala', continent of blood. In 2000, about 30 per cent of the population of Kuna Yala was living outside of autonomous Comarca at least temporarily.

The Kuna gained territorial autonomy in the 1930s, after a bloody struggle against Panama's police. In the

framework of their autonomy, the Kuna developed a system of direct democracy that federates 49 different autonomous communities in the 'General Congress of the Kuna'. Each community has its own internal rules and regulations, and is independent from the others. Each community is obliged to send four delegates to the General Congress in order to enable coordination and to facilitate decisions on issues that relate to all the Kuna. If Panama's central government wants to carry out any kind of project within the region, it must consult the Kuna General Congress, which has the last word in decision-making within the autonomous territory.

Excursus I on America's indigenous peoples, will contain a more extended explanation of the concept and practice of 'Indian reservations' in order to distinguish this particular legal and political concept from that of 'territorial autonomy' as defined in Chapters 2.2 and 2.10. It should be recalled that, compared with reservations, a territorial autonomy presents some additional legal features:

- An autonomous region is represented at the national level as a territorial unit of the state. The inhabitants of an autonomous territory, as national citizens, share the same civil and political rights and duties as the citizens of the state they belong to.
- The national constitution has full applicability within the autonomous territory with regard to fundamental rights, but autonomous powers in the matter of civil and penal law are possible.
- The freedom of movement in and out the region, the right to residence and acquisition of regional citizenship of the autonomous region by citizens of the state, must be ensured under

provisions set by the autonomous authorities, but without ethnic exclusivity.<sup>21</sup>

It should be remarked that, in addition to Panama (Kuna Yala) and Nicaragua (Atlantic Region North and South) territorial autonomy in this sense has been established also in Colombia, but due to the lack of enactment decrees and practical implementation, those autonomies do not yet work in a manner comparable to the territorial autonomies of Panama and Nicaragua.

## 1. Genesis of the autonomy

During the history of colonization, the Kuna community managed to stay relatively isolated without being integrated into the colonial power structure and Mestizo society of Colombia. The Caribbean coast of Panama worked as a non-official demarcation line between the English and Spanish colonial spheres of influence. Only in the nineteenth century did Mestizo rubber-searchers push the Kuna community and settlements towards the islands.

In 1871, the government of Gran Colombia handed the 'Comarca de Tulenega' over to the Kuna in order 'to civilize the wild'. When Panama became a separate state in 1903, Christian missionaries attempted to Christianize the region. Panamanian police stations and state schools were established, provoking fear and distress among the Kuna people.

The first state authority, established in San Blas in 1915, put forth a classic colonial agenda, striving for the integration of all indigenous people in the young state of Panama. After the completion of the Panama Canal, thousands of menial workers from Haiti and other Caribbean islands poured into the region, provoking mounting resistance among the Kuna.

In 1925, some communities openly rebelled against state intrusion and interference. The armed struggle for self-determination began on 25 February 1925 when an armed group of Kuna attacked the Panamanian police on the islands of Tupile and Ukupsein. Previously the police had tried to suppress the cultural practices of the Kuna, but after the failure of many meetings between Kuna leaders, and state representatives including a delegation of the US, in 1930 the state of Panama recognized the autonomous territory of San Blas, which was first established in 1938 under the

name Comarca de San Blas.

In 1953, the Panamanian state established the Comarca of Kuna Yala defining the internal autonomy and governmental structure with its own organic charter (*Carta organica*) under Law number 16 of 1957, declaring the Comarca an 'Indigenous Reservation'. Today this law has been updated under the title 'Ley Fundamental de la Comarca de Kuna Yala',<sup>22</sup> and is equivalent to an autonomy statute.

In 1996, Panama established an additional Comarca for Kuna people living on the mainland, together with Comarcas for the Emberá and Ngobe-Bugle peoples in 1983 and 1997 respectively. In April 2003, a meeting of representatives of the 68 Kuna communities in the three Panamanian Comarcas (Kuna Yala, Kuna de Madugandí and Kuna de Wargandí) declared their decision to unite the three Comarcas into a single autonomous area.<sup>23</sup>

## 2. The autonomy arrangement

Law number 16 of 1953 officially establishes the Comarca de San Blas, which can be considered a pioneer law regarding indigenous autonomy in Latin America as a whole. It recognizes the Kuna people as a collective juridical subject with the right to its own territory. Moreover, it accepts the self-governance of the Comarca San Blas in terms of the 'Carta Organica del Regimen Communal Indígena de San Blas'. This act, however, had to be implemented in accordance with Panama's constitution and national laws.

The law establishes a truly autonomous local institution with its own jurisdiction under the Panamanian constitution. State and private agents are subordinated to the laws of the autonomous Comarca when acting within its territory. The education system is bilingual and intercultural, managed in partnership by state authorities and the Kuna Cultural Congress. This institution is vested with the power to allow the activity of religious sects if they do not contradict the Kuna religion. The institutions of the Comarca de Kuna Yala are:

1. The General Congress of the Kuna Culture
2. The General Kuna Congress
3. Los Sailagan Dummagan or Caciques and local sailas

<sup>22</sup> Congreso General Kuna de la cultura, *Ley Fundamental de Comarca Kuna Yala*, Urandí 1995

<sup>23</sup> In 1983 the Comarca Emberá and in 1996 the Comarca Mandugandí was created, in 1997 the Comarca Ngobe-Buglé and in 2000 the Comarca Wargandí in the forest of Darién.

<sup>21</sup> In the Comarca Kuna Yala, non-ethnic Kunas are, however, not allowed to purchase land.

#### 4. Local Congresses

The supreme political authority of Kuna Yala is the General Congress, which consists of representatives from all communities of the autonomous territory and meets twice a year. Each community has one vote, regardless of the population and size of its territory.

Other parts of the statute determine the role and duties of the sailas, the Governors of the communities, in the political, administrative, economic and judicial fields. The presence of state institutions is accepted, especially regarding education and defence purposes, but both soldiers and teachers must be Kuna. Panama abolished its army in 2000, as neighbouring Costa Rica did many years earlier.

The inhabitants of Kuna Yala, under Law number 16, obtained the right to exclusively benefit from both their coastal waters and the India rubber of the region, but the central state retains the right to intervene in Kuna territories if there are 'national priorities'. The central government is still in charge of permitting exploration and mining activities under the duty of compensation of the affected local population. Although there are still state institutions along with the autonomous institutions, such as schools and penitentiaries, the employees of these offices must be Kuna, elected by the regional assembly. The autonomy law (Carta Organica) determines the boundaries of the region, the communal property, the matrilineal forms of residence and many normative features of the Kuna culture.

For 40 years this law was the framework for the development of the Kuna autonomy. But in the 1990s, the urgent need arose to improve the coordination between the autonomous Comarca and state agencies. In June 1995, the General Congress of all Kuna communities approved a new 'Fundamental Law of the Comarca Kuna Yala', a result of the autonomous constituent assembly of the Kuna, and was consequently approved by their supreme institution, the Cultural Congress of the Kuna. It was approved by Panama's parliament in 1998, and today forms the basis of the autonomy of Kuna Yala.

Land ownership in Kuna Yala is communitarian, but has various modalities, also including private property of the compound of family houses. The communal land is parcelled out and cultivated by individual families. Also, some cooperatives and local associations are landowners. The most important resources for daily livelihood are fish and game. Recently Kuna Yala has experienced a dynamic increase in tourism as

an economic activity and, connected to day trips by tourist boats, the sale of its famous mola textiles. There are some elements of matrilineal organization, with women having a strong role in society, except in politics.

All natural resources and the biodiversity as such have been declared the property of the Kuna people. For individual, collective or state exploitation of mineral resources, the permission of the Kuna government is required. The development of tourism is also reserved for the inhabitants of Kuna Yala, and will be regulated by specific laws in order to respect and preserve Kuna culture. In 1996 the General Kuna Congress approved a 'Statute of Tourism in Kuna Yala', setting the cornerstones for the development of tourism in the region, affecting both the behaviour of tourists and the protection of the environment.

### 3. The relationship of the Comarca with Panama's politics

The relationship between the Kuna and the Panamanian state has often been conflict-ridden. While the Kuna were striving to get a more efficient and safely entrenched autonomy, the state pursued economic interests encroaching on autonomous rights. Two examples of recent interethnic relations exemplify the way the autonomous community tried to protect its interests vis-à-vis state interventions.

The first is the construction of the Bayamo river dam. In the 1990s, an energy corporation had persuaded some Kuna communities to allow a hydroelectric plant on their territory without first consulting the autonomy's authorities. As a consequence, the official Kuna Yala had to restructure the mechanisms of the General Congress and the powers attributed to the sailas (community leaders). The Congress was entitled to address questions of demarcation, compensation and relocation of Kuna families. The government representatives had to explain their issues before their assembly and negotiate directly. Since that episode, only the General Congress has been entitled to final decisions, based on community solidarity to defend the territory and general Kuna interests.

The second example was regarding some building projects of a hotel complex and tourist infrastructures inside the autonomous region, which could be blocked after the intervention of the General Congress. Consequently, the political system of the autonomy has

been reassessed in order to enhance the responsibility of the leaders, transparency, democratic participation of all single communities and the communitarian defence against interventions from outside.

The relationship between Panama and Kuna Yala is dynamic and constantly evolving between tensions and negotiations. There is an asymmetry in the Panamanian state at a political as well as a cultural level. The Kuna community has increasing contact with the outside world through modern communication, the education system (Kuna students are attending schools and universities in Panama), economic development and tourism. The younger generation in particular feels the constant clash of cultures. Nonetheless, Kuna society tries to preserve both its ecosystem and its culture in the framework of autonomous and democratic organization. The collective public life of the Kuna cannot easily be defined in general terms. Some scholars<sup>24</sup> have classified it as a participatory democracy with theocratic elements – democratic because the whole population is actively involved in decision-making and theocratic because the community leaders must possess religious competency and knowledge. The system recalls, certain working forms of direct democracy in Swiss municipalities and cantons. Not all political power is delegated to the elected representatives, but the Assembly continues to have a strong role, and the communities may intervene whenever they decide to do so.

Apart from its internal legitimacy and efficiency, the system has proved to be strategically flexible and adaptable to new conditions. It can communicate and interact continuously with the state's political system – two Kuna represent the Comarca Kuna Yala in the national parliament – without losing their particular features.

The political and cultural tenacity of the Kuna is a shining example to many indigenous peoples of the Americas. Here, a utopia of ethnic regional autonomy in Latin America has endured for almost 80 years. The example of the Kuna has proven that ethnic territorial autonomy is a possible solution to interethnic conflict and minority protection when an indigenous people are settled in a relatively homogenous manner. The Kuna never questioned being a part of Panama, and accepted true 'internal self-determination' as long as the state respected their right to self-governance and control of local resources. The coexistence of different

ethnic groups within the same state framework is a viable solution when societies are allowed to enjoy autonomy from the central state in key issues, but share a common democratic superstructure.

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## 3.15 Zanzibar and Tanzania



<i>Population (2001)</i>	982,000
<i>Land area</i>	2,461 km <sup>2</sup>
<i>Capital</i>	Zanzibar
<i>Religions</i>	90% Muslims, Christians, native religions
<i>Official languages</i>	Kiswahili (Lamu), English, Arabic
<i>Autonomy since</i>	1964

<http://en.wikipedia.org>

Zanzibar is the name given to the two islands of Unguja and Pemba in the Indian Ocean located 35 km off the coast of East Africa. The two islands, with an area of 641 km<sup>2</sup> cover just 0.23 per cent of Tanzania's total area (945,087 km<sup>2</sup>), while its population makes up 2.6 per cent of Tanzania's total population of about 36.5 million in 2004.

Due to its history, Zanzibar's ethnic composition differs from that of mainland Tanzania. After 300 years of integration between native Africans, Arabs and the Shirazi immigrants, three major groups have emerged: the Watumpatu and Wahadimu on Zanzibar island and the Wapemba on Pemba island. All of them consider themselves Shirazi indigenous people of Zanzibar and Pemba and refuse to be labelled as Bantu or Africans. However, Zanzibar's original settlers were Bantu-speaking Africans.

### 1. Historical background

In the tenth century, Persian merchants arrived in Zanzibar, but it was up to the later arriving Arabs, particularly the Moanis, to exercise the deepest influence over time in the islands. The Portuguese gained control of Zanzibar in 1503 and used the island as a stepping-off point for their invasion of East Africa. In 1652, Arabs from Oman and Muscat conquered the island from the Portuguese and converted it into a centre for trade of goods, especially slaves, ivory and precious stones, from their inland African settlements.

The sultans of Zanzibar moved their capital from Muscat to Zanzibar in 1856, and it became an independent sultanate in addition to a major slave-trading hub. Slavery on Zanzibar was abolished only in 1873. In 1890, the British occupied the islands, declaring it a protectorate, while Germany established a protectorate over Tanganyika in 1885 as 'German East Africa'. The British and South Africans conquered the territory from Germany during World War I, and in 1920 the mandate over the territory was granted to the British by the League of Nations.

Tanganyika gained independence on 9 December 1961, and declared itself a republic within the Commonwealth a year later. Zanzibar became independent on 10 December 1963 as a constitutional monarchy under the Sultan. But already in January 1964, the ruling Arab elite were overthrown by the African majority under the leadership of A S P Karume – a social revolution which claimed 17,000 lives on the islands. A new republic was established, and in April 1964 the Presidents of Zanzibar and Tanganyika signed an 'Act of Union', forming the United Republic of Tanzania, without any plebiscite on Zanzibar. Under this Union with Tanganyika, Zanzibar retained considerable internal autonomy. The day of the union of the two former independent states, 26 April, is Tanzania's national festival day.

### 2. The autonomy arrangement

Tanganyika and the islands are governed by a common union government, but in 1979 Zanzibar obtained its own constitution, which provides for an island parliament, government and administration separate from that of the mainland. Zanzibar enjoys a significant level of autonomy over internal affairs and budget. It can amend its own constitution and can

regulate most economic and social matters, but, as the monetary and tax policy remains with the Union, Zanzibar cannot pursue a fully autonomous economic policy.

Executive authority on Zanzibar is vested in the directly elected President who may serve a maximum of two five-year terms. The President of Zanzibar appoints a Chief Minister from the Council of Representatives, and the two together appoint up to 20 members to the governing 'Revolutionary Council'. Legislative authority on Zanzibar is vested in the unicameral 'Council of Representatives', which is composed of 81 members who each serve a five-year term. 50 of those representatives are elected by the people of Zanzibar, ten appointed by the President of Zanzibar, five are ex officio members, an attorney general (also an ex officio member) is appointed by the President, and 15 special seats are reserved for women. In Tanzania's National Assembly, composed of 325 members, Zanzibar is represented by five members, who are elected from Zanzibar's House of Representatives.<sup>25</sup>

The legal position of Zanzibar within Tanzania's constitutional setting is a quite unique system in the world, but beyond official terms, can be defined a 'special autonomy'. Zanzibar's House of Representatives can pass laws for Zanzibar without the approval of the Union of Tanzania's government as long as it does not encroach in matters reserved for the Union. On the other hand, national Union laws are valid for Zanzibar only in specifically designated Union matters. Tanzania's government is responsible for all 'Union matters' that also cover the mainland (which does not have its own government), whereas the institutions on the islands are responsible only for Zanzibar matters. In particular, international relations and foreign affairs, internal security, defence and monetary policy are the principal Union matters.<sup>26</sup>

Zanzibar's autonomous powers include information, agriculture, housing, natural resources, environment and cooperatives, trade and industry, marketing, tourism, education, culture and sports, health and social welfare, water, construction, energy and land regulations, communication and transport, youth, employment, women's and children's development,

and land reform. Zanzibar has a separate administrative framework of seven offices, each headed by a Chairman with a decentralized administration in districts and the Shehias (municipalities).

Zanzibar must pay an annual subvention to the government in Dar-Es-Salaam to help in financing those public services and state functions that it shares. The collection of income tax, customs and excise duty by the Zanzibar government is the major source for this subvention, but it seems unlikely that this income covers the cost of services that Zanzibar enjoys from the Union.<sup>27</sup>

While foreign trade is technically a Union matter, in practice Zanzibar organizes its own external commerce under its office of commerce and industry. This has resulted in a favourable balance of trade for Zanzibar, while the mainland's unfavourable balance has meant considerable economic problems for the Union. Besides, international trade relations in Tanzania are under the exclusive control of the Tanzanian Union government. Zanzibar has its own flag, but the Tanzanian shilling is the general currency for the whole state.

In the past, immigration from the mainland of Tanzania to the islands has caused rising dissatisfaction among the Zanzibaris. The problems of integrating the migrant workers into the island society led to restrictions of free movement. While foreigners who wish to visit Zanzibar from Dar-Es-Salaam need a special permit, Tanzanian citizens from the mainland need a pass to visit Zanzibar. This policy brought the traditional migration of workers of the mainland to Zanzibar during the clove harvest to an end.

Zanzibar's official languages are English and Swahili. Swahili is widely understood and generally used for communication between ethnic groups, while English is the primary language of commerce, administration and higher education.

### 3. Political dynamics and recent developments

After the formation of the United Republic of Tanzania in 1964, the President of Tanganyika became the President of the new republic and the President of Zanzibar became the first Vice President responsible for internal affairs. From 1964 to 1995, Tanzania was ruled as a one-party-system under the 'father of the

<sup>25</sup> International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, June 1999, pp.634–5; also at [<http://www.zanzibargovernment.org>].

<sup>26</sup> See Revolutionary Government of Zanzibar, Ministry of Finance and Economic Affairs, Zanzibar Country Analysis, Final Report, April 2003, at: [<http://www.tzdac.or.tz/znz/country%20Analysis.doc>]

<sup>27</sup> See: [<http://workingpapers.org/country/tanzania.htm>]

fatherland' Julius Nyerere. In June 1975, the National Assembly passed an Interim Constitution Amendment Bill officially incorporating the fundamental principles of socialism and self-reliance into the constitution, and giving legal supremacy to the Tanganyika African National Union (TANU) as the national political party on the mainland. On 5 February 1977, a new party, the Tanzanian Revolutionary Party, or Chama Cha Mapinduzi (CCM) was formed out of the merger of the TANU party and the Afro-Shirazi party of Zanzibar and Pemba. This party acted as the new 'state party' concentrating all powers in its hands.

The first official stirrings of Zanzibar's discontent with the union with Tanganyika arose in 1984 over to strengthen the CCM party. Zanzibar's officials feared that a stronger CCM would leave little room for island autonomy and ultimately lead to a unitary state. Zanzibar's President (who was perceived as closely aligned with the mainland government) resigned, and the installation of a more independent leadership for the islands temporarily silenced the opposition. In January 1985, a new Zanzibar constitution came into force, which provided for the present system of partially representative government on the islands and liberalized the judicial system.

As the Zanzibar government outpaced the mainland government in moving toward policies of greater economic liberalization in the second half of the 1980s, the island secessionists renewed their pressure for looser ties with Tanganyika, if not for full separation. Following a coup attempt in Zanzibar in January 1988, the leading economic 'liberalizers' were expelled from the Zanzibar branch of the CCM as potential threats to Tanzania's unity. Mainland troops were sent to the island to quell any potential unrest. The ties between the islands and the mainland were normalized at what is perhaps best described as a point of unstable equilibrium.

In 1990, a campaign to boycott the elections was launched to show the world that Zanzibar demanded a referendum on whether to remain united with Tanzania. Zanzibar's first multi-party elections were held on Zanzibar in 1995, for the first time under international observation. In the wake of the elections, many arrests and unlawful detentions repressed scores of opposition supporters. The victory went to the ruling pro-Union CCM party, while the main opposition party, the Civil United Front (CUF), rejected the results as rigged. An agreement between the two major parties brokered in 1999 collapsed a few months before the

elections of 2000. These elections were again won by the CCM amidst violence and fraud. 45 protesters were killed, hundreds arrested, and 2,000 took refuge in Kenya after deadly clashes with the police. The CUF did not recognize the results, and denounced massive human rights violations and repressive measures. In 2001, both parties signed a reconciliation agreement (muafaka), but political tension remained. By the end of 2004, most of the 37 issues of the agreement had been implemented. Repression was eased, most prisoners released and most refugees returned to the islands. President Karume won a second term in October 2005 in hotly contested polls. His father, the leader of the 1964 revolution, had been assassinated in 1972. It was under his father's leadership that the political partnership between Zanzibar and mainland Tanganyika had been sealed.

What is the background of the conflict? The restoration of a multi-party system in Tanzania in 1992 by democratic forces is seen as just one step to full democratization, while a strong one-party mentality in state institutions still prevails. The CCM used all its power to perpetuate its rule as a state party. The CUF also challenged the results of the general elections of 2000 or 2005 in Zanzibar as either free or fair. Although opposition parties and civic groups were allowed to organize and articulate their interests, they were also exposed to state repression, sometimes on a massive scale.

There is still no stable political climate in Zanzibar based on respect for fundamental democratic values and human rights. The polarization of support between the two leading parties, the CCM and CUF, has deepened. Muslim groups in Zanzibar and in exile, despite the great autonomy of the island in the Union, dispute the Union's legitimacy. Pemba-based 'Bismillahi' forces demand a referendum on the Union.

One major root of such secessionist movements is a growing influence of religion in Tanzania's and Zanzibar's politics and parties. When Tanzania introduced the multi-party system in 1992, it was widely understood that all parties should be secular and have a national profile, without a religious profile. But recently, Tanzania has experienced a revival of political Islam, which is particularly sensible about Zanzibar. Islamic organizations denounced an alleged political and educational imbalance between Christians and Muslims, underlining the underprivileged position of Muslims in the country. The historically stronger Islamic character of Zanzibar added to mounting

claims of extended autonomy. Only recently did Arabic become the third official language in Zanzibar. The influx of Western tourists has had a negative impact on the Muslim-dominated society of Zanzibar. On both the islands, government and opposition leaders (up to 99 per cent Muslim) want to join the Community of Islamic States (OIC), but the secularly oriented Union government on the mainland, which is religiously balanced between Muslims, Christians and native religions, does not share this wish. During the last two years, a small, radicalized minority of Muslim fundamentalists in Zanzibar has turned to sporadic violent actions using small bombs against tourist centres and state installations.

Today it is unclear whether a majority of Zanzibar's population still upholds the Union with Tanganyika. Under the ruling party, the CCM, Zanzibar is likely to remain a part of Tanzania. Tanzania has an essentially stable party system dominated by the former state party. This party (CCM) is broadly anchored in society, while opposition parties still have not taken hold. Whereas on the mainland (Tanganyika) the government leaders are generally chosen in free, if not entirely fair elections, the ruling party increased the pressure on opposition parties in Zanzibar in 2004. It remains to be seen whether the government's efforts for reconciliation in Zanzibar succeed and settle internal tensions by increasing its autonomy.

While the CCM favours the Union, the Zanzibar political opposition, with a group of about 50 parliamentarians of the mainland, have repeatedly called for a referendum to decide upon the future of the Union. They feel the existing Union of two countries has not been beneficial politically, socially or economically to either the people of Zanzibar or Tanganyika.<sup>28</sup>

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### 3.16 The Autonomous Region of Muslim Mindanao (Philippines)



<b>Population</b> (2000)	2,412,159
<b>Land area</b>	12,000 km <sup>2</sup>
<b>Capital</b>	Cotabato City
<b>Religious composition</b>	90% Muslim, 5% Catholics, 4% Protestants, 1% others
<b>Autonomy since</b>	6 November 1990

<http://en.wikipedia.org/>

The Autonomous Region of Muslim Mindanao (ARMM) is composed of five provinces and one city on the Philippine island of Mindanao and the Sulu islands (the provinces Basilan, Sulu, Tawi-Tawi, Lanao del Sur and Maguindanao). The ARMM was created on 1 August 1989 and officially inaugurated on 6 November 1990 in Cotabato City.<sup>29</sup> In August 1996, a regional referendum was held to decide whether to extend the autonomy to four other provinces, according to an agreement with the Moro National Liberation Front (MLNF). While the political and military conflict with the Moro Islamic Liberation Front (MILF) is still going

<sup>29</sup> See [<http://en.wikipedia.org/wiki/>]: Creation by the Republic Act No. 6734 under President Aquino.

on, on 19 September 2001 the province of Basilan and the city of Marau were included in the area of the ARMM. Cotabato city is not a part of the ARMM, but nevertheless is its administrative centre.

Spanish rule and colonization have deeply changed the religious character of the islands. In 2005, Muslims accounted for about 5 per cent of the total population of the Philippines, living mostly in the South of Mindanao, Southern Paliwand and Sulu. Today, 20 per cent of Mindanao's 14 million odd inhabitants are Muslims, whereas in 1913 98 per cent were Muslims. Mindanao's 'Moros' are not a single ethnic group, but consist of at least ten subgroups with distinct cultures and languages. The present-day area of the ARMM is home to some of the Moro groups, but not all peoples living in the ARMM are Muslim Moro, namely the Maranaos, Tansugs and Lumad.

#### 1. Historical background and genesis of the autonomy<sup>30</sup>.

Mindanao, the second largest island in the Philippines, first came in contact with Spain in the late sixteenth century, when Spanish soldiers and friars colonized some areas. Islam spread from Malaya to Mindanao in the fourteenth century and in 1622 most of Mindanao was under Islamic rule. Magellan was killed by a Muslim chieftain. The Spaniards called the Muslims 'Moros' according to their labels for Northern African Islamic people. Not all peoples of Mindanao were Islamic when the Spaniards arrived, but some of them were also animistic before they converted to Christianity. The arrival of the Spanish in the late sixteenth century united various Muslim groups in a fruitless war against the colonizers. Yet the Spanish colonial troops could never completely subjugate the Moros. Later some tribes and peoples of Mindanao resisted American domination after the Spanish-American war of 1898, when the United States took control of the Philippines, which in the Peace Treaty of 1898 Spain ceded to the US for \$20 million. Until 1902, the new colonial power crushed the insurgency of the Moros on Mindanao, which was directly administered by the US army. After 1920, the Americans reinforced

<sup>30</sup> More in detail about the genesis of the conflict: Rosalita Tolibas-Nunez (1997), *Roots of Conflict: Muslims, Christians and the Mindanao Struggle*, Asian Institute of Management, Makati City; and Mark Turner, *Resolving Self-determination Disputes Through Complex Power-sharing Arrangements: The Case of Mindanao*, in: Marc Weller/Barbara Metzger (eds), 2008, *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Amsterdam, Nijhoff, pp. 161-192

their efforts to implant a new power elite on Mindanao, imported from the Christian-dominated North, while the Moro elite were increasingly integrated into US study programmes in order to allow 'integration'. Only in the twentieth century under American occupation was Mindanao 'opened' for immigration from the Northern islands.

When the Philippines suffered extensive damage during the battles between Americans and Japanese troops in World War II, Mindanao emerged relatively unscathed. After 1945, it was the new independent government of the Philippines that undertook extensive new colonization projects in Mindanao resulting in a huge population increase. In 1946, when the Philippines became independent, nobody asked Mindanao's Moros if they wished to be integrated into the new republic. Their petitions and protests remained unheard. The central government in Manila embarked on a double strategy. On the one hand, it attempted to 'develop' the region, due to its rich mineral resources and its vast fertile lands. On the other hand, the resettlement of landless farmers of the North and former guerrillas of Communist resistance movements should ease social problems of the North and develop the export capacities of the Philippine economy as a whole. Under the Presidents Magsaysay and Marcos, with American support, this kind of internal colonization was the official Philippine policy.

Whereas the Muslim population on Mindanao in 1913 still accounted for 98 per cent of its total population, due to this policy in 1976 not more than 30 per cent of the island's population were Muslim Moros. Before colonization, the Moros and the Lumad (the non-Muslim indigenous peoples) owned all of the land, but today their descendants own not more than 15 per cent of it, mostly in remote and less fertile areas. About 80 per cent of the Muslim families today are landless tenant farmers. The public administration, military forces and trade and service sectors are almost completely in the hands of the relocated settlers from the North. The Philippine government, dominated by Christians, had deliberately neglected and displaced the Muslims of Mindanao from their social and economic base.

The colonization of Mindanao in the twentieth century was all but peaceful. The settlers formed armed militias, backed by the army and supported by paramilitary Christian sects. On the other side, native Moros, finding themselves outnumbered and in many cases pushed off their lands, were driven into resistance and set up Muslim defence commandos. In the Marcos era (1966–

86), this brought about increasing endemic violence, transforming Mindanao into the most highly militarized region of the whole archipelago. For some time, 80 per cent of the Philippine army was deployed on Mindanao to protect the settlers and the interest of the foreign companies. The army collaborated continuously with paramilitary anti-Muslim troops.

In 1968, the MNLF was founded as an anti-colonial liberation army against the central government, united under the banner of the Moros' claim for self-determination. The declared aim of the MNLF was the constitution of a separate independent state on Mindanao, the 'Republic of Bangsa Moro'. When the Philippine army intervened, MNLF guerrilla groups fought back. Many hundreds of villages were burnt during the guerrilla war and the state army's repression. In 1972, a single battle in the city of Jolo claimed 2,000 victims. Since 1969 about 120,000 people had been killed, and hundred of thousands of families internally displaced. Still today, there are more than 200,000 Moros living in the Malaysian federated state of Sabah, waiting to return to their homes in Mindanao.

In 1976, the Philippine government, headed by the dictator Marcos, pledged to grant autonomy to various provinces of Mindanao. Under the peace treaty signed in 1976 by the conflicting parties in Tripoli (Libya), two autonomous regions should have been established, but the autonomy remained purely on paper. It became clear that President Marcos had merely made tactical concessions to divide the Moro popular resistance. Some development agencies were so badly funded that they had nearly no impact, for instance, the Islamic Bank. The Islamic law of Sharia was not introduced as claimed by the Moros. The financial endowment of the autonomous region remained very poor. Finally the MNLF rejected these presidential decrees and resumed the war.

After the end of Marcos' regime in 1986, the Philippines' new strongman, Fidel Ramos, convinced the leader of MNLF, Nur Misuari, to try a new style of autonomy for the Muslims of Mindanao. On 1 August 1989, the 'Organic Law for the ARMM' was signed and enacted as Republic Law number 6734. The extension and the statute of the new autonomous area left both the MNLF and MILF unsatisfied, leading them to boycott the constitutional process. The MILF, a more radical organization for self-determination, had been founded already in 1977.

The MNLF broke off peace negotiations with the government over the majority rule requirements

of the organic act of November 1989, calling for a boycott of the announced plebiscite. Only four provinces of Mindanao voted for inclusion in the planned Autonomous Region: 'The new Autonomous Region looked very similar in size and structure to the former ones and still very far away from the autonomy envisioned by the Muslim signatories of the Tripoli agreement.'<sup>31</sup> In the plebiscite of 1989, the predominantly Christian residents of 14 provinces of Mindanao and ten cities decided not to join the ARMM. Thus, on 6 November 1990 it was enacted in just four provinces: Maguindanao, Nanao Sur, Tawi-Tawi and Sulu. In 2001, Basilan and Marawi City joined in.

Only on 2 September 1996 could the peace negotiation with MNLF be concluded with Indonesian mediation. Fidel Ramos signed the treaty with Nur Misuari. This peace treaty contained not only the constitution of the ARMM, but also established a 'Southern Philippines Council for Peace and Development', embracing all 14 provinces of Mindanao. However, from the beginning, the Christian majority of Mindanao opposed the peace treaty. Especially in the provinces with a Christian majority, the new role of the MNLF was rejected. The Christians protested against not having been involved in the peace and autonomy negotiations, and the Lumad for being completely excluded.

On the other side, the radical MILF never recognized the autonomy or definitive peace treaty signed by the MNLF and the government in Manila in 1996, making claims for the establishment of genuine autonomy for the 13 provinces with Muslim populations, as provided by the agreement of Tripoli in 1976. Other more radical groups kept on struggling for an independent 'Islamic Republic of Bangsa Moro', dismissing the autonomy of the ARMM as just one more bureaucratic device to control and divide Moros.

Manila started to hold talks with MILF as well, but in August 1997 these talks ended in a deadlock, as the MILF demanded a total withdrawal of the Philippine army from Mindanao.<sup>32</sup> The MILF forces recruited strongly from former MNLF guerrillas, and are said to have 15,000 soldiers. The government negotiated only with the MNLF, not with the rest of the Moro militant forces. The MILF withdrew from peace talks in 2000 and launched a new guerrilla war. President Estrada offered anything other than local autonomy. Later, Islamic guerrilla splinter groups were staging

grounds, such as Abu Sayyaf and Jamaa Islamiya, that undermined the more moderate and nationalistic aspirations to full autonomy of the MNLF and MILF. After 2000 these groups intensified their attacks.

From 1990 to 2005, the Philippines had four Presidents (Aquino, Ramos, Estrada, Arroyo), each of whom approached Mindanao's Muslim question differently. The guerrilla war in other parts of Mindanao went on with thousands of victims in the same period. The ongoing military conflict on Mindanao reinforces the position of the Philippine army in the state vis-à-vis the democratic government. President Arroyo still depends on the army, since she was able to become President only with the army's support.

Recently, the army was even able to increase its position with the 'campaign against terror' following 9/11, leading to the risk to conflate the MILF and political movements for self-determination of Muslim Mindanao with the Islamic fundamentalists commanded by Abu Sayyaf. In 2001, President Arroyo started new peace talks with the rebels, refraining from defining MILF as a 'terrorist group', although it has been suspected of having connections with Abu Sayyaf, al-Qaida and Jamaa Islamiya.

## 2. The autonomy arrangement

The ARMM is a special region covering the Mindanao's territories populated by a majority Muslim population.<sup>33</sup> Section 16 of the constitution endows the President with the 'general supervision over the Autonomous Regions' and Section 17 states that all powers, functions and responsibilities not granted by this constitution or by law to the Autonomous Regions shall be vested in the national government. An organic act was supposed to define the basic structure of government of the two Autonomous Regions, consisting of a legislative assembly and an executive department. The organic act shall likewise provide for special courts with personal, family and property law jurisdiction consistent with the provisions of this constitution and national laws.

<sup>33</sup> 'There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines' (Section 15 of the constitution). See [<http://www.gov.ph/aboutphil/10.asp>]: The constitution of the Philippines.

<sup>31</sup> 'Meaningful autonomy or endless war?' in ASIA Source, 30 May 2006.

<sup>32</sup> Syed Serajul Islam, 2003, p.195–224.

The creation of the Autonomous Region would have been enacted only when approved by a majority of voters in the constituent units in a plebiscite. Only the provinces, cities and geographic areas favourable in such a plebiscite would have been included in the Autonomous Region. As illustrated above, only four provinces of Mindanao approved the inclusion.

Section 20 of the Philippine constitution provided a clear limitation of the scope of the autonomy. Within its territorial jurisdiction and subject to the provisions of this constitution and national law, the organic act of Autonomous Regions provide for legislative powers of the ARMM over:

1. administrative organization;
2. creation of sources of revenues;
3. ancestral domain and natural resources;
4. personal, family and property relations;
5. regional, urban and rural planning development;
6. economic, social and tourism development;
7. educational policies;
8. preservation and development of the cultural heritage;
9. such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.<sup>34</sup>

Finally the constitution is not clear about the attribution of local police functions, whereas 'defence and security of the regions shall be the responsibility of the national government'.<sup>35</sup>

In the ARMM only a partial autonomy has been achieved so far. The ARMM's set-up is patterned after that of the national government with a lack of democratic checks and balances. Hence, today the ARMM is still one of the most backward regions of Mindanao, and the Muslims seem not to have taken advantage of the autonomy. Some institutions such as the Sharia and the Medressas (religious schools) are still not respected in the ARMM. Multinational export-oriented corporations have exploited the region rather than meeting local needs, while the Moro population was further driven to the economic periphery.<sup>36</sup> A Muslim

state on Mindanao seems to be a deadlock, but the radical Moro organizations can bundle the frustration of unemployed youth in the poorest areas against the central state.

Among the Philippine Muslims a general feeling of failure to deliver on the promises of autonomy can be perceived. There have been structural defects, a lack of resources and knowledge to effectively perform its functions as well as difficulties of regional government due to the distance of the government's seat from the single provinces and bad communication.<sup>37</sup> But the ARMM's leaders blame the central government for its inefficiency. They point at the fact that development programmes are dictated by Manila, instead of an expression of the democratic institutions of the ARMM, whereas the regional government is not accountable to the population.<sup>38</sup>

Even within the framework of autonomy, the 1996 peace agreement left many questions unresolved. The Philippine parliament never ratified the accord, and eliminated funding for its implementation. Finally it succeeded in watering down the final agreement. Two phases were arranged in 1996: first, the establishment of the Southern Philippines Council for Peace and Development (SPCPD), and second, the establishment of a new regional autonomous government, scheduled for September 1999, which was not done. The implementation of the peace accord was only partial, and the ARMM neither got the promised power, nor the funds.<sup>39</sup>

Hence, the peace agreement was only partially implemented. Since the creation of the ARMM in 1990, the autonomy has been hampered by structural defects, lack of resources and knowledge to effectively perform its functions. Some NGOs list the following factors for this failure:<sup>40</sup>

- weakness of the Regional Legislative Assembly;
- no internal taxation authority;
- the lack of real power and funds of the SPCPD;
- bad governance: personality and patronage-based or even feudalistic governance;

34 See [<http://www.gov.ph/aboutphil/10.asp>] for the constitution of the Philippines, Section 20.

35 Section 20, Constitution of the Philippines

36 Syed Serajul Islam, 'Ethno-communal Conflict in the Philippines: The Case of Mindanao-Sulu Region' in Rajat Ganguly and Ian Macduff (2003), *Ethnic Conflict and Secessionism in South and Southeast Asia*, London, Sage, pp. 219–21.

37 See Centre for Autonomy and Governance, ARMM Roundtable Series, No.2, Manila, 29 October 2003.

38 *Ibidem*

39 See [[http://www.wsws.org/de/2000/mai2000/jolo-m13\\_prn.html](http://www.wsws.org/de/2000/mai2000/jolo-m13_prn.html)]

40 See Centre for Autonomy and Governance, ARMM Roundtable Series, No.2, Manila, 29 October 2003.

- widespread corruption;
- lack of social and economic empowerment of population;
- a lack of an independent media system.

As in the whole Philippines, there is no efficient and truly democratic electoral system. But there is a bright spot: the strengthening of civil society movements on Mindanao, which contribute to a peaceful process towards a more complete autonomy.

### 3. An autonomy under construction

Today, after 19 years of existence, the ARMM seems still a 'project in the making'. A key issue for the ARMM today is to clarify the relationship and the respective responsibilities of Manila's power in the region and that of the ARMM's institutions. In the meanwhile the violent struggle for enhanced self-determination in Muslim Mindanao is not over yet. Despite the operating autonomy of the ARMM the Muslims on Mindanao seem to be both economically and culturally in decline. Parts of the newly educated Moro elite, still denied opportunities of political participation and qualified jobs, are prone to further violent resistance. Since 1990 the MILF, with 6,000 guerrillas, has taken over the struggle from the MNLF, mobilizing internal and external support. The MILF separated from the MNLF in 1977 and carried on with guerrilla activities even after the definitive peace agreement of 1996 between the MNLF and Manila government. Thousands of former MNLF militants were frustrated with the functioning of the ARMM and decided to incorporate into the MILF to continue the guerrilla war.

Various options are on the table, ranging from an enhanced autonomy up to a federal renewal of the whole state. In 2001, the new President Gloria Arroyo reinitiated peace negotiations with the MILF and reached a ceasefire. In 2001, after the 9/11 attacks, American troops were allowed to intervene in Basilan (Sulu Islands) against the guerrillas of Abu Sayyaf, but to no avail. Since 2005, Malaysia is attempting to broker a new peace deal between MILF and Manila. The MILF has taken distance from Abu Sayyaf, which is the smallest, but most radical group of the Islamic separatist forces on the Philippines.

On the other hand, in the national parliament in Manila there are proposals to transform the Philippines in a federalist state. Under such a reform, to be elaborated and approved by a constituent assembly, the existing unitary state should be divided along

geographical and linguistic or ethnic criteria. Three states could be established on Mindanao, one of them, Bangsamoro, reserved for the Islamic population. A main rationale for the Philippine federalists is the ongoing conflict on Mindanao and the need for a just and permanent settlement. Both of Mindanao's major Moro organizations hail the proposal for a federal state of the Philippines with Bangsa Moro as one of the federated states.

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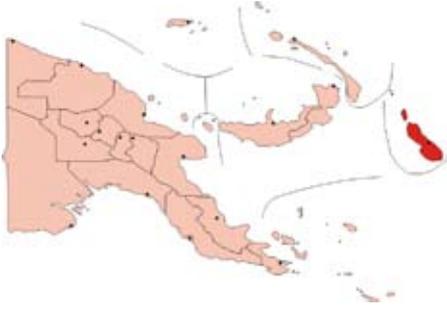
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## 3.17 Bougainville and Papua New Guinea



<b>Population (2005)</b>	175,160
<b>Land area</b>	9300 km <sup>2</sup>
<b>Capital</b>	Arawa
<b>Official language</b>	English
<b>Autonomy since</b>	2002
<b>Ethnic composition</b>	19 different languages

<http://en.wikipedia.org/>

Located nearly 1,000 km east of the capital of Papua New Guinea (PNG), Bougainville includes the main island of Bougainville and some smaller islands. With 19 main languages and several distinct ethnic groups, the identification of a shared 'Bougainville identity' is a rather arduous operation. Nevertheless, Bougainville has a common history, traditions and customs that include better status of women in society than in the rest of PNG.<sup>41</sup> Although geographically distant from the mainland, Bougainville's identity is clearly Melanesian due to an all-encompassing conception of the land.<sup>42</sup>

### 1. The genesis of the conflict

Bougainville's colonization occurred relatively late. After being dominated by British-Australian economic interests, in the late nineteenth century the island fell

<sup>41</sup> Roderic Alley (2000), 'Ethnosecession in Papua New Guinea' in Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States*, Hong Kong, pp.225-53.

<sup>42</sup> A comprehensive analysis of the Bougainville conflict is provided by: Anthony J. Regan (2008), *Resolving the Bougainville Self-Determination Dispute: Autonomy for Complex Power-sharing?*, in: Marc Weller/Barbara Metzger (eds), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Amsterdam, Nijhoff, pp. 125-160

under German control. After the end of World War I, Bougainville was designated a mandated territory of Australia, which treated the island as a backwater. But despite colonial rule, Bougainville's educational facilities produced an identifiable indigenous political elite. Already before the independence of PNG in 1975, some societies emerged claiming self-determination for Bougainville. They imparted urgency to such local needs as village government, area tax relief and return of authority to traditional leadership systems. A political movement developed, striving for economic, cultural and educational autonomy. Despite its close cultural and historical links with the Solomon Islands, Bougainville was integrated into PNG when the state became independent in 1975.

A traumatic intervention in the island's development was the building of a copper mine by the British mining giant Rio Tinto Zinc in 1969. 800 villagers were driven out and another 1,400 left without fishing rights as land was seized, and the subsistence livelihood of gardening and fishing was destroyed as 220 hectares of rainforest were poisoned, burned and bulldozed. After 20 years of activity, the mine had grown to a 500 metre deep crater, 7 km in circumference, creating over a billion tonnes of waste. This was dumped to the Juba river valley, turning it bright blue. In 1988, after 19 years of ignored protests, petitions and compensation claims, some Bougainvilleans had had enough. A handful of islanders stole company explosives, destroying electricity pylons, buildings and machinery. By such tactics, they succeeded in closing the mine.

Before the beginning of the hostilities in March 1988, the mine accounted for around 45 per cent of all PNG's total export earnings. This economic importance drove the PNG to respond with a harsh military repression, supported by Australia. Bougainvilleans formed the Bougainville Revolutionary Army (BRA) to defend their land and people from further exploitation and declared the island independent from PNG. Australia was totally compromised by its former role as a colonial power in Bougainville and PNG from 1918 to 1975, with a brief interruption during World War II. During the Bougainville war, Australia provided PNG with the bulk of its military equipment, financial aid, military training and advisers to crush the armed resistance. The PNG navy could maintain its stranglehold around the island only thanks to Australian boats, helicopters, arms and supply lines. The population around the BRA operating fields were forced into 'care centres', nothing but concentration camps.

In 1997, the PNG government hired British and South African mercenaries to curb the resistance movement, but the offensive failed. An unarmed UN Peace Monitoring Group (New Zealand, Fiji, Vanuatu, Australia) was stationed on the island. In August 1997, a 'Pan-Bougainville Leaders Congress' was held, stating in its final resolution:

The people of Bougainville are united in their common aspiration for an independent homeland and call upon the PNG Government to give the people of Bougainville the chance to exercise their individual and collective rights to self-determination.<sup>43</sup>

Previous assertions that Bougainville should however be a part of PNG began to get modified. Even the 'Bougainville Reconciliation Government' (BRG) was thinking about something less than total independence. Also, Bougainville's direct neighbour New Caledonia was inspiring for the BRG: New Caledonia gained autonomy status as a part of France according to the Nouméa Accord of 1998, and it could evolve its 'shared sovereignty' leading to eventual referendum on independence between 2014 and 2018.

## 2. The Lincoln peace agreement

A formal peace agreement for Bougainville was signed at the Lincoln University in Christchurch (NZ) on 23 January 1998 by all representative forces of the Bougainville resistance as well as the PNG government. Key elements of this agreement included:

- a permanent and irrevocable ceasefire scheduled from 30 April 1998, with an extension of the existing truce monitoring group to that date;
- an agreement for the phased withdrawal of PNG forces subject to the renewal of civilian authority;
- the appointment of a UN special observing mission to monitor peacekeeping arrangements;
- an offer by the PNG government to remove bounties and grant amnesties and pardons to 'persons involved in crisis-related activities';
- an agreement to cooperate in the restoration and development of Bougainville; and
- an agreement to discuss Bougainville's political future and elect a Reconciliation Government before the end of 1998.

There was no attempt to assess Bougainville's future

political status, nor to definitively solve the future of the Panguna copper mine. Violence in Bougainville effectively stopped, and public services and economic activities slowly resumed. But a number of problems, from unemployment, inadequate weapons surrender, lack of police training and economic reconstruction remained unresolved.

In the political field, the division between pro-autonomy forces and pro-independence forces persisted. In late 1998, the PNG parliament was supposed to establish the BRG, by an amendment of the constitution, causing some uncertainty over the maintenance of the peace process.

In May 1999, a 69-member 'Bougainville Peoples Congress' was elected to provide a firmer basis for local representation in negotiations with the PNG government regarding the political status. In May 2000 there was an agreement on a democratically elected autonomous government. But only in August 2001 was a Bougainville Peace Agreement finally signed by all conflict parties. This outcome, which was endorsed by statements from the UN and Commonwealth Secretary Generals, was joyously celebrated in a major ceremony at Arawa, the centre closest to the conflict's point of origin. The agreement comprised three parts:

1. an agreed deliberative mechanism for the formulation of Bougainville's autonomy within the framework of PNG constitution;
2. a constitutionally guaranteed referendum on the territory's political future to be allowed to the Bougainvilleans no sooner than ten years, but no later than 15 years;
3. a practical plan for the phased, internationally supervised disposal of weapons.

Full implementation of the Bougainville Peace Agreement of 2001 required the PNG parliament to pass amendments to the country's constitution. Without passage of those amendments, full disarmament by the warring factions of the territory would not have occurred. The need for local, tribal reconciliation ceremonies, joint weapons surrender and economic recovery were considered essentials in the peace building process. Governor John Momis headed the new autonomous government, and was entrusted with the task of discharging police, tax, export revenue, criminal law, public service and judicial functions. The PNG government retained international shipping, international civil aviation, foreign affairs and defence. Following the agreement, the PNG Defence Forces began moving out of the territory.

<sup>43</sup> Quoted by Roderic Alley (2000), *op. cit.*, p.232.

In March 2002, the PNG parliament passed a constitutional amendment allowing Bougainville to gradually introduce an autonomous system of government.<sup>44</sup> The law also authorized the right to hold a full referendum on Bougainville's future status between 2011 and 2016. Full implementation of the agreement remained subject to certification by UN weapons inspectors, verifying that sufficient surrender of arms had occurred to permit continued administrative disengagement. In welcoming parliamentary approval of the peace agreement, the UN Security Council statement in April 2002 accurately described it as comprising three pillars: autonomy, a referendum and a weapons disposal plan.

### 3. Bougainville's autonomy

Since March 2002, Bougainville has a special autonomous status. Although weapons surrender has gradually proceeded, Bougainville's economic development is equally important for autonomy's future viability. Actual transfer of functions will depend on local tax and loan generating capacity. Cocoa and copper production has revived, but public revenues barely cover essential upkeep, let alone financing outlays for badly needed post-conflict rehabilitation. In April 2002, Bougainville Copper announced its intention to dispose of its Bougainville assets, its board acknowledging that there was no prospect of redeveloping the closed mining operation on the island. Given its prevailing subsistence conditions and the scale of its development needs, Bougainville will require continuing external, economic and technical assistance from its current Australian, New Zealand and EU donors well into the foreseeable future.

Bougainville's identity will be shaped by PNG's future state structure.<sup>45</sup> Notwithstanding the internal divisions in Bougainville's society, the desire for autonomy is deep-seated. But it is not only ethnic nationalism that drives the upsurge for secession from PNG. Protracted violation of civilian human rights and the intervention of mercenaries has had the result that the PNG government could no longer hold up its pretension to treat Bougainville as an exclusive internal matter. Then, the conviction arose that Bougainville could not function in the future outside of an institutionalized dialogue between PNG and BRA. The resumption of armed conflict would have caused

damage for both: 'The people on the island had offered enough at the hands of all belligerents to appreciate the fact that neither full self-determination nor the status quo would ensure the freedom they sought.'<sup>46</sup> Bougainville's interests are represented in the PNG national parliament by a single representative. The major task of the new autonomous government is to improve the public infrastructure, especially the roads and schools.

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<sup>44</sup> See the constitution of PNG, article 287, at: [http://www.paclii.org/pg/legis/consol\\_act/cotisopng534/](http://www.paclii.org/pg/legis/consol_act/cotisopng534/)

<sup>45</sup> Roderic Alley (2000), op. cit., p.250.

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<sup>46</sup> Ibid., p.252.



### 3.18 Aceh in Indonesia

<i>Population</i> (2005)	4,031,589
<i>Land area</i>	55,392 km <sup>2</sup>
<i>Capital</i>	Banda Aceh
<i>Ethnic composition</i>	Acehnese, Gays, Alas, Tamiang, Aneuk, Jamee, Kluet, Nieh, Simeulue
<i>Official language</i>	Basa Aceh, Bahasa Indonesia
<i>Autonomy since</i>	2001 (2006)

<http://en.wikipedia.org>

#### 1. The historical background

The province of Aceh, bordering the street of Malakka in the extreme west of the island of Sumatra in Indonesia, was one of the first areas of South-east Asia to become Islamized in the thirteenth century. The Acehnese call their country 'serambi Mekkah', Mekka's veranda. Aceh's official name today is Nangroe Aceh Darussalam.<sup>47</sup>

Aceh's majority population has its own language (Acehnese, Basa Aceh) practices an orthodox form of Islam. 97 per cent of the population are Muslim (80 per cent of them 'Santri') and 2 per cent Christian. In 2002, the orthodox Islamic law of the Sharia was reintroduced. A certain influx of Javanese immigrants, mostly in the major towns, transplanted by the government of Jakarta from Java in the framework

of the so-called 'Transmigrasi' programme, in recent years provoked conflicts between new immigrants and Acehnese residents.

The Acehnese have been subdued by colonial powers as one of the last peoples of the Indonesian archipelago. Only in 1873 did Dutch troops begin to penetrate the region north of the important town of Medan, launching a 30-year war, until around 1900 when the Acehnese resistance movement had to surrender. Some of their most prominent leaders died or were executed. This colonial war left deep scars in the collective historical memory of the Acehnese province. The Acehnese hailed the Japanese occupation in 1940, as the hated Dutch were defeated. Even later in the history of independent Indonesia, the anti-colonial resistance has always been a historical reference for the heroic defence of the rights of the people of Aceh against foreign rulers, Jakarta and Java included.

The conflict between Aceh and Indonesia's central government can be traced back to the first years of Indonesian independence. After the declaration of independence on 17 August 1945, Aceh unconditionally backed Indonesian efforts to build up an independent state and supported it financially and logistically. The first aircraft of the Indonesian army are said to have been delivered from Aceh. But the Acehnese always stressed their distinct character and succeeded in establishing their own province. However, as early as 1953, the province of Aceh was attached to the neighbouring province of Northern Sumatra, dominated by the mostly Christian Bataks. The Acehnese national leaders of that time, supported by ulamas (religious

<sup>47</sup> [<http://www.NAD.go.id>]: Official website of the Aceh government.

leaders) like Daud Bereuh, organized the resistance against the government in Jakarta, also from an Islamic perspective. Daud Bereuh joined the Darul Islam (House of Islam) movement, which in Sulawesi and Western Java was struggling for an Islamic state in all of Indonesia.

In 1959, the government of Sukarno succeeded in breaking up the Islamic Front making significant concessions to the Acehnese in the fields of education and religious judiciary. Aceh became a province again, and was promoted to a 'special area' along with the Sultanate of Yogyakarta and the capital, Jakarta. While this special status was officially preserved under Suharto's regime from 1965 onwards, the attached privileges were abolished, and Aceh had to suffer the same centralist and corrupt bureaucratic regime as the rest of Indonesia. This alienation further increased when huge natural gas fields and other mineral resources started to be explored and exploited by the state complex of PETRAMINA and by the American company Mobil Oil. Aceh possesses one of Indonesia's largest reserves of oil and natural gas, but its population could take nearly no benefit from the enormous profits gained in these activities for improving Aceh's infrastructure and public services. Moreover, the indigenous local workforce was permanently discriminated against, as migrant workers from Java flocked into the province. Popular frustration inevitably fuelled ethnic and political tensions.

The divide between Aceh and the rest of Indonesia also exists with respect to cultural and religious features. The Acehnese, due to their historical trade links with the Middle East, practise an orthodox version of Islam, while the rest of the archipelago tends to blend Islam with animism and local traditions. The secular nationalism espoused by Suharto's 'New Order Regime' (1965-98) not only repressed all political opposition, but also promoted 'Indonesian culture' over the whole state. This was viewed by many Acehnese as merely a cover for Javanese chauvinism and a threat to their Islamic tradition. Their dissatisfaction fuelled popular claims for greater autonomy or complete separation from Indonesia.

It was out of these groups that the armed secessionists of the 'Movement for an independent Aceh' (Gerekan Aceh Merdeka (GAM)) emerged under the command of Hasan di Tiro, a descendant of the legendary national hero Cik di Tiro. For 29 years the GAM fought against Indonesian security forces with alternating phases of ceasefire and full-fledged war. In 1989, the

central government officially declared Aceh a 'military operational zone' (Daerah Operasi Militer (DOM)). For ten years, from 1989 to 1998, the Indonesian army, unhindered by the international community, committed scores of human rights abuses and war crimes against Aceh's civilian population. More than 12,000 people lost their lives.

## 2. The genesis of the autonomy

After Suharto's fall in 1998, Aceh quieted down with a first 'Cessation of Hostilities Agreement' (CoHa) between the GAM and the Indonesian military that entered into force on 1 January 2002. This paved the way for a first agreement on autonomy, enacted on 9 August 2001, containing some powers in the cultural sphere and some financial concessions. But the centralist administration and the foreign control of the principal economic resources remained untouched. As the resistance movement supposed, only certain parts of the local elite, linked to the Jakarta establishment, would have benefited from this restricted autonomy agreed upon in 2001. The new President, Wahid, underestimated the will of Aceh's population to self-determination, and the election to President of Indonesia of Megawati Sukarnoputri, a fierce nationalist, already heralded a new attack on Aceh's national movement. A non-violent civil movement caused more than a million people to rally for a referendum on independence, which was strictly rejected by President Sukarnoputri.

The first experiment with autonomy collapsed in May 2003, when the Jakarta government introduced martial law and began a large-scale offensive in the region. In 2003, the whole province of Aceh was declared a civil emergency area. But 40,000 troops were not enough to defeat the GAM, whose guerrilla tactics again prevailed. According to a Human Rights Watch report,<sup>48</sup> the Indonesian military committed numerous extra-judicial killings and human rights abuses during this offensive and caused the displacement of more than 100,000 people.

On 26 December 2004, the western coast of Aceh, including the cities of Banda Aceh, Calang and Meulaboh, was among the areas hardest hit by the tsunami, killing about 230,000 people and leaving at least 400,000 homeless. Some quarters of the capital, Banda Aceh, were completely destroyed, and many

48 See [<http://www.hrw.org/>]: Human Rights Watch.

villages and smaller towns disappeared from the landscape. After the devastating tsunami, both sides declared a ceasefire and reiterated the need to resolve the conflict. Because of the separatist movement in the area, the Indonesian government put access restrictions on the press and aid workers, but also opened the region up to international relief efforts.

In 2005, Indonesia's first freely elected President, Yudhoyono, pressed for new negotiations with GAM, aimed to reach an agreement on autonomy. The peace talks, subsequently brokered by Finland and held in Helsinki, eventually resulted in a Memorandum of Understanding (MoU)<sup>49</sup> which was signed in Helsinki on 15 August 2005, ending 29 years of violent conflict. By December 2005 the military wing of the GAM had been formally disbanded, and most of the Indonesian army pulled out from Aceh.

The military conflict in Aceh was not chiefly caused by ethnic-religious reasons, although since the first autonomy act of 2001, the reintroduction of the Sharia was an important issue. The conflict has, rather, grown over economic and political interests and the protracted denial of political freedom and self-governance of the Acehnese population by Indonesia's central government. Besides GAM's military rebellion, there is also a network of civilian political forces in Aceh, committed to non-violent struggle, which asked for a popular referendum to give Aceh the chance to decide between independence or autonomy.

On the side of the Indonesian state, there have been at least three groups interested in a protracted conflict. First, the Indonesian military forces which presumably fight for the national integrity of the country, as the force guaranteeing the unity of the Indonesian state. Behind this official attempt at legitimacy, there are strong economic interests of the military elite in exploiting Aceh's rich natural resources. Local military forces are directly in charge of providing security to the oil corporations of Mobil-Exxon in the Malakka Strait, as well as in smuggling, arms and drug traffic. Among military commanders, the following phrase circulated: 'If you come back from Aceh, you are either rich or dead'. A third group is a part of the local elite, closely linked to the military system, and fears the loss of important profit sources in a more peaceful environment.

### 3. Aceh's new autonomy

Aceh's autonomy is thus still in the making, but after the failure of the two first attempts in 1953 and 2001, the third attempt is more promising. After 29 years of war and the trauma of the tsunami of 26 December 2004, the political environment seems to favour a lasting peace solution based on full self-governance of the province. In their MoU of August 2005 the government of Indonesia and the Free Aceh Movement of GAM agreed on the key issues as a complete ceasefire, the renouncement of Aceh's independence, the decommissioning of all arms. On the other side, the Indonesian government agreed to allow the GAM to transform in a regional political party in Aceh. This would be an exception to constitutional law, which allows only nation-wide parties, present in at least half of all provinces in Indonesia. The number of troops to remain in Aceh after the relocation was fixed at 14,700, the police force at 9,100. An Aceh Monitoring Mission (AMM) will be established by the EU and ASEAN to monitor the implementation of these commitments.<sup>50</sup>

A frequent complaint about the 2001 Special Autonomy Law was that it was enacted without sufficient consultation in Aceh, and contained provisions that Acehnese, if asked, might have contested. This time, starting with September 2005, there were extensive consultations with the Acehnese population and NGOs both in Aceh and in the diaspora communities. The draft law emerged from those consultations with the Aceh provincial legislature which had a proposal elaborated by three Aceh universities. Assisted by several technical experts and with funding support from the United Nations Development Programme (UNDP) Partnership for Governance Reform in Indonesia, an 18-person special committee engaged in a month-long consultation process with GAM, religious leaders, NGOs, academics and members of the provincial government. The final draft of 209 articles was a composite created from different documents drafted by GAM, civil society and the Governor's office.

On 11 July 2006 a new Indonesian 'Law on the Governing of Aceh' was released by the parliament in Jakarta.<sup>51</sup> The new autonomy law for Aceh goes beyond the 2001 Autonomy Law in several respects:

1. It establishes the boundaries of Aceh consistent

<sup>49</sup> The full text of the memorandum can be found at: [[http://ue.eu.int/uedocs/cmsUpload/MoU\\_Aceh.pdf](http://ue.eu.int/uedocs/cmsUpload/MoU_Aceh.pdf)].

<sup>50</sup> Crisis Group Asia Briefing, n.44, 13 December 2005; 'Aceh: so far, so good' at: [<http://www.icg.org>].

<sup>51</sup> The text of the law can be found at: [[www.NAD.go.id](http://www.NAD.go.id)] (in Bahasa Indonesia only).

with the 1 July 1956 borders. This reflects a consensus among most stakeholders that those boundaries are fixed, closing the door on any future division of Aceh through the process of administrative division.<sup>52</sup>

2. The name of Aceh and the titles of senior elected officials will be determined by the legislature of Aceh after the next elections. In line with the Helsinki agreement, the bill makes no reference to 'province', 'autonomy' or 'special autonomy' and establishes the name of the territory as 'Aceh'. Nomenclature is a key issue for GAM, because it wants to establish a clear difference with previous autonomy arrangements and show that Aceh is indeed a distinct entity from Indonesia, although formally a part of it.

3. Aceh will exercise authority within all sectors of public affairs, which will be administered in conjunction with its civil and judicial administration, except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the government of Indonesia in conformity with the constitution.

4. International agreements entered into by the government of Indonesia relating to matters of special interest to Aceh will be entered into in consultation with, and with the consent of, the legislature of Aceh.

5. Decisions regarding Aceh by the legislature of the Republic of Indonesia will be taken in consultation with and with the consent of the legislature of Aceh.

6. Administrative measures undertaken by the government of Indonesia with regard to Aceh will be implemented in consultation with and with the consent of the head of the Aceh administration.

7. Aceh has the right to use regional symbols including a flag, crest and hymn.

8. The Kanun Aceh will be re-established for Aceh, respecting the historical traditions and customs of the people of Aceh and reflecting Aceh's contemporary legal requirements.

9. The wali nangroe, an individual who could occupy the symbolic position of custodian of Aceh's cultural identity, will serve a five-year term after being elected by representatives from customary (adat) groups and religious scholars (ulama) and 'prominent citizens' from each of Aceh's 21 districts, as well as the heads of provincial-level ulama and adat organizations. GAM originally proposed that the position of wali nangroe

be given to GAM's leader Hasan di Tiro for life.

10. It allows establishment of local parties, but, at GAM's request, these can only take part in elections for the Aceh provincial and district legislatures, but cannot field candidates for the national parliament.

11. Independent candidates will be allowed in the 2006 elections for Governor. Candidates must be at least 30 years old, uphold Islamic law, and hold Indonesian citizenship. Those who served sentences for political crimes or subversion are eligible, meaning newly released GAM prisoners can run not only in the elections for Governor, but also for district heads.

The LoGA stipulates that except for foreign affairs, defence and security, monetary and fiscal affairs, judicial and religious affairs, Aceh has its own power regarding domestic affairs.<sup>53</sup> The new Autonomy Law handed over to Aceh more powers than any province in Indonesia.

#### 4. Recent developments in Aceh

The Aceh peace process is working as agreed in August 2005. The GAM has dismantled its weaponry, and the Indonesian military has withdrawn troops on schedule. Amnestied prisoners have returned home, but the GAM is still not satisfied with the role of the military in the province, granted by the autonomy law of 11 July 2006.<sup>54</sup> The army should have been deployed only for defence reasons. For now the GAM just challenged the law before the Asian-European Monitoring Mission (AEMM). The AEMM had welcomed the law as a substantial compliance with the MoU of the 15 August 2005. There is a dispute about the new Human Rights Tribunal, as it will deal only with new human rights violations, but not with the crimes committed in the previous 29 years of the Aceh conflict which left at least 12,000 victims.

As for the economy of the future autonomy, the law regulates several basic issues:

- Aceh has the right to raise funds with external loans and to set interest rates beyond those set by the Central Bank of the Republic of Indonesia.
- Aceh has the right to set and raise taxes to fund official internal activities and to conduct trade on

<sup>52</sup> The issue of dividing Aceh has been favoured by supporters of the so-called Aceh Leuser Antara (ALA) and Aceh Barat Selatan (ABAS). The push for separate non-ethnic districts of Aceh from the GAM strongholds goes back to 2000, when supporters of the ethnic groups of the Gayo, Alas and Singkil proposed the creation of a separate province called GALAKSI. The Yudhoyono government has made it clear that it does not support a division of the province.

<sup>53</sup> Syarwan Ahmad, *Aceh Party's Victory is Perspiration*, on The Aceh Institute, 5 June 2009, at: [www.acehinstitute.org/english](http://www.acehinstitute.org/english)

<sup>54</sup> Malik Mahmud, leading member of the GAM, commented on the law: 'We are concerned over the plan because we see many things in substance of the law that deviate from the spirit of the MoU.' See [<http://www.achehtimes.com>].

business internally and internationally, as well as to seek foreign direct investment and tourism to Aceh.

- Aceh will have jurisdiction over living natural resources in the territorial sea surrounding Aceh.
- As part of the special Autonomy Law approved in 2001, Aceh is already designated to receive a share of 70 per cent of the revenue of its natural resources.
- Aceh conducts the development and administration of all seaports and airports within the territory of Aceh.
- Aceh will enjoy free trade with all other parts of Indonesia, unhindered by taxes, tariffs or other restrictions.
- Aceh will enjoy direct and unhindered access to foreign countries, by sea and air.
- The government of Indonesia commits to the transparency of the collection and allocation of revenues between the central government, and Aceh agrees to outside auditors to verify this activity and to communicate the results to the head of the Aceh administration.

The new law must enact this achievement of paramount importance for the financing of the future autonomy of Aceh. Moreover, it must award the Province an additional revenue from a decentralization fund managed by the central government.

Aceh's first direct elections have been held on 11 December 2006, bringing about the election of Irwandi Yusuf for the Governor with 40% of the votes. Yusuf is neither a GAM hardliner nor a politician close to the establishment of the national Indonesian parties. As a former militant of the GAM he was a political prisoner, but today Yusuf follows a moderate path seeking the dialogue with the central government.<sup>55</sup> He has to face the difficulty that most of Aceh's administration still is nominated or has been installed by Jakarta. Corruption and nepotism is hindering the development of this region rich of natural resources. The election of Irwandi Jusuf expresses the widespread wish of the electorate to achieve a normalisation of the relationship with Jakarta and an internal stabilisation of Aceh. Most urgent tasks are the completion of the integration of the former GAM-combatants, the reconstruction of the Tsunami-damaged areas, the improvement of labour market conditions. Finally there is the difficult task of

enacting the LoGA.<sup>56</sup>

In April 2009 elections were held for the Provincial Assembly and the Districts chiefs. The party grown out from the former GAM, the Aceh Party (Partay Aceh, PA), won 33 seats out of 69 seats of the Provincial Assembly (Aceh's House of Representatives DPRA) gaining about 48% and won the absolute majority in 7 out of 23 regencies. The victory is not only based on the former combatants' familiarity and high moral prestige with Acehnese people, but also intense campaigning. The PA seeks the full implementation of the Helsinki Peace Accord of August 2005. Now a further islamisation can be observed in Aceh, especially in civil and penal law, enhancing the role of the Islamic clergy and adopting new provisions for law and order. A form of the Islamic Sharia has been introduced in Aceh already in 2002 and has been further stepped up.<sup>57</sup> There is a special corps of religious police, in charge with implementing the Islamic provisions such as rules for dressing and public mobility of women. The current peace process in Aceh depends on the political stabilisation of the autonomy and the economic development as well as on the general context of democracy in Indonesia.

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<sup>55</sup> See Lukman Age, "2009, New Power on the New Map", 20 May 2009, The Aceh Institute, retrieved on: <http://www.acehinstitute.org/english>

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<sup>57</sup> Ben Hillman, *Aceh Party Victory Legitimate despite threat*, in *The Jakarta Post*, 7 July 2009

## 3.19 New Caledonia and French Polynesia



<b>Population (2004)</b>	230,789
<b>Land area</b>	18,575 km <sup>2</sup>
<b>Capital</b>	Nouméa
<b>Official language</b>	French, Kanaky
<b>Autonomy since</b>	1999
<b>Ethnic composition (1996)</b>	Kanak 44.6%, Whites 34.5%, Polynesians 11.8%; Indonesians 2.6%; others 6.5%

<http://en.wikipedia.org/>

Whereas Corsica so far could not achieve genuine territorial autonomy, France has granted autonomous status to two of its overseas territories, the former colonies New Caledonia and French Polynesia. New Caledonia, located in Melanesia in the South-west Pacific, is a former colony of France, still formally included in the UN list of non-self-governing territories.<sup>58</sup> Along with France's other Pacific Ocean territories, French Polynesia and Wallis and Futuna, New Caledonia, is part of the French Republic, but its official status is unique in France. New Caledonia was a colony until 1946, then shifted to the legal status of an overseas territory ('territoire d'outre-mer' or TOM) from 1946 to 1999. In accordance with the

Agreement of Nouméa in 1999, the island was granted the status of autonomy *sui generis* in France. New Caledonia is the only French subdivision that is not a 'collectivité territoriale', but a self-governing part of France, which will decide whether to remain within the French Republic or become an independent state in a referendum sometime after 2014.

### 1. Historical background and genesis of the autonomy

The archipelago now commonly known as New Caledonia was populated around 1500 BC by Austronesian ethnic groups and in the eleventh century by Polynesians. In 1774, the British explorer James Cook sighted the main island and named it New Caledonia, a patriotic and poetic term for Scotland. In the nineteenth century people from New Caledonia were traded on the slave markets between the sugarcane plantations in Fiji and Australia's Queensland. Catholic and Protestant missionaries arrived in the nineteenth century and eradicated many indigenous practices and traditions.

The island was occupied by France in 1853, as Napoleon III tried to rival the British colonies in Australia and New Zealand. Following the example set by the British in nearby Australia, between 1854 and 1922 France sent a total of 22,000 convicted felons to penal colonies along the south-west coast of the island. This number included regular criminals as well as political prisoners such as Parisian socialists and Kabyle nationalists from the French Maghreb. Towards the end of the penal colony era, free European settlers (including former convicts) and Asian contract workers far outnumbered the population of indigenous forced workers. The indigenous Kanak population declined drastically in the same period due to the introduction of foreign diseases as well as the institution of an apartheid-like system called the Code de l'Indigénat, which imposed severe restrictions on their livelihood, freedom of movement and land ownership.

In 1985, when New Caledonia had the status of an overseas territory, the 'Front de Libération Nationale Kanak Socialiste' (FLNKS) started a militant struggle for independence. Under the leadership of the legendary Jean Marie Tjibaou, the Liberation Front advocated the creation of an independent state of Kanaky. Tjibaou, after some bloody attacks, was assassinated in 1989, but in 1988 he had won a preliminary agreement with Paris to increase the island's autonomy: the Matignon Accords of 1988. A decade later, local political forces

<sup>58</sup> For the complete list of dependent territories, see the Appendix, Part 6. In legal and political terms, New Caledonia can no longer be considered as such.

and the French government came to terms with the Nouméa Accord of 1998,<sup>59</sup> which today is the legal basis of New Caledonia's autonomy process, and is described as 'irreversible'. This accord also provides for local New Caledonian citizenship, separate official symbols of Caledonian identity, like a Caledonian flag, and a mandate for a referendum on New Caledonia's final status after 2014, at the time of its choosing.

The relative majority of the population in ethnic terms consists of Melanesian Kanaks (44.6 per cent in 1996), while Polynesian and Indonesian groups make up another 15 per cent. Whites who have lived in New Caledonia for several generations are called 'Caldoches', whereas the most recent immigrants from France are labelled 'Metropolitains'. In the official statistics, no distinction is made between French-born and Caledonia-born whites. A significant portion of the 'Metropolitains' immigrants usually come to New Caledonia for a limited period of work, while others settle there for retirement. Until very recently, the Kanak indigenous people were socially and economically disadvantaged, while wealthy French immigrants kept the key positions in the economy and bureaucracy. This led to growing dissatisfaction among the indigenous population, which finally exploded into political violence in the 1980s.

There have been frequent accusations by the pro-independence movement that the French government is attempting to skew the demographic balance between the ethnic communities by clandestinely settling thousands of people from mainland France among the white Caledonians who have lived there for many generations, the 'Caldoches'.

Thus, population censuses are a sensitive operation for the demographic balance in New Caledonia, and the organization of a new census was regularly postponed after 1996. Eventually, the census was carried out in August and September 2004 amidst raging controversies over ethnic questions. Due to the intervention of French President Chirac, questions regarding ethnicity were deleted from the 2004 census, officially because they were deemed to contravene the French constitution, which states that no distinction based on ethnicity or religion should be made among French citizens. The indigenous Melanesian Kanak leaders, who are extremely sensitive to issues of ethnic balance, called for New Caledonians of Kanak ethnicity to not return the census forms if questions regarding

ethnicity were not asked, threatening to derail the census process. Eventually, the stalemate was resolved when the local New Caledonian statistical office agreed to include questions regarding ethnicity. However, it is not known whether these kind of questions were asked to all residents of New Caledonia, and at any rate, no data has been released, leaving the ethnic tables from the 1996 census as the only information on ethnicity currently available. However, the 2004 census shows that immigration to the island was not as high as anticipated, an influx of about 1,000 people each year between 1996 and 2004.

## 2. The autonomy arrangement

The unique status of New Caledonia is in between that of an independent country and a regular overseas collectivité of France, but today, New Caledonia is de facto an autonomous part of the French Republic. A democratically elected congress and a government have been established, and devolution of powers is organized by the 1998 Nouméa Accord. Key areas such as taxation, labour laws, health and hygiene and foreign trade are already in the hands of the territorial congress of New Caledonia, while further responsibilities are planned to be turned over to the congress in the near future. Eventually, the French Republic should only remain responsible for foreign affairs, justice, defence, public order and the currency. The transfer of all remaining powers is subject to the continuous dialogue between New Caledonia and the French government. Permanent consultations are obligatory for matters such as immigration of non-residents, public order, university and scientific research and telecommunications. New Caledonia is also interested in gaining a certain capacity to conduct its international affairs, particularly with regard to the cooperation with its Pacific neighbours. Today it is also allowed to engage in international cooperation with independent countries of the Pacific Ocean under French supervision.

In 2000, some additional competencies were transferred to New Caledonia: the 'status of civil customs', the regulation of the traditional rules of the real estate market and of the immigrant labour force, industrial law, vocational training and external trade; the exploitation of the exclusive economic area, and specifically the use of natural resources such as oil and nickel. New Caledonia possesses about one quarter of the world's nickel reserves. Currently, the devolution process is proceeding according to the scheduled

<sup>59</sup> The text of the accord is to be found at: [<http://www.oure-mer.gouv.fr/outremer>].

timetable. Additional legislative and administrative powers were transferred in 2004, and more powers may be transferred on request to the New Caledonian congress beginning in 2009.

New Caledonian citizenship was introduced by the Nouméa Accord of 1998. Only citizens of the autonomous entity have the right to vote in the local elections. This measure has been criticized for allegedly creating a second-class status for French citizens living in New Caledonia without this form of citizenship. Finally, the congress is allowed to pass statutes that are contradictory to French law in certain areas.

The political institutions of New Caledonia today are regulated by the French organic law and ordinary law of 16 February 1999. This law allocates the powers between the central state, the autonomous entity of New Caledonia, the three provinces (North, South and the Iles Loyauté) and the municipalities. The main institutions are the New Caledonian congress and government, the 'Customary Senate', and the provincial and municipal councils. The congress has 54 members, comprising the members of the four regional councils, all elected for a five-year term by proportional representation.

The provinces hold all powers not explicitly attributed to the state, region and municipalities. The competencies of the New Caledonian parliament (Congrès du territoire), listed in the organic law of 16 February 1999, comprise fiscal rule, control of economic criminality, the regulation of prices, urban and land planning, health assistance and public hygiene and social protection.

Furthermore, a 16-member 'Kanak Customary Senate' has been established, with two members from each of the eight customary areas. The law of 16 February 1999 also provides guidelines for both ordinary political elections and the eventual referendum, to be held after 2014.

The New Caledonian government has between five and 11 members, coordinated by the President, who is directly elected by and responsible to the parliament. The French High Commissioner, the official representative of the French state on the island, participates in the sessions of the government.

### 3. Recent developments

New Caledonia for now remains an integral but autonomous part of the French Republic. The inhabitants of New Caledonia are French citizens and

carry French passports. They take part in the legislative and presidential French elections. New Caledonia sends two representatives to the French National Assembly and one senator to the French Senate.

The representative of the French central state in New Caledonia is the High Commissioner of the Republic (Haut Commissaire de la République, locally known as 'Haussaire'), who is also the head of civil services and sits in the New Caledonian parliament.

The current President of the government, elected by the congress in 2004, is Marie-Noëlle Thémereau of the loyalist (i.e. anti-independence) 'Future Together' party, which toppled the long-ruling 'Rally for Caledonia in the Republic' (RPCR) in May 2004. 'Future Together' is a party of mostly indigenous New Caledonians opposed to independence, but tired of the hegemonic and allegedly corrupt anti-independence RPCR. Their toppling of the RPCR, hitherto seen as the only voice of the whites of New Caledonia, was a surprise to many, and a sign that the society of New Caledonia is undergoing changes. 'Future Together', as the name implies, is opposed to a racial vision of New Caledonian society, opposing Melanesian native inhabitants and European settlers, and is in favour of a multicultural New Caledonia, better reflecting the ethnic and cultural variety of the islands. Some members of 'Future Together' even favour independence, though not necessarily on the same basis as the Melanesian independence parties.

## 3. French Polynesia



Between 1946 and 2003, French Polynesia had the status of an overseas territory (French: territoire d'outre-mer, or TOM). Today the French Polynesia, as New Caledonia, is a "POM" (Pays d'Outre-Mer), based on the Organic Law n. 2004-192 (27 February 2004) endowed with large autonomy. Defence, police, judiciary and the monetary system is under French

governments responsibility. France is represented by a High Commissioner. French is the official language of the archipelago, but the local languages are widely used in education.

<b>Population (2007)</b>	259.596
<b>Land area</b>	4.167 km <sup>2</sup>
<b>Capital</b>	Papeete
<b>Official language</b>	French
<b>Autonomy since</b>	2004
<b>Ethnic composition (1996)</b>	66,5% Polynesians, 7,1% Polynesians with light mixing, 11,9% Europeans, 9,3% Demis (mixed European-Polynesian) and 4,7% East-Asians

<http://en.wikipedia.org/>

The legislative assembly, composed by 57 directly elected members, is allowed to regulate all internal affairs of the islands. President of French Polynesia, elected by the Assembly, is the head of government, and of a multi-party system. Executive power is exercised by the government. Legislative power is vested in both the government and the Assembly of French Polynesia (the territorial assembly). The highest representative of the State in the territory is the High Commissioner of the Republic in French Polynesia (French: Haut commissaire de la République).

French Polynesia also sends two deputies to the French National Assembly, one representing the Leeward Islands administrative subdivision, the Austral Islands administrative subdivision, the commune (municipality) of Moorea-Maiao, and the westernmost part of Tahiti (including the capital Papeete), and the other representing the central and eastern part of Tahiti, the Tuamotu-Gambier administrative division, and the Marquesas Islands administrative division. French Polynesia also sends one senator to the French Senate.<sup>60</sup>

<sup>60</sup> Political life in French Polynesia has been marked by great instability since the mid-2000s. On September 14, 2007, the pro-independence leader Oscar Temaru, 63, was elected president of French Polynesia for the 3rd time in 3 years (with 27 of 44 votes cast in the territorial assembly). He replaced former President Gaston Tong Sang, opposed to independence, who lost a no-confidence vote in the Assembly of French Polynesia on 31 August 2007 after the longtime former president of French Polynesia, Gaston Flosse, hitherto opposed to independence, sided with his long enemy Oscar Temaru to topple the government of Gaston Tong Sang. Oscar Temaru, however, had no stable majority in the Assembly of French Polynesia, and new territorial elections were held in February 2008 to solve the political crisis. The party of Gaston Tong Sang won the territorial elections, but that did not solve the political crisis: the two minority parties of Oscar Temaru and Gaston Flosse, who together

have one more member in the territorial assembly than the political party of Gaston Tong Sang, allied to prevent Gaston Tong Sang from becoming president of French Polynesia. Gaston Flosse was then elected president of French Polynesia by the territorial assembly on February 23, 2008 with the support of the pro-independence party led by Oscar Temaru, while Oscar Temaru was elected speaker of the territorial assembly with the support of the anti-independence party led by Gaston Flosse. Both formed a coalition cabinet. Many observers doubted that the alliance between the anti-independence Gaston Flosse and the pro-independence Oscar Temaru, designed to prevent Gaston Tong Sang from becoming president of French Polynesia, could last very long. For further information see: <http://www.presidence.pf>

Apart from these two “Overseas Territories” (POM) France has also six “overseas collectivities”, for instance Mayotte (collectivité départementale de Mayotte since 2003) and Saint Pierre and Miquelon. The status of these territories is very close to a French département. Mayotte in 2005 has voted to become the 101<sup>st</sup> département of France. These entities have elected councils, but no legislative powers, and hence are nothing more than administrative divisions of France.

The same applies to Wallis and Futuna, which are administered by an appointed French Chief Administrator who is assisted by a 20-member Territorial Assembly. This Assembly is directly elected for 5 years on a common roll and has its own president.<sup>61</sup> Wallis and Futuna elects one member to the French National Assembly and one representative to the Senate. The three traditional kingdoms. On one Wallis and two on Futuna, retain a number of limited powers and have their own Council of Ministers. The three kings and three appointed members of the Territorial Assembly form a 6-member Council of the Territory which advises the Chief Administrator. The Islands are also represented at the European Parliament.

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<sup>61</sup> Retrieved from Maria Ackrén (2009), *Conditions*, op. cit., p. 227

## 3.20 India's district autonomies



Source: <http://en.wikipedia.org>

India is a federated republic with 29 states and 7 'Union Territories', controlled by the federal government in New Delhi. The world's largest democratic republic, in 1950 it adopted the form of a federation to tackle the enormous challenges posed by its vast size, its cultural diversity and its social and religious plurality. But the founders of the Indian Union were ambivalent about federalism and eventually preferred to keep the reins of control as tightly in their hands as possible. What emerged was a partially centralized federal system with asymmetrical elements. The central government and the federal parliament retained more substantial powers than usual in federations, especially powers of intervention and pre-emption at the state level. In each federated state of India, the Union is represented by a Governor, appointed by India's President for a term of five years. The Governor is empowered to dissolve the Legislative Assembly of the respective state.

Special forms of autonomy in the 1947 constitution were given to Jammu and Kashmir, and later to the states of India's north-east. Moreover, after 1950 some territories were established as Union Territories,

governed directly by the Union. Each of these seven Union Territories<sup>62</sup> is directly administered through a federal minister and federally appointed officials who are all directly responsible to the President of India. The seven Union Territories are represented in the Lok Sabha (House of Commons) by 13 elected members. Union Territories are distinct from the states, as well as from autonomous entities of the sub-state level with limited autonomy. Moreover, the 73<sup>rd</sup> and 74<sup>th</sup> amendments of the constitution ensured devolution of powers at village and town levels.

The Indian constitution of 1947 was well ahead of its time, not only in recognizing diversity, but also in providing for representation of the diverse collectivities in the formal democratic structures.<sup>63</sup> On that basis, federal and state institutions enacted special provisions for affirmative action in favour of historically disadvantaged groups such as castes and indigenous tribes. A variety of personal laws, distinct civil codes for distinct religious groups, and acts for the protection of cultural and educational rights of the linguistic and religious minorities were set forth. India's constitutional law and government policy recognized four different categories of diversity: religion, language, region and caste. These issues of cultural autonomy were not connected with specific territories, but required an enormous juridical effort to be accommodated in terms of federal and state laws.

Regarding claims of territorially based autonomy, the Indian federation since 1956 has been organized on an ethno-linguistic basis wherever serious demands of that nature have arisen. This method of framing the federated states, in practice, has provided the states with more cultural-linguistic homogeneity. Although some major ethnic-linguistic groups could obtain a state of their own, many ethnic groups are still without any home rule on territorial basis. The control of the ethnic minority conflicts on the sub-state level has been a continuous task of the Union and the states since the very existence of the Indian democratic federal system.<sup>64</sup>

<sup>62</sup> The Indian Union Territories are: the Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, the National Capital Territory of Delhi, Daman and Diu, Lakshadweep and Pondicherry.

<sup>63</sup> See Ashutosh Kumar, 'The Constitutional and Legal Routes' in Ranabir Samaddar (ed.), 2005, *The Politics of Autonomy: Indian Experiences*, Kolkata, p.94.

<sup>64</sup> Harihar Bhattacharyya, 'L'India federale' in *Federalismo & Libertà*, n.9/2002, Edizioni Il Fencottero, Rome, 2002, p.106.

## 1. The Indian model of an asymmetrical federal state

The Indian constitution was designed largely on the model of the Government of India Act of 1935, with some alterations. A unique feature of Indian federalism is the power given to the Indian federal parliament to alter the boundaries of a state or to create a new state by simple majority, given the approval of the concerned state legislature. This has led many constitutionalists to wonder whether India is a federal state at all.<sup>65</sup> India was a federation, but not as a result of an agreement of the member states to form the federation. Under this system, no state has the right to secede, or in other terms, the right to secession was excluded: 'The Indian federation, in forms of the Art. 352 of the Indian constitution, had an inherent mechanism to convert itself into a unitary state during a period of emergency.'<sup>66</sup>

The distribution of legislative powers indicates a strong tendency towards a high degree of centralization: the Union parliament can legislate on any matter included in the state list under the following conditions:<sup>67</sup>

- if the 'Council of States' recommends by a 2/3 majority that such legislation is of national interest;
- if two or more states mutually agree that such legislation should be made for them;
- in order to implement treaties or international agreements;
- in case of emergency and failure of constitutional machinery.

A much criticized feature of Indian federalism has been the adoption of provisions which enable the Union to take over the government of a state claiming for a national emergency (Article 356). This so-called 'President's rule' has been imposed more than a hundred times since 1950.

The Indian constitution provides special status for certain states such as Jammu and Kashmir, Nagaland, Sikkim, Mizoram, Assam, Manipur and Arunachal Pradesh in Articles 370 and 371. Some of these provisions of speciality are no longer applied, as is the case with Article 370, regarding Jammu and Kashmir; others are expressions of India's 'asymmetrical federalism'. This concept, beyond the federal relationship between the

states and the Union, provides some additional rights for single states based on their special character and interests. Article 371<sup>68</sup> provided for tribal customary laws, traditional decision-making procedures, land rights and the creation of an autonomous region within an autonomous district in case a minority tribal group resided in the jurisdictional area of the district.<sup>69</sup>

The two regions of Jammu and Kashmir in the north-west and the north-eastern states – the 'seven sisters' – not only had different histories of accession to the Union, but strong statehood or autonomy aspirations before the Indian Union came into existence.<sup>70</sup> They share some geographical, historical and sociological features. Neither region was part of the mainstream polity of British India, which allowed remote regions like the princely state of Jammu and Kashmir to be governed by the traditional institutions.

In sociological terms, the north-eastern states have had tribal communities as majority population, but also peoples who are minorities in the rest of India. They were separate nations and cultures on their traditional homeland which the Indian Union simply inherited from the colonial power, without granting the right to self-determination to those peoples, as they would have been entitled to according to international law.<sup>71</sup>

Hence, India is an 'asymmetrical federal state' as there are some special provisions for some Union members. But the Indian constitution did not include provisions to allow different degrees of autonomy to the rest of the member states of the Union, not following the "Russian model" of an asymmetric federalism throughout, but only in Part XXI under 'temporary, transitional and social provision'.<sup>72</sup>

The key of the internal territorial demarcation in the Indian Union since the 1950s and 1960s became language. India is home to almost 114 distinct

<sup>68</sup> A precise overview is given by Gurudas Das, 'Identity and Autonomy in India's North-East: the Constitutional Framework' at: [<http://www.mcrg.in/civilsocietydialogue3.htm>].

<sup>69</sup> See for this chapter Sanjay Barbor, *Autonomous Districts and/or Ethnic Homelands: An Ethnographic Account of the Genesis of Political Violence in Assam against the Normative Frame of the Indian Constitution*, in: Int. Journal on Minority and Group Rights 15 (2008), p. 313-334

<sup>70</sup> For a comprehensive analysis of the quest of Jammu and Kashmir see: Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace*, New Delhi, 2003; also Sanjay Chaturvedi, 'The Ethno and the Geo: A New Look into the Issue of Kashmir's Autonomy' in Ranabir Samaddar (ed.), 2005, *The Politics of Autonomy: Indian Experiences*, Kolkata.

<sup>71</sup> Ibid., p.110.

<sup>72</sup> Ashutosh Kumar, 2005, op. cit., p.96.

<sup>65</sup> A. G. Nourani (2000), *Constitutional Questions in India*, Clarendon Press, Oxford, The Indian constitution is to be found at: [[http://www.oefre.unibe.ch/law/icl/in01000\\_.html](http://www.oefre.unibe.ch/law/icl/in01000_.html)].

<sup>66</sup> Ashutosh Kumar (2005), op. cit., p.95.

<sup>67</sup> A G Nourani (2000), op.cit., p.25.

languages, 18 of which today are officially recognized<sup>73</sup> and included in the 8<sup>th</sup> Schedule of the constitution, while 96 languages remain unscheduled. Speakers of the 18 scheduled languages constitute 96.3 per cent of the population. India has adopted the basic principle that the dominant majority language in a particular state must be the language of administration and education. This unprecedented development in India's history has brought about political and cultural unification within a kind of 'linguistic state'. While the Indian Union could accommodate most of the claims raised by major peoples or ethnic-linguistic groups regarding the division of states along language lines, the question of regional territorial autonomy arose from special cases of accession and membership of states with very peculiar characteristics in the north-west and north-east, as well as from the necessity to cater to the needs of many sub-state national minorities.<sup>74</sup>

## 2. Special autonomies

The legal base for special forms of autonomy is provided by the constitution, which embodies the principle of self-determination in Articles 14, 15, 16, 19 and 29. The freedom to manage religious affairs is contained in Article 26. Article 30 ensures the right of minorities to establish and administer their own educational institutions. Under the special protection clause in Article 371, tribal customary laws, procedures and land rights are protected. Part XVI of the constitution ensures special provisions for scheduled castes, scheduled tribes and other so-called 'backward castes', which are usually not linked to territories, but to specific social groups. Some of the provisions are established on a territorial basis, some can be compared to concepts of 'cultural autonomy' applied in Europe, which are not to be confused with territorial autonomy as defined in Chapters 2.2 and 2.10.

The relevant parts of India's constitution for these forms of sub-state autonomy are the 5<sup>th</sup> and 6<sup>th</sup> Schedules. The 5<sup>th</sup> Schedule is meant to protect the interests of the smaller tribal peoples, who are placed within a larger unit-state structure. It provides a

limited democratic platform through the formation of the 'Tribes Advisory Councils', which can articulate the aspirations of the communities when their welfare and social advancement is concerned. The Council has no executive power, nor does it enjoy any legislative or judicial powers in administering justice within the scheduled areas. The legislative power is vested with the Governor, and the Council has the duty to advise him on his desire. In consultation with the Tribes Advisory Council, he can make laws for the scheduled areas:

- prohibiting or restricting transfer of land
- regulating the allotment of land
- regulating the money-lending trade.

Thus, the 5<sup>th</sup> Schedule (an annex of the Constitution) of the Union's constitution envisaged protecting the tribal interests, albeit in a limited scale, without assigning any concrete right to self-governance. As far as the question of preservation of identity is concerned, protection of tribal homeland by means of creation of scheduled areas is considered the key step to this end.

Despite such measures, India's scheduled tribes still complained that their deprivation, poverty and disempowerment have only grown. The legal-administrative measures for their cultural autonomy are still weak and inadequate. Similarly, the commissions of the states for protection of minority languages and cultures, of the scheduled castes and tribes such as the Minorities Commission, Human Rights Commission and the Ministry of Tribal Affairs are severely limited in their powers.<sup>75</sup> The pattern of combining ethnicity – regarding small peoples or national minorities – with exceptional forms of autonomies remains quite contradictory in India. The Indian constitution emphasizes republican values and fundamental human and civil rights standards throughout the whole territory, in principle not allowing 'ethnic autonomy'. In practice, in order to solve local and regional conflicts, since the beginning of independent India forms of limited territorial autonomy had to be created, admitting clearly that, on a state level, the

<sup>75</sup> 'The result is an Indian paradox: There is on the one hand a publicly equal system with broad state powers to regulate practices to separate identity so that they do not go against equality; on the other hand we have also differential provisions to help the disadvantaged, and then besides this we have a public system accessible to a group determined to impose its values in a large or total measure thereby almost equalizing the public and group interest. In such situation power ensures that autonomy of group identity and interest may become the national identity and national interest. In this way, autonomy combined with power can become completely its other.' Ranabir Samaddar in Chaudhury, Kumar Das, Samaddar (eds., 2005), *Autonomy: Keywords and Keytexts*, Kolkata, p.39.

<sup>73</sup> A comprehensive view of the Indian linguistic world is given by: Roland J L Breton (1976), *Atlas Geographique des Langues e des Ethnies de l'Inde et du Subcontinent*, Université Laval, Québec.

<sup>74</sup> The author has extensively analysed India's language policy towards her minor languages in: Thomas Benedikter (2009), *Language Policy and Linguistic Minorities in India*, LIT Verlag Berlin/Münster/London,



majority rule of a liberal democracy generates a permanent threat to every minority representation and participation in politics and power, and does not provide sufficient protection for ethnic minorities.<sup>76</sup>

### 3. Autonomy under the 6<sup>th</sup> Schedule

The degree of autonomy under the 6<sup>th</sup> Schedule is far larger than that of the 5<sup>th</sup>.<sup>77</sup> The 6<sup>th</sup> schedule contains detailed provisions for “Autonomous District Councils” in districts dominated by so-called tribal peoples, providing territorial autonomy to the areas under its jurisdiction. It has been suitably designed to take care of the autonomy aspirations of the smaller tribal groups in the north-eastern states of India, providing for District Councils’ and Regional Councils’ legislative and executive powers on various vital areas:<sup>78</sup> land,

forests (other than reserved forests), water bodies (for agriculture), regulation of shifting cultivation, village or town committees, village or town administration, appointment or succession of chiefs or headmen, inheritance and property, marriage and divorce, and social customs.<sup>79</sup> As a faculty of the Union under the 6<sup>th</sup> Schedule and special accords approved by State acts (e.g. West Bengal and Darjeeling) the following autonomous districts have been created:<sup>80</sup>

- Darjeeling Gorkha Hill District
- Bodoland Territorial Council
- Leh and Kargil Autonomous Hill Development Councils
- North Cachar Hill District
- Karbi-Anglong Autonomous District
- Khasi, Jaintia Hill and Garo District (Meghalaya)
- Tripura tribal areas district
- Chakma, Mara and La autonomous districts in Mizoram.

76 The Jharkhand movement is one of the most striking examples for those movements. See Sanjay Bosu Mullick, ‘The Jharkhand Movement: Indigenous Peoples’ Struggle for Autonomy in India’, IWGIA document, Copenhagen, 2003.

77 The 6<sup>th</sup> Schedule of the Indian Constitution, to be found at: [www.lawmin.nic.in/coi.htm](http://www.lawmin.nic.in/coi.htm)

78 The political representation of the ‘titular ethnic groups’ in India’s ADCs takes the form of quota systems within the electoral system or, in other ADCs different mechanisms are established to secure minorities’ participation to the district’s political bodies. On this issue see Sanjay Barbora, ‘Autonomy in the North-east: The Frontiers of Centralized Politics’, Ranabir Samaddar (ed.), *The Politics of Autonomy: Indian Experiences*, Kolkata, 2005, p.196-215

79 See Chaudhury, Kumar Das, Samaddar (eds.), *Indian Autonomies, Keywords and Key Texts*, Kolkata, 2005, pp.36–44; and Gurusdas Das, ‘Identity and Autonomy in India’s North-East: the Constitutional Framework’ at: <http://www.merc.in/civilsocietydialogue3.htm>

80 On Bodoland, Ladakh, Karbi Anglong, the Darjeeling Gorkha Autonomous Hill Council and the Tripura Tribal Areas Autonomous District Council, see also: Thomas Benedikter (ed.), 2009, *Solving Ethnic Conflict through Self-Government – A Short Guide to Autonomy*, EURAC, Bozen; some more details at: [http://en.wikipedia.org/wiki/Autonomous\\_regions\\_of\\_India](http://en.wikipedia.org/wiki/Autonomous_regions_of_India)].

## India's Autonomous Districts or Hill Districts

<i>Autonomous District</i>	<i>area (in km<sup>2</sup>)</i>	<i>population (2001)</i>	<i>capital</i>	<i>ethnic composition*</i>	<i>year of constitution</i>
1. Bodoland	8.970	2.631.289	Kokrajhar	ST: 1.354.627 SC 137.594	07.12.2003
2. Karbi Anglong	10.434	813.311	Diphu	ST: 452.963 SC: 29.200	17.11.1951 14.10.1976
3. North Cachar	4.890	186.189	Haflong	Dimasa, Kuki, Hmar, Zemei, Hrangkhawls	17.11.1951 2.2.1970
4. Garo Hills	8.167	865.045	Tura	Garo, smaller groups	22.02.1972 (in 1979 bifurcation)
5. Jaintia Hills	3.819	295.692	Jowai	Pnar and Jaintia, Khasi	22.02.1972
6. Khasi Hills	7.995	1.060.923	Shillong	Khasi, smaller groups	22.02.1972
7. Tripura Tribal Area	7.132	679.720**	Khumwng	ST: 679.720**	
8. Chakma ADC	n.a.	n.a.	Chawngte	Chakma	1987
9. Lai ADC	n.a.	n.a.	Lawngtlai	Lai	1987
10. Mara ADC	n.a.	55.000	Siaha	Mara	1987
11. Darjeeling Gorkha Hill Council	3.144	1.609.172	Darjeeling	ST: 179.153 SC: 209.856	22.08.1988
12. Aut. Hill Devel. Council Leh	45.110	117.232	Leh	ST: 92.200 (Ladakhi)	28.08.1995
13. Aut. Hill Devel. Council Kargil	14.086	119.307	Kargil	ST: 105.377 (Purigba, Balti, Brokpa)	01.07.2003

Source: official websites of the Autonomous District Councils (see annex, bibliography)

\* SC= scheduled caste; ST= scheduled tribes; n.a.: not available

\*\* The tribal population of the district only, which accounts for at least 90% of the total population. Ethnic groups in TTAADC (Tripura): Bhil, Bhutia, Chainel, Chakma, Garo, Holan, Kuki, Lepcha, Lushai, Mog, Munda, Moatia, Orang, Riang, Santal, Tripura, Uchai.

The main purpose of these territorial autonomies is to preserve the distinct cultures of tribal peoples, to prevent economic exploitation by non-tribal peoples, and to allow them to develop and administer themselves. This scheme departed from a mere concept of "ethnic reservation" as listed in the 5th schedule; rather it establishes autonomous territories with mixed populations and requires full democratic institutions. Although limited in its scope, the ADC's, which are based on very elaborate legislation and safeguarded by the Union government, were tasked with granting sufficient autonomy to prevent radical secessionist claims and movements and thus the further splitting up of the States, especially in the Northwest and the Northeast of the country. 10 out of 13 ADCs have been established in the four Northeastern States of Meghalaya, Assam, Mizoram and Tripura, 1 in West-Bengal (established under State law, not under the 6th schedule) and 2 in Jammu and Kashmir (Leh and Kargil). In the rest of the country, however, no territorially district autonomies have been created, although India has 330 districts, many of which host ethno-linguistic or tribal minorities, and about 50 have an ethno-linguistic majority different from the majority population of their respective State.

Even in the Northeast such a limited form of autonomy could not quell the quest for self-determination of some smaller peoples: e.g. the Naga peoples, who in 1963 achieved "statehood" in India without giving up military resistance for full independence. Nor could autonomy granted in the form of a ADC meet the widespread demand of smaller peoples to have their own federated state, especially in the Northeast. It was eventually accorded to Meghalaya, Mizoram, Arunachal Pradesh and Tripura, whereas Darjeeling and Karbi Anglong are still claiming such an advancement.<sup>81</sup>

## 4. Jammu und Kashmir's lost autonomy

Jammu and Kashmir was one of the few princely states with a Muslim majority, but for reasons of personal power, its Hindu Maharaja in 1947 choose to seek accession to India, denying democratic self-determination to the population. India, under this agreement signed by the autocratic monarch and the British in 1947, was designated to retain powers limited to foreign affairs, defence and communication,

<sup>81</sup> The Constitution even attributes a special status to such states under article 371H.

and promised a popular referendum on the final status, which was never held. Additionally there were concurrent powers to be established by the Constituent Assembly of the state of Jammu and Kashmir.



<b>Population (2001)</b>	10,069,913
<b>Land area</b>	81,954 km <sup>2</sup>
<b>Capital</b>	Srinagar and Jammu
<b>Official languages</b>	Urdu, Kashmiri
<b>Autonomy from</b>	1948 until 1953
<b>Ethnic composition</b>	Kashmiri, Ladakhi, Sikh, Hindu, other smaller groups

[www.jammukashmir.nic.in](http://www.jammukashmir.nic.in)

Jammu and Kashmir was endowed with its own institutions and its autonomy, as India '...acknowledged the distinctiveness of the state of Jammu and Kashmir in terms of its religious and cultural diversity and historical and political specificity, thereby allowing an asymmetrical relationship within the Indian federal structure'.<sup>82</sup> Once this constitution was framed, no amendments to the constitution of India, specifically to Article 370 and the state constitution, could be made unilaterally.<sup>83</sup>

But later, due to the powerful interference of New Delhi in Jammu and Kashmir politics under the Delhi

<sup>82</sup> Ashutosh Kumar, 2005, op. cit., p.97.

<sup>83</sup> The author has recently analysed the Kashmir issue in Italian: Thomas Benedikter (2005), *Il groviglio del Kashmir; Origini del conflitto e possibili soluzioni*, Frilli editori, Genova.

Agreement signed in 1975, numerous powers were transferred to the Union in contradiction to what was originally provided by Article 370 of the constitution, putting the state in an equal position as the ordinary member states of the Union. Until today, the state of Jammu and Kashmir has not regained its autonomous status of 1947-53, still granted on paper by Article 370.<sup>84</sup> Hence, there was a negotiated way into the federation, but the way out of the Union in the form of secession was barred. As the Kashmiris perceived their accession by concepts of parity and 'negotiability' of the terms of membership in the Union of India, they were considerably disillusioned when they found themselves forced under the President's rule and complete control of its civil life by the Indian security forces.

Economically, both regions, Jannum and Kashmir and the north-east, are marginal to mainland India, but are of huge importance in military terms as buffer zones to the neighbouring states of Pakistan, China and Myanmar.

To sum up, the autonomy promised under Articles 370 and 371 of the constitution has never been fully honoured. In fact, the Indian government never allowed either Jammu and Kashmir or the states of the North-east to freely enjoy their special status under Article 370 and 371, but put a heavy foot of military and judicial control on Jammu and Kashmir since 1990, and later on most parts of the North-east. Regional autonomy movements in the North-east could not be accommodated just by reformulating the 6<sup>th</sup> Schedule, nor has the existing degree of autonomy ever been constitutionally secured against further erosion. Political alienation, ongoing low intensity warfare and a high rate of human rights violations were and are the consequences. India's Kashmir and North-east policy has been marked by politics of coercion, consisting of:

- military and police repression of self-determination movements;
- economic populism (economic packages without transfer of the control of resources);
- priority for short term security politics;
- cooperation with locally discredited compromised national leaders.

While the peoples of these areas claim their democratic right to participation, representation and genuine self-government, India has responded ever since with the necessity of restrictions for the sake of national security and territorial integrity.

<sup>84</sup> See Ashuntosh Kumar, 2005, op. cit., p.98.

## 6. Territorial autonomy beyond the 6th schedule

Nearly 60 years of experience with autonomy in the North-west and north-east show that even in the case where members of the Indian Union were endowed with special autonomy by the Indian constitution, the centre has played a much more dominating role than ever envisaged by the constitution's authors. 'The idea of genuine autonomy being granted to the states has not been given a proper chance nor has its potential been appreciated in providing solution to the regional problems'.<sup>85</sup> The ongoing movements for autonomy or secession reveal that the Indian federal democracy needs a reappraisal of the concept of territorial autonomy, or as Kumar Das puts it:<sup>86</sup>

The Indian Supreme Court, in its judgements on fundamental rights, created a polity based on republicanism that while allowing autonomies, promote an ethos of one nation, one people and one land. Therefore, provisions such as the administration of scheduled areas cannot counter the wave of majoritarianism that arises from the republican spirit.

The Indian constitutional and political system has been organized since its very origin around autonomy in varying forms: administrative, cultural, religious, fiscal, legal-judicial and territorial. But when claims for autonomy, encompassing the right to secession, were raised, the state answered with repression and bloody wars against the popular insurgencies.

This is due to India's development to independent statehood breaking free from colonial rule in the 1940s, and the building of a state which had to contain hundreds of peoples and tribes. Autonomy claims, in the eyes of the fathers of India, were centrifugal forces, subverting the basis of a united India – hence their mistrust for autonomous institutions and denial of recognition of distinct peoples as subjects of the right to self-determination having suffered colonial rule as well as the Indian mainland. The constitution of India was framed under the shadow of partition. The very real fear of disintegration in a country of India's diversity, along with the vision of a homogenized modern nation-state resulted in a constitutional document that, though it has federalism as its 'defining feature', reflected a pronounced unitary bias. As the experiences of Jammu and Kashmir and the north-east have shown, in the case that autonomy was granted by the constitution, the centre has played a much more dominant role than the constitution-makers have envisaged for even the

'mainstream states'. It is in the context of the ongoing movements for autonomy or secession in these states, as well as the shortcomings revealed over the years in the working of the constitution, that the core issues of Indian federal democracy need critical rethinking.

India is the only South Asian country with working regional autonomies, but her working regional autonomies reveal major shortcomings. The institution of the "Autonomous District Councils," based on the 6<sup>th</sup> Schedule of the Constitution, was originally conceived as a solution for tribal peoples and ethnic conflicts in the Northeast during the initial period of nation building. Established by the fathers of the Constitution to avoid splitting up the multiethnic Northeast, which was faced with a variety of self-determination claims by tribal peoples, the ADCs in their current form cannot comply with the political requirements on the ground. It worked as a temporary painkiller, but the pain was to remain. Assam was split up, and four resulting states (Assam, Meghalaya, Manipur and Tripura) adopted the 6<sup>th</sup> Schedule autonomy to accommodate sub-state self-government demands by smaller ethnic communities and peoples. The very ethnically homogeneous Northeast remained conflict ridden.

After many uprisings, violent rebellions, and years of low intensity warfare and military resistance by guerrilla groups and "national liberation fronts", some ethnic groups and peoples managed to obtain their own federated states, including Mizoram, Nagaland and Meghalaya. Other states, such as West Bengal, Jammu and Kashmir, and Assam, had to accord territorial district autonomy to their own minorities (Leh and Kargil, Karbi Anglong and North Cachar Bodoland). The smaller Northeastern States, such as Tripura and Mizoram, had to come to terms with their internal ethnic heterogeneity. Nevertheless, the existing legal setting and scope as given by the 6<sup>th</sup> Schedule does not offer sufficient political space for a fully autonomous cultural and language policy or for the comprehensive range of powers needed to allow the ADC to be the most important agent for social and economic development in the area. The State government and the Union governor of the respective State exert major hierarchical control, while neither has a sufficient or autonomously controlled financial base.

In addition to the limited scope of the 6<sup>th</sup> Schedule-autonomy, there is a need to focus on the quality of democracy and governance allowed by these autonomies. The population of some ADCs in the Northeast sees autonomy as just an institutional process, and do not feel involved. The participation

<sup>85</sup> Kumar Das, 1996, op. cit., p.111.

<sup>86</sup> Ibid., p.111.

of people and civil society remained very low. This is due to both the weak institutional design and the particular form of the elite-determined political setting at the sub-state level in India.

The mere decentralization of power to local elites - as was the case in Darjeeling - is not enough. There must be provisions to ensure good governance, accountability of the politicians, minority protection and consociational mechanisms of power sharing. Some other features of the 6<sup>th</sup> Schedule autonomy, however, no longer appear appropriate for genuine autonomous legislation and decision making: relying on the Governor's strong role in surveillance rather than giving the judiciary the main responsibility for dissolving disputes, financial dependency on the respective state, the ADCs' lack of power to create their own revenues, gaps in the application of official language policies, the need for fair regulations for recruitment on territorial basis, and the need of forms of immigration control to the autonomous area that are compatible with fundamental rights of all citizens.

The 6th Schedule has implicit limitations, as unrest in several autonomies such as Karbi Anglong, North Cachar and Mizoram's ADCs demonstrates. Some features of this autonomy were extended in 2003, when the 6th Schedule was amended to accord greater autonomy to Bodoland. But the Gorkhaland issue can no longer be met with the means of limited self-governance offered by the 6th Schedule. Ladakh and Telengana, and some other political movements of ethnic minorities and tribal peoples in Central India and in the Northeast are demanding different solutions of self-government. As a multiethnic and multi-religious state, India rightfully emphasizes the need for national integration and fears secessionist tendencies. Nevertheless, as in Europe, special forms of regional autonomy could probably accommodate most of the pending conflicts, while a general pattern of regionalization could decentralize the administration and bring power closer to the people.

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## Part 4

### **Special forms of autonomy**

4.1 Autonomy in Russia and the example of Tatarstan

4.2 Free association versus territorial autonomy: Puerto Rico and the USA

4.3 America's reservations for indigenous peoples

4.4 „Autonomy“ in the People's Republic of China

4.5 Autonomy as a transitional solution for self-determination conflicts: the case of South Sudan

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## 4.1 Autonomy in Russia and the example of Tatarstan

With the collapse of the USSR, the 15 national republics all became independent, but the national autonomous entities of the Soviet Republic of Russia (RSFSR) formed the constituent entities of the new Russian Federation. After the fusion of some subjects, the Russian Federation in mid-2006 consists of 88 units, typically referred to as 'Subjects of the Federation', which are divided into six different types:<sup>1</sup>

- 21 republics
- 53 autonomous regions

<sup>1</sup> See Article 65 of the constitution of 1993. Russia's 21 autonomous republics are: Adygeya, Altai, Bashkortostan, Buryatia, Dagestan, Ingushetia, Kabardino-Balkaria, Kalmykia, Karachay-Cherkessia, Karelia, Komi, Mari El, Mordovia, Sakha (Yakutia), North Ossetia-Alania, Tatarstan, Tuva, Udmurtia, Khakassia, Chechnya, Chuvashia; two autonomous cities: Moscow and St. Petersburg; ten autonomous districts are: Aga Buryatia, Chukotka, Evenkia, Khantia-Mansia, Koryakia, Nentsia, Permyakia, Taymyria, Ust-Orda-Buryatia, Yamalia; one autonomous *oblast*: Jewish autonomous *oblast*. The 53 regions are listed at: [[http://en.wikipedia.org/Russian\\_Federation](http://en.wikipedia.org/Russian_Federation)].

- Two cities with federal status
- Ten autonomous districts
- One autonomous oblast.

This number is expected to shrink in the coming years due to the further process of merging with neighbouring entities. In addition, there are seven 'Federal districts', which have only coordinating functions. The status of the subjects of the Federation is determined both by the Federal constitution and by the Republican and regional constitutions or charters.<sup>2</sup> The Russian Federation as a whole is sovereign, its constituent units are not. As the only source of power the Federal constitution mentions the 'multinational people of Russia'.<sup>3</sup> This excludes the existence of two levels of sovereign states, each endowed with independence, but forming a system of coordinated state powers, equivalent to a 'Confederation'. The Russian Federal constitution of 1993 proclaims the equality of all federative subjects vis-à-vis the central government. The Russian Federation combines both principles of

<sup>2</sup> Andreas Heinemann-Grüder (2002), *Föderalismus in Russland*, in Gerhard Mangott (Hg.), *Zur Demokratistierung Russlands*, Band 2, NOMOS Baden-Baden, S. 79-114

<sup>3</sup> The Russian constitution can be found at: [<http://nhmccd.cc.tx.us/contracts/lrc/kc/constitutions-subject.html>] (supported by the Kingwood College library).

ethno-federalism and territorial federalism.

Regional autonomy in federal states could appear a contradictory feature, as every federated subject by definition enjoys a certain degree of autonomy. The Russian Federation is an 'asymmetrical federation'. Asymmetry in this case encompasses three aspects: a different kind of constitutional status; a different kind of legislative executive power provided by bilateral treaties between the Federal unit and the Federation; a different kind of internal political system (sometimes even contradicting the Federal constitution). According to the relative rank of the subject (republic, region, district, oblast), the extension of power and the degree of autonomy decreases. Asymmetrical federal states adapt their power-sharing structure to the specific needs and interests of the single territorial units. The Russian federal system combines symmetrical features, applied equally to all units, with asymmetrical features, set forth only for certain cases or one specific case. Therefore, in the Russian Federation today there are different forms of participation of power in the centre, different levels of control of local resources, different degrees of autonomous legislative and executive powers. But finally, all the subjects of one kind share some common juridical feature, otherwise the whole system would become ungovernable.

Asymmetry as one fundamental aspect of Russia's federalism was the key issue in tackling the enormous diversity of territorial-ethnic questions, avoiding secession in several cases (as in Tatarstan and in Yakutia or the Republic of Sakha). In the framework of this asymmetric federal system, regional autonomy plays a major role, as the level of regions and districts, apart from the 21 republics, is the second major pillar of the federal architecture of the Russian state. The Russian Federation is the most complex case of asymmetrical federalism in the world. Compared with another major federal state with asymmetrical elements - Canada - the Russian system presents not only two kinds of subjects of the federation (as Canada does with its normal federated provinces and the two 'special provinces' of Nunavut and Québec), but six types of entity, including autonomous districts, areas and regions. However, this circumstance does not transform the Russian Federation into a 'state of autonomies' like Spain, as certain areas' territorial autonomy is just one feature of an all-encompassing federal arrangement.

### **1. The status of the constituent units of the Russian Federation**

The constituent units of the Russian Federation, recognized as self-governing entities, enjoy considerable autonomy. They have adopted their own constitutions without needing the approval of federal bodies. These constitutions had to be based upon the fundamental principles of the federal constitution and the general principles for the formation of legislative and executive bodies. In the Russian Federation, as in other federal systems, federal laws overrule subnational law of lower levels. There are five guiding principles for the constitution of the federal units:

First, the federal units are allowed to establish their own government system and institutions.

Second, the territorial integrity of subjects of the Federation is guaranteed; their borders cannot be changed without their consent, nor can that of the Federation Council. On the other hand, the constituent units have the right to merge, joining with another subject of the federation to form a new constituent unit. The procedure for such a merger is established by federal law. Indeed, recently there have been several proposals for such mergers, given the small size and economic difficulties of some subjects of the Federation.

Third, each constituent unit has its own name, and is free to change it.

Fourth, constituent units of the Federation are able to protect their interests against federal intrusion because they are represented at the federal level in the Federation Council, one chamber of the parliament (Federal Assembly). Each constituent unit has two representatives, one delegated by the legislature and the other by the executive of the respective subject. However, the Federation can protect its interests against centrifugal tendencies. It can establish its own agencies in the component federal subject, and the federal bodies of executive power (ministries, services, agencies, state committees, etc.) maintain branches in the constituent subjects.

Finally, the constituent units exercise both exclusive and concurrent powers. These powers extend even into foreign affairs: constituent units may enter into international agreements (but not treaties) with the constituent parts of other federal subjects of the Federation and, with consent of the federal government, even with foreign countries. However, their powers do

not extend to a right of secession. According to Article 4, Section 3 of the federal constitution, 'the Russian Federation shall ensure the integrity and inviolability of its territory'.

Asserting equality of rights, the federal constitution of 1993 assigned the same concurrent powers to all constituent units. Thus, republics and non-republics in that regard have equal powers. The Federation retains the competence for the adoption and amendment of the constitution and the implementation of federal law (criminal and civil law, regulation and protection of civil rights and liberties, citizenship, etc.). The republics have a major number of primary powers.

The most complicated and innovative aspect of the system of allocation of power is the sphere of joint powers. Federal and regional governments are still experimenting with how best to allocate those powers. Among the concurrent powers listed in Article 72 of the federal constitution are:

- the establishment of general guidelines for organizing the institution of state power and local self-government;
- regulation of the possession, use and management of land;
- mineral resources, water and other natural resources;
- the delimitation of state property;
- the protection of historical and cultural monuments;
- general questions of upbringing, education, science, culture, sports;
- the establishment of general guidelines for taxation and levies in the Russian Federation;
- the protection of the environment and the traditional way of life of small ethnic communities.

Both the federal and regional governments have the authority to adopt acts in the fields of administration, labour, family, housing, land, water and forestry legislation, sub-surface resources and environmental protection. Article 76 of the constitution confirms that federal law is supreme in matters within the joint jurisdiction of the Russian Federation and its constituent unit. Subjects of the Federation may adopt only laws and regulations that are consistent with federal law.

The subjects of the Federations are allowed (Article 77 of the federal constitution) to establish their own governmental institutions. The 1999 law on

'General Principles of the Organization of Legislative (Representative) Federation' provided the regions with clear guidelines as to how regional powers could be organized without violating the separation of powers. By obeying this norm, the size of regional parliaments varies from 11 to 190 and is usually unicameral, sometimes bicameral and always democratically elected. Also, the President (or Governor or Chairman) is elected by an equal and direct vote for a term no longer than five years. He exercises many of the same powers assigned to the President of the Federation: he appoints the government, devises its resignation, introduces draft legislation, vetoes regional laws, conducts negotiations and signs international agreements, issues decrees and executive orders and dissolves the legislature of the respective Federal unit.

Despite the fundamental equality of all subjects of the Federation, the republics enjoy different status, which allows them to adopt constitutions, to establish state languages, to elect the Republic's President, to form constitutional courts, etc. Different status presupposes asymmetrical federalism due to the fact that the constituent units are very different in economical, cultural, geographical and social spheres. There is not yet any functioning mechanism of economical equalization among the members of the Russian Federation. Recent attempts to harmonize the federal relations too could lead to a new centralism, even de-federalization, and create new tensions.<sup>4</sup>

What new tensions? While in 1992-3, especially resource-rich regions sought the status of a republic, today there is less conflict between republics and autonomous regions. Still, tensions arose between some autonomous districts and the regions enclosing them. Nine out of ten districts are enclosed by regions as a kind of enclave. Moreover, considerable tension was referred from 'double autonomies' with two titular ethnic groups competing for hegemony (e.g. Kabardino-Balkaria). The major flaws of Russian federalism lie in the overlapping of powers a still insufficient mechanism for conflict-solving, and a federal system of revenue-sharing that does not honour regional efforts to produce revenue. Thus, federal control of regional expenditures is incomplete,<sup>5</sup> the rules of fiscal equalization are not transparent, and the free flow of capital, goods, labour and services is not ensured throughout the territory.

<sup>4</sup> Andreas Heinemann-Grüder, *Föderalisierung und Regionale Autonomie in Russland und der GUS*, CAP, Munich, 2002, p.112 at: [<http://www.cap.lmu.de>].

<sup>5</sup> Heinemann-Grüder, op. cit., p.112.

President Putin's reform efforts seek to implement federal law through new Presidential Governors. A new composition of the Federation's Senate and tighter supervision on Republican and regional governments is now envisaged.

Russia has, since 1993, enforced its federalist structure in order to integrate ethnic minorities and minority peoples. Compared with other federal states, Russia is characterized by a much higher number of federal subjects (88), a higher number of types of subjects (six), by deep social and economic disparities between regions, overlapping competencies and the lack of an overarching political integration due to the absence of strong federal political parties. Inequality in terms of standards of living, GDP and fiscal revenues, as well as per capita expenditure of the single subjects are increasing. The Russian federal system is faced with preserving both the political and socio-economic unity of the state and, at the same time, regional and cultural diversity. Traditional centralism, inherited from the Soviet system, has been considerably mitigated by recent reforms. The regional elite were accorded veto power vis-à-vis federal politics and, at the same time, were more involved in the federal decision-making process.

Generally, the degree of autonomy of the federal subjects has been considerably enforced, privileging the regional elite. However, there are persistent flaws in the regional democratic systems. The strengthening of Russian federalism is based upon an agreement among elites rather than power-sharing with broad, democratically legitimized majorities. Despite the increased powers of the regions the centre and the President in particular still retain a very strong influence on regional politics.

The Russian federalism represents a perpetual conflict system, today no longer antagonistic, but in the form of a 'policy-dispute' in a federal democracy. The Russian system combines ethno-federal with territorially federal principles. This avoids any overwhelming hegemony of the ethnic Russians within the single federal units. On the other hand, there is the figure of a strong Russian President with an abnormal amount of legislative and executive power for a federal system.

## 2. Autonomy and minority rights in Russia

In the former USSR, out of more than 100 different

peoples, only 53 had their own national entities (republics, regions, districts). Those entities differed in legal status. For instance, the 15 Soviet Republics and 20 autonomous republics had constitutions, but the eight autonomous regions and ten autonomous areas had no constitution. The peoples were not represented equally in the Soviet of Nationalities, the second chamber of the Supreme Soviet. On the other hand, not all autonomous entities were organized along ethnic lines.<sup>6</sup> But the ethnic division of the former USSR was complicated by administrative and political divisions in territories and regions with various peoples split up or scattered on different entities. For political reasons, autonomous entities were disestablished or, conversely, turned from districts into regions or from regions into republics.

If there is a guideline for territorial autonomy to enable national minorities to be a majority in their traditional homeland, in the Russian Federation this principle often was not or could not be respected. In the Bashkir, Buryat, Karelian, Komi, Mordvinian, Udmurt and Yakut Autonomous Soviet Socialist Republics, the Russian population outnumbered the peoples after which the republics were named. Except in the Northern Ossetian, Tuva and Chuvash autonomous republics, the autochthonous ethnic groups were smaller in number than the remainder of the population, with the same situation prevailing in most of the autonomous areas and regions. Hence, territorial autonomy in the form of autonomous republics, regions and areas, due to previous political decisions and cultural-geographic circumstances, in most cases had to be conceived as 'consociational self-government', while specific provisions provide 'cultural autonomy' in order to ensure the protection of ethnic peoples (refer Chapter 2.5).

Under the federal constitution, all constituent entities have equal rights. This equality, however, exists largely only on paper. Critics of the Federation's present nation-state institutions cite the following shortcomings:

- the unsettled question of what role and position the Russian people should occupy in the system of interethnic relations;
- the national autonomous entities have, in a way, been given more rights than the 'Russian' regions;
- Russians in some of the autonomous republics

<sup>6</sup> Vladimir Katashkin and Aslan Abashidze, 'Autonomy in the Russian Federation: Theory and Practice' in *International Journal on Minority and Group Rights*, 10/2004, pp.203-4.

- have become 'second class citizens';
- National republics and regions differing in geographical extent and population size are accorded the same rights;
- National minorities such as the Germans, Poles or Greeks have been left out of the nation-state system;
- Ethnic groups and minorities living outside of the entities established within the Federation for their particular nations are not given proper opportunities to develop their cultures.<sup>7</sup>

The political debate after the reshaping of the Russian Federation in 1993 led to the question of how multi-ethnic Russia should accommodate its ethnic-cultural diversity. Should the division of the Federation into ethnic constituent entities continue, even though this concept was clearly showing limitations?

"The conclusion was that neither an absolutely 'non-ethnic' structure nor an ethnic-cum-geographical approach will solve Russia's problem. The time has come to begin gradually to introduce elements of cultural autonomy. This is essential for the nationality question that must be settled for nations, not for geographical areas."<sup>8</sup>

A major step in this direction was the approval of the 'National Cultural Autonomy Act' on 17 June 1996. Article 1 defines national cultural autonomy, which:

1. constitutes a form of national cultural self-determination by citizens of the Russian Federation associating themselves with particular ethnic communities;
2. is also a means by which Russian citizens can protect their national interests as they explore different avenues and forms of national cultural development;
3. is a voluntary (non-political) assemblage rooted in the free expression of citizens' will as they associate themselves with a particular ethnic community;
4. comes about for the purpose of independently attending to matters related to the preservation of and respect for the language, culture, traditions and customs of citizens belonging to different ethnic communities.<sup>9</sup>

National cultural autonomy is a new element in Russia's nationality politics. In the Soviet era, a hierarchical

ranking of nation-state entities was imposed. Cultural autonomy was neglected and the territorial aspect was privileged, while Russians and the Communist party largely dominated the political sphere. The concept of cultural autonomy should provide for a new, comprehensive legal basis to enable ethnic communities – small, unevenly distributed, indigenous and other(s) – to preserve and develop their distinctive identities, traditions, languages, cultures and education systems. But the law did not provide a specific or exhaustive list of such ethnic communities entitled to cultural autonomy, and remains quite vague with regard to the form that this autonomy should take.

However, the National Cultural Autonomy Act marks a break with the traditional approach to the question of interethnic relations in Russia. From 1996 on, in organizing the different autonomous entities of the Federation beyond territorial autonomy, the whole range of cultural rights of citizens belonging – by free choice – to an ethnic or national community had to be legally taken into account. By introducing this principle, post-Soviet Russia will gradually move away from the dominant tendency to give precedence to the autochthonous population. It remains to be seen whether this tendency will undermine the very character of the autonomous entities, which had always stressed the issue of territorially consociational and ethnically inclusive governance.

<sup>7</sup> Ibidem, p.205.

<sup>8</sup> Ibidem, p.218.

<sup>9</sup> For this issue see also section 2.3 in this text on 'Forms of autonomy'.

### 3.The example of the Republic of Tatarstan



<b>Population (2002)</b>	3,779,265
<b>Land area</b>	67,836.2 km <sup>2</sup>
<b>Capital</b>	Kazan
<b>Official languages</b>	Russian, Tatar
<b>Autonomy since</b>	1994

<http://en.wikipedia.org>

Why should the Republic of Tatarstan be considered a particular case of autonomy? Tatarstan is not only the most populous autonomous republic of the Russian Federation, but also has a particularly advanced form of autonomy. Tatarstan at the time of the USSR was an Autonomous Socialist Soviet Republic (ASSR)<sup>10</sup> located in the centre of the USSR next to the ASSRs of Mordvinian, Chuvash, Mary, Udmurt and Bashkir. The major ethnic groups in Tatarstan are Tatars (over 51 per cent), Russians (43.3 per cent) and Chuvashes (3.7 per cent), while some Mordvinians, Udmurts, Mari and Bashkirs also live in Tatarstan. As for religion, the Tatars are Muslim, and comprise the second largest ethnic group in the Russian Federation after the Russians. They are Turkic in origin, and subsequently settled in north-eastern Mongolia and the Uighur Khanate. Large numbers of Tatars settled in the Middle Volga region and areas adjacent to the Urals in the eleventh century.

Today, Tatar ethnic groups are living in a number of regions throughout the Russian Federation, in the Ukraine (Crimea, see the next Chapter 3.8) and the world. The 1989 USSR census counted 6,645,558 Tatars, 5.5 million of whom lived in the Russian

Federation. From the late 1980s, the Tatars campaigned for increased autonomy, particularly in respect of the administration of the oil and other rich natural resources of their territory. Tatarstan is rated as the eighth state in the Russian Federation in terms of economic output. It is of enormous strategic and economic importance for the whole Federation, producing 79 per cent of its oil, most of its heavy trucks and strategic bombers, and having a highly developed complex of machine-building industries.

On 30 August 1990, when the USSR was dissolved under the leadership of Gorbachev, all of the USSR union republics issued declarations of sovereignty or independence. Tatarstan, too, proclaimed itself a 'sovereign republic', and this action was confirmed two years later by a popular referendum. In November 1992, Tatarstan (an ASSR and not a Union Republic) voted for a republican constitution, virtually declaring its independence. The Russian constitution was adopted in December 1993, and the Tatars refused to sign the Russian Federation multilateral treaty because it disapproved of some features of the structure of federal member state governments. In 1994, the leaders of the Republic of Tatarstan and the Russian Federation reached an agreement, and on 15 February 1994 they signed the bilateral 'Treaty on the Demarcation of Powers between the Agencies of State Power of the Russian Federation and the Republic of Tatarstan'.<sup>11</sup>

This bilateral Treaty did not grant Tatarstan sovereignty, nor was Tatarstan required to sign the multilateral Russian Federal Treaty. Instead, the Treaty describes Tatarstan as 'a state united with Russia on the basis of

<sup>10</sup> Prior to the formulation of the existing Russian Federation, the USSR was divided into 15 union republics (Socialist Soviet Republics), 20 autonomous republics (ASSRs), eight autonomous regions (*oblasts*) and ten national districts (*okrugs*).

<sup>11</sup> The treaty came into force on 24 February 1994. For its English text see: [<http://www.tatar.ru/english/append20.html>]

the constitution of the two states and the Treaty on the Demarcation of Powers between the Agencies of State Power of the Russian Federation and the Republic of Tatarstan'. The Russian Federal Treaty, however is not significantly distinct from the Tatar-Russian bilateral agreement, with one significant weakness inherent in both documents:

[...] the bilateral treaty is more detailed than the Federal Treaty but otherwise does not appear to differ from it substantially. However the bilateral treaty resembles the Federal Treaty in that it, too fails to specify the mechanism whereby the centre and the republic are to exercise their joint powers or resolve jurisdictional disputes.<sup>12</sup>

Russia recognized Tatarstan's right to conduct its own foreign economic and trade policies, as well as to have its own constitution and laws, form its own budget, levy taxes, set up legal and judicial institutions, administer natural resources, and set up its own bank. Joint functions include the protection of individual rights and freedoms of the ethnic minorities, Tatarstan's sovereignty and territorial integrity, military production and trade of weapons, conversion of defence plants to civilian use, coordination of foreign trade, economic policy, monetary policy, transport and communication policy.<sup>13</sup>

The Republic of Tatarstan is de facto and de jure a part of the Russian Federation in accordance with the Demarcation Treaty of 1994. Despite inconsistencies between the latter, the constitution of Tatarstan and the constitution of the Russian Federation, there is no doubt that Tatarstan is not a federated state with the right to secession, but an entity with a unique status of autonomy within the asymmetrical structure of the Russian Federation. In order to enforce the provisions of the Demarcation Treaty and make them operational, at least 12 intergovernmental agreements between the Russian Federation and the Republic of Tatarstan have been negotiated. These agreements deal with the exercise of joint powers allocated under the Treaty, and include economic, property, military, pricing policy, currency, environmental and law enforcement matters. At present, all matters subject to joint powers have been non-contentious, and the parties have reached agreement without conflict. In the event that a conflict does arise, there are no resolution mechanisms offered in the Demarcation Agreement, and it is unclear whether the Tatarstan constitution or

the Russian Federation constitution will prevail.

Like Nunavut (with its special status under the Nunavut Act of 1993) and the German Community of Belgium, as well as with Puerto Rico in the United States and special forms of autonomy in India, Tatarstan is not just an expression of special autonomies established in the framework of asymmetrical federations, but the most advanced example of one category of federal subjects of the Russian Federation, namely the 21 Republics. In a general theoretical perspective, Tatarstan can be taken as a striking example that the concept of territorial autonomy is compatible with an overall federal state structure in pursuance of the aim of accommodating a national minority or minority people(s), ensuring a higher degree and quality of self-government of regional communities.

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<sup>12</sup> See International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, 1999, p.530.

<sup>13</sup> Ibid., p.531.

## 4.2 Free association versus territorial autonomy - Puerto Rico and the United States



<b>Population</b> (2005 estimated)	3,916,000
<b>Land area</b>	9104 km <sup>2</sup>
<b>Capital</b>	San Juan
<b>Official language</b>	English and Spanish
<b>commonwealth with the USA since</b>	1952

<http://en.wikipedia.org/>

Puerto Rico is the most easterly island of the Greater Antilles, located between the Dominican Republic and the US Virgin Islands. 99 per cent of the island's population is of Hispanic cultural background. Puerto Rico was one of the islands discovered by Columbus and colonized by Spain in 1508. The local Arawak people were soon wiped out as a group. As many of the invaders took Arawak women, Puerto Ricans today are of mixed ancestry. Slaves were imported from Africa to work on the plantations until 1873, when slavery was definitely abolished. Puerto Rico remained a Spanish possession until 1898 and, with Cuba, was among the last of the Spanish colonies in the New World.

During various periods in the nineteenth century, Puerto Rico enjoyed an autonomous or semi-autonomous status, and in 1897 Spain granted the island a significant charter of self-rule. During the Spanish-American War, American troops occupied the island with no resistance, and in the process unwittingly ended a Puerto Rican movement toward autonomy. In the 1898 Treaty of the Peace of Paris, Spain ceded Puerto Rico to the United States, which

placed it under colonial rule, but by 1917 granted its residents US citizenship. Under this regime, most power was concentrated in the hands of Americans appointed by the US President. The Congress had the power to cancel any locally adopted legislation, replacing it with federal legislation. It was up to the US Congress to decide whether a law was 'locally applicable' or not. In this early period, the United States also tried to impose the English language on the local population. However, Puerto Rico was granted certain benefits in the economic sphere which to some extent remain in force today: free trade with the mainland, exemption from federal taxes, and the refund to Puerto Rico's treasury of sums collected by the United States as federal excise taxes on the importation mainland of rum and tobacco from the island to the mainland. These benefits were aimed to alleviate poverty in Puerto Rico. Until the early 1940s, Puerto Rico remained a primarily agricultural society, growing sugar, tobacco and coffee. The economic conditions and frustration over its non-emancipated status led to a growing nationalism, which was accompanied by acts of violence and sabotage.

### 1. The genesis of the free association with the US

In general, the US Congress, under the so-called Foraker Act of 1900 (also known as the 'territory clause') had much more extensive control over territories than over states of the Union. At that time, there was a distinction in doctrine between two groups of territories:

1. incorporated ones, to whose inhabitants the provisions of the US constitution were fully applicable, and which were destined to become states;
2. unincorporated territories, whose residents were to enjoy only certain fundamental individual rights and which were not destined to become states.

An unincorporated territory is not recognized 'as an integral part of the United States'.<sup>14</sup> Puerto Rico was considered one of the insular cases of unincorporated territories. Hence, certain guarantees of the US constitution did not apply to it, such as the right to citizenship, the right to trial by jury, and the right to indictment by a grand jury. This inferior status - 'separate but unequal' - caused much frustration and

<sup>14</sup> Ruth Lapidath (1997), *Autonomy: Flexible Solutions for Ethnic Conflicts*, Washington, p.132.

resentment on the island.<sup>15</sup>

On the other hand, if Puerto Rico had been incorporated, it could not have benefited from an exemption from federal taxes, because for a state in the Union to receive such treatment would have been contrary to the 'uniformity clause' which stated that all duties, imposts and excises shall be uniform throughout the United States. As an unincorporated territory, this provision did not apply to Puerto Rico. In 1917, Congress passed the Jones Act, which somewhat liberalized the regime in Puerto Rico in response to pressure from the population. This act granted US citizenship to the residents while increasing the role of the local population in the designation of the various local organs of government. However, the Puerto Ricans were still not granted the right to representation in Congress or to vote for the President of the United States. They were only allowed to elect a so-called Resident Commissioner, who represents the island in the US House of Representatives without the capacity to vote. Moreover, Puerto Rico continued to be an 'unincorporated territory', whereas Alaska became 'incorporated' with acquisition of citizenship.

In 1947 Puerto Rico was granted the right to elect its own Governor, and in 1948 Luis Munoz Marin became the first democratically elected Governor of Puerto Rico. By that time, the island suffered severe social and economic problems that the new autonomous government sought to remedy through a new relationship with the United States. Within four years, Munoz Marin had negotiated a new autonomous status for Puerto Rico within the US federal system, establishing a 'free commonwealth'.

During Munoz Marin's tenure, Spanish was established as the language of instruction in local schools, but English was taught as a subject. A land reform was implemented, and foreign investment and industrialization were encouraged. Nonetheless, many Puerto Ricans still sought greater distance from the USA. Their wish was fulfilled in the early 1950s, when the US Congress passed Public Law 600, recognizing the right to self-government of the people of Puerto Rico and the principle of government by consent. The constitution of the new 'Commonwealth of Puerto Rico' was drafted by a Puerto Rican constituent assembly and approved by the electorate in March 1952. The constitution was submitted to the US Congress, which deleted Section 20 of Article 11 regarding the 'right to work' and the 'right to an adequate standard of living'.

<sup>15</sup> Ibidem, p.132

The remainder of the constitution was approved and officially proclaimed by the Governor on 25 July 1952.

The constitution of Puerto Rico can only be changed with the approval of the US Congress and the legislature of Puerto Rico. While all citizens of Puerto Rico are citizens of the United States, they cannot vote for the US House of Representatives. Puerto Ricans may participate in national party primary elections, but may not vote in presidential elections. As US citizens, Puerto Ricans can settle freely in any part of the United States and are subject to service in the US armed forces in times of general compulsory service.

The UN General Assembly accepted this solution, recognizing that 'the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity'.<sup>16</sup> Hence, the United States was freed from its obligation to submit reports to the UN about Puerto Rico as a 'non-self-governing territory' under Article 73 of the UN Charter.

Its present status is that of a state freely associated with the United States (*estado libre asociado*), which is described as a 'Commonwealth' in English. This term is broadly used in various contexts with different meanings. Thus, the Commonwealth of Nations is the term used to denote a loose association between Great Britain and its former colonies that are now fully independent.

On the other hand, some states of the US, such as Virginia, are also called 'Commonwealths'. The Northern Marianas Islands in the Pacific Ocean, formerly a US trusteeship, have become a 'Commonwealth in Political Union with the United States' by a covenant of 1975. In this case, the term commonwealth has a meaning somewhat similar to that used to describe Puerto Rico. It includes a political community affiliated with the United States with a substantial amount of autonomy over internal matters. This kind of commonwealth derives its legitimacy not only from the US Congress, but also by the consent of the citizens of the entity. The commonwealth concept is a flexible one designed to allow both the entity and the United States to adjust the relationship as appropriate over time.

<sup>16</sup> International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, June 1999, pp.385–99; the issue is further discussed by Natan Lerner in 'Puerto Rico: Autonomy, Statehood, Independence?' in Yoram Dinstein (ed.), *Models of Autonomy*, Tel Aviv, 1981.

Puerto Rico's Spanish definition, on the other hand, refers to associated statehood.<sup>17</sup> On that basis, Puerto Rico's citizens enjoy the right to external self-determination, which has already been exercised several times. There is no doubt that Puerto Rico is an integral part of the United States, but not a fully federated subject. What distinguishes this form of territorial power sharing from the European forms of regional autonomy – apart from the right to exercise external self-determination – is the fact that Puerto Ricans have no democratically elected representation in the parliament of the state of which they are part, and enjoy a special regime of tax exemption.

Since 1952, Puerto Ricans have had to decide not less than three times whether to remain a commonwealth, become a state of the Union or attain independence. Various US Presidents prior to those referenda have declared that they would respect the wishes of the people of Puerto Rico and would advise Congress accordingly. So far, the citizens have voted to continue the status established in 1952, although with a decreasing majority. In the referendum held in 1993, 48.4 per cent of the Puerto Ricans voted for commonwealth (the status quo), 46.2 per cent for statehood as a member of the USA, and 4.4 per cent for independence.

## 2. The power sharing arrangement with the US

Although this division of powers resembles that between an ordinary member state of the United States and the federal level, Puerto Rico's status is quite different from that of a state. The principles that are usually enumerated as the basic pillars in the US–Puerto Rico relationship are common citizenship, a common market, common currency and common defence. Puerto Rico has jurisdiction over local matters, including large parts of criminal law and the administration of the judiciary, civil law (including

property, marriage, and divorce), public works, police, internal communication, various forms of licensing, matters of education, health, environmental protection and social services. It also has the power to levy taxes and other fees. Puerto Rican men are subject to conscription, but Puerto Rico maintains its own militia.

The federal government, on the other hand, has powers in Puerto Rico similar to those it exercised in the 50 states of the Union and the District of Columbia, namely: foreign affairs, defence, immigration, border control policy and coast guard, interstate commerce, licensing of radio and TV stations, postal services, weights and measures, patents and copyright, customs control and jurisdiction over crimes against the United States. The US also maintain air and naval bases on the island.

Laws adopted by the island's legislature do not require approval by the US Congress or President, and are not subject to presidential veto. Statutory US laws that are 'not locally inapplicable' will, subject to certain exceptions, enter into force in Puerto Rico as in other parts of the United States. The US Congress shall not legislate on a matter that is within the local authority of Puerto Rico, but it has happened that the US Congress acted to override a local legislative act. Sometimes the Supreme Court of the United States approaches matters related to Puerto Rico with the assumption that the powers and rights of the island and its inhabitants are similar to those of a state of the Union, while in other instances, it has approved federal acts that involved unequal treatment for the commonwealth. Thus, although numerous unemployed and low-income Puerto Rican families receive considerable aid from Washington, they receive lower subsidies than the residents of a US state under various programmes. This kind of unequal treatment has been acknowledged by the courts.

The legislature of Puerto Rico is bicameral, elected by direct universal suffrage for four years. It is composed of a Senate of 27 members, with two Senators elected from each of eight senatorial districts and 11 elected at large. The House of Representatives is composed of 51 members, one from each of 40 districts, and 11 at large.

The executive branch is headed by the Governor, who is elected by direct universal suffrage for a renewable term of four years. The Governor has the power of veto on appropriation bills, but the legislature can override

<sup>17</sup> Ruth Lapidot (1997), pp.37–40. An associated status 'is established with the consent of both the principal and the associate. The associate is interested in the relationship in order to enhance its security and its economic viability'. An associated state has its own constitution and full internal self-government, but certain (minimum) matters are controlled by the principal: mainly defence and foreign affairs and in most concrete cases, the monetary system. With regard to foreign affairs there are various degrees of delegation of powers to the principal. In some cases the principal must consult the associated state whenever its interest is concerned, in other cases the management of foreign affairs is divided between the two partners. The main difference between autonomy and associate statehood lies in the legal term 'statehood' (see also Chapter 2.2 in this text and Appendix Part 5).

it by a 2/3 majority vote. The Governor, with the advice and consent of the Senate, appoints a cabinet composed of 15 secretaries, including a secretary of state and secretaries of treasury, justice, education, public works and transportation, public health, commerce, labour, natural resources, environmental protection and consumer affairs.<sup>18</sup> He approves or disapproves joint resolutions and bills passed by the legislative assembly. None of the various appointments requires approval from Washington. All Puerto Rican public officials must take an oath to support the US constitution, as well as the laws and constitution of Puerto Rico.

The judiciary of Puerto Rico is a single unified system. The courts of the first instance are the superior, district and municipal courts. The Supreme Court of Puerto Rico is the court of last resort, but final judgements of the Supreme Court of Puerto Rico can be reviewed by the US Supreme Court.

Puerto Rico has two official languages: English and Spanish. Since most of the inhabitants are better versed in Spanish, the official role of this language has gradually increased. Since 1949, Spanish has been the teaching language in public schools, and is used in the Puerto Rican courts. A member of the legislative assembly must be able to read and write in either Spanish or English. The great majority of Puerto Ricans apparently wish to preserve the Spanish language and culture, while at the same time enjoying the 'coexistence in Puerto Rico of the two great cultures of the American Hemisphere', as mentioned in the preamble to the constitution. US citizens, who have resided in Puerto Rico for one year, shall also be citizens of Puerto Rico.

How can this arrangement of free associated statehood be changed? According to Puerto Rico's constitution, the republican form of the island is not amendable. Any amendment of the constitution must be consistent with three basic documents: the constitution of the United States, the Puerto Rico Federal Relation Act, and Public Law 600. Any change which does not conform to these documents would require the assent of the US Congress. A change in the commonwealth status has therefore to be approved by both Washington and San Juan. This strict limit of action of Puerto Rico's elected bodies is due to the fact that these arrangements were enacted as a compact package under mutual consent. However, several US Presidents have declared that if

Puerto Rico expresses the wish to change its status, the President will recommend that the Congress should agree to the change.

### 3. Associated statehood and the economy

The Puerto Rican Federal Relations Act includes several provisions concerning economic matters, similar to those applicable in the period before commonwealth status, which grant comprehensive economic self-regulation:

- free trade between Puerto Rico and the mainland, with no tariffs;
- equal tariffs for imports into Puerto Rico and the mainland on all items except coffee imported from abroad;<sup>19</sup>
- exemption of Puerto Rico from federal internal revenue laws;
- possession tax credits which defer tax on income derived from Puerto Rico and other US possessions until the income is received in the US;
- no export duties levied on exports from Puerto Rico;
- excise taxes on goods transported from Puerto Rico to the US, and customs duties collected in Puerto Rico on foreign imports returned to the Puerto Rican treasury;
- exemption from federal taxation of bonds by the government of Puerto Rico.

The governmental activities are financed through the Commonwealth treasury in accordance with an annual budget prepared by the Governor and approved by the legislature. Federal taxes do not apply in Puerto Rico, except in cases of mutual consent, whereas the autonomous government has the power to levy its own taxes.

The Commonwealth has established several public corporations to administer specific services. These include the Water Resources Authority (electric power), the Aqueduct and Sewerage Authority (water and sewage), the Ports Authority and the Highway Authority.

From the beginning of Puerto Rico's commonwealth

<sup>19</sup> The Puerto Rican Federal Relations Act grants to the island 'harbour areas and navigable streams and bodies of water and submerged land underlying the same in and around the Island of Puerto Rico and the adjacent islands and waters', Ruth Lapidoth, 1997, pp.136-7.

<sup>18</sup> See the official website of Puerto Rico's government at: [<http://www.gobierno.pr>].

status until 1974, its economy made great progress because of certain policies: industrialization and attraction of private investment from the United States with the help of various arrangements, exemption from federal income tax, exception from the application of the US minimum wage, the common market with the United States. These various incentives attracted a considerable number of firms to the island, thus creating a number of new jobs. However, the advantage caused by foreign enterprises later diminished: whereas in the past, labour-intensive industry was attracted (textiles, leather and clothing), at a later stage these industries were replaced by capital-intensive ones. With relatively few employees, these newer industries do not contribute much to relieving unemployment on the island.

Since 1974, Puerto Rico's benefits have been gradually reduced. The general reduction of tariffs has reduced Puerto Rico's comparative advantage in regional markets. The island's minimum wage has increased to the level of the mainland, and federal environmental standards have increased local business expenses. Reduction of taxes in the US under the various Republican Presidents has cut down the island's attraction for mainland capital. Later, the Caribbean Basin Initiative and NAFTA, which increased the number of countries with free access to the US market further weakened Puerto Rico's comparative advantage. As a result, the population has become more and more dependent on grants and assistance from the federal government. It thus seems that although commonwealth status brought economic progress in its early years, this economic miracle did not last.

Puerto Rico does not have formal diplomatic or consular representation in other countries, but does maintain direct contact with its Caribbean neighbours. The US government controls the foreign affairs of the island. The State Department does not object to the opening of exclusively commercial, tourism or trade promotion offices abroad, but no political, diplomatic or consular functions are permitted. Puerto Rico cannot conclude any international agreement, as demonstrated by the 1986 refusal of the secretary of state to allow Puerto Rico to enter a tax treaty with Japan. It seems that with regard to the conclusion of international agreements, Puerto Rico has been restricted even more than the US states. Foreign relations is certainly one area where Puerto Rico strives for changes in its political status.

## 4. Recent developments

Puerto Ricans feel rather frustrated in the sphere of political participation. Although they have been US citizens since 1917, they may not vote for the US congress, nor for the President. Their elected Resident Commissioner represents Puerto Rico in the US House of Representatives, but without a vote. He can participate in the work of various committees, and may propose legislation. Puerto Rico has no representation whatsoever in the US Senate. Its citizens may travel freely to the mainland, however, where they enjoy full political rights, both to vote and to run for office. The USA seem to fully stick to the old motto of British colonial times, but in the reversed sense: 'No representation without taxation'.

Between 1944 and 1968, the Partido Popular Democratico (PPD) held a majority in both chambers of the legislature. Following a 1967 plebiscite in which 60 per cent voted to retain the status 'of a free associated state' and 40 per cent voted for statehood in the US, the PDP split and the Partido Nuevo Progresista (PNP) advocating statehood, won both the governorship and a majority in the House of Representatives. The PDP and PNP alternated control of the government and Congress throughout the 1970s and 1980s. The 1988 gubernatorial campaign focused on Puerto Rico's future status vis-à-vis the US. The PDP maintained its historical platform of 'maximal autonomy within a permanent union with the US', and the PNP, with its endorsement by George Bush Sr, advocated Puerto Rico's accession to the US as the 51st state. In the referendum held in 1993, 48.4 per cent of the Puerto Ricans voted to maintain commonwealth status, 46.2 per cent for statehood, and 4.4 per cent for independence.

The Puerto Rican independence movement has never gathered much support. It is represented politically by the Partido Independentista Puertorriqueño (PIP) and extra-politically by the sometimes violent groups Ejército Popular Boricua (Macheteros) and the mainland Fuerzas Armadas de Liberación Nacional (FALN).

Puerto Rico has a long-standing tradition of self-rule, which grew into commonwealth status or associated statehood in 1952. It is a case of considerable internal self-government accompanied by political inequality on the one hand and economic preference on the other. The wish of the Puerto Ricans to preserve both their special culture and the economic benefits of this relationship with the US while striving for political

equality have played a crucial role in the debate about its status. Those who strive for independence believe that independence is the way to preserve Puerto Rican national identity, and they would sacrifice the benefits linked to the special relationship with the United States. Those who prefer statehood and transforming into a full-fledged state of the US wish to end the political inequality while retaining the benefits involved in the connection to the US, even though statehood would mean giving up their Spanish heritage and economic privileges (at least to a certain extent). Those who favour continuing the commonwealth status hold that this is the best way to preserve both national identity and economic advantages. They would, however, try to eliminate the political inequality and increase the scope of the free association.

However, even US statehood could probably be reconciled with the preservation of the Spanish character and heritage of the island. The economic disadvantage of losing the exemption from certain taxes might be compensated by increased welfare assistance from Washington, to which Puerto Rico is entitled as a state of the Union.

Many Puerto Ricans today have indicated their preference to retain a tight relationship with the US through elections and referendums. The terms of Puerto Rico's relationship with the US will continue to be debated, but two primary issues remain. First, Puerto Ricans are reluctant to give up the US citizenship that accompanies the status quo, and secondly, Puerto Ricans are fully aware of the economic benefits associated with their relationship to the US. The present majority maintains that the existing "commonwealth status" of free association should be developed to permit a genuinely autonomous and democratic state within the USA. Independence therefore seems the least likely outcome for the island.<sup>20</sup> The fourth option, namely to combine genuine territorial autonomy with political equality on the federal level, as successfully applied in some other federal states, is apparently not even considered.<sup>21</sup>

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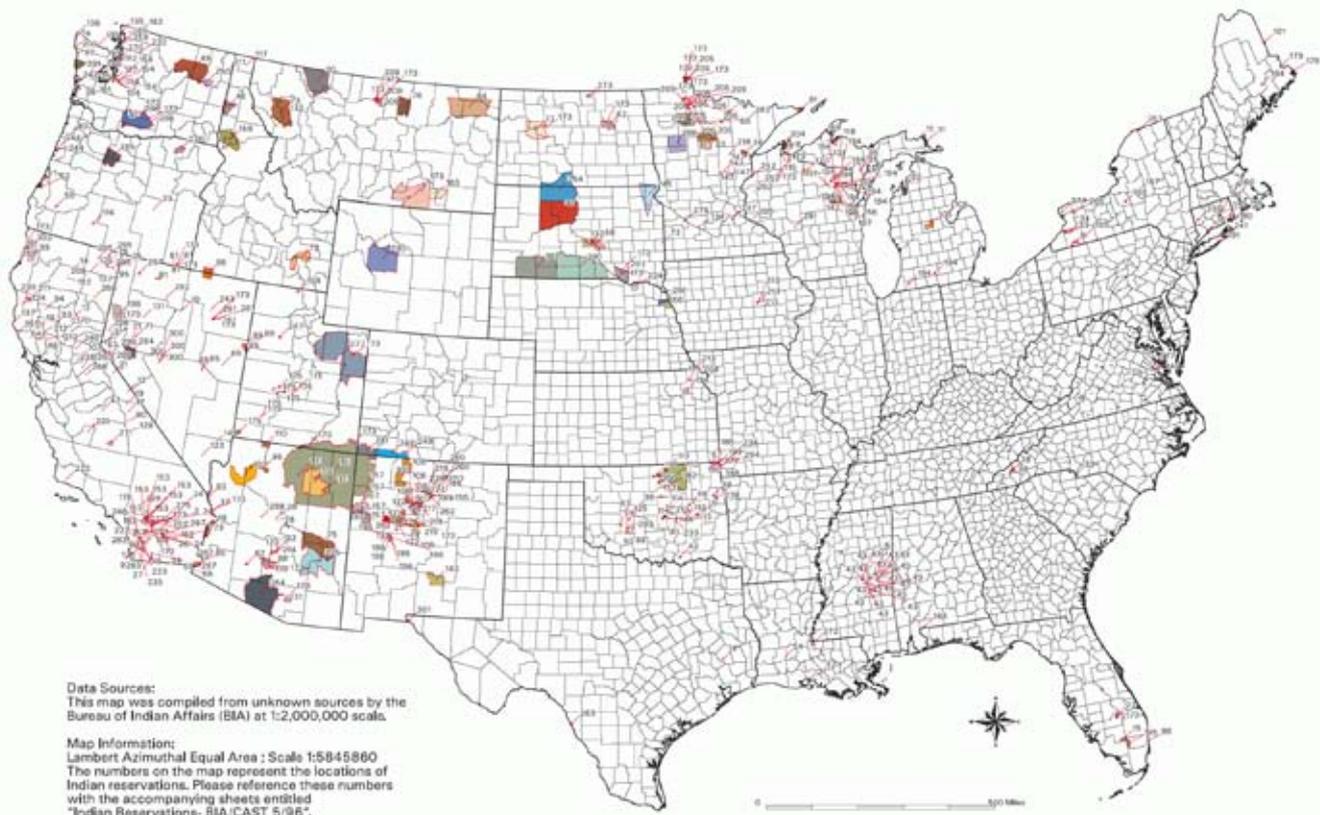
<sup>20</sup> Tibet Justice Committee, 1999, p.388.

<sup>21</sup> For reasons of completeness it should be mentioned that the Northern Marianas Islands share the same legal position as Puerto Rico with regard to the United States. The 16-island archipelago with about 25,000 inhabitants, located 5,300 km east of Honolulu were conquered by the US in World War II from Japan and kept under its control as part of the Trust Territory of the Pacific Islands. They remained under US control until 1978, when the Northern Marianas were declared a 'self-governing commonwealth' associated with the US. The trusteeship was terminated on 3 November 1986. Foreign policy and defence remain exclusive power of the US government.

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- [<http://www.camaraderepresentantes.pr>]: Website of Puerto Rico's parliament.

## Indian Reservations in the Continental United States



### 4.3 America's reservations for indigenous peoples

Reservations or 'reserves' are a special form of spatial organization of government first used by European settlers in America to isolate and dominate indigenous peoples and subsequently also adopted in some parts of Africa and Asia.<sup>22</sup> Reservations can be compared to autonomous regions under the definition given in chapter 2.2 and the criteria explained in chapter 2.10, but they clearly differ in certain aspects. Especially in America, the specific aim of reservations was to accommodate the historical claims of indigenous peoples by establishing self-governing areas with varying extents of power to opt out of national laws.

In Canada and the US, most of the native indigenous peoples live in areas with a special juridical quality

<sup>22</sup> Yash Ghai (ed.), 2000, *International Conflict Resolution After the Cold War*, The National Academic Press, p.485.

called 'reservations' or reserves; in Latin America, such institutions are often defined 'resguardos' or 'reservaciones'. In the US, Indian reservations are managed by the Bureau of Indian Affairs (BIA), a part of the Ministry of Interior. There are about 300 Indian reservations in the US, most of them very small, and just nine reservations are larger than the US state of Delaware (5.372 km<sup>2</sup>).<sup>23</sup> But by far not all of the 500 tribes recognized by the US government have a reservation - in fact, some native peoples have more than one, some have no reservation. Due to land sales and allotments at the end of the nineteenth century, some reservations are severely fragmented. Today, a slight majority of the 2 million Native Americans live outside reservations, primarily in cities. Because of the US government's relocation policies, 93 per cent of Indian land today lies in the Midwest, and only 3 per cent lies east of the Mississippi.

The Indian reservations generally have their own governmental systems. Some of them were established by the US federal government, while others were laid out by the states on state-owned land. Canada's

<sup>23</sup> [[http://en.wikipedia.org/wiki/Indian\\_reservation](http://en.wikipedia.org/wiki/Indian_reservation)]

regulations of Indian reservations are similar to the US rules.

## 1. Reservations in Canada

In Canada, an Indian reserve is specified by the Indian Act as a 'tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band'.<sup>24</sup> The Act also specifies that land reserved for the use and benefit of a band that is not vested in the Crown is also subject to the Indian Act provisions governing reserves. Superficially, a reserve is similar to an American Indian reservation, although the histories of the development of reserves and reservations are markedly different. Although the American term 'reservation' is occasionally used, 'reserve' is the standard term in Canada. The term 'First Nations reserve' is also widely used instead of Indian reserve.

The Indian Act gives the Minister of Indian Affairs the right to 'determine whether any purpose for which lands in a reserve are used is for use and benefit of the band'. Title to land within the reserve may only be transferred to the band or to individual band members. Reserve lands may not be seized legally, nor is the personal property of a band or a band member living on a reserve subject to 'charge, pledge, mortgage, attachment, levy, seizure distress or execution in favour or at the instance of any person other than an Indian or a band' (Section 89 (1) of the Indian Act). As a result, reserves and their residents have great difficulty obtaining financing. Provinces and municipalities may expropriate reserve land only if specifically authorized by provincial or federal law. In all, there are 600 occupied reserves in Canada, most of them quite small in area. Few reserves have any economic advantages, such as resource revenues, and the revenues of these reserves are held in trust by the Minister of Indian Affairs. Most reserves are self-governed under guidelines established by the Indian Act.

## 2. Reservations in the United States

The Indian reservations in the US can be traced back to the segregationist policies of the colonial period.<sup>25</sup> As early as the seventeenth century in New

England, smaller areas were assigned to tribes through contracts. Later, with the colonization of the Midwest and western parts of Northern America, the Native Americans were further confined in smaller territories. The first US reservations were founded in 1786, but most were established only in the second half of the nineteenth century. One founding moment was the legal dispute between the Cherokee nation and the state of Georgia. The Cherokee, under strong pressure from white settlers, proclaimed their own state with a written constitution in 1830 and called upon the United States as 'mediators'. The American Supreme Court, in its famous verdict (*Cherokee Nation versus Georgia*) of 1831, recognized the Cherokee as a 'native dependent nation', but created a new legal category of territory beneath the federated state as 'an owner of a territory until revocation'. Subsequently, very often the US revoked native Indian land rights. Later, a 'permanent Indian territory' was envisaged to resettle all Indian nations pushed out of their original homeland.

In the beginning, reservations bore a resemblance to huge prisoner camps from which the natives could leave only with special permits. Their traditional means of sustainable subsistence economy disappeared, so the Native Americans became more and more dependent on government grants and subsidies, and this dependence was often abused by the government agencies in order to control and blackmail the tribes. Whereas some commentators looked upon the reservations as 'civilization schools for natives',<sup>26</sup> others considered them a key instrument to preserve the Native Americans' culture and way of life.

Most of the reservations were established through a legal act (contract). The Native American tribes had reserved some land that had been recognized under legal contracts with single states of the Union or with the federal government. But since 1871, the US government ceased to stipulate new contracts with Indian tribes, leaving them with no possibility to defend their rights. The government determined the borders of the reservations unilaterally, offering some land and delimiting others. Furthermore, this contract can be withdrawn or abolished in the same unilateral manner. On the other hand, Indian nations could purchase land for constituting a reservation or enlarge their reservation through purchase or inheritance.

The long operation of resettlement of a large number

*Handbook of North American Indians*, Volume 4, *History of Indian-White Relations*, Smithsonian Institution (ed.), Washington.

<sup>26</sup> Klaus Frantz (1995), op. cit., p. 31

<sup>24</sup> [[http://en.wikipedia.org/wiki/Indian\\_reservation](http://en.wikipedia.org/wiki/Indian_reservation)]

<sup>25</sup> Klaus Frantz (1995), *Die Indianerreservationen in den the United States*, Steiner (2.Aufl.), Stuttgart, p.30; Wilcomb Washburn (1988),

of Native Americans began in the 1820s and lasted until the end of the nineteenth century, claiming a huge loss of life. Around 1850, the Native Americans had to acknowledge that an independent homeland could no longer be established. Thus, the federal government proceeded to create 'reservations' for the remaining Native Americans on a smaller part of their previous homeland, controlled by the US Army and a new Indian Administration. Due to this policy of reservations the last Native American nations settling east of the Mississippi lost their remaining sovereign land within a single generation, meaning that they also lost their nominally sovereign nations.

In the last quarter of the nineteenth century, the Native Americans lived their most bitter experiences. They were concentrated in reservations, their population shrank due to hunger and disease, and their cultures were deeply harmed by foreign domination. Within a historically brief span of time, previously independent nations were degraded to paupers. For the US, there was no longer any necessity to stipulate treaties with those peoples, and after 370 treaties, most of them either disregarded or openly broken, in 1871 the US Congress stopped granting new treaties at all. Ever since, the US government has no longer regarded any tribe as a 'treaty partner with equal rights', but as a ward, to be assigned to caretakers of the BIA. The Native Americans were set off by any cultural, economic and political autonomy, and exposed to assimilation by the white majority under the guideline 'Kill the Indian in him and save the man'.

Increasingly, the Natives became economically dependent on donations and food delivery from outside, and at the same time were exposed to humiliation and blackmail. The task of definitive assimilation of the remaining Indian cultures was handed over to Christian churches, and all existing reservations were, according to a sophisticated key, assigned to different churches for 'evangelization'. The same pattern was eventually repeated in the twentieth century by Christian churches in many regions of Latin America. At the end of the nineteenth century, the US government started a new approach of assimilation of Native Americans, privatizing their hitherto collectively owned land. This kind of 'absorption' of their communitarian property and economy deeply affected the very essence of the Native American tribes. With the 'General Allotment Act' of 1887, the privatization became the standard of official US-Indian policy. From their perspective, only the full transformation of Native Americans into individual landowners and farmers and the liquidation

of the reservations could remove the last barriers to 'civilization and progress'. The US government's real interest, of course, was not their welfare, but the appropriation of their land. Over the following 50 years, the Natives lost about 60 per cent of the already drastically reduced territories they owned in 1887.

The General Allotment Act provided that only after 25 years this Native American owner could freely manage, sell and buy land. Once the land was fully privatized, the owner would become fully taxable and accorded US citizenship. In this process, enacted since 1906, the Indians were forced to sell the best parts of their land, but the cash revenue was mostly deposited in BIA accounts with the interest revenue devolved to finance the cultural assimilation policy. Finally, the 'allotment policy' which aimed to transform all Native Americans into private farmers, failed largely because a large part of the Native American population refused to refute hunting. However, they were driven into a critical situation: extreme poverty, high illiteracy, child mortality, ill health and very poor housing conditions.

Thus, in 1934 with the 'Indian Reorganization Act', the land allotment was stopped and reforms launched to allow more economic, political and cultural self-sufficiency among the Native Americans. They regained the possibility of electing their own representative bodies and governments, to pass their own statute and rules for internal affairs, and to have their own police and local judiciary. However, this policy brought about a conflicting parallel system of traditional rules and institutions and the regulations copied from the US public law.

Many Native Americans received US citizenship in 1924 through the 'Indian Citizenship Act', intended as a reward for their massive participation in the US Army during World War I. Only in Arizona and New Mexico did they have to wait longer, until 1948, to be granted the right to vote. In Utah, as non-taxable individuals, they waited until 1956 for the right to vote, as they were still not regarded as responsible people.

Under the New Deal in the 1930s and 1940s, Native Americans obtained funds to recover some parts of their former land that had been forcibly sold to white settlers. In the 1950s, after the Roosevelt era, the US-Indian policy experienced another U-turn, when a 'final solution of the Indian question' was envisaged with the 'Termination Act' of 1953. According to this approach Native Americans would be liberated from their dependency on the BIA, and should be emancipated as mainstream US citizens. To this end,

the reservations would have to be abolished and the special status enjoyed by Native Americans in the US legal system would have ceased to exist. 'Termination' in that sense would have been synonymous with 'definitive assimilation', relieving the US government from any further responsibility for the Native peoples. Hundreds of smaller tribes were 'terminated' under these terms, many lost their remaining autonomy and last economic resources. In that period, the US government sought not only to eliminate the reservation system, but also to transform the Native Americans into common US citizens, promoting a 'Voluntary Relocation Programme' to the towns. The long-term effect of that programme was that today a small majority of Native Americans no longer live on reservations, but in American cities.

At the end of the 1960s, a new generation of more radical Native American leaders successfully opposed the assimilation policies. The new slogan was 'self-determination', and this inspired President Nixon's 'Indian Self-Determination and Education Assistance Act' in 1975. The US government finally recognized that the total assimilation of the Native peoples could not be achieved. It decided to transfer most social and economic assistance programmes to the recognized tribes, largely dismantling the paternalistic structure of the BIA. The single federal ministries maintained only the responsibility of funding the programmes run in autonomy by the elected tribe leaderships. The new generation of Native Americans was much more prepared for self-governance than those before it, and had learnt how to manage enterprises, run institutions and hire skilled staff, for instance. Thus, the BIA's role slowly shifted to that of an auditor and controller of the reservations' autonomous administrations, which provoked conflict because of the competence overlap between BIA and reservation leadership. However, the BIA also underwent a deep internal transformation, as almost 90 per cent of its staff today are Native Americans of every rank and position.

Today it is not uncommon in the US reservations that the local police, the civil courts, housing and social and health assistance are managed directly by the Native American reservations. As far as natural resources are concerned, however, the BIA still has a powerful influence: Native land, with all its mineral resources is US property, which only the tribes make use of. 10 per cent of US natural gas and oil reserves, 33 per cent of the low-sulphur coal deposits and 55 per cent of the uranium supply is found under reservation land.

Within the reservations, about 80 per cent of the land remains under tribal property, while 19 per cent is private property, sometimes owned also by non-Native Americans. The remaining 1 per cent is federal property of the US government, mostly as public facilities and infrastructure like schools, hospitals and roads. Neither the individual owner nor the tribe may sell this land, but is also exempted from property tax.

In 2006, only 2.3 per cent of the US land is left under Native American control, equal to 192,000 km<sup>2</sup> of the US territory or about the same surface as the state of Idaho.<sup>27</sup> The expansion of the white colonizers has come to an end, but the tribes are now restricted to the most inhospitable and least fertile regions of the US. The formerly self-sufficient, sustainable Native American economy has been destroyed, forcing most of them into deep dependency on state agency grants and subsidies. The lion's share of Native American land has been annexed by the state or privatized to individuals, which led to its further sale.

In the 1980s and 1990s the tribes were able to regain some of the lost land (about 15,400 km<sup>2</sup>) from public land due to legal reform. 93 per cent of the reservations today are concentrated in 11 states of the South-west and South and North Dakota, while only 3 per cent of these territories are located east of the Mississippi. 309 Native American peoples are recognized by law, but only 264 have their own reservations.<sup>28</sup> 65 per cent of the reservations are smaller than 100 km<sup>2</sup>, only 7 per cent are bigger than 2,500 km<sup>2</sup>. The Navajo reservation is by far the largest with 63,000 km<sup>2</sup>.

### 3. Reservations in Australia?

In Australia in 1994, 303,261 Aborigines and Torres Strait Islanders were counted (1.5 per cent of Australia's total population), 66 per cent of them living in cities. Unlike the Aborigines the indigenous Torres Strait Islanders, a group of just 10,000 people, form a single identifiable cultural community, settling on a group of 20 islands located in the Strait, living mainly on fishery. In 1989, under the Aboriginal and Torres Strait Islanders Commission Act, the Aboriginal and Torres Strait Islanders Commission (ATSIC) was established to ensure the participation of both groups to the formulation and implementation of government policies, to promote their self-management and self-sufficiency and to further their economic, social and

<sup>27</sup> Klaus Frantz (1995), *op. cit.*, p.47.

<sup>28</sup> Klaus Frantz (1995), *op. cit.*, p.51.

cultural development. No separate Commission for the Torres Strait Islanders was established. With this act, Australia has recognized its indigenous population as a distinct legal subject with separate interests that deserves a special administration. But although the ATSIC, which first came into office in 1996, is composed of 17 elected commissioners, both Chairmen are appointed by the federal government. Thus, the ATSIC rather assumes the role of an advisory body than an organ of self-government. The Torres Strait Islanders are neither represented in the parliament of Queensland nor in the federal parliament. Although the elected Regional Council of Torres Straits has some limited powers on the Islands, there is no underlying concept of reservation (according to US standards), let alone of territorial autonomy, which is now claimed.<sup>29</sup>

#### 4. Are reservations autonomous regions?

From a legal point of view, there are several types of reservations. The most important is the old form of the 'treaty reservation', by which the US government recognized public land owned by a recognized Native American tribe or people. A second form is the reservation on land purchased by Native Americans under private law. Reservations have also been founded through donations of land. Most constitutions of reservations after 1871 occurred through either Executive Orders of the US President or Acts of Congress. These Acts could be recalled at any time, abolishing the reservation system.

Native American land in the USA today can be divided into five categories:

1. Allotted land in individual Native American property (but administered by the US in trusteeship)
2. Native American tribal land (administered by the US in trusteeship)
3. Allotted land purchased by a tribe (only partially administered by the US in trusteeship)
4. Allotted land in private property (taxable)
5. Land owned by the state

Do the tribes possess any juridical sovereignty left in the reservations Although every reservation is a part of one of the US federated states, they are

independent from the state administration under the political, administrative and taxation laws of the respective state. Also, with respect to the judiciary, the reservations enjoy a special regime. Until recently, the reservations could retain some elements of their ancient sovereignty and were neither integrated in the political system of the county or state nor did they elect political representatives to the state assembly and the federal institutions. Instead, the members of the reservations elect the 'Tribal Council' and a Chairman (or Governor or 'Resident'). The administrative bodies of the reservations are entitled to pass regulations valid for all individuals settling in the reservations, even those who are not members of an Indian nation. But it is quite complicated to be permitted to settle within a reservation without being a member of a recognized tribe.

The Indian reservations, although often not ethnically homogenous compact units, still form a separate territory with respect to tax law, administration and as political units (representative bodies, electoral rules). The rest of sovereignty is reflected particularly in the taxation system. The inhabitants of the reservations are basically free from taxation by the state and the Union, but not completely. For US states with a large reservation area, this leads to a significant loss of possible tax revenue on land property. The members of a Native American tribe are also exempted from federal taxation, while white landowners inside reservations remain obliged to tax payment. But on the other hand, the reservations are entitled to impose their own taxes within certain limits.

Also, with respect to the judiciary, the reservation would still preserve some relics of their former sovereignty. Since the Termination Law in 1953, the reservations courts have been replaced by state courts. But in some other states like Arizona, Nevada, Colorado, New Mexico, Utah, Wyoming and Dakota, Native Americans have a special juridical status because a special legal relationship between the reservation and the federal government is still upheld. They have their own tribal courts, endowed with competence on petty crimes, while the right to appeal is devolved to federal courts. With regard to citizenship, it must be recalled that the Native Americans are US citizens vested with the right to vote, but if they are resident members of a reservation they do not participate in any political vote, either at state or federal level.

During the last three decades the Native American tribes have not only tried to consolidate their control

<sup>29</sup> Further information in: International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, June 1999, pp.578–600; and E. Osborne, *Throwing Off the Cloak: Reclaiming Self-Reliance in Torres Strait*, Aboriginal Studies Press, Canberra (ACT) 2009. [www.aiatsis.gov.au/asp/welcome.html](http://www.aiatsis.gov.au/asp/welcome.html)

of land, but also to preserve the remaining features of their ancient political sovereignty and the traditional forms of utilization of the resources. Such rights had been enshrined, often by contract, even outside tribal land (for instance, regarding access to water resources), but Native Americans are in growing conflict with white farmers and other interests, under huge pressure of the respective states. One major task for Native American tribes has been to tackle the extreme fragmentation of land due to hereditary division of property.

In conclusion, the US Native American reservations cannot be considered autonomy systems under the definition given in Chapter 2.10. The main differences are to be found in the political representation at the regional and central state level and the special form of 'ethnic citizenship' of reservations, linked to the membership of a recognized Indian nation or tribe. In the US there is no constitutional entrenchment of territorial autonomy of Indian reservations, and some categories of their territories can also be exchanged on the real estate market. Thus, American reservations share some aspects of classic territorial autonomies, but compared with the new autonomies of indigenous peoples of the North (Nunavut, Greenland), and even with the autonomies in Central America, such as Panama's Comarca Kuna Yala, they appear incomplete. In comparison with associated states or 'commonwealth territories' (Puerto Rico, Northern Marianas) they lack the right to external self-determination.

## 5. Reservations in Latin America

### 5.1 Latin America's indigenous peoples and autonomy

There are two main concepts, among a variety of definitions of autonomy in the Latin American indigenous approach to the subject. The first is expressed quite perfectly by Gonzales, an indigenous member of Venezuela's national parliament:<sup>30</sup>

<sup>30</sup> Quoted by Heidi Feldt, 'Indigene Völker und Staat' in *GTZ: Reader Indigene Völker in Lateinamerika und Entwicklungszusammenarbeit*, 2004, p.52 at: [<http://www2.gtz.de/indigenas/deutsch/service/reader.html>] ; on the legal basis of reservations see: Natalia Loukacheva, 'Autonomy and Law', Toronto 2006, to be found at: [[http://www.globalautonomy.ca/global1/article.jsp?index=RA\\_Loukacheva\\_AutonomyLaw.xml](http://www.globalautonomy.ca/global1/article.jsp?index=RA_Loukacheva_AutonomyLaw.xml)].

The autonomy of the indigenous people must be considered as the right of those peoples to decide freely about their internal matters, about their systems of social, economic, political and cultural organization and about the management, control and administration of their lands. An essential condition for the acknowledgement of this concept is the recognition of these peoples in the constitution of the states without prejudices to the unity and indivisibility of those republics. Based on this prerequisite this concept of autonomy can be applied within the nation-states.

Thus, indigenous autonomy is to be implemented by the definition of a clearly demarcated territory, an indigenous people and, in that context, the recognition of the right of internal self-determination short of general, especially exterior state functions such as foreign affairs and defence. Under that concept, the basic prerequisite is a demarcable territory inhabited exclusively by or with a majority consisting of an indigenous people. While this concept would appear to be applicable in some Central American states, in the Amazonian lowlands and in the Chaco, apparently it cannot be adopted in large parts of the Andes where no indigenous reservations have yet been established.<sup>31</sup>

Roldan<sup>32</sup> extends this autonomy concept to the idea of self-governance in the context of existing territorial units of municipalities, provinces and regions within the borders of an existing state, to regulate through legal provisions and self-government their internal self-determination of the indigenous and local population interests. It should imply a possibility of people's independence in the sense of self-governance, without regard to international powers of a given state. This concept comes closer to the definition of territorial autonomy adopted in this text (Chapter 2.2 and 2.10), which always refers to the whole resident population of a given territorial unit. But vis-à-vis the concept of 'reservation', as illustrated earlier for the Native American's territories in the north, the legal concept of 'territorial autonomy' defined above includes some

<sup>31</sup> Beyond the legally established autonomies there are also self-styled effective autonomy systems such as those organized by the Zapatista communities in Mexico (*Regiones Autonomas Plurietnicas* in Chiapas, see [[www.ezln.org](http://www.ezln.org)] and [[www.ezlnaldf.org](http://www.ezlnaldf.org)] and [[www.utexas.edu](http://www.utexas.edu)] and Miguel Gonzalez, 'Territorial Autonomy in Mesoamerica: With or Without State Consent. The case of the Zapatista Autonomous Territories in Chiapas, Mexico, and of the Autonomous Regions in Nicaragua', paper for the Workshop on Social Movements and Globalization, 'Resistance or Engagement', University Consortium on the Global South, York University, Toronto, 2004.

<sup>32</sup> Quoted by Heidi Feldt (2004), op., cit., p.53.

additional legal features, including:

- The political representation and participation of the population of the territory on the national level. The inhabitants of the autonomous region are also national citizens, with corresponding civil and political rights and duties.
- The full applicability of the national constitution to the autonomous territory with regard to fundamental human and civil rights, although some space can be given to autonomous powers for civil and penal law or 'customary law'.<sup>33</sup>
- The legally enshrined freedom of movement and possibility of acquisition of regional citizenship (residence) of the autonomous region for all state citizens regardless of their membership in the titular nation or ethnic group of the autonomous area. In reservations this is usually not the case. Indigenous reservations have been established in Brazil, Mexico and Colombia.

## 5.2 Territorial autonomy in Latin America<sup>34</sup>

In many Latin American countries, indigenous peoples<sup>35</sup> throughout the era of colonization had 'refuge areas', functioning like de facto autonomies. But until the establishment of the Comarca Kuna Yala, no officially recognized autonomy had been established by national law in any state. The first areas with some kind of territorial autonomy emerged in Panama in 1930, when the Kuna, Emberá and Guaimí communities obtained state-recognized comarcas. In the Kuna region of San Blas, one of the first successful experiences of indigenous autonomy is still operating today.<sup>36</sup>

In the last few decades, the relation between indigenous peoples and the Latin American states has substantially changed. But whilst the multicultural and pluri-ethnic character of many countries has been officially and constitutionally recognized, territorial autonomy catering to indigenous peoples' need for self-

government in their homelands is still the exception. Forms of territorial autonomy have been established only in four countries, two of which can be classified as regional territorial autonomy arrangements under the criteria used in this text (see Chapter 2.2 and 2.10). These are the Comarca of Kuna Yala and Nicaragua's Atlantic Region. Notwithstanding, a variety of laws with respect to culture and education, participation and local administration, control of natural resources and land rights have been issued to enhance the emancipation of indigenous peoples without establishing full-fledged territorial autonomy.

In a rough comparison, Willem Assies presents the autonomy regimes of Panama, Nicaragua, Colombia and Ecuador.<sup>37</sup> In this scheme, the Comarca Kuna Yala is identified as having the highest degree of effective autonomy, which includes forms of social, economic, political and cultural self-organization:

The Kuna have achieved a relatively high degree of 'cultural control', blending autonomous culture with appropriated elements of modern culture in a process of comprehensive organization of their social and political system led by their traditional authorities. Other indigenous peoples of Panama are following this model.<sup>38</sup>

The Kuna also managed to ward off state-imposed projects for resource exploitation and tourism development – they control their internal structures of governance, have some capacity to raise taxes and demand compensation for certain uses of their territory.<sup>39</sup>

The Miskito community, along with the smaller indigenous groups of the Atlantic Region of Nicaragua, established the (chronologically) second autonomy system in Latin America after a protracted conflict with the Sandinista government. The autonomy regime is not only enforced to a lesser degree and continuously faced with hostile national governments, but the autochthonous peoples must cope with increasing migration from other parts of Nicaragua, which has transformed them into minorities within the autonomous councils of the RAAS and the RAAN.

In Colombia in 1990, the reform of the national constitution brought about a system of territorial

<sup>33</sup> See Heidi Feldt (2004), op. cit., p.54, footnote 210.

<sup>34</sup> Willem Assies, 'Two Steps forward, one step back, Indigenous peoples and autonomies in Latin America', in Marc Weller and Stefan Wolff (ed.) (2005), *Autonomy, Self-governance and Conflict Resolution*, Routledge, pp.180–211.

<sup>35</sup> A complete list of the indigenous peoples of Latin America can be found at: [[http://www.obib.de/Schriften/alteSchriften/alte\\_schriften.php?Suedamerika/Suedamerika.html](http://www.obib.de/Schriften/alteSchriften/alte_schriften.php?Suedamerika/Suedamerika.html)].

<sup>36</sup> For details on that autonomy see Chapter 3.18.

<sup>37</sup> Willem Assies (2005), op. cit., p.198.

<sup>38</sup> Ibidem, p.199.

<sup>39</sup> The Comarca Kuna Yala is more extensively presented in section 3.14

autonomy called 'indigenous resguardos'. This institution, familiar from Spanish colonial heritage, took on a new dimension in Colombia. The Spanish colonial concept was similar to the concept of the US reservation system described above: 'It was a system of protection and simultaneously a system of separation and isolation from the rest of the society'.<sup>40</sup> Colombia's 1990 constitution establishes protected territories where indigenous peoples can develop their own policies and freely carry on their cultures. But due to the lack of enactment decrees and implementation, those autonomies are still not working in a way comparable to the territorial autonomies of Panama and Nicaragua.

In Ecuador, no special autonomy is granted to the provinces, but parallel structures of indigenous self-administration are established at municipal and district levels. In both Ecuador and Colombia, there are great differences between the situation in the Amazon lowlands and the Andean highlands, with distinct features of indigenous numerical and political strength. In Colombia, the indigenous 'resguardos' are increasingly integrated and controlled by the formal (non-autonomous) structures of the state, municipalities and provinces, dominated by non-indigenous groups. Colombia's endemic level of violence further reduces the scope of effective self-government.<sup>41</sup> As for political representation, Colombia has reserved two seats in the Senate for indigenous representatives. Indigenous parties do reasonably well at the national level due to the sympathy vote of the urban electorate, and in fact, there are three more indigenous senators in the national parliament than guaranteed by law. In Ecuador the situation at the national level is different. The Pachakutik party, led by indigenous activists and voted chiefly by the various indigenas of the Andes, has become a strong political player.

In Nicaragua and Panama, indigenous representation is partially channelled through the established party system, and partially has its own political parties. However, the challenge for such political involvement is always to go beyond formulating national proposals for indigenous issues and to come up with indigenous proposals for national problems.

What formal features do autonomy regimes have

<sup>40</sup> José Bengoa, 'The question of Indigenous Autonomy in Latin America' in Zelim Skurbaty (ed.) 2005, *Beyond a One-dimensional State: An Emerging Right to Autonomy?*, Leiden, p.353.

<sup>41</sup> Willem Assies (2005), op. cit., p.202.

in those four countries? In Panama and Colombia, a direct consociational model of territorial autonomy has been adopted. In Nicaragua, indigenous institutions and autonomous institutions are frequently opposed to each other in the context of a mixed, pluri-ethnic population. In Ecuador, municipal organizations coexist with indigenous institutions.

In some other countries, such as Guatemala, apart from the *alcaldías* (municipalities) special indigenous territorial bodies have been established (*municipios indígenas*). In some rural areas with an indigenous majority population, the villages (*cantones*) elect their own mayor through a specific electoral system. Yet, they have quite limited autonomy and, especially in matters of funding, are subordinate to the *alcaldías*. Guatemala's indigenous peoples have also tried to actively intervene in politics through *comités cívicos*, free political lists. In Bolivia, no special indigenous territories have been established, but central legislation has been adopted for the general decentralization of state structures. The decentralized bodies (provinces, municipalities) are enabled to regulate indigenous features in an autonomous way (including decision-making powers), but they remain an organic part of the state structure of the local administration.<sup>42</sup>

### 4.3 The 'caracoles' in Chiapas: an autonomy?



On 1 January 1994 the Zapatista Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN) occupied a part of the Mexican state of Chiapas, overwhelmingly inhabited by indigenous peoples,

<sup>42</sup> Heidi Feldt (2004), op. cit., p.54

claiming cultural autonomy, land rights, democratic participation and resistance against the neo-liberal strategies of the Mexican government. The same day Mexico had officially joined the North American Free Trade Association (NAFTA). The Zapatista movement was a shining signal for militant commitment and popular movement for indigenous and social rights not only in Mexico, but in many other parts of Latin America. The Mexican government tried to repress the movement with all means, including military aggression.<sup>43</sup>

In August 2003, five regions under control of the Zapatistas and hundreds of municipalities of Chiapas inhabited by some 300,000 people gathered to form an unofficial 'autonomous Zapatista region'. The EZLN, which since 1994 has not carried out any new military operations, considered this step as a logical consequence of the treaty with Mexico of San Andrés of 1996 referring to cultural autonomy and indigenous rights.

The municipalities, mostly very poor and economically backward, declared autonomy and established structures of democratic self-governance. The five self-governed regions in Chiapas also called 'caracoles' (shells) tried to set up an autonomous health assistance, school system, trade network and productive activities in cooperatives. But the core of the autonomy claim remains the cultural distinctiveness, inspired by indigenous languages, community life, religious beliefs and values.

According to EZLN statements, the Zapatista movement is not questioning the sovereignty of Mexico in Chiapas. Autonomy by the EZLN is seen as a device to achieve two major aims for the indigenas: equality as Mexican citizens, which means an end of social and economic discrimination of the indigenous and poor small farmers and the right to diversity, which means full recognition of the ethnic-cultural peculiarity of the indigenous peoples (20 per cent of Chiapas' population of 4 million belong to about ten indigenous peoples). The 'Autonomous Zapatista Region in Chiapas', despite being de facto autonomous, could not be considered in this text as a 'territorial autonomy' as it is not recognized by the Mexican state as a de jure arrangement and thus does not correspond to the criteria of an official regional autonomy as outlined under Chapter 2.2 and 2.10.

<sup>43</sup> See the websites of the EZLN and: Aracely Burguete Cal y Mayor (ed.), 2002, *Indigenous Autonomy in Mexico, Copenhagen, IWGIA*

#### 4.4 Indigenous self-determination between autonomy and reservations

Since 1992, the year of commemoration of the 'encounter' between European and Native American peoples, a great deal of progress of both practical and legal-constitutional relevance has been achieved in the field of indigenous peoples' rights, particularly regarding culture, education and the control of some natural resources. From Mexico to Chile, the political influence and the legal recognition of indigenous rights has gained momentum, as the uprising in Ecuador, the march of the Zapatista movement through Mexico and the election of an indigenous person to the presidency of Bolivia in 2006 have shown. Frequently, in the more Indigena-friendly atmosphere of today's Latin America, indigenous leaders have hoisted the flag of autonomy as the optimal solution to redress the relation between national (Mestizo) majorities and indigenous minority societies.<sup>44</sup> Breaking definitively with the remainders of internal colonialism, indigenous peoples in all those countries now seek self-determination in terms of practical self-governance in most spheres of life: preserving and developing their cultures, traditions and languages, assuming responsibility over education and resolution of internal conflicts, managing their own resources, fully defending their land rights, taking care of structures of social and health assistance and levying their own taxes.

The major issue of conflict remains the control of natural resources located in the autonomous territories, where legal provisions are either too unclear or not applied, and cannot be challenged before the courts. There are frequent and harsh conflicts between indigenous peoples and state authorities, private corporations and settlers in many countries (Ecuador, Colombia, Peru, Brazil and even on Nicaragua's Atlantic Coast). In some countries, such as Bolivia and Guatemala, no indigenous territories have been established, but central legislation has been adopted for the general decentralization of state structures. The decentralized bodies (provinces, municipalities) are enabled to regulate indigenous features in an autonomous way (including decision-making powers), but they remain an organic part of the state structure of the local administration<sup>45</sup>.

<sup>44</sup> By numbers in Guatemala and Bolivia, the population belonging to indigenous cultures forms a majority of the total national population.

<sup>45</sup> Indigenous autonomy includes also the applicability of cus-

Despite these clearly emerging needs and interests, the concept of autonomy has often been used in a vague and equivocal manner. Political representation, general civil and criminal law and ethnic inclusiveness and regional citizenship rights remain the 'watershed' rules between genuine territorial autonomy and reservations in the North American sense. All Latin American states - except Cuba - are parliamentary pluralist democracies with a representative character. People elect their representatives according to individual citizenship, not according to associate membership. In all these countries, with the exception of Colombia, indigenous representatives are elected in the same manner as non-indigenous citizens. There are no provisions for quotas for indigenous representation in national parliaments (except Colombia), nor any laws ensuring consociational government at the national level. In Ecuador and Bolivia, the indigenous movement achieved the stance of a national political player, but already in Mexico and Peru, indigenous power demonstrations are lacking continuity due to the difficulties of building up an adequate system of representation. Without rightful representation, the indigenous peoples lack the tools to transform the political structures of a society. Organizing in stronger umbrella organizations and parties with an 'indigenous agenda' to become a national player can be an option; another is regional territorial autonomy wherever the conditions allow it.

Nevertheless, territorial autonomy as operating in at least 20 countries in all continents has proven to be a successful means of protecting minority rights and ensuring political participation. Why then should it not work in Latin America? This is why the question of autonomy in Latin America is a pending issue, both theoretically and practically. The autonomy systems established in Nicaragua and Panama are, rather, exceptions. New legal arrangements must be found between indigenous minorities and Mestizo majorities.<sup>46</sup> In this context, forms of territorial

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tory laws, which are not written forms of legal norms developed from a long tradition. In the public law of the Latin American states, this customary law is not applied, except some few norms in civil law. But within indigenous peoples this law regulates the relation among the members and also vis-à-vis non-members. In Bolivia, Peru, Ecuador, Colombia and Venezuela, customary law is recognized as legal act for regulating internal issues. But there is also uncertainty to what extent this law can be applied. It is controversial especially when the indigenous law is seriously deriving from the state law. Some peoples for instance are applying heavy forms of punishment even for smaller crimes. In this case, the general opinion is that human rights and national law are superior to customary law, but in practise there is a considerable grey zone (Heidi Feldt, 2004, p.54).

<sup>46</sup> José Bengoa (2005), op. cit., p.375.

autonomy appear to be appropriate mechanisms for the protection and realization of individual and collective rights of the indigenous peoples wherever they settle in a compact form and form a substantial part of the region's total population. Whether this can best be done in the framework of segregationist reservations or in 'inclusive and consociational regional autonomy systems' remains to be seen. But the basic idea of regional autonomy as a means of territorial self-governance without questioning national sovereignty is as valid in Latin America as it is in other world regions.

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People's Republic of China (PRC):  
Administrative Divisions & Territorial Disputes



### 4.4 “Autonomy” in the People’s Republic of China

Following Soviet style nationality policy, the People’s Republic of China (PRC) has created a number of political and administrative divisions formally designated as ‘autonomous’. Each autonomous entity is specifically associated with one or more ethnic minority, equivalent to the titular nation in the Soviet practice. Autonomous administrative divisions can be found at the first (province), second (prefecture) and third (county) levels of local government. They include the following types:<sup>47</sup>

- Autonomous regions (province level)
- Autonomous prefectures (prefecture level)
- Autonomous counties (county level)

<sup>47</sup> Erik Friberg, ‘Masters of their homelands: revisiting the regional ethnic autonomy system in China in light of local institutional developments’, in Marc Weller and Stephan Wolff (2005), *Autonomy, Self-Governance and Conflict Resolution*, London, Routledge, pp.234–5; [<http://www.gov.cn>]: Official website of the Chinese government.

- Autonomous banners (county level)

Furthermore, at the county level, too, there are cities and districts that were vested with the same rights as regular autonomous entities. As of June 2006, China has five autonomous regions, 30 autonomous prefectures, 117 autonomous counties and three autonomous banners. The autonomous regions and respective ‘minority peoples’ are:

<i>Autonomous Region</i>	<i>Designated minority</i>
Guangxi Zhuang A.R.	Zhuang
Inner Mongolia A.R.	Mongolian
Ningxia Hui A.R.	Hui
Xinjiang Uighur A.R.	Uighur
Tibet A.R.	Tibetan

Regarding the internal demographic composition of China’s autonomous regions, only Tibet (the ‘Tibetan Autonomous Region’ or TAR) has an absolute majority of the titular nation, namely the Tibetans. Xinjiang has a relative majority of Uighurs, while Uighur independence advocates state that the Han Chinese population figures in Xinjiang have been severely

underestimated.<sup>48</sup> The remaining three autonomous regions (Inner Mongolia, Guangxi, Ningxia) have absolute majorities of Han Chinese, even according to official population figures.

## 1. The historical background

Since 221 BC, the beginning of the Qing dynasty, a unitary and centralist state structure had been developed by the Han emperors, which generally dominated the history of China. Given the nature of this unitary state, it is not surprising to find that it rejects the right to self-determination of nationalities, which could lead to secession from the Chinese state. Throughout the history of the unitary empire of China, the prevailing political approach to minorities has been coercive assimilation of non-Han national minorities by sheer economic, demographic, political and military superiority. Assimilation has taken the form of forced immigration of Han into regions where national minorities lived and resettlement or deportation of minorities to areas with a Han majority. However, in many cases assimilation was not effective in solving the national problem, but rather enlarged the gap between the Han and national minorities.

It must be remarked that probably the majority of China's national minorities have lived in their homelands for centuries in close interconnection with the dominant Han culture, remaining deeply influenced by it in all spheres of life. Most of the minority peoples are believed to have merged themselves into a newly moulded nationality known as 'Chinese Nationality' that today, according to the official viewpoint, comprises all nationalities within Chinese territory, but still retaining their ethnic-national identity. However, this approach is usually refused by Tibetans, Uighurs and Mongolians.

On the other side, the Chinese Communists concluded that the national republics within a federation approach adopted in the former Soviet Union were unsuitable or 'inappropriate' to the conditions in China, and thus not acceptable to the new Communist state. The principal argument was that the basic premise of a national republic requires that the republic itself must form an independent economic unit, which, according to the official position of the Communist Party of China

(CPC), was not the case.<sup>49</sup> The orientation of the CPC to establish territorial regional autonomies for national minorities dates back to the first national congress of the 'Chinese Soviet Republic' in 1931, and was confirmed by Mao Zedong at the 6<sup>th</sup> Plenary Session of the CPC in 1938. Mongols, Hui, Tibetans, Miao, Yao, Yi and other nationalities should enjoy equal rights with the Han and the right to administer their internal affairs.

Originally, national regional autonomy incorporated elements like self-determination and even federalism as in the Soviet Union. But the war against Japan from 1937 to 1945 definitely led to focus on the central value of 'national integrity'. Thus the CPC asserted that national questions in the new Communist state, founded in 1949, should be solved through regional autonomy controlled by the minorities, but within a unitary state. The fear of foreign invasion and the experience of the Japanese occupation of Manchuria resulted in a basic suspicion of federalism, and potentially secessionist movements in border regions of the state. Communist China on one side rejected Han chauvinism and assimilation policies, but on the other denied smaller peoples the right to statehood and self-determination. To allay their fears of assimilation, 'regional national autonomies' should establish a new relationship of equality, unity and mutual assistance among all nationalities within the PRC.

In 1949 the 'Common Programme', adopted by the Chinese People's Political Consultative Conference, provided 'regional autonomy' (Article 51) to 'concentrated minorities' prohibiting the splitting away of minorities. Similarly, the 'General Programme' of 1952, and the 1954 constitution of China included both autonomy and unity for minorities, an approach further developed by the 1982 constitution.<sup>50</sup>

The first autonomous region was Inner Mongolia, created within the Communist-held territory in 1947, two years before the proclamation of the new People's Republic. Later, Xinjiang was converted from a province to an autonomous region in 1955 and Guangxi and Ningxia followed in 1957. This official policy, however,

<sup>49</sup> See Zhu Guobin and Yu Lingyun, 'Regional Minority Autonomy in the PRC: A preliminary Appraisal from a Historical Perspective' in *International Journal on Minority and Group Rights*, Kluwer, The Hague, No.7/2000, p.47.

<sup>50</sup> Guobin and Lingyun (2000), op. cit., p.52; according to China's 1982 constitution, the People's Republic of China is 'a unitary multinational state created jointly by the people of all its nationalities' (Preamble).

<sup>48</sup> For Xinjiang, see also: International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, 1999, p.601–22.

did not prevent China's leadership from invading and occupying other neighbour countries like Tibet in 1950, which was fully annexed in 1959. The TAR was formally established in 1965. In all these territories, national and ethnic minorities are supposed to exercise autonomy under the leadership of the central government.<sup>51</sup> After the disastrous years of the 'cultural revolution', in 1978 the system of national autonomy was restored. The current system of autonomy in China claims to preserve the identity of minorities.<sup>52</sup>

The legal basis for these autonomous entities is provided by Section 6, Chapter 3, Articles 111-22 of the constitution of the PRC, and with more detail by the 'Regional National Autonomy Law' (RNAL), promulgated in 1984<sup>53</sup>. The constitution states that the head of government of each autonomous entity must be a member of the titular ethnic group in the respective autonomous entity (Tibetan, Uighur, etc.). In addition, the head of government of each autonomous region is known as a 'Chairman', unlike provinces, where the leaders are known as 'Governors'. The RNAL was meant to enforce ethnic autonomy as expressed in its preamble: 'Regional ethnic autonomy embodies the state's full respect for and guarantee of the right of the ethnic minorities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all its nationalities.'

China's constitution and the RNAL guarantee the autonomous regions a range of powers and rights, including independence of finance, economic planning, arts, science and culture, organization of the local police and the use of local languages. It has the power to appoint and promote leaders and experts from local minority nationalities, can establish its own public security force and has widespread powers in the cultural and educational sectors.

In the field of economic governance, an autonomous region has the power to decide the ownership and rights of the plains and forests in its territory, and to explore and use the natural resources in its region. It is vested with fiscal autonomy, but it can shape its own policies and adjust the economic structure of the region only in accordance with the nation-wide plan of

the central government.

According to the constitution and the RNAL, an autonomous region has a series of powers and rights. It has the legislative power to make regulations, and it can defer the orders made by upper national institutions after reporting to and being approved by those upper institutions. It also has the right to use languages of the autonomy nationalities as official working languages.

Article 5 of the RNAL states that autonomous self-governance must uphold the 'unity' of the country. Like Article 115 of the constitution, Article 5 requires the guarantee that undefined 'other laws' are observed and implemented by the autonomous governments of minorities. The law on autonomy provides the state's special arrangement to preserve and protect minorities, but when it is equated or considered lesser than 'other laws' (which could mean any state, departmental or regional laws), it lessens the gravity of the concept of autonomy in China.<sup>54</sup>

To sum up, why has China granted territorial autonomy to minority peoples and not self-determination or independence? According to official explanations, there are several justifications of the switch from the right to secession to that of autonomy.

First, regional autonomy is believed to be based on historic grounds. In China's official history, various nationalities had maintained good relations, despite some clashes, and all were supposed to wish to maintain a united Chinese nation.

Second, there was a political consensus deriving from the collective struggle of China's various nationalities against the imperialist invasions of the semi-feudal and semi-colonial eras of the late nineteenth century and the first part of the twentieth century. This was based on China's suffering after the first Opium War at the hands of foreign invasion and occupation. This included the 1940s invasion of Manchuria by imperial Japan, Outer Mongolia's declaration of independence as supported by the Soviet Union, and the fear that Xinjiang might join the Soviet Union under the guise of self-determination, to be followed by other minorities.

Third, geographical position has played a role. Hardly any nationality lives concentrated in a single region;

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51 See for these arguments: Shuping Wang, 'The People's Republic of China's Policy on Minorities and International Approaches to Ethnic Groups: A Comparative Study' in *International Journal on Minority and Group Rights*, Special Issue, Vol. 11, 1-2/2004.

52 See the official website of the Chinese government: [<http://www.gov.cn>].

53 See the full text at: [[http://www.novexc.com/regional\\_nation\\_autonomy.html](http://www.novexc.com/regional_nation_autonomy.html)].

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54 Lobsang Sangay, 'China's National Autonomy Law and Tibet: a Paradox between Autonomy and Unity', October 2006, at: [<http://www.harvardsaa.org/saj/>].

there is usually more than one nationality located in a given region. For example, the Uighur minority is spread throughout many areas of China, but most of the population lives in the Xinjiang area (historically also called Eastern Turkestan), which hosts 13 nationalities, including Han and Uighur. The mixed character of most of the areas inhabited by minorities made an autonomy concept more acceptable for the ruling Communist Party when the People's Republic was founded.

It is impossible to ascertain the degree of consent of China's ethnic minorities with the current autonomy arrangements. Nevertheless, even independent scholars state that compared with the past, China's minority approach has improved the situation of the minorities in many areas.<sup>55</sup> On the other hand, the regions in which most minorities are located are still the poorest and most backward regions of China. The economic discrepancy between the minority regions and other regions, especially the prosperous east coast regions, lead minorities to feel neglected. Recognizing this, the Chinese government has tried to solve minority problems by focusing social and economic policies on the central and western regions, where most minority populations reside. But in the meantime, China's economic development has raised some new problems, including those of land use and exploration of natural resources in minority regions.

## 2. Autonomy in China: a contradictory concept

Can the forms of regional territorial autonomy established in China since 1949 and reinforced with the RNAL in 1984 be considered as genuine autonomies responding to the criteria listed in Chapter 2.10? In China today, 56 ethnic minorities (also called national minorities or minority nationalities) are officially recognized as independent nationalities based on objective criteria such as language, territory, manifested common culture and common economy. From the Chinese perspective, the Tibetans and Uighurs in their respective homelands are also considered 'minorities' although they were independent nations before being absorbed in the People's Republic. There are two major groups: the first living either in a single distinct region or area, or in a cluster of adjacent areas. The second group comprises minorities who are generally dispersed on a larger area, thus not settling compactly as a homogenous group. 'Minority' in China refers only

<sup>55</sup> Shuping Wang (2004), op. cit., p.166.

to ethnic groups that are smaller in number compared to the Han. China's non-Han population amounts to 8 per cent (90.45 million in 2004) of the total population of about 1.3 billion of Chinese citizens.

In 1982, the fourth constitution of the PRC came into force, systematically setting forth more detailed and elaborate provisions on regional national autonomy in comparison with the previous constitutions. The structures of the organs of self-government were improved, and the scope of autonomous powers of the self-government organs were clarified.<sup>56</sup> Article 4 provides that autonomy is practised in areas where people of minority nationalities live in concentrated communities. In these areas, organs of self-government are established to exercise the power of autonomy.

With regard to the representation of national minorities at the central level, an 'appropriate proportion of the seats in both the National People's Congress and the People's Congress of autonomous areas should be occupied by members of national minorities' (Articles 59 and 113 of the constitution). The Chairman and Vice Chairman of the Standing Committee and the head of the People's Government of an autonomous area should be members of the national minority (Articles 113 and 114). The constitution and the 1984 RNAL lists the autonomous powers and distinguishes between centre and regional powers, but a detailed, clear separation is still required. This law further strengthens the structure of autonomous regimes by giving more economic and cultural rights to minorities to meet increasing demands from minorities for rapid economic development, while at the same time solving some important problems arising from practice. Of course, the latitude of powers enjoyed by national minorities is firmly confined within the overriding political fact that all national minorities form 'an indivisible part of the unitary state'.<sup>57</sup>

Regional autonomy regimes have proved, to a large extent, to be efficient in maintaining the identity of national minorities.<sup>58</sup> The organs of self-government in autonomous areas, as administrative units of the government hierarchy, enjoy not only administrative powers attributed to local organs of state as specified in the 1982 constitution (Articles 116-21 in particular), but also a wide variety of autonomous powers designed to solve the special problems of national minorities. These special terms empower the autonomous

<sup>56</sup> Guobin and Lingyun, 2000, p.49.

<sup>57</sup> Ibid., p.54.

<sup>58</sup> At least this is the assertion of Guobin and Lingyun.

institutions to enact regulations in a range of political, economic and cultural sectors, to use and develop their own languages, and to preserve their cultural heritage. They can enact special provisions for the employment of minority cadres in the autonomous organs and in the public service sector generally and regulate the use of minority languages as official languages. From a Chinese viewpoint:

[...] the autonomy system, an integral part of the Chinese political system, has proved beneficial to the common prosperity and development of national identity and basically efficient in coping with the minority question. This is not to deny the special problems related to national minorities in Tibet and Xinjiang and their status and political claim for more autonomy.<sup>59</sup>

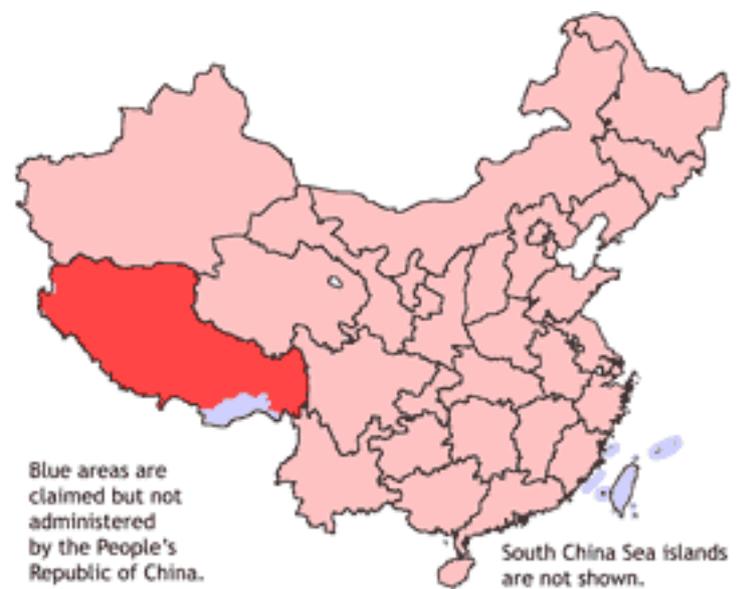
In reality, the extent of legislative autonomy is debatable. Apparently, the RNAL gives room for autonomy by allowing the autonomous congress and government to amend and modify national laws to suit the local culture and conditions (Article 116 of the constitution and Article 19 of the RNAL). But the document's following paragraph explicitly states that any modification of the national law must be reported to and approved by the Standing Committee of the National People's Congress (NPCSC)<sup>60</sup>. In other words, both by 'delaying or denying' the NPCSC can undermine the regional autonomy. Such conditionality renders local legislative modifications and local laws ineffective by requiring approval from the Standing Committee and thus essentially nullifying autonomy for the legislative power of the autonomous regions. Despite conceding autonomy, the RNAL in its basic provisions was contradictory and so was its implementation, as 'unity' superseded autonomy in the following periods.

Further demonstrating that the concept of autonomy has been diluted and undermined, Article 7 of the RNAL states that 'the organs of self-government of ethnic autonomous areas shall place the interests of the state as a whole above anything else and make positive efforts to fulfil the tasks assigned by state organs at higher levels'.<sup>61</sup>

In this context, the fundamental feature of China's

state organization must always be kept in mind:<sup>62</sup> the party hierarchy forms a second power structure, which prevails upon the state institutions and severely limits their political autonomy. Even if territorial autonomy is formally ensured, decision-making independent from the party organs is never ensured. Even if some fundamental scopes of regional autonomy are attained, two major criteria for an effective self-governance in China's given institutional and political framework are not granted: the exercise of political freedom in parliamentary decision-making and full respect for the rule of law.

### 3. Does Tibet enjoy autonomy?



Until 1949 the entire territory of Tibet (about 2,5 million km<sup>2</sup>) was governed by an independent Tibetan government under the leadership of the Dalai Lama. After the invasion of the Chinese Red Army in eastern Tibet in 1949, China's revolutionary regime forced the Tibetan rulers to sign the "17-points-peace-agreement" in 1951. Subsequently the People's Republic of China maintained that Tibet was an inalienable part of the PRC. In 1959, after an unsuccessful revolt, the Tibetan leadership under the Dalai Lama fled to India and more than 100.000 Tibetans took refuge in South Asian countries, Europe and North America. Today the major part of the historical Tibet is governed as an Autonomous Region which has been created as the fifth and last of China's so-called "Autonomous Regions" in 1965. The TAR refers only to the central province of U Tsang,

<sup>59</sup> Guobin and Lingyun (2000), op. cit., p.41.

<sup>60</sup> See Lobsang Sangay, 'China's National Autonomy Law and Tibet: a Paradox between Autonomy and Unity', October 2006 at: [<http://www.harvardsaa.org/saj/>].

<sup>61</sup> Ibid., at: [<http://www.harvardsaa.org/saj/>].

<sup>62</sup> For a critical appraisal of the PRC's state structure see Erik Friberg, 'Masters of their homelands: revisiting the regional ethnic autonomy system in China in light of local institutional developments' in Marc Weller and Stephan Wolff, *Autonomy, Self-governance and Conflict Resolution*, Routledge, London, 2005, pp.234–61.

while large parts of Amdo and Kham are incorporated in the neighbouring province of Qinghai and Yunnan in the legal form of ‘autonomous prefectures’. The main institutions of the TAR are the People’s Congress and the People’s Government of the TAR. ‘The TAR has the power to formulate its own rules and regulations, make independent arrangements for the development of local economic and construction undertakings and for exploitation of local natural resources, independently arrange and use financial revenues and allocations from the Central Government and independently decide on the development of ethnic education, and library endeavours, art, press, publication, radio and TV and other cultural undertakings with salient ethnic characteristics.’<sup>63</sup> The limited autonomy under the Regional National Autonomy Law (RNAL) of 1984 is diluted by the overarching concept of unity of the state, thereby subordinating the exercise of the officially granted autonomy to the general political projects of the central state and its policy of ‘integration of the West’. The implementation of autonomy was further undermined by expansive interpretation of provisions favouring unity while interpreting autonomy narrowly, specifically in the personnel affairs, which were disproportionately dominated by Han Chinese personnel over Tibetans. According to Lobsang Sangay,<sup>64</sup> in the TAR there exists only a small degree of executive autonomy, limited legislative autonomy and almost non-existent judicial autonomy. The local Communist Party is dominated by Han Chinese at the highest decision-making body. Thereby its influence is palpable in major policies favouring unity over autonomy. In sum, Tibetans are not the ‘masters of their own affairs, exercising the right of self-governance to administer local affairs and internal affairs of their own ethnic groups’ as promulgated and prescribed in the Chinese constitution and in the RNAL of 1984.<sup>65</sup> While the PRC claims to permit the TAR a substantial measure of self-government, in reality, the core authority rests almost entirely with the Central Government and the Communist Party of China. Provisions allegedly intended to promote autonomy in the TAR have almost invariably failed to grant Tibetans residing in the TAR meaningful self-rule. It can not seriously be denied that the Tibetans are not allowed to enjoy their fundamental cultural

rights under the Chinese Law on National Regional Autonomy of 1984. Although the TAR, especially since the end of the Mao era in the 1980s, has undergone “modernisation” in terms of economy, infrastructure, public services, administration, health and education system, the very serious record of human rights abuses, the lack of religious and political freedoms, the discrimination in the economic development and environmental protection is threatening the Tibetans<sup>66</sup>. The Tibetan government in exile (Dharamsala, India), since the Dalai Lama’s Strasbourg proposal in the European Parliament of 15 June 1988<sup>67</sup>, has proposed to establish a genuine autonomy for the whole territory of historical Tibet under the sovereignty of China which would keep the power on foreign affairs and defence. Since the transfer of sovereignty over Hong Kong in 1997 from UK to China under the motto “one country, two systems”, Tibetan representatives in exile have repeatedly claimed the application of the same principle for Tibet in the framework of the Chinese Constitution. In 2008 the Tibetan Government in exile, in order to constructively promote the negotiations with the Chinese government during talks held within China, has officially submitted a “Memorandum on Genuine Autonomy for the Tibetan People”, which should lead towards a positive, substantial and meaningful change in Tibet consistent with the principles outlined in the Constitution and laws of the People’s Republic of China. While the proposal has been outright rejected by Beijing, it should be noted that even an autonomy in Hong Kong style could not comply with the minimum standard of modern genuine autonomy.<sup>68</sup>

#### 4. “Autonomies” under criticism

On the other hand, China’s autonomous entities have also drawn criticism from a perspective of the majority population. Some have questioned the necessity of setting up autonomous entities in areas where the designated ethnicity is actually a minority. This

<sup>63</sup> China Tibet Information Centre at: [<http://china.org.cn/english/tibet-english/mzzz.htm>].

<sup>64</sup> Ibid. at [<http://www.harvardsaa.org/saj/>].

<sup>65</sup> More extensive explanations of the regulations of Tibet’s autonomy by: Theodore C. Sorensen/David L. Phillips, *Legal Standards and Autonomy Options for Minority Options: the Tibetan Case*, Harvard University, August 2004

<sup>66</sup> See International Committee of Lawyers for Tibet (now Tibet Justice Centre), *Forms of autonomy*, New York, June 1999, p.553

<sup>67</sup> For the text see: Tibetan Parliamentary and Policy Research Centre, *Autonomy & the Tibetan Perspective*, New Delhi 2005

<sup>68</sup> For this argument see section 4.5 on “Special forms of autonomy in the PR China”. It would be legitimate to apply „genuine territorial autonomy“, apart from the TAR, to the other four autonomous regions of the PRC, Xinjiang, Inner Mongolia, Guangxi Zhuang A.R., and Ningxia Hui A.R. The text of the “Memorandum” is to be found at: <http://www.tibetoffice.ch/web/mwa/memorandum/english.pdf> As for the Tibetan perspective on autonomy see: Tibetan Parliamentary&Policy research Centre, *Autonomy and the Tibetan Perspective*, 2005, at: [http://www.fnst-freiheit.org/uploads/1404/Autonomy\\_Book.pdf](http://www.fnst-freiheit.org/uploads/1404/Autonomy_Book.pdf)

circumstance is today given in at least three out of the five autonomous regions: Inner Mongolia, Guangxi and Ningxia. They also point out that autonomous regions pursue affirmative action policies that are viewed as discriminatory with regard to the majority population, such as less preferential treatment in school admissions and government employment opportunities for Han Chinese.<sup>69</sup> Finally, some contend that the existence of these autonomous entities and the extra privileges they enjoy are a danger to national unity.

Indeed, China's autonomy policy today faces new challenges arising from rapid economic development, which leaves the autonomous areas in a weaker position legally and politically. Recent reforms of the economic system in China have abolished some preferential financial treatments of autonomous regions. Under the market economy China's coastal areas have been booming, widening the gap of economic development with the autonomous areas. There is a naïve assumption that economic development will help the minorities to 'escape from discrimination and backwardness', while in many regions of the world, economic integration in an internationally open context has seriously endangered the identity of smaller cultures. It is highly questionable whether the existing regional autonomies in China are providing sufficient means of political control of the economic system to local communities.

It should not be ignored that economic development by the Chinese leadership is even used as a means to undermine the cultural and ethnic identity of a minority, fostering a de facto assimilation in the long term. Among Tibetans and Uighur, considerable fear remains that their regions and autochthonous peoples may not really benefit from the economic progress, but rather suffer major harm in terms of exploitation of natural resources, increasing immigration of Han Chinese and environmental pollution, not to mention the negative influence on culture and identity.

Human rights organizations in particular<sup>70</sup> argue that these autonomous entities offer little or no actual autonomy, as the officials are not elected by the people, but appointed by China's Communist Party. The real power in the PRC lies with the hierarchical structure of the Communist Party, who is usually Han Chinese, except the head of government, who is required to be of the designated minority. Furthermore, the ranks of the government may become filled with Han Chinese. Asserting that both Tibet and Xinjiang (and eventually also Inner Mongolia) were independent sovereign

nations before Chinese Communist occupation, the very act of their annexation is considered as a fundamentally illegal act, and their autonomies as a facade to cover the actual policy of repression and assimilation.

## 5. A special form of autonomy: Hong Kong



A novel form of autonomy is represented by the case of Hong Kong. This was not to accommodate a different ethnic group, being its inhabitants in overwhelming majority Han Chinese, but to organize the coexistence of very different political and economic systems and societies. Autonomy here is based on an international treaty, the 1984 Sino-British Declaration,<sup>71</sup> and aims to preserve the special character of Hong Kong. Under the transfer agreement of 19 December 1984, which handed Hong Kong over to China, China guarantees to maintain Hong Kong as a 'Special Administrative Region' with all legislative and executive powers except for foreign policy and national defence. Due to Hong Kong's position as a leading trade centre and its economic success, China reiterated its intention not to alter the form and composition of Hong Kong's government. This historically unique operation runs against the background of a PRC which is ever more dynamically moving towards a full-fledged capitalist economy, without assuming the same standards of democratic rights and freedoms. The declaration provided that a 'one country, two systems' principle shall be in effect for 50 years, from 1997 to 2047, during which time China's socialist system and policies will not be practised in the newly renamed 'Hong Kong Special Administrative Region'.<sup>72</sup>

71 See [<http://www.info.gov.hk>]: The Sino-British Joint Declaration and Law.

72 See for a critical perception: Yash Ghai, 'Autonomy with Chinese Characteristics: The Case of Hong Kong' in *Pacifica Review*, Vol. 10, n.1, February 1998.

69 [[http://en.wikipedia.org/wiki/Autonomous\\_entities\\_of\\_China](http://en.wikipedia.org/wiki/Autonomous_entities_of_China)]

70 Tibetan Parliamentary and Policy Research Centre (2005), *Autonomy and the Tibetan Perspective*, New Delhi.

Today, Hong Kong can be considered a modern capitalist state with internal self-government under the sovereignty of the PRC, which is entitled to 'uphold national unity and territorial integrity throughout the motherland'.<sup>73</sup>

The constitutional document for Hong Kong is the Basic Law, adopted by China's National People's Congress (NPC) and in force since 1 July 1997. It confers upon Hong Kong a high degree of autonomy, reiterates that its capitalist system will remain unchanged, and establishes a division of powers in executive, legislature and judiciary. All laws previously in force in Hong Kong keep their effect, except those in contradiction to the Basic Law. This sort of constitution gives all residents (citizens of Hong Kong, China) freedom of speech, press and publication, freedom of association, assembly procession and demonstration, communication, religion and marriage, even freedom to form trade unions and strike. The provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) remain in force. Moreover, Hong Kong remains a free port and a separate customs territory with its own currency. The Basic Law affirms that the free flow of capital through its markets shall continue and that China will not levy taxes in Hong Kong. Finally, the government of Hong Kong shall be responsible for the public order, whereas the People's Liberation Army is stationed in Hong Kong only for defence purposes.

The PRC's NPC has the sole power to interpret and amend the Hong Kong Basic Law, a power which is denied to Hong Kong's legislature or citizens. Hong Kong has 35 representatives on the NPC, all of whom are selected by Beijing. The government of Hong Kong is required to report only to the Central People's Government. Nevertheless, China has several times encroached upon Hong Kong's freedom and liberties. For example, retroactive laws have been enacted repealing the right to demonstrate without the government's permission. China has hinted at further limits on rights of assembly, the banning of political parties that threaten internal security and imposing restrictions on criticism of the government with an anti-subversion law. New laws can be used to restrict political expression on the vague grounds of 'national security'.<sup>74</sup>

<sup>73</sup> The 'Basic Law of the Hong Kong Administrative Region of the People's Republic of China', Preamble; see [<http://www.info.gov.hk>].

<sup>74</sup> International Committee of Lawyers for Tibet, *Forms of Autonomy*, New York, 1999, pp.221–2.

Is Hong Kong an example of 'genuine autonomy' which could be adapted to other territories, annexed by China? After the establishment of the Hong Kong Special Administrative Region in 1997 (and the same for Macau in 1999), the Dalai Lama urged the adoption of the same system in Tibet, attributing only foreign affairs and defence to China, with all other responsibilities handled with full internal autonomy by the Tibetans.

In reality, Hong Kong even retains considerable powers in external affairs, and keeps its membership of international and regional institutions, is allowed to conclude international treaties and maintain its own currency. Indeed, Hong Kong is allowed to have a separate system: its form of economy, its fiscal, tax and budgetary system; its legal and judicial system based on common law, its regime of civil liberties and political freedoms, its citizenship and immigration control. Considering the power of its institutions, Hong Kong is much closer to associated statehood than to territorial autonomy (as illustrated above for 22 states). But its weakness lies in the institutional arrangement, which hardly respects democratic standards:

The internal political system is heavily weighted in favour of the chief executive, the head of the government, who has firm control over the legislative process through vetoes, not only over bills but also over the introduction of legislative proposal. The chief executive is appointed by the Chinese government and cannot be dismissed by the Legislative Council, even on impeachment, except with the approval of the Chinese.<sup>75</sup>

Thus, again the democracy factor is the main 'missing link' to genuine autonomy.

On the other hand, the chief executive has limited powers of dismissal of the legislature in the event that they are in conflict. The weakness of the legislature is compounded by its partially non-democratic nature. A majority of its members are elected through narrow functional constituencies, or by special committees, which privilege business and conservative interests who are, in turn, committed to support China. Consequently, the executive is both unable and unwilling to stand up to the Chinese government, and the more autonomy-minded members of the legislature are unable to hold the government accountable or to secure Hong Kong's autonomy. China is able to devise

<sup>75</sup> Yash Ghai, 'Autonomy regimes in China: coping with ethnic and economic diversity', in Yash Ghai (ed.), 2000, *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States*, Hong Kong, p.93.

'one country, two systems' only because of the lack of democracy in Hong Kong. A democratic Hong Kong would not fit into 'one country' – as China is finding in with regard to Taiwan. But this very fact imposes and defines the restrictive scope of the 'one country two systems autonomy'.<sup>76</sup>

This stems from the very purpose of the Hong Kong autonomy, which is neither to accommodate claims of an ethnic minority (98 per cent of the Hong Kong population are Han Chinese), nor to confer stable political autonomy to the people of Hong Kong with the full right to determine and to amend in free partnership their political status. The purpose has rather been to devise a framework for managing an alternative type of economy. Hong Kong by the official China is perceived as a useful complementary adjunct to its economy, and last not least, as an example of how different systems can coexist under the same state, which is to be understood as a permanent offer for accession to Taiwan. Thus, the Chinese officials were quick to do away with the Dalai Lama's proposal to treat Tibet according to the 'one country two systems' principle, as Tibet is already considered fully integrated in China's economic and political system.

## 6. Conclusion

China has established a sophisticated system of regional and district autonomy to accommodate the claims and needs of its 55 national minorities, which in reality are often smaller peoples. There is strong doubt if those entities can be qualified as 'autonomous regions' in the absence of one decisive quality – pluralist democracy. Moreover, the rule of law and the respect of the full range of human rights are questionable, even if those 'autonomies' in practice cater to some basic needs and interests of the ethnic minorities and minority peoples.

When discussing autonomy issues in China, first of all it must be acknowledged that autonomy assumes a different significance in a democratic environment. Generally, it is detached from political pluralism and rule of law, and means an arrangement for governance in which a particular ethnic community is vested with specific powers of decision-making in legislation and administration. Chinese authorities recognize the distinctiveness of the ethnicities and cultures of minority peoples in the territory of the PRC, and sincerely promote their participation in politics and economic and social development and respect their

cultural needs. But all autonomy arrangements must operate within overarching national laws, institutions and a power structure, which limits the discretion of regional and local communities and their institutions: "There is no independent mechanism for boundary keeping, so there are no safeguards against inroads into autonomy. The Communist Party maintains its overall control and here there is no requirement of local participation or discretion."<sup>77</sup>

The appropriate term for such kind of power-sharing is that of „co-opted rule“: the dominant group rules on the basis of 'divide and rule'. Subordinated groups have some limited access to certain high-level, but mostly symbolic positions in politics, without gaining real power or influence. They act merely as token representatives for the ruling group and, thus, stabilize the existing power structures.<sup>78</sup> This kind of hegemonic control was practised by various colonial powers and China's policy towards its minorities recalls this strategy: a co-optation of subordinated groups without meaningful autonomy of the group as such. This may bring about a limited self-governance for minority peoples without granting them access to higher positions in politics or to public resources: „The groups can determine some issues by themselves, but they are not legally, politically or economically on an equal footing with the ruling group and still remain under the latter's control.“<sup>79</sup>

There is a further limitation of the concept of autonomy from the perspective of today's Chinese ruling elite. There must be an ethnic legitimacy and an ethnic claim for granting autonomy, but conferral of autonomy is linked with an attitude of loyalty to the Chinese state and to subordination to the general interest of the state, as defined by the central government. Language, cultural and education rights are to some extent protected, as long as ethnicity does not give rise to a different political self-consciousness. The ruling elite knows about historical Han chauvinism and assimilation of many minority cultures in the dominant culture. Hence, it respects ethnic history, traditions and customs, but only as far as they consider themselves a part of Chinese history.

Whenever minority peoples do not fit into the

<sup>77</sup> Ibid., p.91

<sup>78</sup> Ulrich Schneckener, *Models of Ethnic Conflict Regulations - The Politics of Recognition*, in: Schneckener/Wolff (eds), 2004, *Managing and Settling Ethnic Conflicts*, Hurst&Company, p.22

<sup>79</sup> Ibidem, p.22; Strategies of control are used most often by non-democratic, autocratic or feudal regimes, but sometimes in recent history of the 20<sup>th</sup> century also by majoritarian democracies.

<sup>76</sup> Ibid., p.94.

overarching political approach of the Chinese system, autonomy becomes a threat. For instance, Tibetan Buddhism and Xinjiang Islam, based on religious concepts, continue to cherish an alternative worldview to that of the Chinese Communist Party. Autonomy can only unfold in limited form and under tight control mechanisms. Today, this does not so much affect the traditional Communist regulation of society, but concepts of development, value systems and human rights in general. The religious basis of ethnic identity in many regions of the world has been endangered by market economy dynamics even more than by Marxist-Leninist dogmas. Hence, even in China the emphasis on economic development is threatening the way of life of minority peoples, as they are ever more absorbed into the national mainstream economy, as their natural resources are exploited with huge damage to their environment and a growing migration of Han workers takes place. These pernicious effects can particularly be observed in Xinjiang and Tibet. When the concrete management of an autonomous entity becomes ethnic in a deeper sense, autonomy is curtailed, or the parallel power structure of the Communist Party must intervene to apply corrections. Legal remedies are underdeveloped in the PRC's legal judiciary system. Autonomy seems to be tolerated only insofar as it does not affect the comprehensive political project of the Communist Party. Sovereignty, national unity and external non-intervention are at the centre. Internal self-determination remains a suspect aspiration in not only political terms, but also in terms of civilization.

This approach to autonomy is closely linked to the genesis of the autonomy concept in the history of the PRC, where negotiations in partnership between distinct minority peoples and minority representatives and the representatives of the state majority have never taken place. It must be acknowledged, however, that compared with democratically organized 'mega-states' (India, Indonesia, Brazil, Nigeria), China has a considerable record and success in implementing autonomy systems at the regional and district 'micro-level' and has to a certain extent accommodated the interests of some of its 56 officially recognized minority peoples.

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[<http://www.info.gov.hk>]: Official website of the Hong Kong government.

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## 4.5 Autonomy as a transitional solution for self-determination conflicts: the case of South Sudan

Territorial autonomy in recent history has also been used as a transitional or interim device to postpone the more difficult issue of the ultimate resolution of a self-determination conflict. In this case, autonomy provides a cooling-off period to separate the parties and powers and to prepare the examination of all available alternatives for the final stable settlement. Autonomy can serve this purpose because both parties can reserve their position, although later it will be hard for the government to offer anything less. The relationship of a working territorial autonomy may provide a better basis for negotiating the ultimate conflict solution by generating trust and a framework for discussions.

This was envisaged as an essential purpose of the Israeli-Palestinian agreement for autonomy for Gaza and the West Bank in Oslo in September 1993. While the course of subsequent negotiations has not yet yielded the expected solution, the concession of autonomy undoubtedly eased tensions and helped the longer-term process of finding a definitive status for a Palestinian state. But as a definitive solution, just autonomy for the Palestinian people always was ruled out. Their right to self-determination and statehood was recognized in 1948 by the United Nations, but since 1967 the Palestinians have had to struggle against military occupation. Under international law, military occupation is unlawful and demands rectification. In the Cairo agreement of 4 May 1994, the conflicting parties agreed on autonomy as a transitional period limited to five years toward full statehood and independence. In retrospect, this is a broken promise. Autonomy in such cases can be nothing but a part of the peace process, but not the solution itself.

In Hong Kong autonomy has a transitional character, as it is guaranteed only for 50 years, beginning in 1997. But unlike Palestine, as Hong Kong's ultimate destination is full integration into China, the transition period facilitates political and psychological adjustment.

settlers has also been overcome through an agreement (Nouméa 1998, entered in force in 1999) that gave the former colony a wide-ranging autonomy and postponed the final decision by more than 15 years. A definitive settlement remains to be reached through a referendum not before 2014.

The Bougainville separatist forces proposed a similar method to the Papua New Guinea government in November 1999. Bougainville may not decide on its definitive status before 2015. In such situations, the expectation of the central government is that the experience of autonomy will convince the regional political forces and population about the advantages of territorial autonomy. Statehood alone does not solve every problem, but a positive arrangement may conduct them against separation, especially since it is always possible to increase autonomy through further negotiations. However, in all of the cases mentioned above – Bougainville, New Caledonia, and Palestine – peoples endowed with the inalienable right to self-determination can install a period of autonomy as a first step towards full independence and statehood. Mutually agreed transitional autonomy serves as a kind of 'statehood training', or as the phase of separation before coming to a peaceful divorce. But the overwhelming majority of the world's operating autonomies are bound to last.

A striking example of a transitional autonomy is the peace agreement for South Sudan, signed by the SPLA/M and the Sudanese government in January 2005, which delays a referendum on self-determination and independence of South Sudan for five years. Thus, the referendum on self-determination will presumably be held in 2011.

### The transitional autonomy of South Sudan

<i>Population</i> (estimated 2005)	8,500,000
<i>Land area</i>	597,000 km <sup>2</sup>
<i>Capital</i>	Juba
<i>Official language</i>	Arabic, English
<i>Autonomy since</i>	2005
<i>Ethnic composition</i>	Dinka, Nuer, Nuba, others

<http://en.wikipedia.org/>

Historically, Sudan consists of two parts: Nubia, the Northern half, which is mainly desert, long inhabited

a history plagued by civil war between the Arabic-Hamitic Muslim North and the Black Christian and animist South which has been the decisive factor in determining the constitutional structure and politics of Sudan. Recently, a new conflict with the black but Muslim western part of Darfur has already claimed more than 200,000 victims.

With an area of 2,505,813 km<sup>2</sup>, Sudan is the largest African state, and in 2005 it had an estimated population of 36 million, including approximately 75 per cent Muslim Arabs and Nubians in the North, and Nilotic, Sudanic and black Africans in the South.<sup>80</sup> Approximately 17 per cent of Sudan's total population follow animist beliefs, and 8 per cent are Christians. Sudan, presently a constitutionally regionalized state, has also initiated a process for achieving political union with Libya by 1996. Arabic is the official language, but over 100 different languages and dialects are spoken in Sudan. The predominant ones are Arabic, Nubian and Ta Bedawie. Diverse dialects of Nilotic, Nilo-Hamitic, Sudanic languages and English are also spoken. A programme of Islamization is progressively spreading Arabic. Politically the Sudan politically is not regarded as a democratic state.<sup>81</sup>

## 1. 50 years of North-South conflict

The colonial administration and the circumstances of Sudan's independence from the previous Anglo-Egyptian condominium (1899-1955) are at the roots of the protracted conflict between North and South that has dominated the first 50 years of this state. South Sudan was not given the opportunity of self-determination in 1955, though Great Britain had administered the South as a separate unit. Nevertheless, on 19 December 1955 the Constituent Assembly of Sudan declared the independence of the whole of Sudan without having the South duly represented in this Assembly. This was accepted by both Great Britain and Egypt as well as the international community, but at the promise of the Sudanese state to provide for the self-government of the South. However, no clause of autonomy or self-determination for the Southern peoples was ever enshrined in the constitution.

Already in August 1955, when Arabian officers replaced the British Corps, the Equator Corps, made up of black African soldiers, launched a mutiny. This 1958 event

<sup>80</sup> [<http://en.wikipedia.org/>]

<sup>81</sup> See [www.freedomhouse.org](http://www.freedomhouse.org) and <http://www.democracyweb.org/majority/sudan.php>



by pastoral nomads who consider themselves Arabs, and the South, largely jungle and inhabited by black Africans. Ancient Egypt colonized Nubia before 1500 BC. The Nubians became Coptic Christians in the sixth century and were not converted to Islam until the fifteenth century, when the area was conquered by the Arabs.

The unification of what today de jure is Sudan began in the early nineteenth century, when it was conquered by Mohammed Ali of Egypt against strong local resistance. In the 1870s, Anglo-Egyptian armies suppressed the slave trade and established military posts along the Nile. This stimulated a revolt by Islamic fundamentalists led by the Mahdi. They succeeded in capturing Khartoum and driving the British out. Not until 1899 was Anglo-Egyptian rule established, when Lord Kitchener defeated the Mahdis at the Battle of Omdurman.

An Anglo-Egyptian dominion was established in 1899 and reaffirmed in 1936, and in 1951 Egypt proclaimed its full and unilateral sovereignty over Sudan, against Sudanese wishes. In 1953, a new Anglo-Egyptian agreement was negotiated, which provided for the establishment of an independent Sudan by 1956. Sudan became independent on 1 January 1956 under a parliamentary government, but in fact has been governed by generals for most of its past 50 years:

triggered a 14-year guerrilla war that ended only in 1972 with the agreement of Addis Ababa. That treaty accorded a very limited autonomy to the Southern regions within the framework of a federal system. Despite President Al-Numeiri's political devolution to the regions, his government remained unpopular in the Christian and animist South Sudan because of its pan-Sudanese Islamization policies. The discovery of oil resources in Southern Sudan in 1979 and the construction of a huge channel aimed to provide Nile water for the North (the Jougla channel) and drove Sudanese President Al-Numeiri to call off the Addis Ababa peace agreement of 1972. Numeiri abolished the formal autonomy of the South, dividing it into three regions in an effort to split the southern opposition. This proved ineffective.

The conflict definitely re-ignited when the Sharia law was introduced by the Al-Numeiri regime in 1983. In May 1983, war broke out again when units of black soldiers revolted against their Arab officers. The black African colonel John Garang, a Dinka, founded and became commander in chief of the Sudanese People's Liberation Army (SPLA). Being part of Al-Numeiri's US-backed regime, the rebels found support in Ethiopia's socialist regime of Menghistu. In October 1984, Al-Numeiri offered re-unification of the three regions as a strategy for reconciliation. But before the two sides could start negotiations, the Al-Numeiri regime was overthrown in a bloodless coup in April 1985. The new regime, led by Sadiq al Mahdi, promulgated a provisional constitution in October 1985. In the first months of the Al-Mahdi government, the South declared a cease-fire, but when its demands for greater autonomy and immunity from Islamization went unmet, the armed conflict resumed. By 1987 the Southern region's official government had become powerless, while the two key forces vying for power in the region were the local militias and the SPLA. The two sides remained united against Khartoum's policy of imposed Islamization, but divided on other issues.

The North-South conflict was further deepened when Islamist leader Omar Hasan Al Bashir captured power in 1989, and by December 1989 the war had intensified. But the end of the Cold War and the collapse of the Soviet Union was a major shock to the SPLA, driving it to the verge of surrender. In 1993, however, John Garang's SPLA found a new allied power in Uganda's President Museveni. When Islamic fundamentalists seized power in Khartoum in 1993, suddenly the SPLA and Uganda gained US political and military support.

## 2. The 'Comprehensive Peace Treaty'

The first peace agreement of 21 April 1997 recognizes the right to self-determination of the peoples of the South within the boundaries of Sudan defined on 1 January 1956. After some unsuccessful negotiation attempts in the 1990s, after 9/11 Khartoum was ready to enter serious negotiations as the Sudan Islamic regime feared US intervention. But the groundbreaking agreement was reached only in the Machakos Protocol, signed on 20 July 2002.<sup>82</sup>

In September 2003, the two parties came to terms on security issues: the Sudan National army had to withdraw from the South and the SPLA from the North. Beneath these further existing armies a mixed division 40,000 men strong will be set up, consisting of soldiers of the SPLA and the National Sudanese Army, under joint command. Its units will be deployed especially along the internal border between the North and South, as well as in the disputed Nuba region and the Blue Nile province.

In December 2003, a treaty was signed on the 'partition of the wealth of the country' dealing with land property rights, the administration of the ministry of finance, a double banking system and the control of revenues from customs and taxes. But above all, the agreement provides for the regulation of sharing oil revenues. After the construction of a pipeline from Heglig to Port Sudan, the Sudanese government has become a mid-range oil export country, earning around US \$2 billion from oil annually.

In May 2004, three further agreements were signed. The most important regulates the joint exercise of political power. Omar Al-Bashir was appointed President of the state, while John Garang<sup>83</sup>, the leader of the SPLA, was selected to be Vice President, having a veto right on the President's decisions. A joint, mixed government was formed, made up of 52 per cent from the Patriotic Congress Party (North), 28 per cent from the SPLA, 14 per cent of the opposition parties of the North and 6 per cent from the opposition parties of the South. Within six months, a Constitutional Commission drew up a new draft constitution, which has never occurred in Sudan since independence was declared.

Only in November 2004, after the re-election of George Bush as the US President, was Sudan's regime

<sup>82</sup> On the 'provisional autonomy' of South Sudan: [<http://www.iss.co.za/AF/profiles/Sudan/darfur/compax>]

<sup>83</sup> John Garang, the founder and leader of the SPLA/M, died in an airplane accident in 2005.

ready for a definitive compromise. In the meantime, the entirely Muslim province of Darfur in Western Sudan had also launched an insurgency against the central government. This still ongoing war proves that the conflict in Sudan is not primarily religious, but is caused by the aspiration to full control of the country by a relatively small Arabian power elite in the Nile Valley. Also, the extension of political unrest to the exclusively Arabic province of Kordofan, as well as trouble in the non-Christian regions of the Blue Nile and Southern Kordofan and the Nuba Mountains in Eastern Sudan recalls the economic and political roots of Sudan's conflict.

The Comprehensive Peace Treaty (CPT), a bundle of agreements signed in Nairobi on 9 January 2005, ended a 19-year war with some 1.5 million victims, 4 million internally displaced people and 600,000 South Sudanese refugees living in neighbouring countries. The complex negotiation took some 30 months to be finalized. An open issue remains how the political opposition, both in the South and North, will be involved in the peace and self-governance process, and how the CPT can be effectively implemented. It provides the possibility of holding a referendum on independence in Southern Sudan after 2011. In 2007, a general census should be carried out, and in 2008 general parliamentary elections are to be held. There is a provision to establish separate regional administrations for the regions of Abyei, for the Nuba Mountains and the southern part of the Blue Nile province. These are regions with a mixed population: Arabs, black Africans, and in religious terms Christians, Muslims and indigenous religions. During the war, however, these regions were controlled by the SPLA. Also, a detailed time plan was scheduled for the implementation of the entire CPT.

The major flaws of this complex agreement lie in the negotiation partners themselves. The current Khartoum regime developed from a coup by the National Islamic Front (NIF), which collected only 7 per cent of the vote in the 1986 polls. The NIF most likely represent scarcely more than 10–15 per cent of the electorate today. On the other hand, the SPLA is far from controlling the whole of Southern Sudan. Other political parties in the South, although not always operating on the ground, do exist. Moreover, there are several militias, independent from the SPLA, or even fighting against the SPLA. As the SPLA is largely recruited from the Dinka ethnic group, it is not welcome in some other regions, particularly those inhabited by the Nuer. The 8.5 million people of the South are just a quarter of

Sudan's total population, the signatory powers of the Nairobi agreement of 9 January 2005 hardly represent more than a third of Sudan's whole population.

A further major obstacle for the implementation of the peace agreement is the ongoing bloody conflict in Darfur. In that Western desert region bordering Chad and Libya, the whole population (an entirely Muslim ethnic mix of Arabs and black Africans) had been sidelined by the Khartoum government during the war, since 1983. Politically and economically, the Darfur region has suffered the same discrimination as the South. When, in 2002, the people of Darfur, witnessing the breakthrough in North–South negotiations realized that some violent resistance could force the government to respect the fundamental rights of different peoples and minority groups, rebel groups started attacks hoping to mount enough strength to be invited to the negotiation table too. This was a bitter illusion.

Further questions arise with the implementation of the agreement: will oil revenues be managed transparently, and will South Sudan obtain its due share? Is the SPLA able to cover all government responsibilities in the joint government of the national union? Will the military arm of the SPLM endure the long transition period until July 2011? Will the deep cleavage between the rich Arab North and the poor and widely devastated South last?

### 3. The autonomy arrangement

The CPT was a substantial compromise, as Sudan recognized both the SPLA/M as a co-equal partner and the South as a 'self-determination entity' with a substantially unconditional right to self-determination following a certain procedure.<sup>84</sup> On the other hand, the SPLA/M agreed to a prolonged interim period during which self-governance for the South within a united Sudan would be attempted. During this prolonged interim period of autonomy, the SPLA/M promised to make unity attractive through various forms of cooperation with the North within the state institutions and values like:

- equal participation to the national government;
- shared common heritage;

<sup>84</sup> 'The people of South Sudan have the right to self-determination, inter alia through a referendum to determine their future status' (Paragraph 1.3, Machakos Protocol). See also Marc Weller, 'Self-governance in interim settlements: the case of South Sudan' in Marc Weller and Stefan Wolff (ed.), 2005, *Autonomy, Self-governance and Conflict Resolution*, Routledge, London, pp.165–6.

- sharing the wealth derived from the exploitation of natural resources;
- freedom of belief in a united Sudan.

As for the application of the Sharia law, the South will be allowed to derogate from the national constitution. After six years of this kind of constitutional framework for Sudan, an internationally monitored referendum will be held to either confirm unity or to decide the secession of the South. There is a special provision for the state of Northern Kordofan, which will enjoy a special status, along with Southern Kordofan/Nuba Mountains and the Blue Nile states, endowed with special autonomy within the South. A separate referendum will be held in the region of Abyei with the option to either remain part of the North with special autonomy or to integrate into the South.<sup>85</sup> Therefore, territorial autonomy will remain an issue of crucial importance for the internal power-sharing within both entities, the North and South of Sudan.

#### 4. The state's new structure

The agreement expressly describes the organization of powers as a 'decentralized system of government with significant devolution of powers having regard to national, South Sudan, state and local levels'.<sup>86</sup> Arrangements for South Sudan and the states are expressly designated as 'autonomy arrangements' (paragraph 1.1.1). The principle of decentralization is a guiding principle that is to apply throughout all of the divisions of the state that are established.<sup>87</sup> Hence, Sudan ceases to be a unitary state, but through devolution it has been transformed into a quasi-confederate arrangement with a complex, asymmetric construction.<sup>88</sup> From 2005 on, South Sudan will have its own constitution, institutions and legislation, but this

<sup>85</sup> Quite detailed provisions are established for autonomy and self-governance of both states, Southern Kordofan / Nuba Mountains and Blue Nile States. However, they do not enjoy a right freely to opt into the North or South, or even to choose independence. Instead, a 'popular consultation' is to be held. That consultation is to confirm approval of the peace agreement, including the special autonomy provisions, by the two respective states. The consultation is to be administered according 'to the will of the people of the two States through their respective democratically elected legislature', after a review process to evaluate the implementation of the peace agreement. There is also the possibility of renegotiating the autonomy provisions, 'if the peace agreement is found wanting'. Marc Weller (2005), *op. cit.*, p.167.

<sup>86</sup> 'States' are the official label of the units of the regionalized state of Sudan according to its previous constitution. The term is equivalent to 'region' in this context.

<sup>87</sup> Marc Weller (2005), *op. cit.*, p.169.

<sup>88</sup> *Ibid.*, p.169.

is not matched by a similar devolution in the North, where the remaining 28 million of Sudan's population live. Relations between the national centre and the southern states will be managed through South Sudan, which is an emerging legal entity. In addition, there are special arrangements for the three autonomous regions mentioned above, and the capital city of Khartoum will be governed under a special statute. The whole complex structure will be determined by an 'Interim National Constitution'.

Sudan will be governed by a bicameral legislature composed of an Assembly and a Council of States with 'equitable representation of the South'. The first elections of these institutions are to be held within three years of 2005. Until the elections, the negotiating parties divide the power in the National Assembly: 52 per cent to the NCP (Al Bashir regime), SPLA/M 28 per cent, other Northern political forces 14 per cent and other Southern political parties 6 per cent. Constitutional changes must be approved by 75 per cent of the members of each chamber. Amendments to the peace agreement can be approved only if they have previously been passed separately by the two treaty participants, the North and South. Thus, the South can veto any constitutional change in the National Assembly, at least in the first three years, as the South has 34 per cent of the votes in the Council of States.

The new Sudan will be ruled by a government of national unity, accountable to the President and the Assembly: In terms of executive power-sharing, the identity of the South now is much more pronounced. There will be a Presidency, composed of a President and two Vice Presidents. Declarations concerning war and states of emergency, and certain appointments and decisions concerning the Assembly must be jointly taken by the President and the first Vice President. Again, for the period until the elections in 2008, the current President is assured of retaining that office, but he will be joined by the SPLA/M Chairman as first Vice President, who is also the President of the government of South Sudan.<sup>89</sup>

Regarding the judiciary, the constitutional court of Sudan is endowed with upholding the national, the South Sudan and state constitutions. It is entitled to remove legislation of all levels if incompatible with constitutions. It is also one of the very few bodies that addresses relations between the states of the North and the national level. But, apart from the

<sup>89</sup> Marc Weller (2005), *op. cit.*, p.170.

national constitution, even the South is to give itself a constitution, to be adopted by a transitional assembly by a two-thirds majority. The 'Protocol on Power-Sharing' assigns 70 per cent of the seats in the Southern Assembly to the SPLA/M, 15 per cent to the NCP and 15 per cent to others.<sup>90</sup> The South Sudan government is composed of a President, a Vice President and a Council of Ministers, with posts assigned according to the same formula that applies to the Assembly.

During the interim period (2005–11), both the North and South retain their armed forces, which will unite only if the referendum to be held in 2011 results in a unitary state. Additionally, the states have their own legislatures, executive and judicial institutions. At this level of government, representation is assigned in pre-fixed shares of seats until the elections are held. Each state can determine the nature of local government according to its own constitution. Special provisions are made for some regions such as Abyei which has its own structure of autonomous governance, operating directly under the authority of the national Presidency. Detailed provisions are also foreseen for the autonomy of the state structures of the Kordofan/Nuba Mountains and Blue Nile states.<sup>91</sup>

## 5. Competencies and legal order

The negotiating parties in Sudan, given the pending issue of self-determination by a popular referendum in 2011, agreed on a broad approach to power-sharing. Defence, borders, foreign affairs, immigration, currency and exchange, national police and other national services will be under exclusive national legislation and executive competence. The South will enjoy the powers of its own constitution, police and security, macroeconomic policy, financial resources and a list of public services. The states, too, are endowed with some exclusive powers. Although the CPT is quite precise in enumerating the single competencies, the complex structure is likely to result in some conflict of overlapping powers. Finally, the Kordofan/Nuba Mountains and Blue Nile states are awarded separate schedules of autonomous powers. Disputes are to be decided according to the following principles:

- the recognition of the sovereignty of the nation while accommodating the autonomy of Southern Sudan or of the states;

<sup>90</sup> Ibid., p.171.

<sup>91</sup> Ibidem, p.172; rather than with the South Sudan, a state *in fieri*, the issue of autonomy in that future state will be dealt with regarding these three regions (in Sudanese legal terminology called 'states').

- whether or not there is a need for national or Southern Sudan norms and standards;
- the principle of subsidiarity;
- the need to promote public welfare and to protect each person's human rights and fundamental freedoms.

Weller assumes that in the presence of the rather loose assignment of powers, most competencies will in practice rest with the South in relation to its own affairs and with the central state (Khartoum) in relation to the Northern states.<sup>92</sup>

Regarding the reach of national law, the South can exempt itself entirely from the Sharia-based law. In addition to the constitution and national law, human rights are to apply throughout the states of Sudan. The CPT requires compliance with all international treaties to which Sudan is a party by all levels of government. The Machakos Protocol commits the parties to grant freedom of worship and absence of discrimination on religious grounds. This particularly affects the position of millions of non-Muslims living in the North, who are exempted from punishment according to the Sharia.<sup>93</sup>

As a major irksome issue, the CPT has regulated in detail the sharing of natural resources, particularly oil, which is of crucial importance for the economic sustainability of the South's state-building. With regard to the oil extracted in the South, 50 per cent of net revenue will be devolved to the North and 50 per cent assigned to the South. 2 per cent shall be allocated to the oil-producing state or region in proportion to the output produced there. Other fiscal arrangements are regulated in detail within the CPT, given the fact that the South has been financially starved in the past, and is today economically devastated.

## 6. Conclusion

The settlement of the Sudanese conflict is one of the most important examples of a solution through self-determination of the concerned population through a referendum, but embedded in an interim period of self-government in the territorial autonomy. South Sudan, after two decades of war with the CPT, is fully constituted as a self-determining entity. The whole peace package, apart from some pressure from outside and technical assistance provided by several governments and NGOs, is the product of genuine compromise elaborated by the two principal parties,

<sup>92</sup> Ibid., p.173.

<sup>93</sup> Ibid., p.175.

the SPLA/M and the Sudanese Al Bashir government. It is left to political dynamics within the South whether unity in Sudan will gain ground or independence forces will prevail – in other words, whether the autonomy will be used to build up full statehood of the South or will be a process to re-integrate Sudan, ensuring reconciliation by sharing power and resources. But 50 years of bloody conflict are a bitter and painful heritage. The Sudan settlement is quite unique in Africa's history, as from the very beginning it was conceived as a 'provisional autonomy', and rather ensures the phasing out of a state that, over 50 years, has proven to be a faulty design. Autonomy, however, will continue to be an important issue within the future states. The next step of the quest for autonomy will be whether the future independent state of South Sudan (after 2011) sticks to its obligations to respect the right to autonomy of Kordofan, Blue Nile and Abyei enshrined in the CPT.

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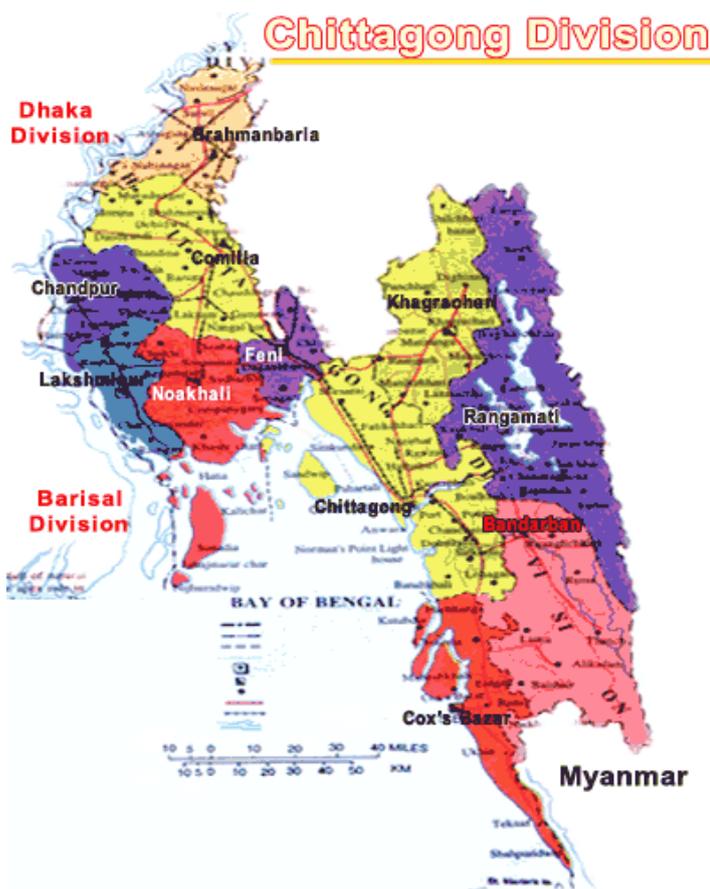
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## 4.6 Autonomy-like arrangements of power sharing

When screening the political landscape of the world's almost 200 states the researcher comes across a number of devices of territorial power sharing, sometimes officially labeled "autonomy". Apart from clearly authoritarian states as China and Myanmar, in several other states with "flawed democracies" or "hybrid regimes" the arrangement has to be examined carefully whether it complies with the fundamental criteria of territorial autonomy as outlined in section 2.10. In the following some typical cases of power sharing with different features impeding the classification as modern autonomy are briefly presented.

### 4.6.1 Bangladesh: pseudo-autonomy in the Chittagong Hill Tracts



The incorporation of the Chittagong Hill Tracts into Bangladesh and previously into Pakistan is a legacy of British colonialism. The indigenous peoples of this area share much less ethno-cultural-religious features with Bengal and especially with Pakistan than Tibet

with China. Over centuries the CHT have been home to 13 distinct indigenous peoples. The history of these peoples in the last century is a history of colonization, gradual erosion of pre-existing forms of self-rule and assimilation, finally leading to armed conflict. Basically the CHT had a sort of autonomy already under the British rule in the sense of a limited self-rule, overseen by the British Deputy Commissioner. Later it was an "excluded area" as several such areas in India's Northeast, where non indigenous persons were not permitted to enter. Inner line regulations, dispensation of justice, application of customary law in land regulations and local chieftainship were also practiced by the colonial power in some areas of the Northeast, which in those times were mostly part of Assam.

After the partition of Pakistan and Bangladesh in 1971, no recognition of ethnic minorities was enshrined in Bangladesh's constitution, which declares Bangladesh a unitary state. Although Article 23 entrusts the state to preserve the cultural traditions and heritage of minorities, again the purpose is to enrich the "national culture." The concept of territorial autonomy remained alien to the legal order of Bangladesh until a solution had to be found to accommodate the tribal peoples of the Chittagong Hill Tracts. The Islamic religion and Bengali language are the two basic features of the state, which only exceptionally recognizes rights and identities of other groups.

When the elected representatives of CHT in 1973, after the independence of Bangladesh, asked for autonomy and a ban on the influx of Bengali settlers, Sheikh Mujibur Rahman summarily rejected it. After many years of immigration of Bengali settlers, displacements, deforestation, dispossession of land, forced migration, the tribal peoples launched an armed resistance. The government of Bangladesh not only resorted to massive military repression, but also adopted an aggressive immigration and settlement policy, drastically changing the demographic composition of the region. From less than 10% in 1947 the share of Bengali settlers on the total population increased to more than 50% today. In 1997, after major bloodshed, the CHT Peace Accord was signed between the state of Bangladesh and the majority forces of the indigenous peoples, granting a limited form of autonomy. But the power of self-rule and the real protection of the rights of the indigenous population of the area in the framework of a territorial autonomy enshrined in the Constitution never came into being.<sup>94</sup>

<sup>94</sup> For a short updated overview see: M. Mahbubur Rahman, *Autonomy for the indigenous peoples of CHT: aftermath of the 1997 Peace Accord*, in: Thomas Benedikter (ed.), 2009, *Solving Ethnic*

The 1997 CHT Peace Accord designed a three-tier framework of administration with the CHT regional council in a central role. The regional Council was tasked with supervising the district councils. By the same time a special ministry for CHT affairs at central level was created. The CHT Regional Council Act curtailed any aspects of the autonomy promised within the CHT Peace Accord. The district council were supposed to get 33 subjects of powers, but only 19 have been transferred. Land management, local law and order were excluded. The three district councils, scheduled in the 1997 Peace Accord, have not yet been elected, but only nominated by the government and cannot operate on a legislative level. Thus, these councils have no real democratic legitimacy and lack the potential to exercise autonomy on behalf of the people.

Subsequently there is no progress in addressing the land conflicts in the CHT between new Bengali settlers and indigenous peoples. Moreover the 1997 Peace Accord is not protected by constitutional safeguards. The government in Dhaka can revoke it at any time. The CHT accord failed to build trust among the political mainstream parties of Bangladesh and the political forces of the indigenous peoples of the CHT. A section of these peoples rejected the accord and resumed armed resistance. They demand a genuine autonomy for CHT, leaving only foreign policy, defense, currency and taxation and heavy industry to the national level. Unless the core issues of the conflict - lack of autonomy powers, no constitutional safeguards, ongoing immigration, no protection of indigenous lands - are not addressed, the conflict will continue. Not only the peace accord has been full of shortcomings, there is even no time frame in the accord for its implementation. This led to the current stagnation.

### 4.6.2 Azad Jammu and Kashmir and the 'Northern Areas': autonomous regions of Pakistan?

Azad Jammu and Kashmir (AJK, literally, „free Jammu and Kashmir“) is the Western part of the former princely state of Jammu and Kashmir, now a political entity controlled by Pakistan; the Northern Areas were the northernmost part of this princely state, now under Pakistani control as well. After the Partition of India in 1947, the princely states were given the

option of joining either India or Pakistan. However, Hari Singh, the maharaja of Jammu and Kashmir, wanted Jammu and Kashmir to remain independent. Pakistani militants from North-West Frontier Province and the Tribal Areas feared that Hari Singh may join Indian Union. In October 1947, supported by Pakistani Army, they attacked Kashmir and tried to take over control of Kashmir. Hari Singh then requested Indian Union to help. India responded that it could not help unless Kashmir joins India. So on 26 October 1947 Kashmir accession papers were signed and Indian troops were airlifted to Srinagar. Fighting ensued between Indian Army and the Pakistani Army with control stabilizing more or less around what is now the “Line of Control”, formally agreed to after the Indo-Pakistani war of 1971, separating the Indian and Pakistani forces and the Indian- and Pakistani-controlled parts of the former princely state of Jammu and Kashmir.

The Line of Control has remained unchanged since the 1972 Simla pact, which bound the two countries “to settle their differences by peaceful means through bilateral negotiations.” Some political experts claim that, in view of that pact, the only solution to the issue is mutual negotiation between the two countries without involving a third party, such as the United Nations. Following the 1949 cease-fire agreement, the government of Pakistan divided the northern and western parts of Kashmir which it held into the following two separately-controlled political entities:

- Azad Jammu and Kashmir (AJK) - the narrow southern part (13.297 km<sup>2</sup> ).
- Federally Administered Northern Areas (FANA) - the much larger area to the north of AJK (72,496 km<sup>2</sup>), directly administered by Pakistan as a de facto dependent territory, i.e., a non-self-governing territory.

### Azad Jammu and Kashmir



<b>Population (2004)</b>	4,567,982
<b>Land area</b>	13.297 km <sup>2</sup>
<b>Capital</b>	Muzaffarabad
<b>Official language</b>	Urdu
<b>Political status</b>	“Free state” since 1947

<http://en.wikipedia.org/>

According to Pakistan’s constitution, Azad Kashmir is not part of Pakistan, and its inhabitants have never had any representation in Pakistan’s parliament. As far as the United Nations is concerned, the entire area of the former princely state of Kashmir, including Azad Kashmir, remains a disputed territory still awaiting resolution of the long-standing dispute between India and Pakistan. While India made its part of Jammu and Kashmir an integral part of the state, Pakistan continues to this day to regard the entire area of the former state as “territory in dispute” to be resolved by a plebiscite to be held at some future date, in order to determine the entire area’s accession to either India or Pakistan. While continuing to call for that plebiscite, however, the government of Pakistan has, so far, been unwilling to entertain the idea of a third option for the plebiscite, i.e., a choice of independence for the entire former state. Today, Azad Kashmir and FANA are together referred to by India as “Pakistan-occupied Kashmir” (POK) and, conversely, the present Indian-administered state of Jammu and Kashmir is referred to by Pakistan as “Indian-occupied Kashmir.”

AJK has a separate Constitution, Legislative Assembly, Government and Supreme Court. The first legislative assembly of AJK, composed by 49 members, out of which 41 are elected directly and the remaining nominated members, was established in 1971 under the „Azad Jammu and Kashmir Act“. In 1974 the „Interim Constitution Act“ granted AJK a parliamentary system, in 2006 the 8<sup>th</sup> Legislative Assembly was elected, among heavy criticism of election frauds. The election process has highlighted that the pro-independence political groups in the region are not free to contest the elections to the Legislative Assembly.

The nominations of 30 Jammu and Kashmir Liberation Front candidates (JKLF) candidates and 72 All Party National Alliance (APNA) candidates were rejected. This is because their leaders who have refused to sign the ‘demand for the accession’ of AJK to Pakistan. This is in accordance to section 4 (7) and (2) of the 1974 Interim Constitution, which reads as: „No person or political party in Azad Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to the ideology of the State’s accession

to Pakistan.“ This has become a customary rule in every election. It is important to note that this is in complete violation of the principles of Article 21 (3) of the Universal Declaration of Human Rights and a violation of the principles in regard to elections embodied in the report of UN-Secretary General A/46/609. As expected the 2006 elections in AJK confirmed the All Jammu and Kashmir Muslim Conference on power in Muzaffarabad with Sardar Attiq Ahmed Khan as the new prime minister.

The question arises whether this kind of election can be considered free and fair, and – if not – AJK can be considered a „genuine autonomous region“ under the criteria of a democratic state with rule of law. Neither is the election of the members of the Legislative Assembly complies with the requirements of a free procedure, nor are the AJK organs by constitution independent from the Pakistan government. The supreme body ruling AJK is rather the “Azad Jammu and Kashmir Council”, consisting of 11 members, six from the government of Azad Jammu and Kashmir and five from the government of Pakistan. Its chairman/chief executive is the president of Pakistan. Other members of the council are the president and the prime minister of Azad Kashmir and a few other AJK ministers.

Simply holding polls at regular intervals, from which undesired political forces are a priori excluded, cannot suffice to accord the brand of being democratic to a region. Moreover Pakistan as such is not matching international standards of a democratic state.<sup>95</sup> As a matter of fact AJK remains strongly dependent from Pakistan’s central government in both political and institutional terms. The pending issue of a definitive solution of the international (bilateral) dispute in Jammu and Kashmir is used as a pretext to preclude an entire regional community from fundamental political freedoms and constitutional rights.

### The „Northern Areas“ or Gilgit-Baltistan



<sup>95</sup> See [www.freedomhouse.org](http://www.freedomhouse.org)

<b>Population (2004)</b>	1.500.000
<b>Land area</b>	72.496 km <sup>2</sup>
<b>Capital</b>	Gilgit
<b>Official language</b>	Gilgiti, Hunza, Balti, Punjabi, others
<b>Religions</b>	Shia, Sunni, Ismaili, Nurbakhshi

<http://en.wikipedia.org/>

Gilgit, Baltistan, Hunza and Nager compose the so-called „Northern Areas“ of Pakistan, at the crossroads of three of the major mountain ranges of the world: Karakorum, Hindukush and Himalaya. Until 1848 these valleys were mostly small independent kingdoms. Then they were invaded and annexed by the Dogra rulers of the princely state of Jammu and Kashmir. When the British colonial rulers left the sub-continent in 1947, the Maharaja of Kashmir decided to accede to India, although both Kashmir and Gilgit-Baltistan had an overwhelming Muslim population. In Gilgit-Baltistan this triggered a struggle for liberation, which after 91 days resulted in the liberation of the Northern Areas on 1 November 1947. As the troops of the Maharaja, supported by the Indian army were returning, the ruling council decided to accede to Pakistan, an act never confirmed by a popular referendum or vote. The Government of Pakistan declared this area „Gilgit Agency“, which was subsequently governed by a political agent directly dependent from Islamabad under the infamous „Frontier Crimes Regulation“ (FCR).<sup>96</sup>

Since the creation of Pakistan in 1947, the population of so-called “Northern Areas of Pakistan” (F.A.N.A.), historically known as Gilgit-Baltistan or sometimes as “Balawaristan,” is living in a state of limbo, having no self-rule nor being formally a part of Pakistan.<sup>97</sup> Unlike Azad Jammu and Kashmir, which obtained a form of separate region with its own assembly, government, judiciary under a separate constitution, Gilgit-Baltistan since 62 years has been governed like a „dependent territory“ or „national trusteeship area“. It is virtually in a legal limbo, as the government of Islamabad holds that, while the Kashmir issue is still pending, no

<sup>96</sup> See Raman D. Anita, *Of Rivers and Human Rights: The Northern Areas, Pakistan's Forgotten Colony in J&K*, in: International Journal on Minority and Group Rights, Vol 11, Nos.1-2, 2004, p. 187-228

<sup>97</sup> On the issue a critical comment from Murtaza H. Shaik., *Pakistan's Federally Administered Tribal and Northern Areas: Fundamental Rights, effective representation and autonomy*, in: Thomas Benedikter (ed.), 2009, *Solving Ethnic Conflict through Self-Government*, EURAC Bozen, at: <http://www.eurac.edu/EURASIA-Net>, pp. 92-96

definitive legal status can be accorded to the Northern Areas. This not only violates the fundamental political rights of its population, but is also contradictory in a double sense: on the one hand, AJK immediately in 1947 has got a well defined legal status with its own constitution, parliament, supreme court and government; on the other hand Gilgit-Baltistan ethnically and culturally is not a part of Kashmir, but just a victim of the expansionist policy of the former Maharajas of Kashmir, who colonized the region in the 19<sup>th</sup> century with the explicit assent of the Britishers.

The Chief governor of the Northern Areas is nominated by Pakistan Government and resides in Islamabad. His deputy is elected by the „Northern Areas Legislative Council“ (NALC), but this local assembly has no real legislative and executive powers. Its 24 male members are elected by the resident electorate since 1994, whereas its 6 female members are nominated by the 24 elected men. The Northern Areas are governed under the Legal Framework Order (1994), which lists the few powers of this assembly. Every single act, however, has to be confirmed by the Ministry of Kashmir affairs in Islamabad, which is also fully controlling its administrative and financial affairs.

As the Human Rights Commission of Pakistan concluded after its mission in 2005 in Gilgit Baltistan,<sup>98</sup> the majority of the people of the area want Gilgit-Baltistan to be definitely merged into Pakistan as the 5<sup>th</sup> province. If this is should legally be impossible, they demand autonomy status (free state) like Azad Jammu and Kashmir, or in short terms

- the chief executive of the Northern Areas should be an elected member of the NALC and accountable to the Council;
- the Legislative Council NALC should be given legislative powers;
- the Chief executive should be based in the Northern Areas;
- the Chief Executive should be given full executive authority;
- all laws (except taxation laws) in force in Pakistan should be extended to the Northern Areas;
- an autonomous judiciary and full respect of fundamental rights should be ensured. The judiciary should be made independent of the executive.

<sup>98</sup> See Human Rights Commission of Pakistan (2006), *A strong yearning for autonomy – Report of HRCP mission*, Lahore

### 4.6.3 Other cases of “autonomy-like arrangements of power sharing”

Apart from the special forms of self-government in South Asia briefly presented above, there are several states in all continents which have established similar arrangements, formally labelled as “autonomous entities”. Here, just a few cases shall be listed in order to reiterate the necessity of a conceptual distinction between modern territorial autonomy, respecting the four criteria explained in section 2.10, and arrangements of territorial power-sharing not matching one or more of these criteria. In democratic states this refers mostly to the lack of the devolution of legislative powers, in non-democratic states the lack of democratic institutions and procedures on the national and regional level.

#### São Tomé and Príncipe

São Tomé and Príncipe are made up of seven municipal districts, six on São Tomé and one encompassing the Autonomous Region of Príncipe. Every district functions in a similar way. Each district has a governing council that has some autonomous decision-making power. The autonomy in the region of Príncipe has increased since 1995, and Príncipe now acts as a region and a regional government consisting of five members. But the entity still lacks legislative powers.

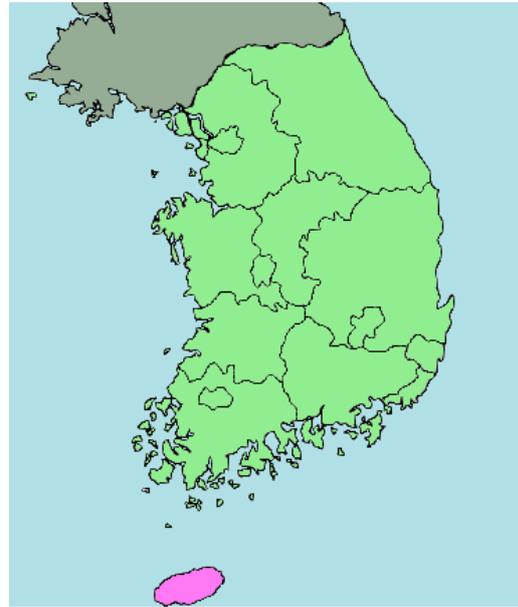


#### South Korea's province of Jeju

In February 2006, the Special Act on the Jeju Special self-Governing province in South Korea was introduced.<sup>99</sup> The island has an autonomous status that differs from the other provinces of the state. There is a council consisting of 41 members, which is not elected, but nominated from the national government. Three members function as political advisory members to each standing committee. Tasks are being transferred to the region from the national level in stages. Jeju island will have its own police force and its own fiscal

<sup>99</sup> Jeju Special Self-governing Province at: <http://english.jeju.go.kr/contents/index.php+mid=0202>

system according to the free-market principle. The national parliament has the ultimate right to amend the Special Act.



#### Mauritius and Rodrigues

The regional assembly of Rodrigues is empowered to make regulations for regional matters. It may initiate legislation, which has to be ushered in the National Assembly to become law for Rodrigues. This Assembly prepares the annual budget, but does not approve it. This form of power sharing is a form of decentralisation of decision making without establishing a genuine autonomy.

#### Corsica (France)

The Corsican Assembly has no legislative powers, but instead „regulatory powers to implement national laws and decrees as well as to define and implement policies within expanded spheres of competence (education, media, training, culture, environment, regional planning, agriculture, tourism, fiscal matters, housing, transportation, energy, etc.)<sup>100</sup>. Corsica has also a local executive council created by the 1991 Statute.<sup>101</sup> The council has six councillors (selected from the Assembly) and a president that implements the Assembly's policies. The central government on Corsica is represented by a prefect as „a political/administrative instrument to ensure respect of public order and to facilitate dialogue with the centre.“<sup>102</sup>

<sup>100</sup> M. Tkacik (2008), Characteristic of Forms of Autonomy, p. 381, relying on F. Daftary, „Experimenting with Territorial Administrative Autonomy in Corsica: Exception or Pilot Region?“, in Int. Journal on Minority and Groups Rights 15 (2008),

<sup>101</sup> The 1991 Special Statute of Corsica is available at: <http://www.legifrance.gouv.fr/WAspad/Visu?cid=13568764&indice=1&able=LEGI&ligneDeb=1>

<sup>102</sup> Ibidem



Corsica's regional assembly, having only limited regulatory powers, cannot be qualified as a "legislative autonomy". The central government is not required to consult the regional assembly even on matters that will affect Corsica, though "it may be consulted by the French Prime Minister on draft laws or decrees which directly affect the Island".<sup>103</sup> Also Legaré/Suksi do not qualify Corsica as a territorial autonomy, in spite of the fact that it is constituted as a special area.<sup>104</sup>

### Karakalpakstan (Uzbekistan)



Karakalpakstan is an autonomous republic of Uzbekistan with its own constitution and parliament ruling the area. The government is headed by the Council of Ministers of Karakalpakstan. The head of the government should be an ex-officio member of the Cabinet of Ministers of Uzbekistan. Karakalpakstan also has its own judicial system.<sup>105</sup> This autonomous

<sup>103</sup> Alessandro Michelucci, Rebel Island: Corsica's long quest for autonomy, in: Thomas Benedikter (ed. 2009), *A Short Guide to Autonomy in South Asia and Europe*, EURAC, Bozen.

<sup>104</sup> André Legaré/Markku Suksi (2008), op. cit., p. 147

<sup>105</sup> Information retrieved from Maria Ackrén (2009), *Conditions*,

entity can freely determine its administrative structure and has even the right to secede from Uzbekistan on the basis of a nationwide referendum held by the people of Karakalpakstan. Unfortunately the standard of political rights and democratic freedoms is by far not sufficient to qualify Karakalpakstan as a modern autonomy system.

### Nakhichevan (Azerbaijan)



Nakhichevan forms an Autonomous Republic in Azerbaijan. The regional parliament, the Ali Majlis, is endowed with legislative power and the executive power should be implemented by the Cabinet of Ministers. The Chairman of the Ali Majlis is the highest official of this autonomous entity. The parliament consists of 45 members elected for a five-years term.<sup>106</sup> Amendments to the status of Nakhichevan follow the same procedure as amendments to the Constitution and are only possible if approved by a referendum in Azerbaijan.<sup>107</sup>

### Gorno-Badakshan (Tajikistan)

Gorno-Badakshan is a very mountainous region, which is part of the Republic of Tajikistan.<sup>108</sup> It has its own parliament and the right to introduce draft legislation. The region is considered to be a component and an indivisible part of the Republic of Tajikistan. There is a clause requiring permission of the people's deputies in the regional parliament to alter the borders of the territory.

op. cit., p. 212; the Republic of Karakalpakstan at: <http://www.umid.uz/Main/Uzbekistan/Regions/Karakalpakstan/>

<sup>106</sup> Nakhichevan Autonomous Republic, Section IX in the Constitution of Azerbaijan, at: [http://confinder.richmond.edu/admin/docs/local\\_azerbaijan.pdf](http://confinder.richmond.edu/admin/docs/local_azerbaijan.pdf)

<sup>107</sup> Maria Ackrén, (2009), *Conditions*, p. 216

<sup>108</sup> Ibidem, p. 207

The people's deputies are elected in accordance with established laws, regardless of the size of population. Gorno-Badakshan has also its own courts. The President of the Republic appoints and dismisses the chairs of Gorno-Badakshan. One of the assistants to the Chair of the National Parliament must be a people's deputy from this region. The powers related to internal matters of the region are determined by constitutional law.<sup>109</sup> It has to be recalled that Tajikistan in terms of standards of democratic liberties and civil rights is not considered a democratic state.

The arrangements of territorial power sharing as established in the states of Central Asia, in Pakistan and in the PR of China are not eligible for classification as a "modern autonomy system" as the fundamental criterion of a democratic system with political freedoms and free and fair elections is not matched. As discussed in section 2.10 the absence of democratic procedures and institutions prevents self-government of the population of the concerned area, although with regard to democratic standards there are considerable differences between Pakistan and China, between Azerbaijan and Tajikistan.

On the other hand the criterion of a working democracy on both the central state's and the autonomous entity's level is not the issue in other cases of "autonomy-like arrangements of territorial power sharing".. Such forms have been established in the USA (American Samoa and American Virgin Islands), in New Zealand (Cook Islands, Tokelau and Niue), Australia (Norfolk Islands).<sup>110</sup> In terms of constitutional and international law most of these arrangements are dependent territories, still included in the respective UN-list under Article 73 of the UN-Charter. Hence, unlike the autonomous regions presented in chapter 3, these territories are not incorporated (including the British Crown Dependencies) and thus not parts of the respective state. Due to different reasons they are either in a relationship of associate statehood or dependent territories and hence they do not match the criterion 1 and 3 of the four criteria listed in section 2.10, mostly their inhabitants are not entitled to vote for the central state's parliament. On the other hand, the respective state government has ultimate power on amending or vetoing decisions taken by the local legislatures or executives of the dependent territories.

<sup>109</sup> Constitution of Tajikistan at: <http://www.unpan1.un.org/intra-doc/groups/public/documents/untc/unpan003670htm>

<sup>110</sup> See the list reported by Maria Ackrén (2009), *Conditions*, op. cit., pp. 189-228. See also the full list of autonomous territories according to Ackrén in the appendix, part 7.

There is no doubt that in the majority of these cases in political day-to-day practises there is a high degree of autonomy and the central states' (Australia, USA, UK, New Zealand) interference in internal affairs is minimal, as long as security interests are safeguarded. The decisive issue is often economic and financial dependencies of such former colonies. Nevertheless, in the framework of the present legalistic-political approach still a clear line is discernible between such cases as New Caledonia (autonomous overseas country of France, fully incorporated) and Niue (an associate state of New Zealand) and again American Samoa (a dependent territory), and St. Pierre and Miquelon (an overseas département of France, without legislative autonomy). Projecting the potential of conflict solving through self-government to the future, not dependency under Article 73 of the UN-Charter as a remnant of the colonial period of the great powers can be the issue and will be aspired by regional communities, but modern autonomy respecting all aforementioned criteria of a modern democratic polity.

## *PART 5*

### **Conclusions**

5.1 Experiences with territorial autonomy – An overview

5.2 Minimum standards of territorial autonomies

5.3 Functional elements of territorial autonomy

5.4 Factors of success of territorial autonomy and crucial lessons

5.5 Autonomy as a solution for ongoing ethnic conflicts?

As of 2009, territorial regional autonomy, according to the criteria determined in section 2.10,<sup>1</sup> is working in at least 20 countries of the world. As some states are home to more than one autonomous region (Spain has 17 'Autonomous Communities', Italy 5 'regions with special statute', United Kingdom six, Nicaragua and Portugal two, etc.), there are at least 60 regions or territorial entities vested with territorial autonomy.<sup>2</sup> Modern territorial autonomy systems of this kind have operated successfully since 1921, when the Åland Islands obtained special status within Finland. The most recent autonomy system has been established in Serbia with the restoration of the Autonomous Province of Vojvodina on 14 December 2009, whereas the Province of Aceh in Indonesia has achieved autonomy in August 2006. The most salient features of these working autonomies – at least of one autonomous region for each of the 20 countries respectively – were examined in chapter 3.

After giving a comparative overview on such experiences the possibility will be discussed to determine the minimum standard of a 'genuine modern autonomy' and the key factors for success of autonomy systems, taking account of the lessons to be drawn from the experiences hitherto collected. At the end of this chapter we deal with possible application of autonomy devices as a solution to open ethnic conflicts. Finally, the need for a collective right to autonomy is explained.

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<sup>1</sup> Democracy at both levels, a minimum of legislative and executive powers, stability and rule of law, equality of the autonomous entity's citizens with regard to general civil and political rights.

<sup>2</sup> See the complete list of the working autonomous regions in section 2.10. The autonomous subjects of Russia are not included in this count, as the whole state is considered an asymmetrical federal system *sui generis* with various kinds of federal subjects. China's autonomous regions, along with some regions in other former Communist states in Central Asia are not included, as the criterion of a fully democratic system is not matched. Other autonomous regions are autonomous only by name. A different list of autonomous entities, proposed by Maria Ackrén, is produced in the appendix, part 8.

## 5.1 Experiences with territorial autonomy - An overview

Considering the application of territorial regional autonomy on all continents, this device of vertical power-sharing provides a rich potential of means and arrangements for conflict solution, especially in conflict situations with an ethnic background, or connected to national minorities or minority peoples. Given the fundamental premises and political legitimacy, regional autonomy in almost 60 cases has proved to offer appropriate forms of accommodation of the interests of both sides, the central states and the regional communities or minority peoples.

### 5.1.1 Typical elements of autonomy

Territorial autonomy normally has been established in unitary states, but there are examples of special autonomous regions in regionalist states (Italy) and in federal states as well (Canada, India, Belgium, whereas Russia's autonomous entities are in reality federal subjects). In a few states, regional autonomy has become the basic principle of the overall state structure as in Spain, a 'state of autonomies'. In this case, regional autonomy, with blurred borders to the world's operating asymmetric federal systems, has been dis-connected from its previous main historical reason of existence, the presence of minority nations in Catalonia, Galicia and the Basque Country. Taking the form of disguised federalism, regional autonomy has developed into the main tier of political territorial organization, aimed to ensure a higher degree of subsidiarity and democracy for all regions of the state. But apart from Spain, regional autonomy as applied in other about 45 regions of the world still appears as a means of accommodating the needs and rights of particular regional communities and minority groups. In the following, we briefly draw some conclusions from a comparison of the working autonomies presented in chapter 3, before coming back to touch upon further perspectives of autonomy.

From a historical perspective, one fundamental premise of territorial autonomy has been the presence of an ethnic or national minority, distinct from the majority, to raise the claim for self-government. This minority had to match two further conditions: develop a political representation of its interests and give expression to a strong movement towards autonomy, backed by

the group and the regional population, and eventually supported by third parties. In almost no case - with exception of Spain's "Autonomous Communities" not hosting historical nationalities - has autonomy been granted simply out of the 'generosity' or wisdom of a central state, but only following political pressure, sometimes protracted political conflict or even violent struggle ending in full-fledged war. Self-governance in the form of regional autonomy on each continent usually was not donated, but had to be conquered.

The 'ethnic factor' as a basis for the legitimacy of establishing autonomy has been the rule, but exceptionally regions distinct from the mainland by mere geographic, historical and political features could and can obtain territorial autonomy as well (e.g. the Azores and Madeira, some Spanish regions like Andalusia, the Canary Islands and others without a significant ethnic minority, Sicily and Friuli-Venezia Giulia in Italy, some autonomous regions in Russia). The case of the United Kingdom demonstrates that language and ethnicity must not be the decisive factors for legitimizing autonomy: although English in all three autonomous regions as well as in the Crown Dependencies of the UK - Isle of Man, Guernsey, Jersey, Scotland, Northern Ireland and, to a lesser extent, Wales - is the absolutely dominant language, the history, the self-conception of the population, and the complex political relationship among social groups with different identities are a powerful rationale to settle a conflict through self-governance devices. However, territorial autonomy, in light of the currently operating autonomy systems, appears to be the most far-reaching system of ethnic minority protection. A growing number of national minorities and minority peoples are experiencing that there is no absolute need to constitute its own state, as long as territorial autonomy can offer sufficient means to preserve one's group identity and safeguard one's collective rights.

Numbers count in this regard, but are not decisive. There is a considerable difference between the major autonomous regions in terms of population<sup>3</sup> as Catalonia (population 7,248 million), Sicily, Scotland, Puerto Rico and Aceh (4-5 million) and the smallest autonomous regions, the Nordic Islands (Greenland, Faroe, Åland, between 27,000 and 56,000), the British Crown Dependencies (Isle of Man, Guernsey, Jersey), the Comarca Kuna Yala (47,000) and Nunavut, home to only 30,000 people. More important is the factor of the remote, peripheral location, which favours the central states' willingness to establish a regional autonomy.

<sup>3</sup> Apart from South Sudan (8.5 million), which is rather to be looked upon as a future independent state (referendum in 2011).

But even the Inuit of Nunavut, although they are few and remotely settled, had to negotiate for several decades to gain self-government, let alone the Kuna in Panama, who successfully struggled for autonomy as early as the 1920s, and were lucky to be faced with a relatively weak state ready for compromise at that time.

One further basic condition, confirmed by experience, is the compact form of settlement of the minority people or national minority on its traditional territory or 'homeland'. Minorities dispersed over several geographical areas can hardly be organized, nor can territorial autonomy be of major benefit to a minority whose members largely reside outside the autonomous area or do not form a stable majority within the autonomous region. This is a major problem in some autonomous subjects of the Russian Federation, with regional majorities not formed by the concerned 'titular' minority people, but by Russians, while many members (in some cases even the majority of the titular ethnic minority) are more dispersed. In other words, the concept of territorial autonomy should not be confused with 'ethnic autonomy', equivalent to reservations, nor with 'cultural autonomy', which is not linked to a specific territory, but to specific communities. However, it is always a particular challenge for regional autonomies to develop a particular responsibility for the protection of ethnic minorities, even if these minorities do not form a majority within the autonomous region.

This fact raises the issue of drawing the boundaries of autonomous regions, which must necessarily meet ethnic criteria if minority protection is to be achieved, but in reality often respects historical developments and political interests as well. Two kinds of open problems can be mentioned in this regard. First, there have been repeated attempts by central governments to redraw regional borders to the disadvantage of minority peoples, by securing the national majority population a similar majority within the autonomous region.<sup>4</sup> Second, enlarging the autonomous region to pretended 'historical extension' can push a national minority again into a minority position in terms of population within the autonomous entity.<sup>5</sup> This touches

<sup>4</sup> The latest example for a harsh conflict due to such a circumstance is Indonesia's province of West Papua, artificially divided in two distinct provinces. The most striking example is the division of the historical Tibet in 5 distinct provinces, by Maoist China in the 1950s.

<sup>5</sup> This would be the case if the Basque Country (the Autonomous Community in Spain) also encompassed the Community of Navarra, which has just a small Basque-speaking minority. The Basque speaking and feeling people would be in a minority in such a greater

the risk that a territorial autonomy may fall short of its fundamental aims to ensure minority protection and to allow a national minority effective self-governance if this minority is a numerical minority within its own region.<sup>6</sup> The concept of territorial autonomy is a flexible means of setting institutions and sharing powers, but if the self-government of regional communities and minority protection is the purpose, apart from the size of minorities, both the drawing of boundaries of the concerned region and, internally, forms of consociational government must ensure the central role of the national minorities in regional politics.

This argument leads to one major issue that can seriously endanger the success of territorial autonomy as a means of conflict solution: beyond the will of a group to survive as a distinct ethnic-cultural group, in the framework of a pluralist autonomy system, the will to cooperation and coexistence with other groups is also required. If ethnic groups are opposed to each other in open conflict for historical reasons and due to deep trauma of protracted violent conflict, then joint responsibility and a power-sharing agreement can hardly work. In some of the currently operating territorial autonomies, the regional ethnic majorities since the institution of the autonomy, have been in a majority position in their region vis-à-vis the members of the national majority population. In order to unfold the creative potential of autonomy, consociational mechanisms and common political responsibility must enforce the 'territorial dimension' of the autonomy, avoiding any form of revenge or internal discrimination. As some historical examples have shown, some national minorities or minority peoples have abused their new powers (Bosnia-Herzegovina, Kosovo, Abkhazia and South Ossetia in war-like circumstances). The lacking will for cooperation and respect of minority rights has even brought about 'ethnic cleansing', the attempt to create ethnically homogeneous regions, which seriously jeopardizes both the position of central states granting this autonomy and the supportive role of international organizations, kin-states and the international community.

Hence, the territorial dimension of an autonomy must not be underestimated if durability in conflict resolution and peace building is to be achieved. If an autonomy is expected to last, the individual ethnic groups sharing the territory with other peoples within a multi-ethnic

region must perceive the region as their common home, where political power and responsibility must be shared for the benefit of everyone.

This is particularly difficult, even painful, if the emographic composition of a region has been politically altered by resettling large numbers of members of the state's ethnic majority in the concerned region (Chittagong Hill Tracts, South Tyrol, Crimea, West Papua), or in the case of the descendants of the local agents or settlers of a colonial nation (Caldoches in New Caledonia, Mestizos in Nicaragua's Atlantic Region, Christian Filipinos in Muslim Mindanao, Java-Indonesians in West Papua, Bengali Muslims in CHT). Vindictiveness and reversed discrimination provide nothing but a pretext for the central state to intervene, undermining the very basis of the autonomy.

The time factor is also important: most successful autonomy systems required decades to be fully implemented (South Tyrol, the Åland Islands, Greenland, Faroe, Puerto Rico, Comarca Kuna Yala). The autonomy statute underwent total revision repeatedly, significantly improving the degree of autonomy. Also, the autonomy process in East Asia shows that establishing a stable power sharing in unitary states (as in Papua New Guinea, Indonesia, Philippines and even France) requires a great deal of time and patience. France has recognised that former colonies like New Caledonia cannot be kept in an indefinite state of dependency, if populations are allowed to freely exercise democracy. There are still many regions which could adopt autonomy as a lasting, stable solution along terms and conditions outlined here, but there are also territories which are fully entitled to exercise their right to self-determination as a people under codified international law and UN covenants. One typical element is that autonomy is an open process. Both parties agree to share power with precisely defined limits retaining the state's sovereignty and unity. But within this framework, autonomy can be further developed.

Stability appears to be another important element, as the establishment of autonomy has led to a renunciation of external self-determination. In most regions, there are still political forces advocating secession and independence or accession to the kin-state, but their influence has been strongly reduced (Northern Ireland, Basque Country, South Tyrol, New Caledonia, Zanzibar, Mindanao). In most cases, the implementation of autonomy could end violence, and peace agreements have been signed.<sup>7</sup> On the other hand, violence is

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<sup>6</sup> 'Basque Country'.

<sup>6</sup> Today, this is the case in the Atlantic Coast of Nicaragua, where especially in the RAAN, indigenous peoples feel increasingly threatened. Moreover, this is the case in several Russian autonomous republics and regions, where the 'titular minority peoples' are in numerical minority vis-à-vis the Russian majority.

<sup>7</sup> See U. Schneckener (2004), *Models of Ethnic Conflict Regula-*

used by movements that could not gain autonomy (Muslims in Pattani, Thailand; various minority peoples in Myanmar/Burma; Western Papua's indigenous peoples; smaller peoples in India's Northeast). But even the violent fringes of self-determination movements seem to be closer to relinquish the strategy of violent confrontation if advanced forms of autonomy are established. Apparently, a growing number of states have acknowledged that autonomy can serve to integrate national minorities into the state and to stabilize conflict in situations otherwise prone to go out of control.

### 5.1.2 A geographical bias

Looking at the world's map of autonomies, Europe still is home to the majority of autonomy solutions worldwide. In Europe's reality today, territorial autonomy has in nearly every case proved to be a success for all conflict parties involved: the national minorities, the regional communities, the central states and some kin-states. In none of the 12 European states with working regional autonomies is there a serious debate about cutting them back; on the contrary, in most cases the existing autonomy system is continuously improved and completed in order to grant an ever more appropriate system of self-government. Spain leads the group of states with a dynamic development towards a more articulated 'state of autonomies'. In 2006, the new autonomy statute of Europe's largest autonomous region in terms of population, Catalonia, was approved by its population in a popular referendum and later by the Spanish parliament. Serbia's parliament on 30 November 2009 approved the new autonomy statute of the multiethnic Province of Vojvodina. In Corsica, local political forces are working on a reform of the still weak model of self-government in order to enrich the system with more legislative powers. In Italy, the general devolution process of the central state's powers to the ordinary regions is pushing the state towards a federal structure, indirectly reinforcing the position of the five regions with special autonomy. In Romania a growing movement of ethnic Hungarians is pushing for the establishment of an autonomous Szeklerland. An ever-deepening process of European integration in the framework of the European Union has definitely been helpful for such autonomy proposal and solutions, as they are backed by a legitimate role of the respective

kin-states or international organisations.<sup>8</sup>

In this political context, three patterns of establishing regional autonomies can be distinguished. First, there is the 'traditional way' of granting autonomy as a special solution to a specific region in unitary states (Moldova, Ukraine, Portugal, France, Denmark, the Netherlands, Finland, Serbia and United Kingdom), due to its specific cultural, historical or ethnic features. Autonomy appears as the exception aimed to accommodate a minority, whereas the state as a whole is not prone to transform in a federal or regionalist direction. A second pattern is the establishment of autonomy in different (asymmetrical) forms for every territorial entity, as in Spain and Italy since the 1970s, and in Belgium as a newly federal state. A third solution is the creation of different layers of self-government within a large and ethnically heterogeneous country (Russia, India, Canada) in a form of asymmetrical federalism in order to find appropriate solutions for each specific regional reality. The latter is the object of broad research efforts in the field of federalism studies.<sup>9</sup>

The new autonomies in Eastern Europe, operating only for about a decade, are still in a provisional phase, with contradictory developments in the interethnic relations of the autonomous regions. In the Autonomous Republic of Crimea, for instance, the Russians have kept their predominant rule, while the Tatar community, returning after deportation by Stalin in the 1940s, is not yet accommodated. Tatarstan, at the other hand, presents a positive model of how national conflicts inside Russia could be resolved in an equitable balance of power between the centre and an ethnically mixed region. Thinking about the ongoing unrest in Chechnya, a lesson to be drawn is that autonomy solutions should be envisaged before low-level violence escalates into full-blown ethnic war. What makes these autonomies particularly important is their role as pioneers of autonomy regulations in a part of the continent which since 1990 has been a scenario of rising new nationalism, state centralism and widespread hostility towards autonomy solutions. In this context, Gagauzia, Vojvodina, Tatarstan and Crimea - if successful - are paving the way for a range of other regions aspiring to territorial autonomy (Albanians in Macedonia, Hungarians in Transylvania

<sup>8</sup> E.g. by the 'Conference of European Regional Legislative Assemblies' CALRE with its resolution on „Regions with legislative powers: towards multi-level governance“. See the appendix, part 5.

<sup>9</sup> Two recent examples: Francesco Palermo/Carolin Zwilling/Karl Kössler (2009), *Asymmetries in Constitutional Law – recent Developments and Regional Systems*, EURAC Research, Bozen/Bolzano; and: Palermo/Hrbek/Zwilling/Alber (2007), *Auf dem Weg zum asymmetrischen Föderalismus?*, NOMOS, Baden-Baden.

tion, in Schneckener/Wolff, *Managing and Settling Ethnic Conflicts*, London, p. 31-34; also Fernand De Varenes, *Lessons in Conflict prevention: A Comparative Examination of the Content of Peace Accords*, in: *The Global Review of Ethnopolitics*, Vol. 1, no.3, March 2002, p. 53-59

and Slovakia, Turks in Bulgaria, Ruthens/Rusyns in Ukraine, and other regions in the Northern Caucasus).

Apart from two cases of autonomy, systems provided by European states as former colonial powers in former colonial territories (France in New Caledonia and the Netherlands in their Antilles respectively), territorial autonomy has been a rather isolated episode in the Americas, in Oceania and in Africa, but it is of growing importance in Asia. The key players in the Americas' working autonomies are indigenous peoples: the small population of Panama's Kuna set an example for an alternative relationship with the central state as early as 1925, different from both cultural assimilation and reservations with cultural isolation and ethnic exclusiveness. The Comarca Kuna Yala, unlike most of America's ethnic reservations, enjoys both a territorial autonomy and equal rights of political participation on the national level. On the same path, Canada and Denmark accorded an exemplary autonomy status to the tiny population of indigenous Inuit in Nunavut and Greenland.

The autonomy of Nicaragua's Atlantic Region (North and South), now entering its twentieth year of existence, faces major problems in the difficult task of combining protection of indigenous peoples, territorial autonomy in a centralist state, consociational government and defence against over-exploitation of natural resources. Thus, both the Comarca Kuna Yala and Nicaragua's Atlantic Region are observed very critically by many indigenous peoples of America from Canada to Chile, which are faced with different options of political territorial organization:

- Indian reservations or "resguardos", a phasing out model of "ethnic exclusive autonomy";
- a system of general decentralisation linked with institutions of cultural autonomy and self-governance on a local level;
- territorial autonomy, which so far appears as an absolute exception.

Which is the most successful way from their perspective has still to be demonstrated.

Africa is another exception, as far as autonomy solutions to ethno-political conflict is concerned: New nationalism attempting to dominate ethnically fragmented states with growing difficulty to face weak states fails to take autonomy into account autonomy as a stable solution.

The provisional balance sheet is not positive to the same degree for the autonomy experiences in Asia, partly because some autonomy systems are only now about to be implemented (Muslim Mindanao since 1996, Bougainville since 2002, Aceh since 2006), and

partly because in other regions the autonomy process is not implemented properly (Chittagong Hill Tracts, West Papua). It should be recalled that in some crisis areas, autonomy arrangements have been accorded but were seriously flawed from the very beginning.<sup>10</sup> In India, from more than 50 years of experiences with territorial autonomy under the 6<sup>th</sup> Schedule of the Constitution emerged the necessity to systematically amend this formula and to establish new forms of territorial autonomy at the sub-state level. Asia from the West to the East is the scene of several conflict areas which would require a serious contemplation of territorial autonomy solutions as, e.g., various regions of Myanmar/Burma, the Chittagong Hill Tracts in Bangladesh, the Cordillera province in the Philippines, Indonesia's West Papua, Pattani in Southern Thailand, and Balochistan in both Pakistan and Iran.<sup>11</sup>

To sum up, the experiences with territorial autonomy accumulated so far in at least 20 countries with some 60 regions have been overwhelmingly positive. In most cases, autonomy arrangements have proved useful for all involved parties: the national minorities or minority peoples, the territorial regional community as a whole, the central state, and the international environment. In none of the 20 states hosting territorial autonomies at present has there been a serious political debate or attempt by the central state to cut back on or abolish an autonomy system. On the contrary, most of the existing autonomy systems are subject to reform processes to grant a more appropriate, detailed solution, and to approve and complete the degree of self-government. Nearly all considered autonomous regions have been successful in ensuring internal stability and power sharing. Some of the youngest autonomy arrangements, like Bougainville, Aceh and Vojvodina are just beginning the process of implementation of this newly gained autonomy. Particularly after long armed conflicts, establishing autonomy is like paving a road through a mined territory, a joint venture which cannot succeed without mutual confidence and strong international support.

<sup>10</sup> An assessment of autonomy arrangement in peace accords is given by Fernand De Varennes, 'Lessons in Conflict prevention: A Comparative Examination of the Content of Peace Accords' in *The Global Review of Ethnopolitics*, Vol. 1, No.3, March 2002, p.53-9; Nakhichevan in Azerbaijan, Karakalpakstan in Uzbekistan, Badakshan in Tajikistan, Azad Jammu and Kashmir in Pakistan are not 'recognized' as modern autonomy systems due to the lack of democratic standards.

<sup>11</sup> This issue will be examined in section 5.5

## 5.2 Minimum standards of territorial autonomy

As argued in section 2.2 and 2.10, a 'modern territorial autonomy' is identified when some basic requirements are met: democratically elected bodies representing the regional population in the regional and national institutions, the rule of law (and hence, the possibility to sue the state before the constitutional judiciary in case of conflict or for the full implementation of the autonomy), the existence of legislative powers (autonomy is the right to create law, not only to implement it) and a regional parliament and government, elected by the regional citizens and independent from the power of the central state.

Apart from these basic criteria of defining a territorial autonomy, the 'design' of an autonomy regime is as flexible as the structuring of a federal state or any constitutional setting of a state. Moreover, it is an open process propelled by the continuous dynamics of social and political development and the need of improving the quality and efficiency of an autonomy, and projected to bring about a stable balance of self-governance and internal and external conflict solution. Each of the world's autonomies has its own specific features suited to special cultural needs, geographical settings, political interests, social circumstances, ethnic and religious peculiarities, and even historical or psychological sensibilities.

### The minimum standard of territorial autonomy

However, based on the theoretical concept of autonomy in combination with historical experience, some 'functional minimum standard' of an autonomy must be defined in accordance with its main aims and goals. The main purpose of the world's working autonomies is it to concede to national minorities or minority peoples within their home region a certain sphere of self-governance (or „internal self-determination“), excluding certain political functions of a sovereign state, but including a minimum of powers to freely determine the social, economic and cultural development of the concerned territories.<sup>12</sup>

The concept of 'minimum standards' differs from an optimal idea, which can hardly be defined, but is up to

the continuous negotiation process and dynamics in a living political system. Such a concept of minimum standard is also helpful to determine whether territorial autonomy in a concrete case can be an appropriate means for the solution of ongoing conflict with ethnic background or not.

However, autonomy systems have been established mostly in those cases where a national minority or minority people is living in a local majority in its traditional homeland, and most members of that people or minority living in the same state live within that region (Germans in South Tyrol, Basque in the Basque Country, Scots in Scotland, Faroese in the Faroe Islands, Acehnese in Aceh, Gagauz in Gagauzia, etc.). The demarcation of the region that is to be endowed with autonomy is one of the major decisions to be taken in accordance with the concerned national minority or minority people. Experience has shown that an autonomy system is unlikely to be stable and enduring if majorities belonging to the titular nation of a state are created through artificially drawn borders. In reality, often the borders are given by geographical (island or peninsula) or historical factors. Otherwise, a democratic form of definition of borders shared by all communities living on a territory must be found.

Democracy not only is a criterion, but has to reach a minimum standard of regulations too. Territorial autonomy includes a local legislature with constitutionally or otherwise entrenched powers. According to Hannum three criteria are essential:<sup>13</sup>

- 1) locally elected legislative body with a minimum of independent legislation
- 2) a locally selected chief executive
- 3) an independent local judiciary

Hannum has been blamed to be unnecessarily rigid as autonomy should be inherently flexible: „It is the scope and depth of local rights and powers that matter, and not whether a single attribute such as a locally elected chief executive exists. The right to pass local laws, implicit in legislative autonomy also requires enforceability and a broad spectrum of local rights to truly rise the level of legislative autonomy.“<sup>14</sup>

As far as political representation is concerned, not only the legislature and government of the autonomous entity must be freely elected by general franchise, but the population of an autonomous region, regardless of membership in a national minority or the national

<sup>12</sup> See, for this chapter, Ulrich Schneckener (2002), *Auswege aus dem Bürgerkrieg*, Ed. Suhrkamp, Frankfurt; and Marc Weller/Stefan Wolff (ed.), 2005, *Autonomy, self-governance and conflict resolution*, Routledge.

<sup>13</sup> See Hurst Hannum (1990), *Autonomy, Sovereignty, and Self-Determination*, Philadelphia, p. 458-466

<sup>14</sup> M. Tkacik (2008), op.cit., p.373

majority, must also be represented by elected politicians on the national level (national parliament). This will grant a minimum participation of the regional community whenever the interests of that region and its population are directly affected.

Given the typical limitations of legislative and financial powers of autonomous regions, the effective degree of autonomy not only depends upon regional institutions and powers, but also upon the capacity to influence the decisions of the centre. This happens regularly in the form of political representation of the autonomous community in the national parliament, as well as in special commissions or exceptionally (Gagauzia, South Sudan) even a seat in the central government. Special bilateral commissions have also proved useful for arbitration and preparing reforms of autonomy statutes.

With regard to the powers transferred from the central level to the autonomous region, the autonomous bodies have to be enabled to effectively protect the minority culture and identities along with the general economic and social development of the region. If there is a bordering 'kin-state', the autonomous region needs powers to manage sufficient transborder contacts for sharing cultural life with the kin-culture. The following can be considered the essential cultural powers:

- The regulation of the official languages (in all public spheres)
- The education system and the social right to education
- Information rights and the media system
- The enhancement and patronage of culture in general
- Preservation of cultural heritage, toponyms and regional symbols

Territorial autonomy should also provide for the protection and equal rights of the minority language, as the most significant feature of distinct culture and identity. Not only has every member of the minority to be entitled to freely use his mother tongue, but the regional languages have to be advanced to official languages with the same legal opportunities as the national language.

A further core power of a genuine territorial autonomy is local responsibility over the education system and the local media. Notwithstanding some framework competencies of the central state, regulation of the education and media sectors is to ensure the full acceptance of regional school-leaving certificates on

a national and international level. Local media have to be responsive to the needs of information of the regional community based on their languages.

But power regarding cultural affairs is not enough to ensure the cultural survival of a national minority and its self-controlled development.

A territorial autonomy must be based on a second pillar, namely the power to influence regional social and economic development. Economic and financial resources are the backbone of the quality of the administration, but also the social security, the quality of life, the economic stability and the capacities of self-reliance of the region. A minimum of autonomous powers, thus, should encompass not only regulation powers on agriculture, forestry, fishery and hunting, but also on the mining industry and energy production, industrial policy, the service sector and regulations and incentives for all branches important for the region. Moreover the regional transport and communication infrastructure is of crucial importance in a modern society. If these important sectors remain within the central state powers, at least when major projects of larger scale (large dams, oil exploration and oil drilling, mineral mining) are to be carried out, the consensus of the concerned region and the concerned population should be required.<sup>15</sup> Finally, the terms of international economic relations and of integration in major economic organisations are still controlled by national governments, while only exceptionally autonomous regions can opt out (Greenland and Faroe Islands).

The autonomous control of local security forces under regional control (police) can be helpful in building up more confidence among the civil population after long, violent conflicts with the central state. But it proved that an autonomous police is no necessary part of the minimum standard of an autonomy.

Referring to powers in the judiciary, autonomous regions endowed with an autonomous judicial system (with at least the control of one level of the judiciary) are still the exception. There are several assertions that autonomous regions, having a comprehensive range of legislative and administrative powers, should also be endowed with an administrative judiciary, as it has been established in many states at a decentralized level. On the other hand, whenever civil and criminal law remains a prerogative of the central parliament and government, the civil and criminal courts too should be controlled by central ministries. However, a

<sup>15</sup> An exemplary setting of powers in these policy sectors has been enshrined with Catalonia's new autonomy statute 2006, reproduced in section 2.7

working autonomy must have an independent judiciary in the state that can be invoked in any legal conflict between the autonomous bodies and the central state. This judiciary should in no form be dependent on the changing majorities at the national level.

If the regional autonomous legislature is entitled to freely regulate the region's public services and public administration, it should also have the power to provide for the local recruitment of staff, the civil servants in each autonomous branch. There has been a growing acceptance of the rule that the population of an autonomous region has the right to be administered by civil servants from the same region and recruited according to the rules set by the regional legislature.

One further basic pillar, closely linked to the need for control of natural resources, is a solid financial provision to ensure full efficiency and operational capacity of a regional government and administration. From a historical perspective, there are some autonomous regions which have simply been financially starved. Financial provisions for autonomous regions are a major issue of dispute even in states with a consolidated tradition of regional autonomy (Spain, Italy, Portugal, Denmark and Finland). Basically, they are avoided in order to keep the autonomous region dependent on unclear, arbitrary juridical arrangements and arbitrary government decisions in providing the revenues of the regional administration. Financial autonomy regulations must be fixed in the autonomy statute, even the constitution, or ideally, in both. The amount of a financial endowment must be calculable in order to allow long-term planning. The autonomous region must be vested with full autonomy of public expenditure.

Without a solid and legally secured financial rule, the effective autonomy of the autonomous organs is at risk and becomes open to blackmail and pressure from the centre. While the autonomous power of taxation might be an ideal device for financing a wealthy region, it has disadvantages regarding poorer regions with scarce economic resources. Often, the operating autonomous regions are not financially self-sufficient, and need a certain state transfer to compensate regional disparities. Exclusive dependence on one's own tax revenues could bring about public impoverishment.

How is an autonomous system going to be protected against central state intervention and how will the state be obliged to accomplish this with its obligation vis-à-vis the regional community? A minimum standard of arbitration should entail the legal means against state

intervention in the sphere of autonomy. The classic instance for settling such conflicts on powers is the Supreme or the Constitutional Court. In some cases, other organs of mediation have been established below this judiciary level and are functioning successfully, composed of equal numbers of representatives of both parties, the central state and the concerned autonomous entity.

Generally, a solid entrenchment in the state constitution should be the minimum standard, in combination with the necessity of confirmation by the regional population (consensus of the local government and parliament) or even the concerned population through a referendum (as is the case in Spain's Autonomous Communities). This form of entrenchment provides a protection umbrella against unilateral amendment pushed through by the central state. The amendment procedure must ensure both full involvement and the possibility of initiative of the regional autonomous community and a qualified majority in the national parliament.

Finally, mechanisms and provisions for 'consociational decision-making' in the minimum standard of an autonomy should be included, whenever multinational autonomous regions are concerned. In most autonomous regions, the territorial autonomy has created protection rules for national minorities, but also brought about new internal minorities. In order to ensure democratic inclusion of all groups in the exercise of power and to safeguard the stability of the solution, there should be clear provisions, as a part of the autonomy statute, to establish the need of consociational, cooperative decision-making in public institutions. There may be no such necessity for remote island regions inhabited almost exclusively by a single ethnic community (Greenland, Nunavut, Faroe, Åland, Comarca Kuna Yala), but it is essential in multi-ethnic regional societies. This consociational mechanism should not only be limited to the government, but to all possible levels of decision-making. This must be entrenched in the autonomy and should not be kept open to political amendment by regional bodies.

Is there any "optimal autonomy model" to be formulated on the basis of a comparative analysis of the world's experiences with territorial autonomy? As autonomy is a flexible means to conflict solving - apart from the criteria for determining a "modern autonomy system" - there is a wide range of possibilities for

shaping autonomy models according to the respective conditions and political-historical background. In principle, as in federations, when territorial autonomies are established there are some features which must be regulated:<sup>16</sup>

- The methodology of establishing an autonomy: the procedure of confidence building and external mediation.
- The demarcation of the autonomous area: which are the borders to be drawn (in most cases existing or historical borders, or application of geographical criteria). The demarcation must be accorded with the concerned population in order to avoid serious and persistent conflict.
- The autonomous region possess their own democratically legitimized institutions: not necessarily judicial power and police, but representative assemblies and executive boards and a separate public service;
- Regional self-rule entails the right to adopt regional constitutions, regional laws, administrative regulations. The power to legislate over their own affairs can be either guaranteed or devolved. The former implies that the terms of regional legislation can only be changed with the consent of the region. The latter implies that the central government can unilaterally reduce or expand regional legislative powers.
- The entrenchment of the solution agreed upon. International entrenchment or guarantees would indeed grant the maximum security for the region and national minority concerned, but entrenchment in the Constitution should be the minimum, provided the autonomy is established in a state with rule of law and democracy, saving autonomies from changing moods in the national political majorities.
- Arbitration between regions and centre: the division of powers leads to conflicts. Required to establish procedures and mechanisms for dispute settlement. Most often the high courts (supreme or constitutional courts) function as arbitrator of possible disputes about division of power. An additional permanent instance of dispute settlement can avoid tension and risks for the whole autonomy process, but also enable both sides to adapt smoothly to new needs and confidently tackle unexpected problems. The same body can serve as the first instance of amendment procedure of the autonomy law or statute.
- There should be an optimum of fiscal autonomy to finance an autonomous region's institutions and services. While often the unitary tax system is preserved at the state level, at the very least, autonomous regions should have both certainty regarding the revenues to fund all its transferred powers as well as space to impose and levy autonomous taxes.
- There should be a clear division of powers between the center and regions adopting three kinds of regulation: powers strictly divided, powers shared (both levels have to make decisions jointly and concurrent powers: both levels make their laws (the state the general framework, and the region the concrete regulations).
- Regional representation at the central level: Normally autonomous region has a certain numbers of Mps based on proportional voting or on a fixed number of seats. Autonomous regions need not be represented at the national level to enable them to influence national politics. Sometimes, if population of autonomous region is too small to vote an own MP based on proportional rule, a special constituency, smaller in terms of voters, can be established. It is only possible to grant the region special consultation and co-decision rights when a national law touches on regional competencies or interests.
- The equality of civil rights of all resident citizens: a territorial autonomy creates a "special area" with legal framework distinct from the rest of the state to which it belongs. Within that framework, all residents must enjoy equal rights in order to ensure loyalty to the autonomy and avoid new tension.

Following this scheme along functional elements, there are still huge differences in the quality standards of autonomy arrangements and the performance achieved among the working territorial autonomies scrutinised in this text. Nevertheless, it would not make any sense to formulate an "optimal standard" of an autonomy, as territorial autonomy remains a flexible tool of sharing powers between a central state and an autonomous territory, which must be moulded according to the context and conditions of every single case. Thus, in order to give an overview on how the single functional elements of an autonomy can be shaped, in the following pages just minimum standards will be listed along with "best practises" as found in reality.

<sup>16</sup> Schneckener, CAP papers, Munich 2003, Lapidoth, CAP papers, Munich 2001

## The minimum standard and „best practises“ of territorial autonomy

Functional elements	Minimum standard of regulation	Best practises
1. <i>Political representation in the autonomous region (A.R.)</i>	Democratically elected regional assembly and president, independent from the central state. Special arrangements to ensure representation in the legislative and executive bodies to internal ethnic minorities within in the A.R.	Wherever internal minorities are represented not only in the territorial autonomous assembly, but also in the autonomous government
2. <i>Political representation at the national level</i>	Regardless of its geographical and demographic size, the A.R. should be entitled to representation in the central parliament (to be ensured through specific constituencies or exceptions from the electoral laws for ethnic minorities in A.R.	Every small A.R. represented in the national parliaments (Nordic Islands, New Caledonia, Comarca Kuna Yala, Nunavut, Italy's small A.R.)
3. <i>Legislative and executive powers</i>	Basic powers to achieve the fundamental aim of the autonomy as shared by both parties (state and region), in particular with regard to the protection of cultural identity and the material basis for autonomy. Taxation, police, judiciary and most parts of civil and penal law are only exceptionally part of autonomous powers, let alone foreign affairs, defence, currency and macroeconomic policy.	Associated statehood offers the maximum extent of autonomy (only defence, foreign affairs and monetary policy left to the central state) and includes the possibility to freely terminate this kind of relationship. Almost no A.R. has achieved this level.
4. <i>Entrenchment of the autonomy statute or law</i>	The autonomy arrangement should be legally entrenched by nothing less than a constitutional law. An ordinary state law should be amendable only by a qualified majority of the national parliament, but after consultation with the concerned A.R.'s regional assembly or government.	All autonomies entrenched by international or bilateral agreements like South Tyrol and the Åland Islands; Spain with a constitutionally enshrined "right to autonomy".
5. <i>Procedures of revision of the autonomy</i>	Only with the consensus of the majority of the representatives of the elected bodies of the region, and after conclusion of a mediation procedure within a commission with equal composition between the central government and the A.R..	The Ålands, Catalonia and Basque Country (requisite consent of regional assembly, popular referenda required when the autonomy statute is amended).
6. <i>Arbitration for disputes between the centre and region</i>	The first level of mediation or arbitration in case of disputes about the autonomy of the A.R. occurs in appropriate joint A-R.-state commissions. The second step has to consist in two levels (regional and state) of the judiciary with appeal to the Constitutional Court.	South Tyrol, Greenland, Faroe, Åland Islands
7. <i>Legal remedies for individuals and groups</i>	At least two tiers of legal remedies are required: a first instance at regional level, a second one at the national level (Supreme Court or Constitutional Court). The legal remedy is required for both the individuals concerned by legal acts of an autonomous body, and for the autonomous institution concerned by state interventions.	In European states, citizens can complain before the Europ. Court for Human Rights. With international entrenchment, complaints can be addressed to an International Court and to kin-states (South Tyrol).
9. <i>Control of regional economic resources</i>	The autonomous powers must include the regulation of the exploitation of the basic economic resources of a region. Regional economic policies, labour market, environmental protection, urban planning must be under the A.R.'s legislation. Collection of taxes by the A.R.	Nunavut, Comarca Kuna Yala, the Åland Islands, Aceh, Greenland and Faroe, Catalonia, Basque Country and other A.R. in Spain.

10. <i>Forms of regional citizenship</i>	Forms of control of the degree of migration into and out of the A.R., endowing the A.R. with some possibilities of control over immigration, attributing its inhabitants specific rights linked to the duration of residency in the A.R.	The Ålands, New Caledonia, Comarca Kuna Yala, Nunavut, South Tyrol
11. <i>Powers in international relations</i>	Possibility of autonomous representation in an international context, right to stipulate international agreements with sub-state entities; right to be a party to international organisations; right to be consulted if international agreements affect the A.R.	Faroe, Greenland, the Ålands (especially the right to opt out from affiliation to supranational organisations), Spain's A.R., Netherlands Antilles, Bougainville
12. <i>Language rights</i>	The languages of the minority groups, along with the state language, must be recognised as "official". All citizens of the A.R. must be entitled to communicate and be assisted by all public instances in their mother tongue, choosing freely among the official languages recognized within the A.R.	Most A.R. have appropriated practises in this regard. Optimal forms in Spain, South Tyrol, Crimea and in the Nordic islands.
13. <i>Protection of ethnic/national minority rights</i>	All powers needed to ensure cultural development as if the region would be part of the kin-state or an independent state. For the language policy, media, education system, information rights, preservation of cultural heritage for A.R. primary powers are needed.	Nunavut, Greenland, Faroe, the Ålands, South Tyrol, Spain's historical autonomies, Gagauzia, Crimea, Comarca Kuna Yala, Aceh
14. <i>Consociational structures and internal power sharing</i>	Complex power-sharing among distinct ethnic groups of an A.R. in order to ensure political inclusion of each group and maximum of democratic participation in decision making. The prerequisite is the recognition of group rights.	Northern Ireland, Crimea, South Tyrol
15. <i>Autonomous administration</i>	All autonomous powers must be carried out by autonomous administration under the control of the A.R. The rules of recruitment to these bodies must reflect the multicultural features of a region in both linguistic requirements and individual capacities.	South Tyrol, the Ålands, Greenland and Faroe, Nunavut, Comarca Kuna Yala
16. <i>Autonomous judiciary</i>	The administration should ensure neutrality of the judiciary within the autonomous region. In A.R. with indigenous peoples the compatibility of public law and traditional and customary law has to be regulated.	Greenland, Basque Country, South Tyrol
17. <i>Protection of human rights and political freedoms</i>	Important issue for post-conflict areas, where normal legal remedies are too slow or lack efficiency. Special bodies have to monitor the protection of human rights and cater for immediate redress.	In principle ensured in every working autonomy.
18. <i>Demarcation of autonomous territory</i>	Necessity to draw the boundaries of aut. Territory in accordance with historical development and democratic will of the concerned populations	No issue in the case of autonomous islands; democratic method (referendum) used in Gagauzia

Source: the author's elaboration on autonomy statutes and other relevant regulations.

Maria Ackrén<sup>17</sup> applies a rather new method called fuzzy-set for a twofold purpose: to outline the necessary and/or conditions for territorial autonomy (which I call 'criteria for determining a modern autonomy system) and to assess the quality of the arrangements against a set of variables. Ackrén explores the possible explanatory factors that are assumed to lead to the occurrence of territorial autonomy and its degrees by testing a number of variables. The emphasis of her investigation lies in measuring the "degree of autonomy".

On the other hand, assessing just the degree of autonomy may be too an abstract result for the political practitioner faced with the issue of choosing among different ways to shape functional elements (entrenchment, scope, financial regulation, drawing of borders etc.). Different methodological approaches are applied to assess the performance of such "functional elements" of a power sharing arrangement, as listed above. This procedure of dissecting single elements to be operationalized and measured allows their further evaluation and comparison. Probably complex power sharing systems as territorial autonomies can not be compared as such, but their composing elements can. Alike, comprehensive autonomy models cannot be exported and applied as such to an other context, region or community elsewhere in the world. But single elements, duly adapted to the local requirements and designed to cater the specific local needs, can. It will be a main task of future research and consultancy in the field of autonomy arrangements to filter out which of these elements can be regarded as "best practises", whenever there is a consensus on a common purpose to be achieved by territorial autonomy.

## 5.3 Functional elements of territorial autonomy

The world's working territorial autonomies share numerous common features, but also reflect differences depending upon their different geneses, developments, geographical locations, ethnic compositions and political contexts. Autonomies are usually institutional and procedural systems based upon a complex set of legal provisions (autonomy statute or act approved by organic or constitutional law, and applied in details through enactment laws and decrees). The implementation of an autonomy through enactment decrees is an ongoing process. Finally, an autonomy unfolds in the full range of legal provisions approved by its autonomous institutions.

Although the fundamental aim of most working autonomy arrangements is similar - territorial self-governance for the purpose of protecting the groups' identity and controlling the social and economic development of a given territory - the concrete 'design' is the result of the dialectic relationship between the autonomous community and the central state. Finally, the performance of each autonomy in terms of peace, respect of minority rights, stability and positive social and economic development can be assessed by some quantitative variables, shared by all autonomous realities. The result would give more reliable information about the key elements for 'best practises' or optimal solutions. As the multi-layered legal structure of an autonomy can not be compared, necessarily a comparison of territorial autonomies must focus on the basic functions which every autonomy system has to regulate. Although the list may not be exhaustive, such central functional elements are:

1. The political representation: Political representation in a functional institutional setting ensures the democratic participation of the regional population at all levels.
2. The scope of the autonomy: The legislative and executive (and judicial) powers transferred to an autonomous entity allow for varying degrees of 'internal self-determination'.
3. The entrenchment and revision mechanisms: The autonomy system must be safeguarded from arbitrary intervention by solid legal entrenchment. The regional institutions and population must be involved when the system is to be revised or amended.
4. The financial regulations for ensuring sufficient

<sup>17</sup> Maria Ackrén (2009), *Conditions for Different Autonomy Regimes in the World – A Fuzzy-Set Application*, Åbo Akademi, Åbo

financial means for covering the expenditures connected with the exercise of the autonomous powers in all transferred policy sectors.

5. Forms of control of the economic resources: Has the autonomous entity sufficient legal and material means to control the social and economic development of the region? How can the autonomous institutions influence the welfare of their population and control its economic resources?

6. Provisions for regional citizenship: Does the autonomous entity have any influence on the composition of the regional population and the right to residence within the autonomous territory?<sup>18</sup>

7. International relations: Have autonomous entities the right and possibility to operate in the international sphere, and to what extent? Can they interfere when their internal interests are concerned with the foreign policy of the central state?<sup>19</sup>

8. Language rights and the protection of ethnic identity and minority rights: As in most cases of territorial autonomy, the main cause of establishing autonomy has been the protection of national minorities or minority peoples and their self-government. How are language and other cultural rights regulated, and how is cultural identity protected?

9. Consociational structures of internal power-sharing: Multi-ethnic or multinational regions are complex societies that require careful internal power-sharing among all single groups (not only the state and regional levels). Internal conflict solution depends on these 'consociational structures'.

10. Arbitration and settlement of disputes: In every human relationship, conflicts arise continuously. What legal remedies are available for the institutions and individual citizens of the autonomous territory? How are the unavoidable disputes between the centre and the autonomous entity settled, and how can serious crises be prevented?

We can consider these functions as the constitutive

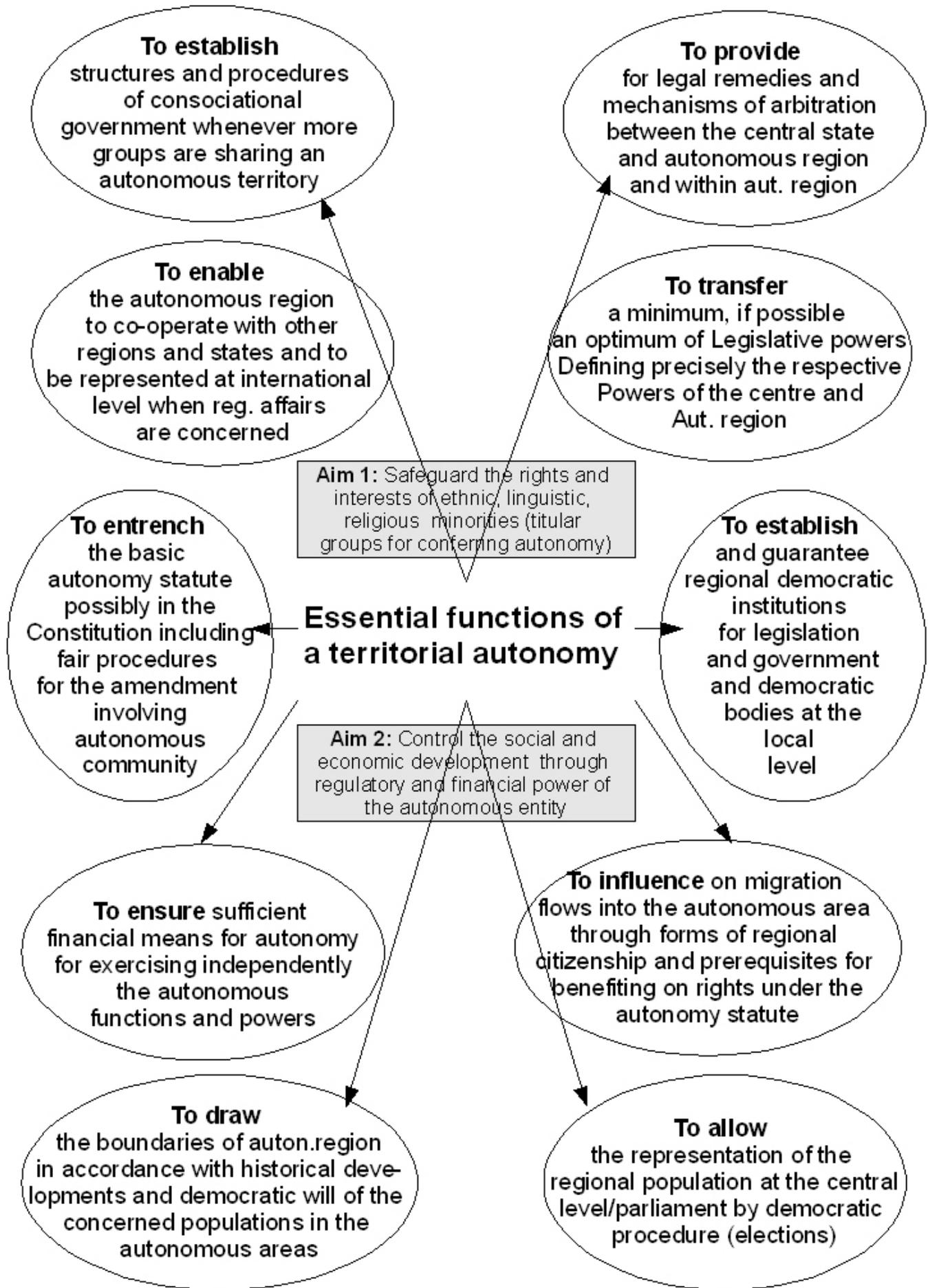
<sup>18</sup> Local 'regional citizenship': some autonomous regions (Isle of Man, Aland Islands, India's ADCs) have significant local control concerning local citizenship, with real benefits to the residents of such autonomous territories (M. Tkacik 2008, p.394). In Aland most far reaching right to vote, right to run a business, right to own real property is reserved to domiciled. Isle of Man have similar powers. Generally, just the residency provides some benefits, depending on the duration.

<sup>19</sup> For this issue see: Sören Silverström, The Competence of Autonomous Entities in the International Arena – With Special Reference to the Aland Islands in the European Union, in: *Int. Journal on Minority and Group Rights* 15 (2008), pp. 259-271

elements of every autonomy system. Some functional elements of an autonomy can be considered as constitutive elements. Other functional elements are of secondary importance. If one or some of these elements is/are seriously flawed or even missing, the stability, durability and very existence of an autonomy is at risk. In the past some autonomy systems failed due to the fact that some cornerstones of the 'autonomy building' were seriously flawed or not even applied. Two examples: the autonomy of the two formerly 'autonomous provinces' of Serbia, Vojvodina and Kosovo, were not sufficiently entrenched in the Republic's and Federation's constitution, as Belgrade could unilaterally abolish these arrangements. The 1997 Peace Accord for the Chittagong Hill Tracts should have established a territorial autonomy, but lacked any provision for legal entrenchment procedure of implementation, any timetable and dispute resolution mechanisms between the parties.

These 'functional elements' have found different forms of application and solutions within the working autonomy arrangements, which cannot be outlined in depth in this text. A detailed comparison of the concrete performance of these functions within diverse arrangements of autonomy would be possible and worthwhile, but this requires a broader database and more empirical evidence on each autonomy system. Such an exercise, however, would provide some insight into the necessary minimum standards of regulation of every single element and the likelihood of success of an autonomy. By hypothesis, even it should be possible to determine the decisive features of an 'optimum standard of autonomy' tailored to each single case.

Why a functional comparison? Generally, autonomy arrangements are established to meet specific needs, also definable as functions. The quality and the very success of an autonomy depend essentially on how far these aims are achieved. Therefore, when comparing autonomy solutions we have to start from the common aims of territorial autonomies. Without doubts among these aims are: the protection of ethnic or national minorities, the peaceful coexistence of different ethnic groups sharing the same territory, the autonomous organisation of the social and economic development, the equality of opportunities of members of all groups, the stability and sustainability of the autonomy system itself.



## 5.4 Factors of success of territorial autonomy and crucial lessons

### 5.4.1 Lessons from the application of territorial autonomy

Territorial autonomy as in 2010 established in at least 60 regions of 20 countries has endowed these regions with a differing degree of self-government and differing scope and depth of autonomous political regulation. In combination with other forms of autonomy (e.g. cultural autonomy) territorial autonomy has revealed to yield a high capacity of conflict resolution. Which lessons can be drawn from a comparison of the territorial autonomy systems so far? A comparative analysis of such experiences has to begin with the fundamental goals of every territorial autonomy system and the corresponding regulations. To measure the efficiency and quality of all these regulations would require a highly complex set of indicators, which hardly can be empirically assessed. Moreover some regulations are tailor made for the very specific political context of a given autonomy system. More concretely: a regulation suitable for the German Community of Belgium must not be sufficient for Greenland or South Tyrol. A provision, which has brought about positive results in Åland, must not be appropriated for Italy's Aosta Valley, as the population could have different preferences. Nevertheless, we can define on a theoretical level which 'functional elements' compose the minimum standard of any territorial autonomy and which regulation of these functional elements could be the optimum in order to accommodate the interests of the conflict parties respectively. Eventually, autonomies are "open building sites", which are continuously further extended, corrected and refined to address new problems, whereas - at least in Europe - no process of curtailing of autonomies can be observed.

According to the specific premises and conditions of a region and national minorities, each autonomy system shows a particular 'architecture' and mechanism to ensure political participation, conflict solving, power-sharing, minority protection, and stability. By definition these arrangements as national constitutions must be dynamic, giving space to new answers for a developing society. On the other hand, there are some elements and conditions that have turned out to be key factors or

success, which a more detailed comparative analysis could eventually identify. New autonomy projects and negotiations may take advantage of this precious set of experiences, avoiding the repetition of harmful mistakes, and adopting devices more likely to bring about a successful solution. Some crucial lessons can be drawn from the experiences collected so far:

1. Autonomies are not a mere act of unilateral devolution of public powers. Establishing, entrenching and amending the autonomy must be based on a genuine negotiation process and constitutional consensus. This implies negotiations between political representatives of the concerned minority people, of the regional population and the central government.
2. Autonomy is an open and dynamic, but irreversible process that must involve at least three players: representatives of national minorities, the central government and representatives of other groups living within the same territory. All their interests must be brought into balance, with a strong role of the civil society and the media in building up a culture of mutual and shared responsibility for peaceful coexistence and minority protection.
3. Autonomy can offer the necessary institutional framework for minority peoples, its cultures and languages, as far as the regional institutions are endowed with all culturally relevant powers and means, especially in the field of education, cultural and language policy and in the media sector.
4. An implementation plan is to be incorporated in the conflict settlement. This is sometimes a very technical, long-lasting undertaking, but time plays a decisive role in building up and maintaining trustful cooperation.
5. There must be a complete set of functions and powers if local institutions are to be endowed with a true potential of self-governance. Sufficient powers make autonomy meaningful, and should encompass legislative, executive and judicial powers, which must be transferred in an unambiguous way. Conflicts on the division and exercise of powers must be resolved before the regional or national constitutional courts or oth, but not by coercive means.
6. Autonomy must be effectively entrenched, if not at the international or bilateral level (within a treaty with a potential kin-state), at least at the national constitutional level, preventing exposure to the short-term political majorities of the central parliament.

7. There must be a solid system of financing autonomy and sufficient provisions to allow the autonomous entity to control local economic resources in order to ensure the efficiency of the autonomous administration and the positive social and economic development of the region.

8. Internally, particularly when there are two or more ethnic groups sharing the same autonomous region, there must be consociational arrangements to grant access and participation to power to all relevant ethnic groups living in same autonomous territory.

9. Regional integration, trans-border cooperation with kin-states or integration in regional supranational organizations are definitely helpful in building up confidence and ensuring autonomy solutions. Moreover, there are already forms of participation of autonomous entities in international organizations, which can act as mediators when the territory is affected by conflicts.

10. In order to ensure the effective operation of autonomy and, in the case of overlapping powers, between the state and the autonomous entity, there is a need for 'neutral instances' of mediation and arbitration or an effective mechanism of conflict-solving. Such a role can be attributed to the Constitutional or Supreme Court of a state or various forms of joint commissions with an equal number of members of the state and the autonomous region. In the future, such a responsibility could be vested in regional organizations as the Council of Europe, the African Union, ASEAN, SAARC, the Organization of American States OAS, or by the UN.

One major lesson to be drawn is that genuine modern autonomy is a viable arrangement to prevent the escalation towards a secession conflict. But autonomy, as recurrently pointed out, cannot be considered as a panacea or a 'shelter for all seasons', which can solve immediately all problems of national or ethnic minorities. Territorial autonomy should rather be viewed as an instrument for the effective emancipation of minorities, for securing their equality in politics and economy and for minimizing the risks of disadvantage, marginalization and exclusion. Autonomy, from this perspective spells out constructive interdependence within a state rather than independence from a state. Hence, the fear of autonomy as first step to secession is unfounded: 'Secession is neither an epiphenomenon

nor the unavoidable consequence of autonomy.'<sup>20</sup>

From the experiences compared above, it emerges that autonomy has not been disruptive to territorial integrity. The claim for secession and concrete movement toward secession came up mostly in cases where autonomy either was denied or curtailed (South Ossetia, Abkhazia, Eritrea, Kosovo, Turkish Kurdistan, Tamil Eelam, Burma/Myanmar). Secession movements are strong in such regions, where genuine autonomy is either not applied or promises of autonomy have not been kept by the state. Indeed, in the light of worldwide experience, autonomy can be rather seen as a 'win-win' solution:

An autonomy arrangement should not be viewed as a zero sum game whereby the allocation of a competence to an autonomous unit diminishes the competence and power of the central government and thus - diminishes the effectiveness of the state machinery. On the contrary, viewed in the context of overall effectiveness of the state machinery in terms of its impact on democracy, good governance and human rights as well as the maximisation of the welfare of the whole population of a state, autonomous arrangements present themselves as powerful tools to ensure these values.<sup>21</sup>

### 5.4.2 Conditions for success of territorial autonomy

How is it possible to measure the success of an autonomy arrangement? What are the crucial conditions for the lasting success of an autonomy? Some experts<sup>22</sup> cite its durability, others propose a list of central criteria ranging from factors measuring the political stability up to factors of social and economic performance of the concerned region. Apart from such a comprehensive evaluation of autonomy systems, the following criteria are derived from the very purpose of autonomy:<sup>23</sup>

- Has a significant degree of self-governance been ensured?

<sup>20</sup> Zelim A Skurbaty (2005), *Beyond a One-dimensional state*, op. cit., p.566.

<sup>21</sup> Zelim A Skurbaty (2005), *Beyond a One-dimensional state*, op. cit., p.566.

<sup>22</sup> Kjell-Ake Nordquist (1998), 'Autonomy as a Conflict-Solving Mechanism: An Overview' in: Markku Suksi (ed.), *Autonomy: Applications and Implications*, pp.59-77.

<sup>23</sup> 'Autonomy is considered a success over the long term if it has been established for a long time, and if democratic structures representing the interests of the autonomous entity have been put in place. Autonomy is positive over the short term when it has been established as a mechanism of peaceful settlement of political conflict.' See Andi Gross, DOC 9824, 3 June 2003, p.45, at [<http://www.coe.int/>].

- Is the ethnic and cultural identity of a national minority protected?
- Is peaceful coexistence of two or more ethnic groups in a region facilitated?
- Has a violent or political conflict been ended and the unity of a state been preserved?
- Are equal chances for all citizens ensured, regardless of their ethnic affiliation?

These general criteria need a careful transformation in empirical categories.

Yash Ghai<sup>24</sup> summarizes the conditions for success of an autonomy system as follows, starting from the assumption that 'conflict is inherent to human groups and organization. The heart of the matter is if is conducted by civil process, by equitable rules, through dialogue and bargaining, in a framework facilitating cooperation and reconciliation.'

1. Autonomy is likely to be established if the international community becomes involved in conflict resolution. International pressure to accept autonomy has been facilitated by the willingness of the conflict parties to establish it and the international community to guarantee it. The EU and the OSCE, for example, have offered major integration into the EU system, if an autonomy solution was to be achieved.
2. Autonomy arrangements are most likely to succeed in states that have established traditions of democracy and of rule of law.
3. Autonomies are more likely to succeed if the autonomous area is small, has limited resources and is marginal to the state.
4. Autonomies are more likely to succeed when there is no dispute about sovereignty.
5. Autonomies are more likely to succeed if there are several ethnic groups involved.
6. Autonomies are more likely to be conceded and to succeed if they are not explicitly based on ethnicity.
7. Autonomies which have been negotiated in a democratic and participatory way have better chances of success than those that have been imposed.
8. Autonomy arrangements that provide for consultation and re-negotiation mechanisms are more likely to succeed. Independent dispute settlement mechanisms are essential to long-term operations.
9. Autonomies are more likely to succeed if there is built-in flexibility to deal with an evolving

situation

10. A careful design of institutional structures is essential for the success of an autonomy.

Andi Gross,<sup>25</sup> in his report for the Council of Europe, identifies as basic factors of success:

- The legal design: History shows that it is easier for a grant of autonomy to be considered legitimate if the territory concerned is clearly delimited and its cultural dimension clearly defined.
- Geopolitical and demographic aspects: The autonomous region's distance from or proximity to the central government may determine the political relations between the two tiers of government. Key issues are the number and size of ethnic groups that make up the region's population, their relationship with one another and the central government and the relation between the minorities and the majority population of the state.
- Political and institutional aspects: The success of an autonomy depends on certain political conditions, such as the quality of the relations between the entity, the state and neighbouring states and clear regulations governing the powers of the central authorities and these entities. If the region and the central state share the same aspirations, the central state will grant wider powers.
- Social, financial and institutional aspects: The material and financial resources that enable the autonomous entities to effectively implement its autonomous powers.
- Cultural aspects: When the members of a minority in a particular entity represent a substantial proportion of the population that warrants specific protection, the appropriate measure should be taken to preserve their identity.
- Respect for human rights: This issue has an extremely important role to play in autonomy systems. The competent body and the standards to be applied must be clearly defined. When an autonomous entity has been established, the principles of equality and non-discrimination must be respected. The autonomy must guarantee the rights of the ethnic groups that are different from the

<sup>24</sup> Yash Ghai (2000), *International Conflict Resolution after the Cold War*, National Academics Press, Hong Kong, p.506.

<sup>25</sup> Council of Europe, 'Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe' (rapporteur: Andi Gross), DOC 9824, 3 June 2003, [<http://www.coe.int/>]. In his report, Andi Gross considers the Åland Islands and South Tyrol as the two 'most successful historical causes of autonomy'.

majority group in the region as well as the majority group in the state. Specific steps must be taken to protect the 'minority within a minority', so that the members of a majority population or other minorities do not feel threatened.

Other scholars and renowned researcher formulate conditions for the success of an autonomy derived from a general analysis. According to Ruth Lapidot,<sup>25</sup> certain ingredients can decisively enhance the success of an autonomy:

- A regime of autonomy should be established with the consent of the population intended to benefit from it. The most appropriate forms to obtain the consensus would be procedures of direct democracy (referenda), but at least the consent of the clear majority of democratically elected representatives of a population must be ensured, if the solution is to be accepted.
- The autonomy regime should be established with the consent, expressed or implicit, of a foreign state to which the autonomous group may have an ethnic or other affiliation (the kin-state or neighbouring state with particular interest in security, stability, human rights and minority rights beyond its borders).
- The autonomy should be beneficial for both the state and the population of the autonomous region. This must be communicated to the concerned populations in that manner, as stability is not conceivable with permanent fundamental grievances among the directly affected populations.
- The local populations should be permitted to enjoy the formal or symbolic expressions of their regional identity: first of all, the recognition as a distinct culture and ethnic group, and second, the official status of their languages at the regional level; third, the recognition of institutions with symbols as flags and anthems.
- The division of powers should be defined as clearly as possible. The more detailed the three fundamental lists (state powers, regional powers, concurrent power list) the better. Precautions should be taken within the statute for mediation of the attribution of all newly arising matters in a modernizing autonomous society and state.
- If the activities of the central government are conducted in spheres that are under its authority and directly affect the autonomous

region, the local authorities should be consulted.

- An organ or several specialized organs for cooperation between the central government and the local authorities should be established, possibly in advance.
- The modes and mechanism for settling disputes between the central government and local authorities should be established over time, with a maximum of detail. However, when relations between the centre and the autonomous authority are good, disputes can often be prevented at an earlier stage by the organs of cooperation.
- Under certain circumstances it may be preferable to establish the autonomy in stages, that is, to transfer the relevant powers gradually.<sup>26</sup>
- The prospects of success are greater if both the central government and the autonomous authorities are based on democratic regimes.<sup>27</sup>

Finally, one recurrent acknowledgement is that each autonomy model is tailored to solve specific problems. Autonomy allows conflict solving on a political level, stability and security. But autonomy systems are not in equilibrium forever, but develop like an ecological system being exposed to external influences and internal transformation. Hans-Joachim Heintze argues that autonomy should not be seen as a static phenomenon but as a phenomenon changing through time and space.<sup>28</sup> This leads to different autonomy arrangements occurring during various periods. Also after the solution of a conflict between central states and national minorities or regional communities they cannot be static, but have to continuously develop and adapt.

<sup>26</sup> Schneckener describes the methodological approach to conflict regulation through autonomy listing four components: the institutional design, the factors of success, the third party mediation and the implementation of autonomy solutions. In these terms, autonomy appears an enlightening learning process for all involved conflict parties. See Ulrich Schneckener, *Schritte zur Autonomie: Ein Leitfa-den für externe Vermittlung*, CAP Munich, 2002.

<sup>27</sup> Under the criteria applied in this work to select working autonomies, only autonomous regions constituted by democratic procedures and established within a pluralist democratic system are considered as 'genuine autonomy systems'.

<sup>28</sup> Hans-Joachim Heintze (1998), 'On the Legal Understanding of Autonomy', in Markku Suksi, op.cit., p. 19-20

## 5.5 Autonomy as a solution to ongoing ethnic conflicts?

Can territorial autonomy be a solution for open ethnic conflicts? In the scientific literature there is still no comparative empirical evaluation of the results produced by the working autonomy arrangements, following the model of comparative federal studies. Yet comparisons are often barred by the assumed 'uniqueness' of every autonomy system, and the same can be said for attempts to suggest solutions by transferring certain models of autonomy arrangements to other similar conflict areas. This is correct, but only partially: Indeed, each working autonomy has been created against a specific social, political, cultural and ethnic background, based on a unique historical genesis and aimed to accommodate the needs and interests of specific groups living in those areas and minority peoples within a state. But on the other hand, territorial autonomy is also a precisely definable relationship between a central state and a region, and all working autonomies in the world share some basic features. As these features can be carved out from every arrangement and their efficiency can be evaluated empirically, assumptions can be made regarding:

- the general applicability of territorial autonomy in a given political environment;
- the possible basic features of a working autonomy in order to achieve specific aims;
- the transfer not of entire 'models of autonomy systems', but of single elements and regulations or a set of elements, institutions and procedures which have proved in various existing experiences of autonomy as efficient in a similar context.

Of course, the conflict parties - state elite and regional communities - starting from this assumption are never released from the necessity to hammer the specific design of an autonomy suitable to solve a given conflict through serious negotiations. Mediation efforts must balance both the standard elements and features of autonomy arrangements with their performance in given historical contexts on one hand, and the concrete conflict scenario, particular to every historical phase and geographical area, on the other.

Starting from the assumptions about conditions and factors of success listed above, it is possible to draw a list of regions on all continents, afflicted by violent conflict, deep ethnic or religious cleavages, burdened by the strain of discrimination and oppression of national minorities or entire minority peoples (or colonized peoples) for decades. Developing an autonomy solution for such conflicts is not only an exercise of political science fiction or an academic game, but worth the effort of serious reflection and research on the feasibility of an autonomy arrangement. Taking into account the experiences and performances of regional autonomy in 20 states, international mediation efforts can work more effectively. Moreover, in a number of today's conflict areas, an autonomy arrangement as a means of conflict solutions appears rational, since:

- territorial autonomy has already been envisaged as a possible solution by both the conflict parties, but not thoroughly implemented, or territorial autonomy has already been established in some other areas of the same state;
- external self-determination with subsequent secession, even if legitimized under international law, could bring about an escalation of the internal conflict in the concerned region;
- the considered region is home to more than one national minority or minority people, and thus as a multinational region; this situation again could turn into interethnic violence if secession occurred.
- The considered state according to its constitution has a democratic system which theoretically would allow for the establishment of internal power sharing (authoritarian states first need greater reforms towards democracy).

### Cases of ongoing conflict

While some self-determination conflicts, such as Palestine, Western Sahara, South Sudan, Northern Cyprus, Myanmar, and Somalia can hardly be imagined to be solved through autonomy arrangements alone, the case is different for a major group of regional conflicts in several conflicts. Some of these conflicts are smouldering since many years leading to structural discrimination, social tensions, cultural oppression (political exclusion).<sup>29</sup> Some of them are a continuous

<sup>29</sup> Stefan Wolff (2006), *Ethnic Conflict - A Global Perspective*, Oxford University Press

source for violent confrontation and military action as a reaction, as confirmed by the current list of ongoing conflicts. Just 14 examples shall be very briefly presented.

### 1. The Cordillera Region (Philippines)



<http://en.wikipedia.org/>

The Gran Cordillera is the largest mountain range of the Philippines, covering 1/6 of the Luzon island (about 18.300 km<sup>2</sup>). The population of about 1,1 million (2% of the Philippines' total population) is formed mainly by Igorots ("people from the mountains"). The area is divided in 5 provinces, namely Kalinga-Apoyo, Abra, Ifugao, Benquet and Mountain Province. The peoples of the Cordillera are represented by the CPA (Cordillera People's Alliance), the federation of political forces and civil organisations of the indigenous peoples of the region, founded in 1984 by seven Igorot organisations and today consisting of more than 120 member organisations. Beyond the peaceful struggle for autonomy, the Cordillera People's Liberation Army started guerrilla war in the first 80s, later continued by the communist "New People's Army" (NPA).

Until now not more than a "Cordillera Administrative Region" has been established. But the Cordillera Peoples Alliance is seeking the institution of a modern territorial autonomy with a "Cordillera Regional Assembly", a "Cordillera executive board" and the

"Cordillera Bodong Administration" as transitory bodies. Genuine territorial autonomy could be a realistic compromise solution as the Philippines already are engaged in talks about such a scheme and in 1996 have already established autonomy with the ARMM on Mindanao for the Islamic Moro population.<sup>30</sup>

### 2. West Papua (Indonesia)



<http://en.wikipedia.org/>

The island of Papua Niugini is home to about a thousand of different indigenous peoples of Melanesian provenience. West Papua hosts the world's highest ethnic diversity on one territory. Since 1848 the island was divided between colonial powers (Great Britain, Netherlands, and Germany). When in 1949 Indonesia gained full independence from the Netherlands, it claimed West Papua too, but did not occupy it. While Australia and the Netherlands prepared West Papua's independence and in 1962 handed the territory over to a United Nations interim administration, soon after 1962 Indonesia invaded the peninsula. On the 1 May 1963 Indonesia became the new colonial power of Western Papua. No possibility of referendum was given to the population of West Papua. Ever since revolts and resistance have been repressed by force. The West Papuan indigenous population (about 900.000 people) have recently been outnumbered by about one million of Indonesian settlers, supported by the state authorities and its "transmigrasi"-program. The indigenous OPM (Organisasi Papua Merdeka) resistance movement is continuing its armed resistance.

In 2001 an autonomy package was granted to West Papua by the government in Jakarta, but its main pillar, the "Papuan People's Council" yet does not operate since West Papua has been divided into two provinces and the indigenous population does not accept this solution. The indigenous peoples see the major threats in the large migration from other Indonesian islands and the exploitation of Papua's natural resources. If the MRP (Majelis Rakyat Papua) would collapse,

<sup>30</sup> For the Autonomous Region of Muslim Mindanao see also: [www.unpo.org/member.php?arg=19](http://www.unpo.org/member.php?arg=19) as well as section 3.16

no genuinely representative dialogue partner with Jakarta would not any more exist. Jakarta carved out West Irian Jaya from the Western part of the island establishing it as a separate province, but without according a genuine territorial autonomy. Autonomy for the whole region could be envisaged also following the successful compromise solution achieved on 15 August 2005 in Aceh, which led to a modern territorial autonomy in 2006.

### 3. Western Balochistan (Iran)

Historical Balochistan is comprising a land area of nearly 700.000 km<sup>2</sup>, divided between Iran (280.000 km<sup>2</sup>), Pakistan (350.000 km<sup>2</sup>) and the rest in southern Afghanistan. Of its total population of 13 to 15 million about 4 million are living in Iran, who do not enjoy even limited cultural or political autonomy. The Baloch speak two distinct Indo-European languages, Baloch and Brahui. The majority are Sunni Muslims.



<http://en.wikipedia.org/>

Western Balochistan was annexed to Persia in 1928. The Baloch under Iran never have been recognised as a distinct people or national minority and even have been denied any cultural rights. Political Baloch organisations have been banned and forcedly dismantled. Political freedom in West Balochistan is inexistent. In 2003 the Balochistan People's Party (BPP) has been founded aiming to give voice to the Baloch grievances.<sup>31</sup> Autonomy is one of the possible conflict solutions envisaged by the BPP. Fundamental rights and autonomy rights of the Baloch population

31 <http://www.unpo.org/member.php?arg=66>

are violated also in the Pakistani part of Eastern Balochistan. A similar conflict scenario within Iran is given in the Region of Ahwaz, inhabited mostly by ethnic Arabs.

### 4. The Chittagong Hill Tracts (Bangla Desh)

The Chittagong Hill Tracts (CHT) comprises an area of 13.180 km<sup>2</sup> in South Eastern Bangla Desh bordering to India and Myanmar (Burma). The indigenous population of at least 1,1 million belong to different tribal groups.



<http://en.wikipedia.org/>

Most are Buddhist, some Christians and animists. The major ethnic groups among 13 peoples are the Chakma, Tipra, Murong and Magh, but almost 50% of the present day's population are immigrated Bengali Muslim settlers. Since the independence of Bangla Desh the indigenous population was faced with increasing immigration of settlers from the mainland, fostered by the central government. Among the tribal nations, first political and civil, later (since the 1980s) armed resistance was organised, especially by the Shanti Bahini guerrilla movement. In reaction the whole region was heavily militarised and the police and army unleashed a wide spread repression with a serious human rights violations. The 5-points-manifesto of the Jana Samhati Samiti, released on 7 September 1987, was focused on a well-entrenched autonomy:

- autonomy for the CHT with legislative assembly and recognition of the right to self-

determination

- inclusion of this provision in the Constitution
- removal of all non-tribals settled in CHT after 17 August 1947
- allocation of funds from the government to develop the region
- creation of favourable environment for a political solution of the crisis<sup>32</sup>.

On 2 December 1997 a “Peace agreement” was signed by the government and Parvatya Chattagram Jana Samhati Samiti, the political platform of the indigenous peoples, granting a limited level of autonomy to three districts of CHT. Subsequently the Jana Samhati Samiti transformed into a party. Nevertheless, this treaty was never seriously implemented, as it was opposed by both the opposition parties of Bangla Desh and by the majority fraction of the Shanti Bahini.<sup>33</sup> The current Bangla Desh government of Khaleda Zia promised to relaunch the peace process, but until now did not accomplish with its promises.

## 5. Szeklerland (Romania)



The majority of Romania’s ethnic Hungarians live in the Western part of the country, in the region of Transylvania. 6,6% of Romania’s population consider themselves Hungarians (1,431.000), which is 20% of the total population of Transylvania (census 2002). Thus the Hungarians are the major national minority of Romania. In the Szekler Region the Hungarians make up the largest minority. When Transylvania in 1919 was incorporated into Romania in the Peace Treaty of Trianon

the rights of the national minority were safeguarded and Romania even granted the right to autonomy to the Hungarian Szekler minority of Transylvania. In 1989 the Democratic Alliance of Hungarians in Romania (DAHR) was founded, which still is the most representative force of Romania’s Hungarians. In a basic treaty signed in 1995 by Hungary and Romania the latter renounced on claims on the territory, the latter promised to respect the rights of the Hungarian minority. The DAHR joined the Romanian government after the elections of 1996, 2000 and 2004 becoming a major factor of Romania’s political life (6,8% of votes for the Chamber of Deputies, 6,9% for the Senate). Among its major tasks remains the full respect of the fundamental rights and freedoms of the Hungarian community. DAHR presented a “draft minority law” to regulate some aspects of the right to use of mother tongue in public life and education. The most important task of the draft is setting the framework for cultural autonomy, while a growing number of Hungarians associations and people are claiming a full-fledged territorial autonomy.<sup>34</sup> Thus, the ethnic „Hungarian Conference in Romania” called upon the Romanian parliament and government to ensure full equality for the Hungarian community and to approve the “Szekler Autonomy Statute”. The EU has been invited to pose the conditionality of the establishment of autonomy for Eastern Transylvania among the accession criteria for Romania to the EU in 2007, which has not been accepted.<sup>35</sup>

## 6. Transdniestria (Moldova)

Transdniestria (land area: 3.567 km<sup>2</sup>, total population in 2004: 555.000) is a de-facto independent region of the Republic of Moldova since the 2 September 1990. Beginning with Moldova’s emancipation from the Soviet Union from 1990 onwards, protest movements against Moldova’s independence started in the region east of the Dnjestr, predominantly inhabited by non-Moldavians (ethnic Russians and Ukrainians).

In June 1992 a brief war broke out, as Transdniestrian secessionists were backed by the 14<sup>th</sup> Russian army stationed in this area since Soviet Union times. In the

<sup>32</sup> See: <http://www.unpo.org.cht> “A report on the states of implementation of the CHT accord, by P. Bhikkhu, February 2006

<sup>33</sup> The issue has been illustrated in section 4.6.1 of the present volume.

<sup>34</sup> Christoph Pan/Beate S. Pfeil (2003), *National minorities in Europe - Handbook*, ETHNOS Braumüller, Vienna.

<sup>35</sup> An updated account on this autonomy conflict is provided by: Miklós Bakk, Romania and the Szeklerland – Historical claim and modern regionalism, in: Thomas Benedikter, (ed.), 2009, *Solving Ethnic Conflict through Self-Government – A Short Guide to Autonomy in South Asia and Europe*, EURAC Bozen, pp. 29-34; available at: <http://www.eurac.edu/eurasia-net>



<http://en.wikipedia.org/>

conflict about 1.000 people died and several 10.000 had to leave their homes. On 21 July 1992 a ceasefire agreement was signed between the Republic of Moldova and the Russian Federation, obliging the parties to a peaceful solution of the conflict and deploying a trilateral Russian-Moldovan-Transnistrian peacekeeping force. The need of a special status of the left bank of the Dniestr and the right of the population of this area to decide on its own future if Moldova were to reunite with Romania has been the main issues of contention since 1990. Negotiations on a autonomy status such as Gagauzia's up to now were unsuccessful. Currently the OSCE is trying to resolve the situation.<sup>36</sup>

## 7. Cabinda (Angola)

With an area of about 4.000 km<sup>2</sup> the Angolan province of Cabinda is separated from the rest of the country by a 60 km-wide strip of territory of Congo. Cabinda has an estimated population of 600.000. Cabinda, due to its major resource oil, is considered Africa's Kuwait. Its considerable offshore oil reserves now accounts for more than half of Angola's output. Despite this rich oil reserves, Cabinda has remained one of Angola's poorest provinces. An agreement in 1996 between the national and provincial governments stipulated that 10% of Cabinda's taxes on oil revenues should be given back to the province, but also these funds mostly ended up in corrupt central bureaucracy.

<sup>36</sup> A profound analysis of this case is given by Benedikt Harzl, 'The Gagauzian model of autonomy: A perspective for Trans-Dniestr?' in: Thomas Benedikter, (ed.) Solving Ethnic Conflict through Self-Government – A Short Guide to Autonomy in South Asia and Europe, EURAC Bozen 2009, pp. 46-50; available at: <http://www.eurac.edu/eurasia-net>

Since the early 60s several movements advocating a separate status for Cabinda came into being, the most active has been the MLEC (Movement for the Liberation of the Enclave of Cabinda) and the FLEC (Front for the Liberation of the Enclave of Cabinda). Both movements failed to get international recognition for their "government in exile". When Angola became independent in 1975 Cabinda's self-determination forces MLEC and FLEC claimed a special status for Cabinda. In the first period a solution along the lines of a "large autonomy" (following the model of the autonomy of Madeira and Azores) was envisaged. In 1993 full scale civil war erupted. The FLEC-FAC guerrillas proclaimed a "Federal Republic of Cabinda", claiming control of 85% of Cabinda's total area, and created a government in exile.



<http://en.wikipedia.org/>

Luanda has made clear that a secession of Cabinda is unacceptable, but it is ready for negotiations with all armed factions. Today, the whole issue is moving towards an autonomy solution. Claims for independence are underpinned with Cabinda's cultural and ethnic peculiarities. But Angola's ruling party stated that cultural peculiarities was not enough for independence as every province has specific cultural features. Thus, Angola is considering autonomy for Cabinda in the framework of shaping decentralisation for the whole country, which could be not enough for the Cabindans.

## 8. Gilgit-Baltistan (Pakistan)

Gilgit-Baltistan is the historical name of the huge

region (84.931 km<sup>2</sup>) between Western Himalaya and Karakorum, which today forms the Northern part of Pakistan under the official term of “Northern Areas”. The region is inhabited by 1,1 million people, belonging to a dozen indigenous peoples and ethnic minorities as well as immigrants from mainland Pakistan. It came under the dominion of the Princely State of Jammu and Kashmir in the mid of the 19<sup>th</sup> century, whereas the Hunza kingdom in the very north of the region resisted until 1878. After the partition of British India in 1947 and the subsequent war on Jammu and Kashmir, on 1 November 1947 the indigenous liberation movement gained independence, but had to seek protection under the newly constituted state of Pakistan.<sup>37</sup>

While the Western part of divided Jammu and Kashmir was declared a “Free state” (Azad Jammu and Kashmir) with its own constitution, parliament and government with a certain internal autonomy, Gilgit-Baltistan was kept in a legal limbo, pending the final juridical status of the formerly princely state of Jammu and Kashmir, which is claimed by India, Pakistan and Kashmir. The region since 1947 is directly governed by the central government of Islamabad, has no genuine democratic representation neither a national nor at regional level. Only a council with very limited consultative powers was established. Since 1990, unrest and grievances are mounting and triggered of violent revolts and bloody repression. Also due to increased immigration from mainland Pakistan inter-Islamic communal conflicts are on the raise. An increasing number of Gilgit-Baltistan political forces are claiming full autonomy under Pakistan, the de-connection from the whole pending conflict Jammu and Kashmir and self-determination.<sup>38</sup>

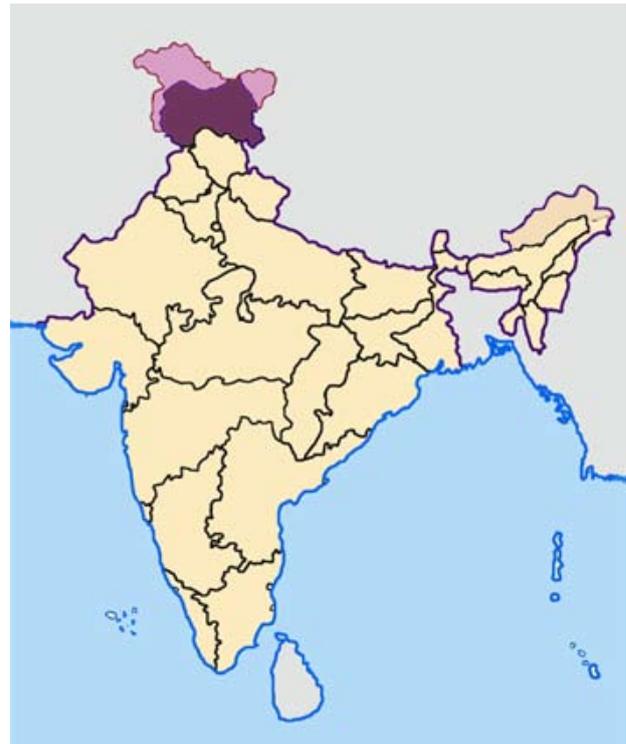
## 9. Jammu, Ladakh and the Valley of Kashmir (India)

The formerly princely state of Jammu and Kashmir in 1947/48, along with the whole sub-continent, suffered partition, war and ethnic cleansing. The Eastern part with Jammu, the Kashmir Valley and the huge mountainous region of Ladakh was annexed to India by the decision of its former ruler, the Maharaja. Contrary

<sup>37</sup> The case has been illustrated *supra* at section 4.6.2

<sup>38</sup> An updated account on this case is provided by: Murtaza H. Shaikh, ‘Pakistan’s Federally Administered Tribal and Northern Areas: Fundamental rights, effective representation and autonomy’, in: Thomas Benedikter, (ed.), 2009, *Solving Ethnic Conflict through Self-Government – A Short Guide to Autonomy in South Asia and Europe*, EURAC Bozen, pp. 92-96; available at: <http://www.eurac.edu/eurasia-net>

to promises of democratic India and obligations under international law confirmed vis-à-vis the United Nations, India never held a popular referendum on the status of the region. Hence, three further wars were fought by India and Pakistan, and Jammu and Kashmir is still at the heart of a bitter territorial dispute. Jammu and Kashmir as a federated state of the Indian Union enjoyed special autonomy status under Art. 370 of the Indian constitution until 1953 (formally this article is still in force).

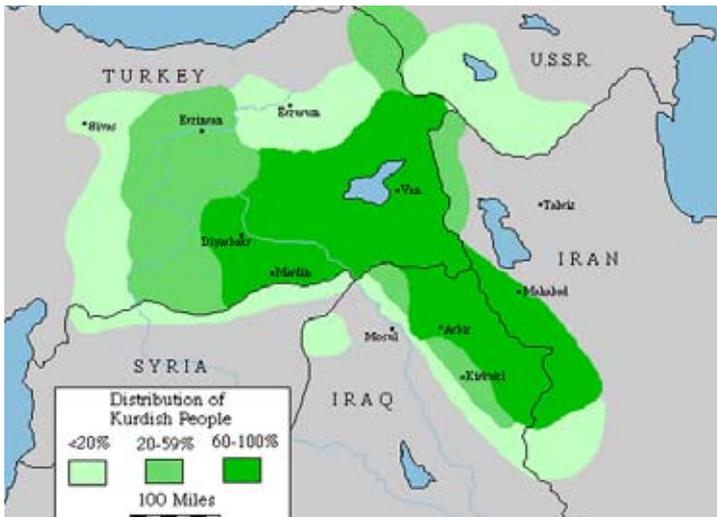


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Since January 1990 Jammu and Kashmir are suffering first a popular insurgency, followed by a protracted guerrilla war, which India tries to suppress with enormous military commitment. The war provoked at least 80.000 victims, scores of refugees and a deep political alienation of the majority of the Muslim population of the Kashmir valley. Long lasting talks between Indian and Pakistan did not produce any result regarding the political issue, the platform of Hurriyat, boycotting every kind of elections in the state and for the Union institutions, is advocating a referendum with at least three options: accession to Pakistan, status quo with J&K remaining under India and independence. The whole process is complicated by the ethnic-religious composition of the state: in Jammu the majority population is Hindu, in Ladakh the majority is Buddhist and nearly all inhabitants of the Kashmir valley are Muslim. Both Ladakh and Jammu are claiming secession from the state of J&K or even separation, but strictly sticking to permanence

with India. Jammu and Kashmir is the only federated state of India with a Muslim majority. A restoration of the former autonomy under Art. 370 with elements of condominium regarding security and external representation with Pakistan appears the only feasible way for an interim solution.

## 10. Turkish Kurdistan



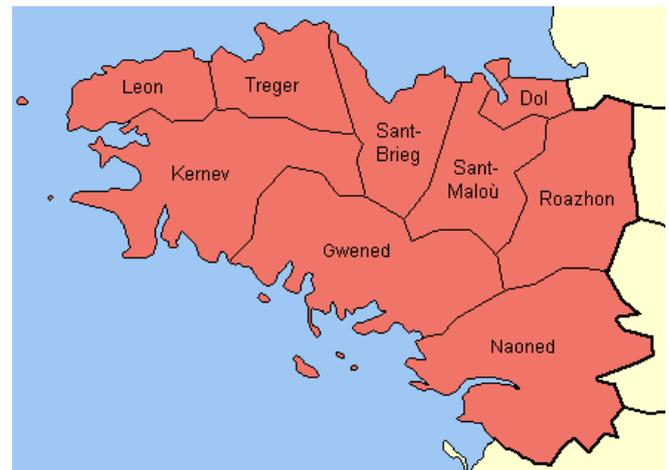
<http://en.wikipedia.org/>

Turkish-Kurdistan is an unofficial name for the South Eastern part of Turkey predominantly inhabited by ethnic Kurds, one larger part of the geographical and cultural area know as Kurdistan. The Kurds and Kurdistan not only are not officially recognised as distinct people by Turkey, but still many Turkish institutions deny its very existence, defining the region just “Anatolia” and its inhabitants “mountain Turks”. The Kurdish population is spread over an area of 18 provinces of Turkey covering 209.000 km<sup>2</sup>, but have also migrated in millions to the large cities in the western part. The century old Kurdish ambition for statehood was to be fulfilled in the 1920 Treaty of Sèvres, when a truncated Kurdistan (leaving all the Kurds of Iran, Iraq and Syria outside) was granted national rights. But in the subsequent 1923 Treaty of Lausanne Turkish-Kurdistan was fully recognised as an integral part of Turkey with vague promises of autonomy. Ever since then Kurdish nationalists sought to obtain fundamental collective cultural and political rights or outright self-determination, opposing the repressive centralist policy of the Turkish state, inspired by Kemal Atatürk. As a result, the Southeast of Turkey has been at the centre of a long running insurgency by the Kurdish Workers party PKK, in which

more than 30.000 lives were lost, more than 2.000 Kurdish villages were destroyed, and for decades the Kurdish provinces were transformed in human right emergency areas. The Turkish authorities have often been criticised by foreign governments, human rights organisations and international organisations such as the EU, the Council of Europe and the OSCE for their conduct in the region. The issue has recently (2005) been reignited and remains a major sticking point in the proposed accession of Turkey to the European Union.

The region is still heavily militarised by the Turkish security forces due to the activities of the Kurdish resistance movements and the unstable nature of the border (Iraq conflict). Territorial Autonomy in this extremely centralist state, based on a nationalist ideology enshrined in the constitution, seems still far away, although the Kurds today in culture, education and media enjoy some more rights and freedoms.

## 11. Corsica and Brittany (France)



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Corsica is the fourth largest island in the Mediterranean Sea after Sicily, Sardinia and Cyprus, located north to Sardinia. In France Corsica is referred to as a “region”, one of the 26 regions of France, although officially it is defined a “territorial collectivity”, which enjoys slightly more powers than other French regions. Unlike other “overseas territories of France” in the Caribbean, in South America (Guyana) and in Oceania Corsica is considered a part of the French mainland.

Corsica’s claim for autonomy is based on both historical and cultural-linguistic reasons. In 1982 96% of the island’s inhabitants of Corsican origins (just 70% of the total population) understood and 86% regularly

spoke the Corsican language, a form of medieval Italian related with the Sardinian language. Corsican still now is not an obligatory medium language in schools, but can be offered as an optional subject. As Corsican has no official status, its administrative and legal role is minimal. It can be used occasionally in contacts with the public administration and in court, as long as the officials themselves know the language. But it is in no way a requirement to have access for public employment.

There are several movements on the island calling for a real autonomy of Corsica from France or even full independence. Autonomy proposals focus on the promotion of the Corsican language, more powers for an autonomous Corsican region and full financial autonomy. While among the island's population there is some support for a special autonomy, polls show that a large majority of Corsicans are opposed to full independence. Some nationalist Corsican groups carried out violent campaigns since the 70ies, including bombings and assassinations, usually targeting officials and buildings representing the French government. France responded also to peaceful protest with an overwhelming force, generating sympathy for the independence groups among the Corsican population. In 2000, the French Prime Minister Jospin agreed increased autonomy to Corsica in exchange for an end to violence. The proposed autonomy for Corsica would have included greater protection for the Corsican language, whose practice like other minority languages in France, had been discouraged. According to UNESCO classification, the Corsican language is currently in danger of becoming extinct. However, the plans for increased autonomy were opposed by the Gaullist opposition in the French National assembly, who feared that this would lead to calls for autonomy from other regions such as Brittany, the Basque Country and Alsace, eventually threatening France's unity. In a referendum on 6 July 2003 a narrow majority of Corsican voters opposed a project of the Paris government to grant a major autonomy to the "territorial collectivity" of Corsica. As the 2003 referendum shows, still broad sectors of Corsica's population do not wish more autonomy. Nevertheless, Corsica's example by some other regional minorities in France has been taken as an encouragement to claim autonomy as well (Alsace, Brittany, Savoy, the Basque Country) and also in the French Overseas Departments Martinique, Guadeloupe and Guyana.

The cultural region of Brittany - a peninsula in Northwestern France once a independent kingdom

and duchy - today is split between the region of Bretagne and some parts attached to neighboring departements and regions of France. The land area of this cultural region is 34.034 km<sup>2</sup> with a population of about 4,2 million. The duchy of Brittany kept specific laws and taxes until 1790, when French revolutionaries withdrew all the "privileges". French today is the only official language and spoken throughout Brittany, while the two regional Breton and Gallo languages have no official status, although they are supported by regional authorities within the strict national laws. Until the 1960s Breton still was spoken and understood by the majority of Brittany population. Now the Breton language and culture is living a strong revival as other Celtic cultures (in Galicia, Ireland, Wales and Scotland), supported by a private education network called Diwan. Regionalist parties, advocating territorial autonomy, are gaining ground, but are far away from being majorities.

## 12. Caracoles de Chiapas (Mexico)

On the 1 January 1994 the Zapatista Liberation Front (Ejercito Zapatista de Liberación Nacional) occupied a part of the Mexican state of Chiapas, overwhelmingly inhabited by indigenous peoples, claiming cultural autonomy, land rights, democratic participation and resistance against the neo-liberal strategies of the Mexican government. The same day Mexico had officially joined the North American Free Trade Association (NAFTA). The Zapatista movement was a shining signal for militant commitment and popular movement for indigenous rights and social rights not only in Chiapas, but in many other parts of Latin America. The Mexican government tried to repress the movement with all means, including military occupation and aggression.

In August 2003 five regions under control of Zapatistas and hundreds of municipalities inhabited by some 300.000 people, gathered to form an unofficial "autonomous Zapatista region". The EZLN, which since 1994 has not carried out any new military operations, considered this step as a logical consequence of the treaty with Mexico of San Andrés referring to cultural autonomy and indigenous rights. The municipalities, mostly very poor and economically backward, declared autonomy and established structures of democratic self-governance. The five regions by the Zapatista movement of Chiapas are called "caracoles" (shells). The self-governed communities tried to set up an

autonomous health assistance, school system, trade network and productive activities in co-operatives. However, the core of the autonomy claim remains the cultural distinctiveness, inspired by indigenous languages, community life, religious beliefs, values. Whereas female participation is moving around 33% of the political representatives in the new communities, it is still considered as not sufficient.

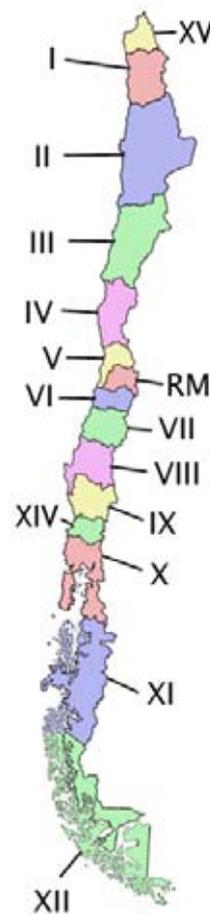
According to EZLN statements, the Zapatista movement is not questioning the sovereignty of Mexico in Chiapas. Autonomy by the EZLN is seen as a device to achieve two major aims for the indígenas: equality as Mexican citizens, which means an end of social and economic discrimination of the indigenous and poor small farmers and the right to diversity, which means full recognition of the ethnic-cultural peculiarity of the indigenous peoples (20% of Chiapas' population of totally 4 million are belonging to about 10 indigenous peoples). The "Autonomous Zapatista Region in Chiapas", despite being de facto autonomous, could not be considered in this text as a "territorial autonomy" as it is not recognised by the Mexican state as a de jure arrangement and thus not corresponding to the criteria of a official territorial autonomy as outlined under section 2.10.

### 13. Wallmapu (Mapuche territory in Chile)

Chile's Mapuche political leaders are demanding regional autonomy for Wallmapu (Mapuche word for Araucanía). In August 2009 the Council of All Lands (Consejo de Todas las Tierras) proposed the creation of an autonomous self-governed area south of the Bio Bio River, based on the right to political self-determination and autonomy granted by the 2007 UN-Declaration on the rights of Indigenous Peoples. The Council of All Lands likened their project with the existing autonomy arrangements for Nicaragua's Atlantic Coast and Nunavut. The new autonomy should be financed by Chile's government, since „Chile from the moment it took over, usurped, and confiscated the territory of the Mapuche, has a debt in economic, cultural and even moral terms.“<sup>39</sup> On 15 August 2009 dozens of Indian communities agreed to form the Mapuche Territorial Alliance to fight for political autonomy.

Another group, Wallmapuwen, was formed in 2009 as Chile's first official Mapuche political party, for the main

purpose to advance the goal of regional autonomy. The draft proposal for such an autonomy entails not only a decentralized government on a demarcated territory, but calls also for a new constitution that would recognize Chile as a plurinational state.<sup>40</sup> The new party plans „to restore the Mapuche nation as a political and administrative entity under a statute of territorial autonomy that enshrines the rights of its native people and established Mapuzugun as an official language. Wallmapu should have an independent executive and parliament elected by the entire population of the region, as a single electoral district, with proportional representation.



<http://en.wikipedia.org/>

In the traditional Mapuche region of Araucanía in Southern Chile live more than half of the country's 900.000 Mapuche.<sup>41</sup> The ongoing conflict is rooted in the backlog of unsatisfied demands for land by Mapuche claimants. According to the Mapuche organizations the Wallmapu region covers the 9<sup>th</sup>

<sup>40</sup> See North American Congress on Latin America at: <https://nacla.org/node/6115>; also [www.unpo.org/mapuche](http://www.unpo.org/mapuche)

<sup>41</sup> According to the 2002 census, almost 700.000 people (4,6% of Chile's population) belong to indigenous communities. The Mapuche account for 87,3% of them, but many are believed to have declared other identities.

<sup>39</sup> Aucán Huilcamán, spokesman of the Mapuche organization. See <http://www.ipsnews.net>

region of Chile, Araucanía, where 23,5 percent of the population belongs to the Mapuche, together with some bordering regions. In comparison to other indigenous groups of Latin America, the Mapuche hold a strong legacy of resistance. For over 350 years they fought against Spanish invaders before they were ultimately defeated in 1881 by the long established state of Chile.

determination should be recognized and autonomy should be accorded, can definitely be helpful to bring about a positive solution for many ongoing ethnic conflicts. This issue will be discussed in the final outlook.

### Conclusion

As some of these examples show, territorial autonomy can be established also within federal states where the basic challenge consists in adapting the vertical power sharing within a single federated state (e.g. India or Mexico) in order to accommodate the interest of minorities or regions with special needs and interests at sub-state level. As a settlement of self-determination conflicts and for the sake of protecting ethnic minorities territorial autonomy is, however, mostly required in unitary states. The list given above is far from being complete, but can serve to underscore the urgent need to promote territorial autonomy solutions for open ethnic conflicts. Moreover, if autonomy could be enshrined not only in constitutions, but in international covenants, this would provide the autonomous regions on the one hand a secure legal entrenchment: the state parties at the other hand would be reassured that autonomy would not usher into secession.

Modern territorial autonomy could offer a political and legal device for a stable solution of a number of current conflicts, combining minority protection with internal self-determination without changing state boundaries. In most of the working regional autonomy systems in at least 20 states of the world such an arrangement of power sharing is meeting acceptance by both, the regional community and the central states.<sup>42</sup> The potential of regional autonomy as a means of conflict solution and minority protection is far from being exhausted. Secession can hardly be legitimised if a smaller people or national minority enjoys not only the whole range of minority rights, but even a large degree of territorial autonomy. Elaborating, discussing and adopting an "international covenant on the right to autonomy", which precisely could define under which circumstances the right to internal and external self-

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<sup>42</sup> On this issue cf. Marc Weller, *Settling Self-determination Conflicts: An Introduction*, and John McGarry, *Powersharing Theory: Lessons from the Complex Power-sharing Project*, in Marc Weller/Barbara Metzger (eds), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*, Amsterdam, Nijhoff 2008, p. xi and pp.691-720

## 6. Outlook: the need of a right to autonomy

Generally, in the past century the states have been very skeptical about a right to autonomy. Often the argument used is that its content is too vague and cannot be clearly defined. But one must distinguish between the right and the concrete form of application. However, the interest of states to preserve full integrity of their territory does not clash with a possible right to autonomy. In addition, autonomy must often tackle a double problem: to grant the protection of the national minority in its traditional homeland, but also to include in self-governance all the groups living in that area. Regional autonomy, as the label suggests, should benefit a whole regional community, not just one sector of the regional population.

Although there is still no group right to autonomy in international law, as shown above, there is a wide variety of examples of the efficient use of autonomous institutions in all continents. Autonomy regimes are usually created in an ad hoc manner to meet the aspirations and claims of particular groups. Today, the recognizable trend points towards more decentralization of federal and even unitary structures. Federalism, within this pattern, denotes the symmetrical set-up of the subjects of federations, while autonomy arrangements are usually expressions of an asymmetrical relationship between the central state and particular regions. No matter what form autonomous arrangements take, there will be an overriding need to ensure that the basic principles of democracy and human rights are preserved for all inhabitants of an autonomous area. Because of the variety of forms and of historical and political contexts, there is also a need to define autonomy in legal terms, countering the inadequate knowledge of autonomy, even among those who demand it, to form a secure basis for negotiations, policy formulation and implementation.

Regional autonomy not only can potentially cater for most of the needs and interests of national minorities, but its decisive advantage that it does not clash with the interest of the states to preserve full integrity of their territory. Autonomy in addition must often tackle a double problem: to grant the protection of

the national minority in its traditional homeland, but also to include self-governance all the groups living in that area. Regional autonomy, as the label suggests, should benefit a whole regional community, not just one sector of the regional population.

But regional autonomy – in order to be an enduring solution – has to be built on solid legal foundations: a pure domestic or internal entrenchment of an autonomy arrangement in several cases might be too weak to grant its acceptance by the concerned national minorities. In this regard Kosovo's experience is a striking example: the escalation of the conflict was mainly due to the abolition of the autonomy of this Serbian province in 1989, which had been established by Tito only in 1974. But regional autonomy was the minimum what former Yugoslavia could have offered to Kosovo's Albanians, by number more than Macedonians, Slovenes and Montenegrins., considering that in 1945 Kosovo has been denied the status of a federal republic. But this autonomy, not based on any agreement with Albania, has been cancelled by Milosevic along with the autonomy of Vojvodina, depriving the Albanians from any protection of Serbian chauvinism, has not been the first case of "lost autonomies". Other precedents are Jammu and Kashmir in the 1950ies, with an autonomy curtailed by federal India under Nehru, Eritrea which enjoyed autonomy under Ethiopia from 1962 to 1972 and South Sudan (1972-1983), finally the short autonomy experience of Iraqi Kurdistan smashed by Saddam Hussein in 1977. All those cases lead to war and genocide for so many years, South Sudan's agony lasted 19 years claiming more than 2 million lives, whereas the conflict in Kashmir is still going on. In the 90ies, Abkhazia and South Ossetia, former autonomous regions of Georgia, rebelled against the abolition of their autonomy by independent Georgia, declaring themselves independent as well. In all those cases the International Community did not intervene as autonomy was considered a purely internal arrangement, lacking any international entrenchment.

However, just a tiny part of the world's operating autonomous regions can count on such an entrenchment, for instance the autonomous province of South Tyrol, Italy. But this is a key requirement of integrating the legal system of minority protection and the collective rights of peoples, if the case of Kosovo is not be referred to a precedent for any secessionist movement. From this case we may draw the lesson that autonomies which are curtailed or even abolished, are a major risk not only for the population who suffer

its immediate effects, but also for peace and stability in the whole region. Without having a perspective of a far reaching and safe autonomy possibly entrenched in international law, secessionist forces ever will find some good arguments to invoke independence as the only way out.<sup>43</sup>

Autonomy, once sufficiently conceptualized starting from historical and current political experience and legal achievements, needs to be enshrined in terms of international law.<sup>44</sup> In 1994, a European umbrella organization of ethnic or national minorities, the FUEN launched a courageous draft proposal for a special convention on the right to autonomy with the title 'Autonomy Rights of Ethnic Groups in Europe'.<sup>45</sup> The draft document was presented in all relevant international institutions from the Council of Europe to the European Parliament, but never came into a stage of official debate on those levels. It reaffirms the fundamental and inalienable human right to self-determination as expressed in Article 1.1 of the UN Human Rights Covenant<sup>46</sup> and acknowledges the right of each existing state to safeguard its existence within existing territorial boundaries. The drafters claim the necessity of respecting the right to a people's self-determination by acting in accordance with the aims and principles of the Charter of the UN and the relevant rules of the international law (including the right to territorial integrity). They point out that autonomy, according to each specific case, has developed different features, but has proved its effectiveness in most cases. They assert that the right to self-determination of peoples includes a freely chosen autonomy by which peoples can determine their own political, economic, social and cultural matters within the given state borders and propose a 'Special International Convention' containing the basic issues of autonomy, thereby implicitly recognizing autonomy as one form of respecting the inalienable right of self-determination.

#### The draft convention on 'Autonomy Rights of Ethnic

43 The text of this draft convention can be found in Beate S. Pfeil/ Christoph Pan (2003), *Handbook for National Minorities in Europe*, Braumüller, Vienna, p. 278-286. It is further commented by the author in *The World's Working Regional Autonomies*, quoted above.

44 The 'Lund Recommendation on the Effective Participation of National Minorities in Public Life of 1999' strongly recommends such an option to enforce political participation and protect national minority rights.

45 For the full text see the Appendix, Part 1 and Pan and Pfeil, *Handbook for National Minorities in Europe*, Vienna, 2003, pp.278-86.

46 All peoples have the right to self-determination. By virtue of that right they freely pursue their economic, social and cultural development.<sup>7</sup>

Groups in Europe' starts from the two fundamental aims of autonomy: Article 1 reassures the states and governments that autonomy shall guarantee the highest possible degree of self-determination without any prejudice to the territorial integrity of the state parties. The text even sticks to the imperfect formulation of the Council of Europe's 'Framework Convention for National Minorities' and the UN Declaration on the Rights of Ethnic, Religious or Linguistic Minorities that autonomy is aimed to protect 'persons belonging to an ethnic group against being outvoted by majority decision not authorized in this Convention' (Article 1.2). In these terms, autonomy is conceived as a juridical shelter for the civil, political and fundamental rights of minorities without questioning the national borders of the concerned state.

Who should be entitled to obtain autonomy? The qualification most often quoted is a specific ethnic, national, religious group living within its traditional territory. The primary criterion is granting the domain of self-governance to such a group in its clearly defined territory. It is not the territory which is decisive, but a population with clearly identifiable features distinct from the rest of the population. A special jurisdiction is easier to manage if it can be geographically determined. However, the concept of cultural autonomy can integrate territorial autonomy for regions with a multi-ethnic or multinational composition.<sup>47</sup>

In Article 2, the draft convention offers a clear and explicit definition of 'ethnic group'<sup>48</sup>. Each group falling within the terms of this definition is entitled to recognition as an ethnic group. Thus, it is no longer up to a central state's discretion - as provided by the FCNM and other international documents - to recognize a minority group or people under state or constitutional law, but it turns out to be a clear-cut right of a specific group of citizens living in a specific part of the territory of a state. Although the right to autonomy remains reserved to ethnic groups that form a majority in their traditional homeland or region, the draft convention also affirms the rights of groups that are a minority even in their own region or homeland.

47 Markku Suksi, 1998, op. cit., p.359.

48 'For the purposes of this Convention the term "ethnic group" shall mean a community (a) compactly or dispersed on the territory of a state party,

(b) smaller in number than the rest of the population of a State Party;

(c) whose members are citizens of that State;

(d) which have ethnic, linguistic or cultural features different from those of the rest of the population;

(e) whose members are guided by the will to safeguard these features.

The subjects entitled to such rights freely choose to be members of a group or not, as provided by Article 3:

1. The rights set forth in this convention for a) safeguarding and preserving and b) promoting and developing the ethnic groups as entities, shall be exercised by persons belonging to these ethnic groups in community with other members of their group.
2. To belong to an ethnic group shall be a matter of individual choice and no disadvantages may arise from the exercise of such a choice. The State parties undertake to create the legal, political, cultural and social conditions for such free choice.<sup>49</sup>

The right to territorial autonomy in the draft convention is defined as ‘the right to a special status within a demarcated territory, with autonomous legislative, governmental, administrative and judicial powers to safeguard their own affairs’. The scope of an autonomy ‘[...] shall be taken to mean all matters which fall within the exclusive or preponderant interest of the community situated in the territory and which are suitable to be managed by the community itself within its borders with its own means, including the unhindered use of the natural wealth and resources of the territory concerned’. (Article 4)

Although needed, such a general definition of the scope of autonomy would leave the determination of the content of autonomy up to the arbitrary decisions of the central states.

Therefore, the draft convention rightly does not leave up to arbitrary speculation which powers territorial autonomy should entail, and Article 5.2 lists the core responsibilities that must be provided. It is questionable whether every state party, willing to sign such a convention, can fully apply for full-fledged autonomy in accordance with that article, but on the other hand it is obvious that a minimum standard for the scope of territorial autonomy must be fixed in clear terms, leaving it up to the autonomy partners to find a even more comprehensive solution. Nevertheless, Article 7 reaffirms in extended form the core powers in the cultural and economic field, both of vital interest for any operating autonomy system: the first in order to safeguard the identity and development of a minority

<sup>49</sup> Article 3, Draft Convention on ‘Autonomy Rights of Ethnic Groups in Europe’; see Appendix, Part 1. Yet the Draft Convention does not fail to affirm that that ‘the exercise of the rights set forth in this Convention shall not prejudice the enjoyment of universally recognized human rights and fundamental freedoms by persons belonging to those parts of the population which form a numerical minority within the territorial autonomy’ (Article 6).

culture and ethnicity; the latter to ensure the material basis of the autonomy in its territorial dimension. Generally, the classic core powers of sovereign states – foreign relations, defence, monetary and macroeconomic policy, immigration and citizenship law, civil and penal law – in some regions of the world are shifted to a supranational level as sovereign states join in a supranational regional confederation such as the European Union. Yet no genuine ‘world domestic policy’ is emerging, but the importance of the attributes of sovereign states clearly diminishes the quality of life of a regional community, even if the central states delegate those powers to a superior level of governance.

In Articles 7, 8, 9 and 10, the remaining forms of autonomy are also precisely defined: cultural and local autonomy (or the right to local self-administration<sup>50</sup>). Differentiating between these additional forms of autonomy, the draft convention attempts to respond to the need of ethnic groups not forming the majority population in their home areas, or groups which reside in ‘isolated settlements’ or are scattered over a large area, sharing the region with other groups. It should be noted that such a multi-layered form of autonomy does come very close to the concept drafted and claimed by UN institutions for indigenous peoples, just short of the right to external self-determination. The draft convention, furthermore, does not omit a precise article regarding financial means and adjustments, due to the bitter experiences of several autonomy regions that were prevented from working by financial exhaustion.

One last issue deserves major attention: how is autonomy and its correct implementation to be legally protected and entrenched? This – as mentioned in various chapters before – is a crucial issue for both

<sup>50</sup> Also to be named in this context is the European Charter of Local Self-government of October 1985, which has been in force since September 1998 as the current time has been ratified by 38 Council of Europe member states (by October 2002). Certain basic federalist principles for the local level of administration are established in it, which although not specific to national minorities, can nevertheless be of special relevance to them. Overlaps and parallels come to light in particular with regard to the concept of local autonomy. The synergy potential therein has not yet been fully exhausted. It is necessary to combine the federalist formation of local administrative bodies with the principles of minority protection in an optimal manner. This is all the more necessary since many national minorities are not settled in a compact area but rather dispersed, and thus only the local level can offer a sensible link to specific precautions for protection. Such an attempt was made by the Parliamentary Assembly of the Council of Europe with the Recommendation 43 on territorial autonomy and national minorities, adopted on 27 May 1998. See Pan and Pfeil, *Handbook*, 2003, p.200, and Appendix, Part 3.

parties of a majority–minority conflict to be solved through an autonomy arrangement. Which instance will control the internal implementation of autonomy, and which international third parties or institutions will be entitled to control the process? Regarding the first requirement, all conceivable forms of internal coordination and mediation between the central state and the minority representatives are listed. With regard to the second requirement, Article 15 (individual and state complaints) refers to the general European context where every existing state is a party to the European Convention of Human Rights, which is the fundamental Charter of the Council of Europe. Thus, the European Commission of Human Rights is called upon to function as the highest arbitration authority. On a global level, it is easy to transfer these roles to the UN Human Rights Commission, to the UN General Assembly or to the International Court in The Hague.

At the same time it is imperative to set forth clear legal remedies and control machineries, as well as provisions on the international entrenchment of autonomy. Both state parties and political representations of minority peoples, especially when involved in a deep, protracted conflict on various levels, will agree on a compromise solution for internal self-determination only if international guarantees are enshrined. Once an autonomy is established, the concerned state is interested to be safe from further claims to self-determination and steps to secession as long as the autonomy is safeguarded in its essence. Conversely, the concerned minority must feel protected by the international legal system that changing political majorities at the central level of the state cannot change the cornerstones of the autonomy arrangement. For the sake of stability and peace, both parties renounce a part of their 'traditional sovereignty': the minority being accommodated by a territorial autonomy, and the state by being subject to international surveillance as far as national minorities and its right to autonomy are concerned. This provision has a fundamental importance in building up the necessary confidence among conflict parties. By relying upon the legal framework of such a 'convention on the right to autonomy', state sovereignty would be granted along with autonomy as a form of application of 'internal self-determination'.<sup>51</sup>

<sup>51</sup> Critical regarding the right to autonomy are: Steven Roach (2004), 'Minority Rights and an Emergent International Right to Autonomy: A Historical and Normative Assessment' in *International Journal on Minority and Group Rights* 11, 2004, pp. 411–32; and Tim Potier (May 2001), *Autonomy in the 21<sup>st</sup> Century Through Theoretical Binoculars*, UN Commission on Human Rights, Sub-commission on Minorities, New York.

At the level of general international law, no explicit right to autonomy has yet been codified, while at the level of constitutional law Spain is still the only state which has enshrined the right to autonomy in its constitution. Still, the most common way of establishing autonomy is ad hoc regulation under pressure of harsh and even violent consequences. In this process, and in the political debate around autonomy, the concept and the content of autonomy is still marked by flexibility and ambiguity.

Tkacik notes that „one of autonomy's greatest strength is its adaptability and thus attempts at hard legal definitions are not only unlikely to succeed, but are also probably unwise inasmuch as such a definition could limit the applicability of autonomy.<sup>52</sup> I disagree, as there is a need of precise definitions and concepts in order to avoid misunderstandings by both governments claimed to concede autonomy and regional movements aspiring to autonomy. The scope and the depth of control exerted by the regional community is important to assess the quality of an autonomy, but not a criterion in itself.

The growing number of autonomies, now working in at least 20 states, can shape a clearer profile of what territorial autonomy is about. Empirical evidence on its performance, collected over several decades, adds to create visible experience to be shared around the world. If flexibility is still one of the strengths of autonomy, as Markku Suksi remarked in 1998,<sup>53</sup> ambiguity is no longer a virtue. If not a 'positivization of the term autonomy', then clear-cut minimum standards and evaluation criteria are required to promote autonomy as a legally relevant category and a device of power-sharing in international law. Some developments within the Council of Europe and the OSCE are particularly significant in view of hammering out of an international covenant on the right to territorial autonomy.<sup>54</sup>

Hence, territorial autonomy, on the grounds of the draft convention, obtains a clearly defined legal-political profile, as a comprehensive set of minimum

<sup>52</sup> M. Tkacik (2008), op. cit, p. 375

<sup>53</sup> Markku Suksi (1998), 'Concluding remarks' in Markku Suksi (ed.), *Autonomy: Applications and Implications*, p. 357.

<sup>54</sup> In this context the Council of Europe, too, in its resolution no. 1334 of 24 June 2003 called for the enforcement of regional autonomy to solve ethnic conflicts. The regions fulfil a widespread desire among peoples to feel secure at home, to appreciate and fully develop identity, to enjoy the roots in the local homeland. The EU-25 includes about 450 regions and not less than 100,000 municipalities. Basic information about all regions of the member countries of the Council of Europe can be found at [[www.fedre.org](http://www.fedre.org)].

requirements in legal terms, retaining its flexibility in concrete application. Autonomy in today's political and scholarly debate must come out of a reign of 'total arbitrariness', in which nearly everything from administrative decentralization to quasi-independence can be imagined. An international convention would be extremely useful to set the standard for an autonomy to build up the best possible practices and model solutions, and thus serve as a major reference for both state agents and minority representatives when beginning this joint venture. This would be helpful in creating more transparency in the goals and mutual confidence to avoid the build-up of overstretched expectations of the concerned population.

Unfortunately, even in Europe there is no concrete sign of an 'emerging right to autonomy', but it appears convincing that such an international collective right is a condition in order to ensure two fundamental requirements: setting the minimum standard for an autonomy, defining who is entitled to claim autonomy, and granting legal protection and international entrenchment to single autonomy solutions. As an effect, first, the scope of territorial autonomy, while retaining its necessary flexibility, would cease to be arbitrary in legal terms and would have to comply with clear minimum standards in order to achieve its fundamental aim. Second, and equally important for relaunching territorial autonomy as a means of conflict solution, are the international guarantees to be ensured by third parties to both conflict parties, the regional or ethnic community and the central state. The minority renounces a more far-reaching option of (external) self-determination and thus of full statehood, if the autonomy status is effectively safeguarded by third parties and entrenched in international law. The central state, on the other hand, can feel secure not to be faced with new secession claims as long as the autonomy is respected. Successful mediation and long-term sustainability of autonomy arrangements critically depends upon international entrenchment and the supervision of an autonomy. A legal system encompassing the right to autonomy and the duty to grant it, given some precise circumstances, is the key to peaceful accommodation of numerous minority peoples in today's conflict regions all over the world. In such a way, this literal 'joint venture to solution of ethnic conflict' would no longer be a tightrope act, but a well-secured path to partnership. International support for both central states and minorities would be granted only if they fully stick to international conventions and institutions and internal autonomy

arrangements.

Today there is still no state obligation to establish autonomy under international law. But such a duty and the corresponding right of groups seems to be the dictate of the moment. The FUEN proposal of 1994 gives this idea a concrete shape which deserved more attention. Jens Woelk concludes that:

A right to autonomy indeed could create an alternative to the secession movements aiming to independence with violent means, an often unrealistic goal [...] As often the option of autonomy is not even considered by states, national minority movements tend to radicalise, and independence is proclaimed as the only acceptable solution. By that the chance is sacrificed to find flexible solutions, within the existing state boundaries. The idea of autonomy as an evolving process could prevent the built-up of front-lines behind maximum claims and seek for a gradual integration respecting the identity of a minority group.<sup>55</sup>

Autonomy as a form of allowing territorial self-government is inextricably linked to the general values of democracy. The maturity of a democracy is measured according to its respect for minorities. Pure majority rule would sideline minorities permanently; this is even more critical if minority positions are not only a matter of holding different political views but a consequence of a person belonging to an ethnically, linguistically or religiously defined group from a state's majority. These groups can never retain their vital interests completely safeguarded within their own territory if the state's majority representatives alone make the decision. But democracy can only work when there is a genuine link between the parliament, the government and the people, when the ruled are effectively represented by their rulers.

Related to an interplay of democracy and autonomy are the questions pertaining to the notion of 'internal self-determination': are governments representative enough to claim an autonomous arrangements or the expansion of the scope of the existing one? The answer could be that autonomy in and of itself might serve as a way of ensuring that there is an effective mode of political osmosis between the rulers and the ruled; that the rulers embody the often mystical, organic or

<sup>55</sup> Jens Woelk (2001), 'Minderheitenschutz durch territoriale Autonomie: "Reservate" oder nachhaltige Integrationsprozesse?' in *Europäisches Zentrum für Föderalismusforschung*, EZFF Jahrbuch 2001, Tübingen, p.124.

even physical identity of the ruled.<sup>56</sup>

In the presence of national minorities and minority peoples, there can never be such a relationship between rulers and the ruled. Territorial power-sharing corrects this flaw of representative democracy in large nation-states in such situations: 'The various forms of autonomy are, in fact, mechanisms that promote organizational or institutional correspondence between the rulers and the ruled by facilitating the self-government in one way or another of those individuals that belong to a specific group'.<sup>57</sup> In this sense, democracy is both a condition for and result of genuine autonomy. Without a democratic system in the state (together with rule of law), autonomy will not be a power-sharing between institutions elected by the people, but power-sharing between the power elite of other origins at both levels. In contrast, without autonomy democracy will not occur in a regional dimension, as the central power makes all decisions disregarding regional needs and interests. In autonomy systems with more groups sharing the same region, the enlarged scope of power at the regional level must be tempered with consociational mechanisms in order to avoid new forms of discrimination. This is how autonomy and democracy can be brought into productive interplay.

There are plenty of aspects of autonomy to be questioned and reconsidered thoroughly before coming to a solid conclusion. The point is not whether there is more or less enthusiasm about a concept, but whether the instrument works to achieve the aims. The issue is whether self-determination conflicts can be resolved by political means and arrangements of internal power sharing allowing for a sustainable "internal self-determination" without redrawing borders and reproducing new conflict scenarios. There are plenty of conflicts in the world which could be solved peacefully, if only solutions applied elsewhere and their lessons were fully acknowledged: not in order to be transferred one-to-one to the case under examination, but to have all their positive and useful elements isolated in order to avoid Sisyphus's condemnation to repeat the same errors for eternity. Autonomy - like federalism - is a kind of 'heritage of humanity' as a collective experience of how to organize internal power-sharing, ensuring both peace and the protection of minority rights.

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270 <sup>56</sup> Zelim A Skurbaty (2005), *op. cit.*, p.566.

<sup>57</sup> Markku Suksi (1998), *op. cit.*, p.358.

## Appendix - Part 1

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### **Autonomy Rights of Ethnic Groups in Europe**

Discussion Document for a Special Convention

Drafted May 12, 1994

#### Preamble

The States Parties to this Convention

reaffirming that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion;

reaffirming the fundamental human rights, the dignity and worth of the human person, the equal rights of men and women and of nations large and small, and the fundamental and inalienable human right to self-determination, as expressed in Article 1 Paragraph 1 of the Human Rights Covenants: 'All peoples have the right to self-determination. By virtue of that right they freely pursue their economic, social and cultural development';

taking note that, according to the Declaration of the United Nations on the principles of International Law concerning Friendly Relations among States and Peoples of 24/10/1970 GA Res. 2626 (XXV), each state, as a matter of principle, has the right to safeguard its existence within the existing territorial boundaries and that in principle any attempt at dismembering or impairing, totally or in part, the political unity or territorial integrity of a state is incompatible with the aims and principles of the Charter of the United Nations;

pointing out that, in the conflict between the right to self-determination and territorial integrity of the States, the States Parties declare in the CSCE Final Act of Helsinki and in the CSCE Charter of Paris for a New Europe that they will respect the right to self-determination of the peoples by always acting in accord with the aims and principles of the Charter of the United Nations and the relevant rules of the international law, including those which refer to the territorial integrity of states;

conscious that, as stated in the above-mentioned Declaration, States manage their affairs in accordance with the principle of equal rights and self-determination of peoples and thus come to possess a government representing all those on their territory without distinction as to race, creed and colour;

aware that the right to self-determination of peoples also includes a freely chosen autonomy by which peoples can determine their own political, economic, social and cultural matters within the given state borders;

pointing out that autonomy, according to each specific case, has developed different features, but that its effectiveness in any case requires a spirit of autonomy,

agree to the following Convention:

#### I. GENERAL PROVISIONS

##### Autonomy without prejudice to the territorial integrity of the State

#### Article 1

1. Autonomy shall mean an instrument for the protection of ethnic groups which, without prejudice to the territorial integrity of the States Parties, shall guarantee the highest possible degree of internal self-determination and at the same time a corresponding minimum of dependence on the national majority.

2. As an instrument of protection of ethnic groups, the autonomy is aimed at the protection of persons belonging to an ethnic group against being outvoted by majority decisions not authorized in this Convention, and to safeguard

- a) their civil and political rights as well as
- b) the fundamental rights and freedoms being due to them as to all other persons,

without prejudice to the territorial integrity of the States Parties.

### Definition of ethnic group

#### Article 2

1. For the purposes of this Convention the term 'ethnic group' shall mean a community
  - a) compactly or dispersedly settled on the territory of a State Party,
  - b) smaller in number than the rest of the population of a State Party,
  - c) whose members are citizens of that State,
  - d) which have ethnic, linguistic or cultural features different from those of the rest of the population,
  - e) whose members are guided by the will to safeguard these features.
2. The term 'ethnic group' shall apply neither to migrant workers and their families lawfully residing in the States Parties, nor to other immigrants, groups of refugees or persons seeking asylum; their rights have been established or shall be established independently of the rights of ethnic groups.
3. Each ethnic group falling within the terms of this definition shall be entitled to be recognized as an ethnic group.
4. In guaranteeing the rights of autonomy, the particular conditions given for ethnic groups forming in their settlement area
  - a) the majority of the population,
  - b) a substantial part but not the majority of the population,
  - c) neither the majority nor a substantial part of the populationshall be respected.

Persons belonging to compactly settled ethnic groups but who live away from them in isolated settlements shall also be taken into account.

### Fundamental principles

#### Article 3

1. The rights set forth in this Convention for
  - a) safeguarding and preserving,
  - b) promoting and developingthe ethnic groups as entities, shall be exercised by persons belonging to these ethnic groups in community with other members of their group.
  1. To belong to an ethnic group shall be a matter of individual choice and no disadvantage may arise from the exercise of such a choice. The States Parties undertake to create the legal, political, cultural and social conditions for such free choice.

## II. RIGHTS OF AUTONOMY

### Right to territorial autonomy

#### Article 4

1. Ethnic groups forming the majority of the population in the areas where they are settled, shall have the right to a special status within a demarcated territory, denominated territorial autonomy, with autonomous legislative, governmental, administrative and judicial powers to safeguard their own affairs.
2. 'Their own affairs' shall be taken to mean all matters which fall within the exclusive or preponderant interest of the community situated in the territory and which are suitable to be managed by the community itself within its borders with its own means, including the unhindered use of the natural wealth and resources of the territory concerned.
3. Safeguarding its own affairs shall take place through its own bodies for
  - a) legislation,
  - b) executive power, with corresponding administrative structure, and
  - c) the administration of justicewhich are responsible and reflect the composition of the population.

### Scope of the territorial autonomy

#### Article 5

1. The territorial autonomy shall comprise all the powers which the ethnic groups consider necessary for conducting their own affairs and which shall be designated in national legislation as falling within the competence

of the territorial autonomy.

2. The following competencies fall within the territorial autonomy:

- a) the right to have and display the ethnic group's national emblems;
- b) the right to participate in the settlement of any question of a possible second citizenship;
- c) education, including higher education, which respects the values and needs of that ethnic group;
- d) cultural institutions and programmes;
- e) radio and television;
- f) licensing of professions and trades;
- g) the use of natural resources, e.g. agriculture, forestry, hunting and fishing, mining;
- h) health care, social services and insurance;
- i) provincial communications, e.g. local roads, airports;
- j) energy production;
- k) banks and other financial institutions;
- l) police;
- m) taxation for provincial purposes.

#### Rights to protection of other citizens

##### Article 6

The exercise of the rights set forth in this Convention shall not prejudice the enjoyment of universally recognized human rights and fundamental freedoms by persons belonging to those parts of the population which form a numerical minority within the territorial autonomy.

#### Right to cultural autonomy

##### Article 7

1. Ethnic groups not forming the majority of population in the areas where they are settled as well as ethnic groups which - for whatever reason - consider the establishment of a territorial autonomy as unnecessary, shall have the right to a cultural autonomy in the form of an organization with public law status that they consider appropriate.

2. The organization provided with cultural autonomy shall be an association of individuals comprising persons belonging to the ethnic group concerned.

3. The functions of the cultural autonomy shall be carried out by bodies elected freely according to democratic principles.

#### Scope of cultural autonomy

##### Article 8

1. Cultural autonomy shall apply to all such matters the ethnic groups consider necessary for the preservation, safeguarding and development of their identity; they shall be designated in national legislation as falling within the competence of the cultural autonomy.

2. Within the scope of the cultural autonomy shall fall those competencies essential for the preservation and development of the ethnic group's identity, namely:

- a) culture,
- b) the education system,
- c) information, including through radio and television,
- d) use of the ethnic group's national emblems,
- e) participation in the settlement of a possible second citizenship, and
- f) any other matters which, according to the ethnic groups, are necessary for preserving and exercising the protective rights to which they are entitled.

3. Cultural autonomy also includes the right to establish and maintain institutions in particular in the fields of

- a) teaching,
- b) the print and electronic media,
- c) care of traditions,
- d) the education system,
- e) the safeguarding of economic activities.

Right to local self-administration (local autonomy)

Article 9

1. Ethnic groups not forming the majority of the population in the areas where they are settled, as well as persons belonging to ethnic groups who reside in isolated settlements away from those, shall have the right to local self-administration, called local autonomy, within administrative units where they form the local majority of population, e.g. in individual districts or municipalities or administrative units subordinated to these.
2. Beyond the competencies transferred to such administrative units by national law, safeguarding the affairs of an ethnic group shall fall within the competence of the local autonomous administration (local autonomy).
3. Matters falling within the scope of local self-administration (local autonomy) which constitute an exclusive or preponderant interest of the local community situated in the territory, shall be managed by this community in free self-determination within its local borders.

Scope of local self-administration (local autonomy)

Article 10

1. The following competencies shall in particular fall within the sphere of local self-administration (local autonomy):
  - a) regulation of institutional bilingualism within the local self-administration;
  - b) use of names and symbols specific to the ethnic group;
  - c) regulation of local customs and festivities;
  - d) protection of local monuments and memorials;
  - e) local security and traffic police; health and buildings inspectors.
2. The local self-administration (local autonomy) shall also include the right within the framework of the means at its disposal. to establish and maintain institutions, in particular in the fields of
  - a) local teaching,
  - b) local print and electronic media,
  - c) care of traditions,
  - d) the education system,
  - e) safeguarding economic activities.
3. Moreover, the ethnic groups shall participate in accordance with their share of the population in all other administrative matters.

Administrative subdivision

Article 11

1. Ethnic groups shall have the right to respect for their interests and to uncurtailed protection of their rights in the subdivision of the national territory into political, administrative and judicial districts as well as constituencies.
2. The respective administrative subdivision shall therefore be agreed with the ethnic group directly concerned.

Provision with financial means and financial adjustment

Article 12

1. The autonomous bodies of the territorial and cultural autonomies shall be provided with adequate financial means to enable them effectively to exercise their powers.
2. For the financial adjustment between the respective State Party and a territorial autonomy the latter shall be entitled to a fixed share in all pertinent State expenditure in proportion to the average of its share in the population and the territory of that State.
3. A territorial autonomy shall be entitled in any case to an appropriate share (about nine-tenths) in all taxes and contributions levied within its territory. The share due to it should remain within the territory where it was levied and only the amount due to the State shall be assigned to it.
4. Should the share in the revenue from taxes and levies due to a territorial autonomy fall short of its fixed share in all the relevant State expenditures, the State shall pay the difference to the autonomous body.

Legality control

Article 13

- The validity of legal acts of the auton. bodies shall be subject only to supervision by independent courts.

### III. PROVISIONS ON LEGAL PROTECTION

#### Internal implementation by the States and co-determination

##### Article 14

1. The States Parties shall respect and enforce the rights of the ethnic groups as set forth in this Convention, by
  - a) granting them an adequate position in their basic legal system,
  - b) passing all legal provisions required for this purpose.
2. Ethnic groups shall have the right to participate in the national implementation of the rights set forth in this Convention through joint commissions composed of representatives of the State Party and the ethnic groups on an equal basis; the commissions decide by mutual agreement and their decisions shall be binding.
3. All relevant legal provisions of the State put into effect without a previous favourable opinion given by the joint commissions may be contested by the ethnic groups before the competent courts.
4. Ethnic groups shall have the right to participate, through autonomous bodies in their respective State Party, in the preparation of decisions of international organizations on matters in which they take a specific interest.
5. In the exercise of the rights set forth in this Convention, persons belonging to ethnic groups shall respect national legislation and the rights of others, in particular those of the members of the majority population and of other ethnic groups.

### IV. CONTROL MACHINERY

#### Individual and State complaints

##### Article 15

1. Provided that States which have acceded to this Special Convention have by declaration recognized the competence of the European Commission of Human Rights (hereinafter referred to as Commission) to receive complaints for alleged violations of the rights set forth in this Convention, any individual or group of individuals entitled by statute to represent the rights of such groups may file a claim with the Commission for an alleged violation, by a State Party, of the rights set forth in this Special Convention.
2. The Commission may receive complaints from any State Party which considers that another Party has violated the rights set forth in this Convention.
3. In respect of individual and State complaints, the Commission and European Court of Human Rights (hereinafter referred to as Court) shall apply the relevant rules of procedure.
4. If States Parties to this Convention are not at the same time Parties to the ECHR, they shall appoint an additional member to the Commission and Court if individual or State complaints are entered against such States not being Parties to the ECHR. These additional members shall have a seat and a vote in the Commission and Court only in such cases. They shall be nationals of the State Party concerned and must fulfil the same personal requirements and will receive the same compensation as the members of the Commission and Court.
5. The Court shall be competent only if the State concerned has by declaration recognized its competence.

#### State Reports

##### Article 16

1. The States Parties to this Convention shall submit to the Commission, through the Secretary General of the Council of Europe, reports on the legislative, judicial and administrative implementation of the rights set forth in this Convention as well as on any difficulties in law and in fact, within one year after the entry into force of this Convention for the State concerned and thereafter at two yearly intervals. The Secretary General of the Council of Europe is entitled to demand a report from a State Party earlier if circumstances become known indicating that a State has difficulty in giving effect to its undertakings under this Convention. Groups entitled by statute to represent the interests of ethnic groups shall have the right to bring to the attention of the Secretary General such circumstances and to prompt him to obtain such reports. The States Parties are invited to consult with the NGOs and the ethnic groups' organizations on the content of the State's report.
2. In order to assist the States Parties in fulfilling their reporting obligations, the Commission shall draw up general guidelines as to the form, contents and dates of reports. The guidelines are to help ensure that the reports are presented in a uniform manner so that the Commission and the States Parties can obtain a complete picture of the implementation of the Convention and the progress made therein.
3. The Commission shall examine such reports immediately in the presence of the representatives of the State

concerned and may make recommendations to the representatives of the State concerned and to the Secretary General of the Council of Europe, in order to ensure respect for the rights set forth in this Convention. The States Parties shall publish the report submitted to the Commission and the Commission's opinion on the report, as well as any resulting recommendations.

4. Whenever such reports are submitted by States Parties to this Convention which are not Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Commission shall be composed as provided for in Article 15, Paragraph 4 of this Convention.

#### Peaceful settlement of disputes

##### Article 17

1. The States Parties to this Convention shall submit to the Secretary General, within three months from entry into force of this Convention, a list of names of personalities known for their competence and high moral standing in the field of minority and group protection. Should difficulties of any nature whatsoever arise under the jurisdiction of a State Party in carrying out this Convention, the Secretary General shall have the right to appoint three persons from this list (Minority Rights Council) who shall carry out the tasks provided for by the La Valetta settlement mechanism in the version adopted at the Moscow Meeting of October 1991.

2. Three States Parties to this Convention may demand that the State under whose jurisdiction difficulties have arisen in fulfilling the obligations under this Convention use the mechanism of settlement contained in this article. A State Party to this Convention which is not willing to accept the recommendation made by the Minority Rights Council has the right to demand an advisory opinion from the European Court of Human Rights on the necessity of the recommendations. Such advisory opinion shall be binding. The second Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply *mutatis mutandis* to any such advisory opinion.

3. For a State Party availing itself of this mechanism of settlement, the possibility of entering a State complaint against a State in accordance with Article 15, Paragraph 2 shall be excluded.

4. The members of the Minority Rights Council shall serve in their individual capacity. They shall be independent and shall not be bound by instructions. In the exercise of their office, they shall enjoy the same privileges and immunities as the members of the Commission and Court. The members of the Minority Rights Council shall receive, for each working day, a compensation equal to that received by the members of the Commission and Court. The States Parties to this Convention shall cover the costs of establishing the Minority Rights Council and its operating; the General Secretariat of the Council of Europe will assist the Minority Rights Council. It has its seat at the seat of the Council of Europe and shall be entitled, according to the requirements of its work, to transfer its seat elsewhere within the jurisdiction of the States Parties.

#### V. FINAL PROVISIONS

##### Article 18

1. This Convention shall be open for signature by the Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms. They may express their consent to be bound by signature.

2. The signed documents shall be deposited with the Secretary General of the Council of Europe.

3. Each State Party shall specify at the time of signature the ethnic groups resident in its territory in accordance with Article 2 to which the provisions of this Convention shall apply. Each State Party may, at any time, supplement this notification. Should ethnic groups having the right in accordance with this Convention to be recognized as such not be specified, such ethnic groups shall have the right to file an application for recognition through the Council of Europe.

4. This Convention shall enter into force on the first day of the month following the date on which ten States Parties have signed this Convention. In respect of any State Party which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the date of deposit of its signature.

5. Pending the entry into force of this Convention the States Parties agree to apply the Convention provisionally from their date of signature, in so far as it is possible to do so under their respective constitutional systems.

##### Article 19

1. The Committee of Ministers may invite to accede to this Convention any State which has not signed the European Convention for the Protection of Human Rights and Fundamental Freedoms but has signed the

Helsinki Final Act of 1 August 1975. Such States shall be entitled to appoint ad hoc members to the Commission of Human Rights and to the European Court of Human Rights for a period of six years. Such members shall have a seat and a vote in the Commission and Court only with regard to decisions concerning the application of this Convention.

#### Article 20

1. For the purposes of this Convention, the English and French texts are equally authentic. However, a language other than the official languages of the Council of Europe may be agreed upon as a negotiating language. If necessary, a translation/interpretation service shall be provided for.

## Appendix - Part 2

### The Lund Recommendations on the Effective Participation of National Minorities in Public Life<sup>58</sup>

#### I. GENERAL PRINCIPLES

1. Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. These Recommendations aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.
2. These Recommendations build upon fundamental principles and rules of international law, such as respect for human dignity, equal rights, and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights and the rule of law, which allow for the full development of civil society in conditions of tolerance, peace and prosperity.
3. When specific institutions are established to ensure the effective participation of minorities in public life, which can include the exercise of authority or responsibility by such institutions, they must respect the human rights of all those affected.
4. Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision as to whether an individual is a member of a minority, the majority, or neither rests with that individual and shall not be imposed upon her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or refuse to choose.
5. When creating institutions and procedures in accordance with these Recommendations, both substance and process are important. Governmental authorities and minorities should pursue an inclusive, transparent, and accountable process of consultation in order to maintain a climate of confidence. The State should encourage the public media to foster intercultural understanding and address the concerns of minorities.

#### II. PARTICIPATION IN DECISION-MAKING

##### A. Arrangements at the Level of the Central Government

6. States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. These may include, depending upon the circumstances:

- Special representation of national minorities, for example, through a reserved number of seats in one or both chambers of parliament or in parliamentary committees; and other forms of guaranteed participation in the legislative process;
- Formal or informal understandings for allocating to members of national minorities cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high level organs;
- Mechanisms to ensure that minority interests are considered within relevant ministries, through, e.g. personnel addressing minority concerns or issuance of standing directives; and
- Special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.

##### B. Elections

7. Experiences in Europe and elsewhere demonstrate the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.

<sup>58</sup> The text is to be found at: [[http://www.osce.org/documents/hcnm/1999/09/2698\\_en\\_pdf](http://www.osce.org/documents/hcnm/1999/09/2698_en_pdf)].

8. The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interest of a specific community.

9. The electoral system should facilitate minority representation and influence.

- Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.
- Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.
- Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.
- Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.
- The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.

#### C. Arrangements at the Regional and Local Levels

11. States should adopt measures to promote participation of national minorities at the regional and local levels such as those mentioned above regarding the level of the central government (Paragraphs 6–10). The structures and decision-making processes of regional and local authorities should be made transparent and accessible in order to encourage the participation of minorities.

#### D. Advisory and Consultative Bodies

12. States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interest.

13. These bodies should be able to raise issues with decision-makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources.

### III. SELF-GOVERNANCE

14. Effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof. States should devote adequate resources to such arrangements.

15. It is essential to the success of such arrangements that governmental authorities and minorities recognize the need for central and uniform decisions in some areas of governance together with the advantages of diversity in others.

Functions that are generally exercised by the central authorities include defence, foreign affairs, immigration and customs, macroeconomic policy and monetary affairs.

Other functions, such as those identified below, may be managed by minorities or territorial administrations or shared with central authorities.

Functions may be allocated asymmetrically to respond to different minority situations within the same State;

16. Institutions of self-governance, whether non-territorial or territorial must be based on democratic principles to ensure that they genuinely reflect the views of the affected population.

#### A. Non-Territorial Arrangements

1. Non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities.
2. The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion and other matters crucial to the identity and way of life of national

minorities.

- Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names.
- Taking into account the responsibility of the governmental authorities to set educational standards, minority institutions can determine curricula for teaching of their minority languages, cultures or both.
- Minorities can determine and enjoy their own symbols and other forms of cultural expression.

### B. Territorial Arrangements

3. All democracies have arrangements for governance at different territorial levels. Experiences in Europe and elsewhere show the value of shifting certain legislative and executive functions from the central to the regional level, beyond the mere decentralization of central government administration from the capital to regional or local offices. Drawing on the principle of subsidiarity, States should favourably consider such territorial devolution of powers, including specific functions of self-government, particularly where it would improve the opportunities of minorities to exercise authority over matters affecting them.
4. Appropriate local, regional or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of these minorities.
  - Functions over which such administration have successfully assumed primary or significant authority include education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, and housing, health, and other social services.
  - Functions shared by central and regional authorities include taxation, administration of justice, tourism, and transport.
5. Local, regional and autonomous authorities must respect and ensure the human rights of all persons, including the rights of any minorities within their jurisdiction.

## IV. GUARANTEES

### C. Constitutional and Legal Safeguards

6. Self-governance arrangements should be established by law and generally not be subject to change in the same manner as ordinary legislation. Arrangements for promoting participation of minorities in decision-making may be determined by law or other appropriate means.
  - Arrangements adopted as constitutional provisions are normally subject to a higher threshold of legislative or popular consent for their adoption and amendment.
  - Changes to self-governance arrangements established by legislation often require approval by a qualified majority of the legislature, autonomous bodies or bodies representing national minorities, or both.
  - Periodic review of arrangements for self-governance and minority participation in decision-making can provide useful opportunities to determine whether such arrangements should be amended in the light of experience and changed circumstances.
  - The possibility of provisional or step-by-step arrangements that allow for the testing and development of new forms of participation may be considered. These arrangements can be established through legislation or informal means with a defined time period, subject to extension, alteration, or termination depending upon the success achieved.

### D. Remedies

7. Effective participation of national minorities in public life requires established channels of consultation for the prevention of conflicts and dispute resolution, as well as the possibility of ad hoc or alternative mechanisms when necessary. Such methods include:
  - Judicial resolution of conflicts, such as judicial review of legislation or administrative actions, which requires that the State possess an independent, accessible, and impartial judiciary whose decisions are respected; and
  - Additional dispute resolution mechanisms, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions, which can serve as focal points and mechanisms for the resolution of grievances about governance issues.

## Appendix - Part 3

The Congress of Local and Regional Authorities of Europe – Council of Europe (CLRAE)

### **Recommendation 43 (1998) on territorial autonomy and national minorities<sup>59</sup>**

The Congress,

Having regard to the declaration on ‘Federalism, Regionalism, Local Autonomy and Minorities’, adopted on 26 October 1997 in Cividale del Friuli,

Having regard to Resolution 52 (1997) on ‘Federalism, Regionalism, Local Autonomy and Minorities’, adopted at its fourth session;

Considering that the application of the principle of subsidiarity can contribute positively to solving the problem of protecting national minorities;

Recommends that the Committee of Ministers of the Council of Europe adopt Recommendation to the member States based on the draft appended hereto.

Appendix

Draft Committee of Ministers Recommendation to the Member States on territorial autonomy and national minorities

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realizing the ideals and principles which are their common heritage;

Reaffirming the principles contained in the European Charter for Regional Minority Languages and the Framework Convention for the Protection of Ethnic Minorities, which must be considered as a general approach to the problem;

Considering that the protection of national minorities – meaning Europe’s historical minorities – is a question of human rights;

Convinced that the application of the principle of subsidiarity, whereby decisions are taken at the level closest to citizens, can contribute positively to resolving problems of protecting national minorities;

Considering that the principle of subsidiarity takes concrete form in the recognition and the institution of territorial autonomy, which may consist in local or regional self-government;

Bearing in mind the fact that the concept of territorial autonomy does not necessarily imply that the powers assigned to a particular level of government – local, provincial or regional – are the same, but that, in relation to the same level of self-government, powers may be distributed differently in accordance with economic, geographical, historic, social, cultural and linguistic requirements;

Affirming that the use of the subsidiarity principle to assist in solving the problems of national minorities is not detrimental to the unity of the state, but should be an opportunity to strengthen that state’s cohesion and solidarity, while at the same time, having regard to the growing interdependence within national populations and the peoples of Europe;

Having regard to Recommendation No. 43 (1998) of the Congress of Local and Regional Authorities of Europe (CLRAE);

Recommends:

Part 1: To member States whose administrative subdivisions of State are already established when the members of a minority within a given territorial authority constitute a substantial proportion of the population, justifying specific protective measures:

- A. To avoid changing the geographical boundaries of the authority in question for the purpose of altering the composition of the population to the detriment of the minority;

<sup>59</sup> This text is to be found at: <https://wcd.coe.int/ViewDoc.jsp?id=853855&Site=COE>

- B. To consider the possibility of merging or encouraging partnership between authorities in order to bring together the members of a national minority in such a way as to justify protection;
- C. To grant the authorities in question wide-ranging powers, defined by law in all fields that can afford an effective protection of the members of the minority and mainly in the fields of language, education and culture;
- D. To recognize the legitimacy in territories inhabited by minorities of the existing specific legal provisions governing the main areas in which the minorities distinctiveness is expressed;
- E. To recognize the right of these authorities to join together with other authorities sharing the same characteristics, for the purposes of culture or language promotion and, in the case of border authorities, to establish trans-border links for cooperation with similar authorities in neighbouring states;
- F. To grant these authorities the competence to rule on the use of regional minority languages in their elected bodies and administration, in their relation with the citizens and, in accordance with Article 10.2g of the European Charter for Regional or Minority Languages, to adopt correct traditional forms of place names in regional or minority languages, if necessary in conjunction with the name in the official language(s).
- G. To make provision in the local finance system for resources and/or transfers enabling these authorities to cope with the increased and specific responsibilities arising from the presence of members of a national minority;
- H. To grant territorial authorities the power to put in place mediation and collaboration arrangements to promote harmony between the majority and the minorities;
- I. To establish a guarantee such as to ensure an appropriate level of representation for members of minorities on the elected bodies of the territorial authorities, as well as on the bodies representing these authorities at the levels of the federal or national state;

Part 2: To member states planning to change their system of administration, subdivisions, and in particular to create regional tiers of government in territories where national minorities represent a substantial part of the population, that, in addition to the provisions in (A) to (I) above, they take measures:

- A. To guarantee the creation of territorial authorities in such a way as to prevent dispersal of the members of a national minority and to afford them effective protection, unless other economic, social or geographical considerations duly motivated make this impossible;
- B. To grant the territorial authorities - local or regional - appropriate powers to provide adequate protection for minorities;
- C. To consult the populations concerned regarding the geographical boundaries, the authorities in question according to the provisions of Article 5 of the European Charter of Local Self-Government;
- D. To ensure that, where regional authorities have already been created, they also enjoy substantial powers in the sphere of regional development, so that they can take full advantage of the potential offered by history, tradition and multiculturalism.

## Appendix - Part 4

### The European Charter of Local Self-Government (15 October 1995)<sup>60</sup>

#### Preamble

The member States of the Council of Europe, signatory hereto, Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment, have agreed as follows:

#### Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

#### Part I

##### Article 2 - Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

##### Article 3 - Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

##### Article 4 - Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited

<sup>60</sup> Retrieved from: <http://conventions.coe.int/Treaty/en/Treaties/Html/122.htm>

by another, central or regional, authority except as provided for by the law.

5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

### Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

### Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

### Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.

2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

### Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

### Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The

provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

#### Article 10 – Local authorities’ right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to cooperate with their counterparts in other States.

#### Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

### Part II – Miscellaneous provisions

#### Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs: Article 2, Article 3, paragraphs 1 and 2, Article 4, paragraphs 1, 2 and 4, Article 5, Article 7, paragraph 1, Article 8, paragraph 2, Article 9, paragraphs 1, 2 and 3, Article 10, paragraph 1, Article 11. 2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article. 3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

#### Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

#### Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

### Part III

#### Council of Europe - ETS no. 122 - European Charter of Local Self-Government

#### Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

### Article 16 - Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

### Article 17 - Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.

2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

### Article 18 - Notifications omissis

## Appendix - Part 5

Resolution 293 (2009) of the Conference of European Regional Legislative Assemblies

### **„Regions with legislative powers: towards multi-level governance“**

(17<sup>th</sup> PLENARY SESSION in Strasbourg, 13-15 October 2009)

1. The Council of Europe lays great store by the strengthening of local and regional democracy in particular as it is at local and regional levels, in application of the principles of subsidiarity and proximity, where democracy is closest to citizens. Regional democracy is a strong element of constitutional checks and balances, especially in federated states, and a guarantee for democratic and effective multi-level governance. Citizens identify most strongly with their region through cultural and linguistic ties but also for historical, geographical and social reasons.

2. The Congress of Local and Regional Authorities of the Council of Europe believes that good regional governance brings an added value which can be seen in the fact that regionalisation has spread across many of the member states over the past years. New regional institutions have been introduced or existing ones endowed with additional responsibilities. This has led to a rich diversity of regions based on a number of different models.

3. The advance of regionalisation in countries depends to some extent on their historical background and on the experiences of other countries. The process of European integration, namely the creation of the Congress of Local and Regional Authorities of the Council of Europe and the Committee of the Regions of the European Union - both established in 1994 - also contributed to this development. The process is slow, however, and does not follow a systematic pattern. The Congress, aware of this, is convinced that in the present European and international context, the process is inescapable.

4. Multi-level governance must be guided by mutual co-operation and interaction between European, national, regional and local authorities with due regard to the respective roles, functions, competences and activities of each level. Former hierarchical subordination schemes are about to be abandoned in favour of a solutions-oriented approach to co-operation. A clear delineation of power for cross-cutting issues is a prerequisite for sound and successful multi-level governance. In this light, the Congress welcomes the Committee of the Regions' White Paper on Multi-level Governance adopted on 17 June 2009 (Doc n°CdR 89/2009 fin).

5. Firm in this belief and convinced of the merits of good regional governance, the Congress adopted Recommendation 240 (2008) on a Draft European Charter of Regional Democracy and is now co-operating on the drafting of a reference framework on regional democracy which will guide member states' regional reform.

6. Regionalisation is a means of giving regions with legislative powers ownership of, and other regions a say in policy shaping and political decision-making. Directly elected regional assemblies are a means of reducing the regional parliamentary deficit. This proximity to Europe's citizens strengthens democracy thanks to a more direct citizen participation, and brings processes closer to citizens' daily lives with the result they reflect more accurately regional and cultural differences. Executive bodies - regional governments - are accountable to these parliaments.

7. In federal countries, the constituent units generally confer responsibilities to the commonly established federal level while in most unitary and regionalised countries certain competences are devolved to sub-national levels. Over the past decades, in several countries, regions have been conferred legislative powers. However, their role, function and responsibilities are generally determined at national level by constitutions or federal agreements. These arrangements specify the extent of legislative competencies which are granted to regions. Regional authorities must have the power to establish legislation with regard to the organisation and management of their competences on their territory. In addition, their economic, administrative and structural

requirements need to be met in order for them to be able to operate effectively and efficiently. Once this is the case, regions with legislative powers are able to regulate and manage a share of public affairs in the interests of their population. This type of region can be considered, to some extent, as a vanguard for other regions that do not have comparable powers.

8. Regions should also be given a say in policy shaping and political decision-making at national and international levels when their legislative powers are concerned. The colloquy on “bicameral systems and representation of regions and local authorities: the role of second chambers”, organised by the Congress in co-operation with the French Senate in 2008, concluded that “... the Senate represents the people on a geographical basis and the territory as a sovereign entity.”. Second chambers should “give the territorial units of a country political representation ... The powers and responsibilities of this second chamber must allow regional and other territorial authorities to scrutinise and endorse decisions which affect them. ... the principle of territoriality would seem to be the only viable basis from which an upper house can draw its identity.”

9. Regional democracy, by virtue of its proximity to citizens, is a means of dealing with minorities’ issues. Giving legislative powers to regional authorities in conflict areas can help towards establishing peace and democratic stability. “... giving regions/peoples/nationalities or nations an important role as sub-state institutions, [is] the only way to satisfy nationalist claims which would otherwise, in the absence of an alternative, call for the creation of a new state”.

10. With regard to the current economic and financial crisis, regions are struggling to support their regional economy. Following the April 2009 G20 Summit, international regulation and monitoring has been entrusted to international financial institutions. However, regions with legislative powers, in view of their specific legislative competences in the economic and financial fields, can make an important contribution to overcoming the crisis, not only because they can devise regional and local economic recovery packages that have a direct impact on growth and jobs, but also because, again thanks to their proximity, they can set up and implement measures much quicker than national or European authorities.

11. Financial autonomy is a key factor for adequately tackling the present economic crisis. The budgetary and fiscal decisions taken via regional legislative measures can ensure that taxation imposed on the population is fair, reasonable and, above all, adequate to the regional economic and social context. In addition, the public budget spent within a given area, namely the regional context, is better controlled and visible by the population of the area concerned.

12. The Working Group “Regions with legislative powers” instigated the first Conference of Presidents of Regions with Legislative Powers (REGLEG) in 2000 and has since maintained close relations with the Conference. It has also maintained close contact with the Conference of European Regional Legislative Assemblies (CALRE). The Congress considers it of utmost importance to examine ways to intensify co-operation with these organisations which represent regional governments and regional parliaments.

13. The Congress welcomes the Parliamentary Assembly of the Council of Europe’s continued support for regional legislative assemblies which has been given tangible form thanks to the signature of an agreement with the Conference of European Regional Legislative Assemblies (CALRE). The Congress emphasises the importance of this co-operation and wishes itself to expand co-operation with this organisation.

14. In the light of this, the Congress:

a. welcomes the strengthening of its relations with the Conference of Presidents of Regions with Legislative Powers (REGLEG) and the Conference of European Regional Legislative Assemblies (CALRE);

b. commits itself to examining and furthering the representation of regions in second chambers of national parliaments;

c. undertakes to continue the reflection, launched during its 2008 Autumn session in the Chamber of Regions, on special autonomy status of regions in Europe.

15. Recommends the Working Group “Regions with legislative powers”:

a. follow up on the conclusions of the colloquy on “Bicameral systems and representation of regions and local authorities: the role of second chambers”, held on 21 February 2008, in particular by examining the role of regions in second chambers by means of a report and a follow up conference. In this context, the Congress thanks the President of the Piedmont Region, Italy, and 2009 President of REGLEG, Ms Mercedes Bresso, for her invitation to host such a conference in her region in 2009/2010;

b. pursue its work on special self-governing status and conflict resolution, in particular in the light of recent events in the South Caucasus, and to organise a conference on this subject in 2010. In this context, the Congress thanks the President of the Autonomous Region of Madeira, Portugal, Mr Alberto Joao Jardim, for his invitation to host such a conference in his region in 2010;

c. examine the effects of globalisation on regions with legislative powers which can act as a counterbalance to it;

d. examine the political and economic efforts of regions with legislative powers in contributing to economic recovery plans as concrete examples of the added value of regions with legislative powers for citizens, enterprises and municipalities (assessment of regional recovery plans);

e. in accordance with Congress Resolution 265 (2008), address key issues related to regional public finances, in particular the ways in which regions may contribute to resolving the current economic and financial crisis and benefit from the advantages of fiscal federalism;

f. strengthen co-operation with the Inter-regional Group “Regions with Legislative Powers” in the Committee of the Regions of the European Union;

g. continue co-operation with the Council of Europe Venice Commission on its work on regions with legislative powers and federalism.

16. Draws the attention of regions in Europe to:

a. the key role regions with legislative powers play in developing regional democracy and delivering services to citizens;

b. the need to involve themselves as active partners in the search for solutions to cross-cutting challenges in a system of multi-level governance based on co-operation and mutual respect of the different levels involved;

c. the good governance which can be achieved thanks to the status, powers, finances, joint decision-making, participation and administrative structures of regions with legislative powers;

d. the added value of granting a special status to autonomous regions as they have a better potential for keeping peace and ensuring security while maintaining state unity;

17. Considering the Working Group has served as a political spur in the regionalist drive to achieve broader and better organised self-government, the Congress asks its Bureau to renew the terms of reference of the Working Group “Regions with legislative powers” for the period 2010-2012.

## Appendix - Part 6

### Dependent territories<sup>61</sup>

Currently, there are 61 dependencies on these lists. The list includes several territories that are not included in the list of non-self-governing territories listed by the General Assembly of the UN, a list that also includes Western Sahara. Since 1990, the General Assembly reaffirmed that the question of Western Sahara was a question of decolonization which remained to be completed by the people of Western Sahara. Faroe, Greenland, Hong Kong, Macau, New Caledonia and Åland cannot be considered 'dependent territories' as some other regions vested with territorial autonomy, in contrast to the list of Wikipedia. Puerto Rico and the Marianas are in associated statehood with the US. The Netherlands Antilles have been cancelled from the UN list of dependent territories. French Guayana, Guadeloupe, Martinique and Réunion are (first-order administrative units) of France, and are therefore not dependencies or areas of special sovereignty, similar to how the island state of Hawaii is a first-order political unit of the US.

American Samoa, e.g., is an "unincorporated and unorganized territory of the US, administered by the Office of Insular Affairs of the US-Ministry of Interior. Its constitution of 1967 endows its elected assembly with some legislative powers, but under strict control of the US-administration. American Samoans do not vote for the US-elections, but have a non voting delegate to the US-House of Representatives.

New Caledonia since 1998 is officially labelled a pays d'outre-mer (overseas country) with a special autonomy status and representation in the French parliament (its autonomy is presented under Chapter 3.21).

#### 1. List of dependencies by Commonwealth sovereignty

All these are, as such or as part of a Commonwealth state in personal union under the same British Monarch.

##### 1.1 Australia

- Christmas Island: territory administered by the Australian Department of Transport and Regional Services
- Ashmore and Cartier Islands: territory administered by the Australian Department of Transport and Regional Services
- Cocos (Keeling) Island: territory administered from Canberra by the Australian Department of Transport and Regional Services
- Coral Sea Islands: territory administered from Canberra by the Department of the Environment, Sport, and Territories
- Heard Island and McDonald Islands: territory administered from Canberra by the Australian Antarctic Division of the Department of the Environment and Heritage
- Norfolk Island: territory of Australia; Canberra administers Commonwealth responsibilities on Norfolk Island through the Department of Environment, Sport, and Territories
- Australian Antarctic Territory: territory administered from Canberra by the Australian Antarctic Division of the Department of the Environment and Heritage

##### 1.2 New Zealand

- Tokelau: self-administering territory of New Zealand. Tokelau and New Zealand have agreed to a draft constitution as Tokelau moves toward free association with New Zealand. A UN sponsored referendum on self-governance in February 2006, did not produce the two-thirds majority vote necessary for changing the current political status. The Cook Islands and Niue, on contrary, are in free association with New Zealand.
- Ross Dependency: land and islands claimed in Antarctica

##### 1.3 United Kingdom

Crown dependencies (in this text these entities are considered 'modern territorial autonomies')

- Guernsey: British crown dependency
- Jersey: British crown dependency

<sup>61</sup> Retrieved from: [[http://en.wikipedia.org/wiki/List\\_of\\_dependent\\_territories](http://en.wikipedia.org/wiki/List_of_dependent_territories)].

- Isle of Man: British crown dependency

#### Ordinary dependencies

- Akrotiri: overseas territory administered by an administrator who is also the Commander of the British Forces, Cyprus
- Anguilla: overseas territory (a non-self-governing territory as listed by the UN)
- Bermuda: overseas territory (a self-governing territory as defined by the UK. A non-self-governing territory as listed by the UN)
- British Antarctic Territory: land and islands claimed in Antarctica
- British Indian Ocean Territory: overseas territory administered by a Commissioner, resident in the Foreign and Commonwealth Office in London
- British Virgin Island: overseas territory with internal self-government (a non-self-governing territory as listed by the UN)
- Cayman Islands: overseas territory (a non-self-governing territory as listed by the UN)
- Dhekelia: overseas territory administered by an administrator who is also the Commander of the British Forces, Cyprus
- Falkland Islands: overseas territory; also claimed by [Argentina](#) (a non-self-governing territory as listed by the UN)
- Gibraltar: overseas territory (a non-self-governing territory as listed by the UN)
- Montserrat: overseas territory (a non-self-governing territory as listed by the UN)
- Pitcairn Islands: overseas territory (a non-self-governing territory as listed by the UN)
- Saint Helena: overseas territory (a non-self-governing territory as listed by the UN); it includes the Island group of Tristan da Cunha. Saint Helena also administers Ascension Island.
- South Georgia and the South Sandwich Islands: overseas territory, also claimed by Argentina; administered from the Falkland Islands by a Commissioner, who is concurrently Governor of the Falkland Islands, representing [Queen Elizabeth II](#); [Grytviken](#), formerly a whaling station on South Georgia, is a scientific base.
- Turks and Caicos Islands: overseas territory (a non-self-governing territory as listed by the UN)

## 2. List of dependencies by other sovereignty

### 2.1 France

- Bassas de India: possession administered by a high commissioner of the Republic, resident in Réunion (no permanent population)
- Clipperton Island: possession administered by France from French Polynesia by a High Commissioner of the Republic (no permanent population)
- Europa Island: possession administered by a high commissioner of the Republic, resident in Réunion (no permanent population)
- French Polynesia: overseas collectivity since 2003 (designated as an overseas country since 2004)
- French Southern and Antarctic Lands: overseas territory since 1955 and the French-claimed sector of Antarctica (no permanent population).
- Glorioso Islands: possession administered by a High Commissioner of the Republic, resident in Réunion (no permanent population)
- Juan de Nova Island: possession administered by a High Commissioner of the Republic, resident in Réunion (no permanent population)
- Mayotte: overseas collectivity since 2003 (designated as a departmental collectivity since 2001)
- Saint Pierre and Miquelon: overseas collectivity since 2003 (designated as a territorial collectivity since)
- Tromelin Island: possession administered by a High Commissioner of the Republic, resident in Réunion (no permanent population)
- Wallis and Futuna: overseas collectivity since 2003 (designated as a territory since 1961).

## 2.2 The Netherlands

- Aruba: part of the Kingdom of the Netherlands, but not of the European Union; full autonomy in internal affairs obtained in 1986 after separation from the Netherlands Antilles; the Dutch government is still responsible for defence and foreign affairs. The status of the Netherlands Antilles (which are going to be split up on 1 July 2007) today can be compared with that of a special autonomy within the Netherlands, but from 10 October 2010 Curacao and Sint Maarten will shift to 'associated statehood' with the Netherlands, whereas Bonaire, Saba, and Sint Eustatius will become a direct part of the Netherlands as special municipalities (bijzondere gemeente).

## 2.3 Norway

- Bouvet Island
- Peter I Island (Antarctica)
- Queen Maud (Antarctica)

## 2.4 United States

### 2.4.1 In the Caribbean

- Navassa Island: unincorporated territory of the US; administered by the Fish and Wildlife Service, US Department of the Interior, from the Caribbean Islands National Wildlife Refuge in Boqueron, Puerto Rico; in September 1996, the Coast Guard ceased operations and maintenance of Navassa Island Light, a 46-metre-tall lighthouse on the southern side of the island; there has also been a private claim advanced against the island.
- US Virgin Islands: organized, unincorporated territory with policy relations between the Virgin Islands and the US under the jurisdiction of the Office of Insular Affairs, US Department of the Interior (a non-self-governing territory as listed by the UN).

### 2.4.2 In the Pacific

- American Samoa: unincorporated and unorganized territory administered by the Office of Insular Affairs, US Department of the Interior, a non-self-governing territory as listed by the UN).
- Guam: organized, unincorporated territory with policy relations between Guam and the US under the jurisdiction of the Office of Insular Affairs, US Department of the Interior (a non-self-governing territory as listed by the UN).
- Baker Island, Howland Island, Jarvis Island, Johnston Island, Kingman Reef and Midway Island: unincorporated territories of the US; administered from Washington, DC, by the Fish and Wildlife Service of the US Department of the Interior as part of the National Wildlife Refuge system.
- Palmyra Atoll: incorporated Territory of the US; partly privately owned and partly federally owned; administered from Washington, DC, by the Fish and Wildlife Service of the US Department of the Interior; the Office of Insular Affairs of the US Department of the Interior continues to administer nine excluded areas comprising certain tidal and submerged lands within the 12 nautical miles territorial sea or within the lagoon.
- Wake Island: unincorporated territory administered from Washington, DC, by the Department of the Interior; activities on the island are conducted by the US Air Force, the ownership of the territory is disputed with the Marshall Islands.

Citizens of US overseas possessions, including Puerto Rico, do not have the right to vote in US federal elections. The US Department of State uses the term Insular Areas to refer to the areas listed above (with the exception of Guantanamo Bay). Although the US state of Hawaii is an island and is technically overseas from the rest of the US, it is fully a state of the Union and shares equal status under the US constitution with all of the other states.

The US does not claim sovereignty on Guantanamo Bay, but exercises permanent control and pays rent under terms of treaties with Cuba.

The Republic of the Marshall Islands, the Federated States of Micronesia and Palau and, formerly part of the Trust Territory of the Pacific Islands, have not been US territory ever since each became a sovereign state and entered into a Compact Free Association with the US. However, some still treated them as US dependencies until they were admitted to the UN in the 1990s as full nations (see also the following Appendix Part 5).

The Native American tribal governments are sometimes called 'dependencies', but in a broader sense they are really subnational entities; their territories, whether recognized as reservations or not, are an integral part of the US in every territorial and geographic sense, as well as legally for most purposes. Their status as a 'nation' is merely official recognition of their historic tribal sovereignty, which under US law usually displaces state sovereignty but not federal sovereignty (including foreign affairs). Native Americans are full citizens of the US and of the state in which they reside, regardless of their tribal membership or place of residence.

Source: CIA World Fact Book.

## Appendix - Part 7

### Free associated states (associated statehood)

An 'associated state' is used to describe a free relationship between a territory and a larger nation. The details of an association are specific to the countries involved. The relationship of 'free association' can be seen as a post-colonial form of amical protection. The meaning of 'free association' is explained in General Assembly Resolution 1541 (XV), entitled 'Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73 of the Charter', which contains the following Principle VII:

- a) 'Free association' should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.
- b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

#### 1. Associated states of New Zealand<sup>62</sup>

- The Cook Islands: a self-governing territory in free association with New Zealand, fully responsible for their internal affairs. The residents of those islands are New Zealand citizens. In contrast to the US situation, those territories are not treated by the UN as independent states, although the Cook Islands have the right to declare independence, and are parties to several international conventions. New Zealand retains responsibility for external affairs and defence, in consultation with the Cook Islands. In 2005 they had diplomatic relations with 18 countries.
- Niue: self-governing in free association with New Zealand since 1974; while fully responsible for internal affairs; New Zealand retains responsibility for external affairs and defence; however, these responsibilities confer no rights of control and are only exercised at the request of the government of Niue.

#### 2. Associated states of the United States

- The Federated States of Micronesia, Palau and the Marshall Islands are associated with the US under what is known as the Compact of Free Association. Under this relationship the states possess international sovereignty and ultimate control over their territory. However, the governments of those areas have agreed to allow the US to provide defence, funding grants, and access to US social services for citizens of those areas.
- The Marianas Islands and Puerto Rico have a relationship of associated statehood with the US, but being represented at the US Congress as well as being citizens of the US, in this text they are subsumed under 'territorial autonomy'.

#### 3. Other examples

The status of Aruba (since 1986) and the Netherlands Antilles (which will be split up on 10-10-2010) in the Kingdom of the Netherlands can also be compared to that of associated states (status aparte), after that date. A similar relationship once existed between the UK and its former colonies of Antigua and Barbuda, Grenada, Saint Lucia, Saint Kitts and Nevis, and Saint Vincent in the Caribbean, under the Associated Statehood Act of 1967. Under this arrangement, each state had full control over its constitution, although all of them have since been granted full independence.

<sup>62</sup> Retrieved from: [[http://www.en.wikipedia.org/wiki/Freely\\_Associated\\_States](http://www.en.wikipedia.org/wiki/Freely_Associated_States)].

## Appendix - Part 8

### A different list of autonomy arrangements

(„Territorial autonomies“ according to WIKIPEDIA<sup>63</sup>. Further different lists of autonomous entities are to be found at<sup>64</sup>

<i>Autonomous territory</i>	<i>country/state</i>	<i>official label</i>	<i>real status</i>
Abkhazia	Georgia	autonomous republic	no incorporation in the state's territory
Aceh	Indonesia	special territory	<b>Modern autonomy system</b>
Adjara	Georgia	autonomous republic	Administrative unit
Åland	Finland	autonomous province	<b>Modern autonomy system</b>
Aosta Valley	Italy	autonomous region	<b>Modern autonomy system</b>
Azad Kashmir	Pakistan	autonomous state	non-democratic system in state and autonomy
Azores	Portugal	autonomous region	<b>Modern autonomy system</b>
Mount Athos	Greece	autonomous monastic state	non-democratic system in state and autonomy
Balearic Islands	Spain	autonomous community	<b>Modern autonomy system</b>
Basque Country	Spain	autonomous community	<b>Modern autonomy system</b>
Bougainville	Papua New Guinea	autonomous province	<b>Modern autonomy system</b>
Cabinda	Angola	special province	non-legislative form of autonomy (administrative)
Canary Islands	Spain	autonomous community	<b>Modern autonomy system</b>
Catalonia	Spain	autonomous community	<b>Modern autonomy system</b>
Corsica	France	territorial collectivity	non-legislative form of autonomy (administrative)
Crimea	Ukraine	autonomous republic	<b>Modern autonomy system</b>
Friuli-Venezia Giulia	Italy	autonomous region	<b>Modern autonomy system</b>
Gagauzia	Moldova	autonomous region	<b>Modern autonomy system</b>
Galicia	Spain	autonomous community	<b>Modern autonomy system</b>
Gilgit-Baltistan	Pakistan	autonomous community	non-democratic system in state and autonomy
Guangxi	People's Republic of China	autonomous region	non-democratic system in state and autonomy
Inner Mongolia	People's Republic of China	autonomous region	non-democratic system in state and autonomy
Iraqi Kurdistan	Iraq	autonomous region	Federal unit of Iraq
Jammu and Kashmir	India	special status state	No special status, federal unit of India
Jeju-do	South Korea	autonomous province	No elected legislative assembly of aut. territ.
Karakalpakstan	Uzbekistan	republic	non-democratic system in state and autonomy
Kohistan-Badakhshan	Tajikistan	autonomous province	non-democratic system in state and autonomy
Kuna Yala	Panama	comarca	<b>Modern autonomy system</b>
Madeira	Portugal	autonomous region	<b>Modern autonomy system</b>
Muslim Mindanao	Philippines	autonomous region	<b>Modern autonomy system</b>
Nakhchivan Autonomous Republic	Azerbaijan	autonomous region	non-democratic system in state and autonomy
Northern Ireland	United Kingdom	province	<b>Modern autonomy system</b>
Ningxia	People's Republic of China	autonomous region	non-democratic system in state and autonomy
North Atlantic Autonomous Region	Nicaragua	autonomous region	<b>Modern autonomy system</b>

<sup>63</sup>Retrieved from: [http://en.wikipedia.org/wiki/Territorial\\_autonomy](http://en.wikipedia.org/wiki/Territorial_autonomy);

<sup>64</sup> Entities with large degree of autonomy are listed at: [<http://useres.skynet.be/hermandw/f/countries/html#non>]. A different list of such entities with different criteria: [[http://www.absoluteastronomy.com/reference/list\\_of\\_autonomous\\_entities](http://www.absoluteastronomy.com/reference/list_of_autonomous_entities)]

## THE WORLD'S MODERN AUTONOMY SYSTEMS

Nunavut	Canada	territory	<b>Modern autonomy system</b>
Oecussi-Ambeno	Timor-Leste	special administrative region	non-legislative form of autonomy (administrative)
Papua	Indonesia	special autonomous province	No democracy, no rule of law in aut. territory
Príncipe	São Tomé and Príncipe	autonomous region	non-legislative form of autonomy (administrative)
Rodrigues	Mauritius	autonomous island	non-legislative form of autonomy (administrative)
Sardinia	Italy	autonomous region	<b>Modern autonomy system</b>
San Andrés y Providencia	Colombia	department	non-legislative form of autonomy (administrative)
Sicily	Italy	autonomous region	<b>Modern autonomy system</b>
South Atlantic Autonomous Region	Nicaragua	autonomous region	<b>Modern autonomy system</b>
Southern Sudan	Sudan	autonomous region	non-democratic system in state and autonomy
Scotland	United Kingdom	kingdom	<b>Modern autonomy system</b>
Tobago	Trinidad and Tobago	autonomous island	non-legislative form of autonomy (administrative)
Transdnjestria	Moldova	territorial autonomous unit	no incorporation in the state's territory
Trentino-Alto Adige/Südtirol	Italy	autonomous region	<b>Modern autonomy system</b>
Tibet	People's Republic of China	autonomous region	non-democratic system in state and autonomy
Wales	United Kingdom	country	<b>Modern autonomy system</b>
West Papua (Papua Barat)	Indonesia	special autonomous province	No democracy, no rule of law in aut. territory
Xinjiang	People's Republic of China	autonomous region	non-democratic system in state and autonomy
Zanzibar	Tanzania	autonomous island	<b>Modern autonomy system</b>

The Federal subjects of Russia, originally comprised in the WIKIPEDIA list, have not been inserted. Also the „non-incorporated autonomous territories (mostly dependent territories of the UK, USA, Australia and New Zealand) are not included.

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## 2. Links to general information on minorities and autonomy:

- [<http://www.eurac.edu/miris>]: The Minority Rights System of the European Academy of Bozen.
- [[http://www.osce.org/publications/factsheets/osce\\_e.pdf](http://www.osce.org/publications/factsheets/osce_e.pdf)]: General fact sheet of the High Commissioner on National Minorities of the OSCE.
- [<http://www.eblul.org>]: The European Bureau for Lesser Used Languages.
- [[http://www.coe.int/T/E/human\\_rights/minorities](http://www.coe.int/T/E/human_rights/minorities)]: The Council of Europe, Minority Rights.
- [<http://www.ciemn.org/mercator>]: MERCATOR minority language centre of the CIEMEN, links to legislation on minority languages.
- [<http://www.aer.eu/>] and [[www.a-e-r.org](http://www.a-e-r.org)]: The Assembly of European Regions (AER).
- [<http://www.ecmi.org>]: The European Centre for Minority Issues in Flensburg (Germany).
- [<http://www.centrefortheneweuropa.org>]: Information about the right to secession.
- [<http://www.federalism.ch>]: A major Swiss export item: federalism.

[<http://www.forumfed.org>]: the Forum of Federations, the world organization of federal states.  
[<http://www.icg.org>]: The International Crisis Group, London.  
[<http://www.minorityrights.org>]: The Minority Rights Group (MRG), London.  
[<http://www.idea.int>]: The International Institute for Democracy and Electoral Assistance, IDEA.  
[<http://www.eurominority.org/>]: General data on European minorities and minority languages.  
[<http://www.eurolang.net>]: Minority network in Europe.  
<http://confinder.richmond.edu> : The Constitution finder.  
[<http://www.mercator-education.org/>]: Europe's minority languages and education policies of minorities.  
[<http://www.unpo.org/>]: The Unrepresented Nations and Peoples Organization.  
[<http://www.odci.gov/cia/publications/factbook/nt.html>]: The CIA World Factbook.  
[<http://www.gksoft.com/govt/en/world.html>]: The worldwide governments.  
[<http://bertelsmann-transformation-index.de>]: Reports on countries in transition to democracy.  
[<http://www.bpb.de>]: German Federal Centre for Political Information.  
[<http://www.freedomhouse.org>]: Reports on the development of democracy in all countries.  
[<http://www.peacereporter.net>]: Peace Reporter coverage of ongoing wars.  
[<http://www.globalsecurity.org/military/world/war>]: Global security coverage of ongoing wars.  
[<http://www.eurac.edu/miris>]: EURAC Research, Minority Rights Information System MIRIS.  
[<http://www.eurac.edu/Org/Minorities/Publications/EDAP/Index.htm>] : Online revue on minority issues of the EURAC Bozen.  
[<http://www.nationalia.cat>] : Online magazine on ethnic minority issues and nations without state.

### 3. Links to official documents

- The UN-Declaration on the Rights of Persons belonging National or Ethnic, Linguistic and Religious Minorities: [http://www.unhchr.ch/html/menu3/b/d\\_minori.htm](http://www.unhchr.ch/html/menu3/b/d_minori.htm)
- The Framework Convention for the Protection of National Minorities (FCNM): <http://conventions.coe.int/Treaty/EN/Treaties/Html/157>
- The constitutions of the world (supported by the Kingwood College library): [<http://nhmccd.cc.tx.us/contracts/lrc/kc/constitutions-subject.html>]
- The European Charter for Regional or Minority Languages: <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>
- The European Charter of Local Self-Government: <http://conventions.coe.int/Treaty/EN/Treaties/Html/122.htm>
- UN-Declaration on the Rights of Indigenous Peoples: <http://www.iwgia.org/graphics/Synkron-library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf>
- The European Charter for Regional or Minority Languages (CoE): <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>
- Recommendation 43 (1998) on territorial autonomy and national minorities (Congress of Local and Regional Authorities of Europe – Council of Europe): <https://wcd.coe.int/ViewDoc.jsp?id=853855&Site=COE>
- The Assembly of European Regions (AER), The Draft European Charter for Regional Democracy: <http://www.aer.eu/main-issues/regional-democracy/european-charter-for-regional-democracy.html>]:
- The Lund Recommendation on the Effective Participation of National Minorities in Public Life at: [http://www.osce.org/documents/hcnm/1999/09/2698\\_en\\_pdf](http://www.osce.org/documents/hcnm/1999/09/2698_en_pdf)
- Periodical Report on the Implementation of the European Charter of Minority or Regional Languages (CoE) at: [http://www.coe.int/T/E/Legal\\_Affairs/Local\\_Regional\\_Democracy/Regional\\_or\\_Minority\\_languages/Documentation/](http://www.coe.int/T/E/Legal_Affairs/Local_Regional_Democracy/Regional_or_Minority_languages/Documentation/)
- The Universal declaration of the collective rights of peoples, at: [www.clemen.org/pdf/ang.PDF](http://www.clemen.org/pdf/ang.PDF)
- UNPO's 1991 Covenant of the Unrepresented Nations and Peoples Organisation [<http://www.unpo.org/maindocs/0710cove.htm>]
- EURAC Bozen, The Bolzano/Bozen Declaration on the Protection of Minorities in the Enlarged

- European Union, 2004: <http://www.eurac.edu/pecede>
- Further documents on European declarations and conventions at: <http://www.unesco.org/most/lnzint.htm#Europe>
- Eurac Bozen/Bolzano, Package for Europe – Measures for human rights, minority protection, cultural diversity and economic and social cohesion, 1998, at: <http://www.eurac.edu>
- A guide on minority rights advocacy in the EU to empower minority and human rights activists from SEE to advocate successfully for the inclusion of minority issues in their countries EU accession process; at: [www.minorityrights.org/admin/Download/pdf/MRG\\_Euguide.pdf](http://www.minorityrights.org/admin/Download/pdf/MRG_Euguide.pdf)
- The Draft Declaration on Linguistic Rights, at: [www.unesco.org/most/lnngo11.htm](http://www.unesco.org/most/lnngo11.htm)
- All national constitutions (with relevant articles on minority rights), at: <http://www.unesco.org/most/>

#### 4. Autonomy statutes on the web:

3.1 South Tyrol and Italy's autonomous regions:

[[http://www.provinz.bz.it/lpa/autonomy/autonomy\\_statute\\_eng.pdf](http://www.provinz.bz.it/lpa/autonomy/autonomy_statute_eng.pdf)]

3.2 The Basque Country: [<http://www.euskadi.net>]

[http://www.basques.euskadi.net/t32-6874/en/contenidos/informacion/estatuto\\_guernica/en\\_455/adjuntos/estatu\\_i.pdf](http://www.basques.euskadi.net/t32-6874/en/contenidos/informacion/estatuto_guernica/en_455/adjuntos/estatu_i.pdf)

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3.3 Great Britain's devolution:

Scotland, Wales and Northern Ireland: <http://www.devolution.ac.uk>

Scotland's Devolution Act 1998: <http://www.parliament.uk/Commons/lib/research/rp98/RP98-001.PDF>

Northern Ireland's Devolution Act: [http://www.opsi.gov.uk/Acts/acts1998/ukpga\\_19980047\\_en\\_1](http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980047_en_1)

Government of Wales Act: [http://www.opsi.gov.uk/ACTS/acts1998/ukpga\\_19980038\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980038_en_1)

Constitution of the Isle of Man: <http://www.gov.im/isleofman/constitution.xml>

3.4 The Åland Islands (Finland):

<http://www.finlex.fi/fi/laki/kaannokset/1991/en19911144.pdf>

3.5 Greenland Act on Self-Government:

<http://uk.nanoq.gl/Emner/~media/6CF403B6DD954B77BC2C33E9F02E3947.ashx>

Faroe Islands: <http://www.tinganes.fo/Default.aspx?ID=201>

3.6 The German Community in Belgium: <http://www.dglive.be/>

3.7 Moldova's autonomous region Gagauzia:

<http://www.regione.taa.it/biblioteca/minoranze/gagauziaen.pdf>

3.8 The Republic of Crimea (Ukraine): <http://www.kmu.gov.ua/en/publish>

3.9 Vojvodina (Serbia):

3.10 The Netherlands Antilles: <http://gov.an>

3.11 Azores and Madeira (Portugal): <http://www.azores.gov.pt> and <http://www.gov-madeira.pt>

3.12 Nunavut (Canada): <http://www.gov.nu.ca>

3.13 The Atlantic Coast of Nicaragua:

[http://www.calpi.nativeweb.org/doc\\_3\\_english\\_english.html](http://www.calpi.nativeweb.org/doc_3_english_english.html)

[http://calpi.nativeweb.org/doc\\_15.html](http://calpi.nativeweb.org/doc_15.html)

3.14 Panama's Comarca Kuna Yala: Ley Fundamental de la Comarca Kuna Yala, Urgandí (Kuna Yala), 1995. at:

[http://www.congresogeneralkuna.org/capitulo\\_i.htm](http://www.congresogeneralkuna.org/capitulo_i.htm)

3.15 Zanzibar and Tanzania: [<http://www.zanzibargovernment.org>]

## THE WORLD'S MODERN AUTONOMY SYSTEMS

### 3.16 Muslim Mindanao (Philippines):

<http://www.armm.gov.ph>: The official website of the ARMM's government

### 3.17 Bougainville (Papua New Guinea):

<http://www.unpo.org/Downloads/BougainvillePeaceAgreement29August01.pdf>

<http://www.dfat.gov.au/geo/png/bougainville>

### 3.18 Aceh (Indonesia):

<http://www.NAD.go.id> and [http://ue.eu.int/uedocs/cmsUpload/MoU\\_Aceh.pdf](http://ue.eu.int/uedocs/cmsUpload/MoU_Aceh.pdf)

### 3.19 New Caledonia and French Polynesia (France): <http://www.oure-mer.gouv.fr/outremer>

### 3.20 India's district autonomes (6<sup>th</sup> Schedule of the Constitution)

The Indian constitution: [http://www.oefre.unibe.ch/law/icl/in01000\\_.html](http://www.oefre.unibe.ch/law/icl/in01000_.html)

Tripura Tribal Areas: <http://tripura.nic.in/ttaadc>

Darjeeling Gorkha Hill Council: <http://darjeeling.gov.in>

Jaintia Hills Autonomous District Council: <http://jaintia.nic.in>

Khasi Hills Autonomous District Council: <http://khadc.nic.in>

West Garo Hills Autonomous District Council: <http://westgarohills.nic.in>

Ladakh (Leh) Autonomous Hill Development Council: <http://leh.nic.in>

Ladakh (Kargil) Autonomous Hill Development Council: <http://kargil.nic.in>

North Cachar Autonomous District Council: <http://nchills.nic.in>

Karbi Anglong Auton. District Council Ex. Committee: <http://karbianglong.gov.in>

Karbi Anglong Autonomous District Council: <http://karbianglong.nic.in>

Mara Autonomous District Council (Mizoram): <http://www.maraland.net>

Maraland (Mizoram): <http://samaw.com/maraland>

Bodoland Territorial Council: <http://www.bodolandcouncil.org>

Bodoland general: <http://www.bodoland.org>

Darjeeling's most important weekly magazin: <http://darjeelingtimes.com>

Gorkha major political party: <http://www.gorkhajanmuktimorcha.org>

Kokborok of Tripura: <http://www.boroksite.co>

Northeastern Council: <http://necouncil.nic.in/>

## 5. Human Rights NGOs dealing with minority issues and autonomy

- <http://www.minorityrights.org> : Minority Rights Group International, London
- <http://www.fuen.org> : The Federalist Union of European National Minorities
- <http://www.eblul.org> : the European Bureau for Lesser Used Languages (EBLUL)
- <http://www.forumfed.org> : the Forum of Federations, the world organisation of federal states
- <http://www.icg.org> : the International Crisis Group, London
- <http://www.osi.hu> : The Open Society Institute (Soros Foundation)
- <http://www.idea.int> : Internat. Institute for Democracy and Electoral Assistance IDEA
- <http://www.centrefortheneweuropa.org> : information about the right to secession
- <http://www.unpo.org/news> : the "Unrepresented Peoples Organization"
- <http://www.eurominority.org> : Independent website for minority issues
- <http://www.alertnet.org> : Humanitarian crisis overview world-wide
- <http://www.ciemn.cat> : Centre Int. Escarré for Ethnic Minorities, CIEMEN, Catalonia
- <http://www.freedomhouse.org> : reports on the development of democracy in all countries
- <http://www.iwgia.org> : the International Working Group for Indigenous Affairs, Copenhagen
- <http://www.gfbv.org> : International Association for Threatened Peoples (GfbV), Germany
- <http://www.amnestyinternational.org> : Amnesty International, London, General secretary
- <http://www.hrw.org> : Human Rights Watch, independent human rights organisation
- <http://www.peacereporter.net> : association of journalists covering ongoing wars
- <http://www.hrdc.net/sahrdc/> : Asia-Pacific Human Rights Network
- <http://www.aitpn.org> : Asian Indigenous and Tribal Peoples Network

- <http://www.achrweb.org> : Asian Centre for Human Rights
- <http://www.safhr.org> : South Asian Forum for Human Rights
- <http://www.hrln.org> : Human Rights Legal Network
- <http://www.mcrq.ac.in> : Mahanirban Calcutta Research Group
- <http://www.hrcp-web.org> : Human Rights Commission of Pakistan (HRCP):
- <http://www.humanrightsinitiative.org> : Commonwealth Human Rights Initiative (CHRI)
- <http://www.icescolombo.org> : International Centre for Ethnic Studies (ICES)
- <http://www.cpalanka.org> : the Centre for Policy Alternatives (CPA)
- <http://www.inseconline.org> : INSEC (Informal Sector Service Centre)
- <http://www.tpprc.org> : Tibetan Parliamentary and Research Centre

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