

Elements of Stable Regional Autonomy Arrangements

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Abstract

This Working Paper examines the elements necessary to create and to maintain a stable regional autonomy arrangement within a particular state. Drawing on both contemporary and historical examples from different continents, the author considers what autonomy means, how it is established, how it is put into practice, and how it may best be sustained over a longer period of time. Each case of autonomy is unique, responding to cultural, historical and political circumstances of a particular situation, and respecting that uniqueness is important both in order to understand how autonomy works and how to create new regimes of autonomy. Nevertheless, some common themes emerge among solutions, and designers of new regimes of autonomy must address similar challenges. These specific issues are discussed, with examples from current and historical practice. Finally, factors which may enhance the prospects of success are identified, the most important of which is a prevailing atmosphere of conciliation and goodwill. While the general political atmosphere between the parties of autonomy may, with steady work and good intentions, improve over time, so far no autonomy has succeeded in a hostile environment.

In this paper territorial autonomy is flexibly defined and refers to an arrangement aimed at granting the population of a sub-state unit a means by which it can express its distinct identity and run its own affairs in certain spheres while maintaining at the same time the integrity of the state which the region is part of. Beyond these two basic ideas, all the details of the regime of autonomy are open to negotiation between representatives of the central state and representatives of the autonomous region. An overriding issue in these negotiations is the division of powers between the central authorities and the autonomous entity. How will the entity express its uniqueness? In which spheres will it run its own affairs?

The author argues that defining the powers of an autonomous regime as clearly as possible at its establishment is important for avoiding future disputes and misunderstandings. Usually four different areas of powers have to be considered: which powers are reserved for the central authorities, which are fully transferred to the autonomous entity, which can be exercised in parallel, and which can only be exercised jointly. Within these four categories, historic and current practice offers a

variety of models. Even in areas like membership in international organizations, which is usually reserved for sovereign states, there are examples of autonomous regions charting a course separate from the state to which the regions belong.

Institutional arrangements, while flexible, contribute to the success or failure of autonomy arrangements. Some of the most contentious questions include: whether, once given, autonomy can be revoked, whether laws adopted by the autonomous region must be approved by the central authorities; and who makes the ultimate decision about whether questions fall within the authority of the autonomous region or the central state. Efficient joint organs can do much to prevent conflict and the escalation of disputes.

In deciding on the allocation of powers the following spheres may have to be considered: security, foreign relations, economic financial and monetary matters, water, energy, communication, transportation, environmental protection, cultural questions, social policy, the legal system and residual powers. Every effort should be made to prevent conflicts from arising, and the establishment of a permanent joint organ for exchanging information and consulting is a useful means for keeping conflicts at a minimum. Substantive rules, especially for protection of universal human rights and the environment, must also be agreed upon.

The paper adds a list of factors which may enhance the prospects of success. In addition to the elements of goodwill, Territorial autonomy, a clear division of powers and procedures for dispute resolution, elements improving an autonomy's chances for durability include: allowing the local population to enjoy symbols of self-determination (language, flag, anthem, etc.), and providing for autonomy before relations between the region and the central state have deteriorated.

I. Introduction

One of the characteristics of our time is the trend toward integration, on the one hand, and towards fragmentation or diffusion of powers, on the other hand. “Pushes toward integration and toward fragmentation have occurred throughout history ... What is new is that both impulses ... are happening at the same time.”¹ In fact, these trends are complementary: the common umbrella established by integration makes it easier for the state to give up some of its powers to sub-state entities, and the latter feel a stronger need to be in control of matters that concern their own population, which is far away from the center and from that umbrella.

However, the need for diffusion of powers or autonomy does not depend on any trend towards integration. Several circumstances may prompt such a need. The majority of the population in the area in question may be an ethnic group, which constitutes a minority in the state but is the majority in that special area.² The diffusion of power will be particularly needed if the relevant group belongs to an indigenous people,³ or is part of a people for which autonomy constitutes a means of self-determination.⁴ In other cases the wish for autonomy may stem from special economic or social conditions (e.g., Hong Kong⁵) and from historical circumstances. If the inhabitants of the relevant area do not differ from the majority of the population in the state, they

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¹ Edith Brown-Weiss, “The Rise or the Fall of International Law?” *Fordham Law Review*, vol. LXIX (2000), pp. 345-372, at 349.

² Ruth Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts* (Washington D.C.: U.S. Institute of Peace Press, 1997), pp. 10-16.

³ *Ibid.*, pp. 16-19; Gudmundur Alfredsson, “Indigenous Peoples and Autonomy,” in Markku Suksi, ed., *Autonomy: Applications and Implications* (The Hague: Kluwer Law, 1998), pp. 125-137.

⁴ Lapidoth, *Autonomy*, pp. 19-23; Lauri Hannikainen, “Self-Determination and Autonomy in International Law,” in Suksi, ed., *Autonomy* pp. 79-95.

⁵ Yash Ghai, “The New Constitutional Order of Hong Kong: The Resumption of Chinese Sovereignty and the Basic Law” (Hong Kong: HKU Press, 1997).

may still aspire for autonomy for more general reasons, such as democratization and subsidiarity,⁶ in particular if the state is very large and its population is numerous.

It is doubtful whether international law imposes upon the state a duty to grant autonomy. The community of states still hesitates to grant minorities any group rights in general and autonomy in particular.⁷ However, it seems that a tendency can be discerned toward granting indigenous populations a certain degree of self-government.⁸ It is possible that in the future the community of states may adopt binding rules requiring democratic governance and subsidiarity. Such a development might also involve the recognition of a right to autonomy. Irrespective of the existence or non-existence of any international obligation, certain states have included in their constitutions some provisions on the establishment of autonomy, e.g. the 1978 Constitution of Spain and the 1987 Constitution of the Philippines.

Each case of autonomy is different and has to be studied in its own context. We will, however, try to draw some general conclusions from the available sources. So far no general rules or regulations do exist in this field. However, in 1999 the High Commissioner on National Minorities of the OSCE and The Foundation on Inter-Ethnic Relations in The Hague convened a group of experts who drafted “The Lund Recommendations on the Effective Participation of National Minorities in Public Life.”⁹ This text includes several provisions on territorial self-governance to which we will refer from time to time.

⁶ Wolfgang Danspeckgruber, “Self-Determination and Regionalization in Contemporary Europe,” in W. Danspeckgruber, ed., *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World* (Boulder: Lynne Rienner, 2001), pp. 165-197, at pp. 178-182; Hans-Joachim Heintze, “On the Legal Understanding of Autonomy,” in Suksi, ed., *Autonomy*, pp. 7-32, at pp. 10, 12 and 32; Brown Weiss, “The Rise or Fall of International Law?” at pp. 362-363.

⁷ Heintze, “On the Legal Understanding of Autonomy,” at pp. 13-14; Lapidoth, *Autonomy*, pp. 175-177. According to Patrick Thornberry, “A preliminary rush to judgement” [after looking at multilateral instruments embodying minority rights] suggests that autonomy is hardly there in the minority rights’ texts, but closer examination discovers strands and whispers of autonomy or something like it” – “Images of Autonomy and Individual and Collective Rights in International Instruments on the Rights of Minorities,” in Suksi, ed., *Autonomy*, pp. 97-124, at p. 98. According to Mr. Peter Rabe, Mdl, it may perhaps be considered a ‘right in statu nascendi’ (oral statement at the Workshop “Zwischen staatlicher Integrität und gesellschaftlicher Vielfalt – Modelle regionaler Autonomie”, held in Gütersloh on 4 September 2001.

⁸ See supra note 3.

⁹ Published by the Foundation on Inter-Ethnic Relations, The Hague, September 1999.

II. Autonomy and How It is Established

In this chapter an attempt will be made to give a general description of territorial autonomy. Then we will discuss the formal means used to establish a regime of autonomy, including the question of entrenchment and of the procedure for the introduction of amendments. Lastly, we will see what circumstances favor the resort to autonomy.

Territorial political autonomy is an arrangement aimed at granting the population of a sub-state unit a means by which it can express its distinct identity and run its own affairs in certain spheres.

A major issue involved in the establishment of a regime of autonomy is the division of powers between the central authorities and the autonomous entity. The powers of the autonomy are usually related to matters of “education, culture ... language, environment, local planning, natural resources, economic development, local policing functions, and housing, health and other social services.”¹⁰ There are, however, different degrees of autonomy, and the extent of the powers transferred to the autonomous authorities varies accordingly, ranging from very limited to larger and up to a high concentration of major powers in the above areas. “Functions that are generally exercised by the central authorities include defense, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs.”¹¹ However, in a few cases the autonomous body has limited powers with the consent of the central government to enter into international agreements and to become a member of a particular international organization. For example, Åland is a member of the Nordic Council and, with the approval of the president of Finland, is permitted to conclude agreements with the Nordic countries; Greenland left the European Community (EC), even though Denmark has remained a member, and the Faroe Islands never became a member. In some cases, the central authorities consult with the autonomous body whenever they conduct foreign affairs that may have a considerable impact on the autonomous region.

¹⁰ Ibid., p. 12, no. 20.

¹¹ Ibid., p. 11, no. 15.

In order to avoid disputes and misunderstandings, it is important that the powers of a regime of autonomy be defined as clearly as possible when it is established. In fact, there are usually four different areas of powers to be considered: powers reserved for the central authorities, those fully transferred to the autonomous entity, parallel powers, and powers that can only be exercised jointly. “Functions shared by central and regional authorities include taxation, administration of justice, tourism and transport.”¹²

In certain cases (for example, in southern Sudan when it enjoyed autonomy), the central authorities determine a general policy in a number of areas in which the autonomous entity may act, and the local authorities are authorized to operate within the limits of this general policy. In fact, there is usually a need for cooperation, coordination, and consultation between the central authorities and the autonomous entity. This is crucial because there is likely to be a close link between their respective powers. In addition, certain powers are likely to require joint action.

Even if the transferred powers are carefully and meticulously described when the autonomy is established, future difficulties cannot always be prevented. For example, there may be differences of opinion regarding to which category of powers a certain practical matter belongs. Similarly, a question may arise in an area of power that had not been considered beforehand; or a question may arise that encompasses different areas, one of which is within the jurisdiction of the center and the other within that of the autonomy – for example, if customs duties are within the powers of the central government and criminal law is within the jurisdiction of the autonomous authorities, who is authorized to prosecute persons suspected of having committed criminal violations of customs law?

In many cases, to ensure the cooperation that is needed for certain activities and to solve problems, the parties establish a joint organ in which both the central government and the autonomous authorities are represented (such as the Aland Delegation). In addition, they may agree upon a special procedure for settling disputes between the center and the autonomous body (for example, the documents that

¹² Ibid., p. 12, no. 20.

established the autonomy of the Faroe Islands, Greenland, and Memel/Klaipeda contain such a procedure).

As has been noted, the powers of the autonomous entity usually include legislation, adjudication, and administration in those spheres of responsibility that have been transferred to the autonomous entity. In some cases, however, adjudication remains fully within the authority of the central government. The legislative acts of the autonomous area often require confirmation by the central authorities, but this confirmation must be given except in serious cases defined in advance – for example, when those legislative acts amount to an excess of power or undermine the security of the state.

The assumption is that the representatives of the population in the autonomous area exercise the relevant powers. Nevertheless, coordination is often needed between the center and the autonomous authorities regarding the appointment of one or more high-ranking officials (for example, the representative of the central government in the autonomous region or the head of the local administration). In those cases, the official is appointed either jointly, or by the local authorities with the consent of the center, or vice versa. The acts of the autonomous entity in the areas for which it has jurisdiction are normally not subject to any control by the central authorities (except, as mentioned, in such cases as excess of jurisdiction).

In certain cases, the inhabitants of the autonomous region participate fully in public life, both in their region and in the framework of the central government (for example, in Aland, South Tyrol/Alto Adige, and in the past in southern Sudan). One may, however, also encounter different arrangements, as in Puerto Rico and in trust territories.

Typically, autonomy arrangements are not rigid; they are rather flexible, allowing the introduction of changes. Moreover, at the outset autonomy is sometimes deliberately designed to be established by a gradual process (as in Greenland and in the case of the Palestinians).¹³ This phased process has the advantage that it gives the parties an opportunity to adapt slowly to the new regime. Moreover, it permits linking the transfer of authority to the emergence of confidence between the parties. The

¹³ Ibid., p. 13, no. 23.

incrementalism may, however, also have a disadvantage as the initial momentum might wane, no confidence be formed, or the circumstances that prompted the parties to agree on the establishment of autonomy might change.¹⁴

An autonomy can have several types of international elements:

- It may have been established in pursuance of a resolution of an international institution; for example, the autonomy in Eritrea, 1952-62, which was established following a UN General Assembly resolution.¹⁵
- An international treaty may have been involved in its establishment; for example, the 1924 Paris convention concerning the Memel Territory;¹⁶ to a certain extent, the 1921 convention between Sweden and Finland regarding the Åland Islands;¹⁷ and the Gruber-De Gasperi agreement of 1946 regarding South Tyrol/Alto Adige.¹⁸
- Autonomy may include international machinery of supervision (such as the right that existed in Åland to appeal to the League of Nations), or machinery for dispute resolution (such as the jurisdiction that the Permanent Court of International Justice had with regard to Memel/Klaipeda).
- The autonomous community may have an ethnic affinity with a foreign country.

However, other autonomies do not have any international element and are established solely on the basis of internal constitutional acts (for example, the Faroe Islands, Greenland, and the regions of Spain).

¹⁴ Yash Ghai, "Autonomy as Strategy for Diffusing Conflict," paper submitted to the 1999 Conference on Constitutional Design at Notre Dame University, at p. 25.

¹⁵ UN General Assembly Resolution 390 (V) of 2 December 1950.

¹⁶ Convention of Paris of 8 May 1924 concerning the Memel Territory (published in London by H.M. Stationery Office, Cmd. 2235, 1924).

¹⁷ League of Nations, Minutes of the 17th Meeting of the Council, 27 June 1921 (Minutes of the 13th Session of the League of Nations, Geneva, 17-18 June 1921), p. 52.

¹⁸ UN Treaty Series, vol. 49 (1950), p. 3, at p. 184 (Article 10 and Annex IV).

In the analysis in this section an attempt has been made to highlight the typical features of autonomy. Since actual cases of autonomy are rather diverse, they may differ in various aspects from the description suggested in this section.

Autonomy can be established pursuant to the constitution of the state (e.g., the 1978 Constitution of Spain), by an organic law (e.g., the autonomy of the regions of Spain), by a regular law (e.g., Greenland in 1979, and Scotland in 1998), by an international agreement (e.g., the above mentioned 1921 convention between Sweden and Finland regarding the Åland Islands); probably it can even be established by custom. In many cases a combination of some of the above instruments is involved (e.g., the autonomy of the regions in Spain is based on the constitution and on special organic laws, the autonomy of Memel/Klaipeda, Åland and Alto Adige/South Tyrol are governed by international agreements and regular laws). In one case mentioned above, Eritrea, autonomy was established in pursuance of a resolution of the UN General Assembly and additional local instruments.

In some cases the local population is consulted by a referendum, e.g., in Greenland and Puerto Rico, but not in all (Åland and Memel/Klaipeda).

An interesting question concerns the entrenchment of autonomy arrangements. According to the Lund recommendations, “[s]elf governance arrangements should be established by law and generally not be subject to change in the same manner as ordinary legislation...”.¹⁹ Indeed, in certain cases the enactments which regulate the regime can be amended only by a procedure that is more complicated than the one used for the amendment of regular laws. Thus, in the Åland Islands the introduction of changes into the regime requires an act of the Finnish parliament adopted in accordance with the specific procedure for amending the constitution,²⁰ as well as the

¹⁹ Lund Recommendations, p. 13, no. 22. See also Markku Suksi, “On the Entrenchment of Autonomy,” in Suksi, ed., *Autonomy*, pp. 151-171.

²⁰ Either it is adopted by a simple majority in Parliament, followed by a two-thirds majority vote in a newly elected one, or Parliament decides by a five-sixths majority that the matter is urgent, and then a two-thirds majority may adopt the amendment, with no need to await new elections. See Sten Palmgren, “The Autonomy of the Åland Islands in the Constitutional Law of Finland,” in Lauri Hannikainen and Frank Horn, eds., *Autonomy and Demilitarization in International Law: The Åland Islands in a Changing Europe* (The Hague: Kluwer, 1997), pp. 85-97; Markku Suksi, “The Constitutional Setting of the Åland Islands Compared,” *ibid.*, pp. 99-129.

approval of the Åland Legislative Assembly by at least a two-thirds majority of votes cast.²¹ It is rare to find such a strong entrenchment in autonomy statutes.

In those cases where autonomy was established by a regular statute of the central authorities, the question may arise whether it can also be changed or amended by such a unilateral act of the center. Can the autonomy of Greenland or that of Scotland be repealed or amended by the Danish parliament or by the House of Commons in Westminster respectively? Opinions on this matter are divided. According to some experts, formally the central legislature retains those powers, but others are of the opinion that in practical terms such a unilateral act would be excluded.²²

What are the circumstances, which might prompt the central authorities to grant autonomy despite the tendency to conservation and to the preservation of the status quo? A review of various cases shows that there are at least four situations, which enhance autonomy arrangements. First, when the state itself is undergoing constitutional changes,²³ as happened, for instance, in Spain after the death of Franco (the 1978 Constitution),²⁴ and in the Philippines after the overthrow of Marcos. Second, autonomy is a useful tool when decolonization does not lead to full independence, e.g., the case of Greenland/Kalaallit Nunaat which remained in the Danish realm,²⁵ and the Cook Islands and Niue which remained associated with New Zealand. Third, in some cases autonomy has been established when a territory changed hands, like Memel/Klaipeda which had formerly been part of Germany and was annexed by Lithuania after World War I,²⁶ South Tyrol/Alto Adige which changed hands (1919) from Austria to Italy and later (1948) was granted autonomy,²⁷

²¹ Section 69 of the 1991 Autonomy Act.

²² The author wishes to express her gratitude to The Right Honourable the Lord Hope of Craighead for his enlightening remarks and comments.

²³ Yash Ghai, "Autonomy as Strategy," p. 17.

²⁴ Carlos Flores Juberias, "Regionalization and Autonomy in Spain: The Making of the "Estado de las Autonomias," in Suksi, ed., *Autonomy*, pp. 195-221.

²⁵ Kristen Trolle, "Greenland Home Rule: Experiences from the implementation of autonomy for the population of Greenland within the Danish Realm," paper submitted to the 2001 Conference in Beijing on Ethnic Regional Autonomy; Lapidoth, *Autonomy*, pp. 143-152.

²⁶ Jacob Robinson, *Kommentar der Konvention ueber das Memelgebiet vom 8 Mai 1924*, (Kaunas, Lithuania : Verlag "Spandos Fondas," 1934).

²⁷ Lapidoth, *Autonomy*, pp. 100-112, and references on pp. 245-246. Jens Woelk, "Südtirol: ein Lehrbeispiel für Konfliktlösung", *Die Friedens-Warte*, Vol 76 (2001) pp. 101-124.

and Hong Kong and Macao which were returned to China by Britain and Portugal in 1997 and 1999 respectively.²⁸ In some of the above cases autonomy was granted on the basis of an understanding between the state and the relevant region, (e.g. in the case of Greenland), while in other cases some international pressure was involved (e.g. in the case of Memel/Klaipeda and of Alto Adige/South Tyrol).

Perhaps one may add a fourth circumstance that may prompt a state to grant autonomy; namely, when the territory is in dispute, like Northern Ireland. The arrangement adopted in the 1998 Belfast Agreement involves not only Britain and Northern Ireland, but also the Republic of Ireland.²⁹

As already mentioned, our discussion deals only with territorial autonomy. Some authors use different names for the same regime, e.g. *federacy*³⁰ or *regional autonomy*.³¹ It has to be distinguished from non-territorial autonomies, which are sometimes grouped into cultural, personal, functional and corporate autonomies.³²

III. Autonomy and Other Means for the Diffusion of Powers

When there is a need for diffusion of power, several mechanisms or regimes may be available, including territorial autonomy.³³ In this chapter an attempt will be made to distinguish among these various mechanisms. However, it should be remembered that these are not clearly defined and strictly differentiated concepts. Moreover, different authors and politicians may have differing conceptions of the relevant institutions.

With these caveats in mind, we can now try to examine four main types of arrangements which, like autonomy, serve for diffusion of powers: federal systems,

²⁸ Supra, note 5.

²⁹ Brendan O'Leary, "The British-Irish Agreement of 1998: Results and Prospects," paper presented at the University of Notre Dame, December 1999, at the Conference on Constitutional Design.

³⁰ Daniel J. Elazar, ed., *Federal Systems of the World: A Handbook of Federal, Confederal, and Autonomy Arrangements*, 2nd ed. (London: Longman, 1994), pp. xvii-xviii.

³¹ Yash Ghai, "Autonomy as Strategy," p. 2.

³² Heintze, "On the Legal Understanding of Autonomy," at pp. 20-24; Asbjorn Eide, in co-operation with Vibeke Greni and Maria Lundberg, "Cultural Autonomy: Concept, Content, History and Role in the World Order," in Suksi, ed., *Autonomy*, pp. 251-276.

³³ See e.g., Daniel J. Elazar, *Federal systems of the World*, pp. xvii-xviii; Lapidoth, *Autonomy*, pp. 49-58.

decentralization, self-government, and associate statehood. As for devolution – the term used to denote the transfer of powers from London to Scotland, Wales and Northern Ireland – it seems to resemble autonomy and therefore will not be analyzed separately.³⁴ The same goes for “self-administration” – a term used in the draft Convention on Self-Determination through Self-Administration submitted to the United Nations in April 1994 by Liechtenstein.³⁵

Some scholars and politicians use the term “autonomy” or “autonomous” as a generic term for sub-national entities, even those that do not conform with the stricter characterization of the concept described above. Similarly, the term decentralization is sometimes used to describe all shades of devolution or delegation of functions.³⁶

Autonomy and Federalism

Some scholars distinguish between federal systems and the federal principle, between federations and federal arrangements. Despite the existence of considerable differences among the various federations, it seems that most of them can be described as a more or less clearly defined constitutional structure under which the state is divided into regions that assume different names in various countries, such as “state” in the United States, “province” in Canada, “Land” in Germany and “canton” in Switzerland. The constitution usually allocates powers to the central authorities and the regional ones. In cases where the entities that comprise the federation existed before the latter and united in order to establish it, these entities are often in control of residual powers. The regions, as such, participate in the legislative function of the central authorities: Their representatives are members in an upper house, and the consent of the local parliaments is required in order to amend the federal constitution. Usually, there is a special tribunal for settling disputes among the various regions, or between a region and the center. On the other hand, federalism with the meaning of

³⁴ See e.g., Sir Franklin Berman, “Treaty Implementation in Great Britain After ‘Devolution,’” in Thomas M. Franck, ed., *Delegating State Powers: The Effect of Treaty Regimes on Democracy and Sovereignty* (Irrington, N.Y.: Transnational Publishers, 2000), pp. 255-259.

³⁵ Permanent Mission of the Principality of Liechtenstein to the United Nations, *Draft Convention on Self-Determination through Self-Administration and Comments* (New York, April 1994).

³⁶ For example, Hans Kelsen, *General Theory of Law and State* (Cambridge, MA: Harvard University Press, 1949), pp. 308-317.

mere federal arrangements “is a form of political organization which unites separate polities within an overarching political system so that all maintain their fundamental political integrity.”³⁷

A regime of autonomy may perhaps be regarded as a certain kind of “federal arrangement,” and this may explain why certain authors deal with autonomy and federations as if they belonged to the same category. However, there are several significant differences between autonomy and a “federal system” in the constitutional sense of the term. As already noted, autonomy can be established by a treaty, by a constitution, by a statute or by a combination of these tools, whereas a federation is usually established by a constitution. In most cases, the autonomous entity, as such, does not participate in the activities of the central authorities,³⁸ whereas the cantons in a federation, as has already been mentioned, play an important role in the central authorities (membership in the upper house and participation in the process of amending the federal constitution). Autonomy is usually established in regions that have a particular ethnic character, whereas the federal structure applies to the entire territory of the country.

Sir Franklin Berman, who was closely associated with the devolution process in Britain, made the following remark when underlining that devolution (which, as mentioned, resembles autonomy) is not the creation of a federal state: “‘Devolution’ means what it says: not, in other words, the apportionment of legislative and executive powers between the central and subordinate units subject to a rule for determining residual cases, but the grant of powers by the central parliament without thereby diminishing the powers *of* the central parliament ...”³⁹

Moreover, if a state grants autonomy to several regions, the degree and modalities of that autonomy can differ from region to region⁴⁰ (e.g. Scotland, Wales and Northern

³⁷ Daniel J. Elazar, “Federalism v. Decentralization: The Drift from Authenticity,” *Publius: The Journal of Federalism*, vol. 6 (1976), pp. 9-19, at p. 12.

³⁸ However, in the Soviet Union the autonomous republics, regions, and areas were represented in the Council of Nationalities of the Supreme Soviet (Section 110 of the 1977 constitution), and in Yugoslavia the autonomous provinces of Kosovo and Vojvodina were represented in the Council of the Presidency as well as in the Chamber of Republics and Provinces (Sections 284 and 321 of the 1974 constitution and amendment IV).

³⁹ Berman, “Treaty Implementation,” at p. 255.

⁴⁰ “Functions may be allocated asymmetrically to respond to different minority situations within the same State” – Lund Recommendations, no. 15, p. 11.

Ireland⁴¹). On the other hand, in most federations the various cantons have the same rights and responsibilities (Canada and the Russian Federation are some of the exceptions).

How should one categorize a state in which the autonomy (or diffusion of powers) applies to the whole territory (as is usually the case in federations), yet in which the component entities do not participate in the activities of the central authorities (as happens in regimes of autonomy)? Some authors would consider these as a separate category – *Etats autonomiques* (autonomist states).⁴²

In the case of autonomy, no special tribunal is established in order to deal with disputes between the autonomous entity and the central government, although in several cases a system of settlement of disputes is set up.

Sometimes federalism and autonomy have been combined. Thus, the Soviet Union and the former Yugoslavia were at least formally federations, yet they also included certain autonomous entities (the autonomous republics, *oblasti* and *okruga* in the Soviet Union, and the provinces of Kosovo and Vojvodina in the former Yugoslavia). In those cases, the autonomous areas were not full fledged federated units. However, one could also think of a situation where a component entity of the federation would wish to enjoy additional rights on the basis of autonomy, namely, powers not granted to the other federated entities.

Despite the considerable differences between autonomy and federalism, it appears that there is some similarity between their objectives, and therefore it may be useful to draw analogies between them in various spheres.

Autonomy and Decentralization

As noted, some authors use the word decentralization as a general term for all types of devolution of power from the center to the periphery.⁴³ However, in a narrower sense, decentralization implies a limited delegation of powers, subject to the control and

⁴¹ Berman, “Treaty Implementation,” at pp. 255-256.

⁴² Daniel Louis Seiler, “L’Etat autonome et la science politique: Centre, périphérie et territorialité,” in Christian Bidegaray, ed., *L’Etat autonome : Forme nouvelle ou transitoire en Europe ?* (Paris : Economica, 1994), pp. 11-35.

overriding responsibility of the center. There are various degrees of decentralization, depending upon the scope of the delegated powers, the extent of participation of locally elected officials, and the degree of supervision.

Autonomy differs from decentralization mainly in the following matters: Whereas decentralization involves solely a delegation of powers, autonomy assumes a transfer of powers. Decentralization may include limited participation of locally elected persons in the regional authorities, whereas in the case of autonomy the basic assumption is that all the transferred functions are exercised by the locally elected representatives. The central government may revoke the decentralization unilaterally, whereas in certain cases of autonomy the abrogation or amendment is in principle subject to the consent of both the central authorities and the autonomous entity. Whereas under a regime of decentralization the central government is fully empowered to control, supervise and revise the acts of the decentralized authorities, it may interfere with acts of an autonomous entity only in extreme cases (for example, when the latter has exceeded its powers or has endangered the security of the state).

It should be noted that various authors use the expressions noncentralization and deconcentration;⁴⁴ for the purpose of the present study, however, there is no need to examine these notions.

Autonomy and Self-Government

It appears that the concept of self-government or self-rule closely resembles autonomy.⁴⁵ It is therefore not surprising that during the various stages of the search for a solution to the problem of the Palestinian Arabs, one term was used in some documents and another term in others. Thus, the “Framework for Peace in the Middle East,” agreed upon by Egypt and Israel at Camp David in 1978, refers to “full

⁴³ Kelsen, *General Theory of Law and State*, p. 316.

⁴⁴ Mark O. Rousseau and Raphael Zariski, *Regionalism and Regional Devolution in Comparative Perspective* (New York: Praeger, 1987), pp. 3 and 32; *Encyclopaedia Britannica*, 15th ed., s.v. “federalism.”

⁴⁵ Another related term is home-rule. According to Isi Foighel, home-rule is a “particularly qualified type of self-government” – see Isi Foighel, “A Framework for Local Autonomy: The Greenland Case,” in Yoram Dinstei, ed., *Models of Autonomy* (New Brunswick, N.J.: Transaction Books, 1981), pp. 31-52, at p. 37.

autonomy,” whereas the 1989 peace initiative of the government of Israel refers to “self-rule”; the term used in the agreements concluded by Israel and the Palestinians after 1993 was “self-government.”

It is generally accepted that under self-government a territorial community manages its own internal affairs by itself, with no external intervention.

The meaning of the term “self-government” has been discussed by the United Nations in the context of Chapter XI of the UN Charter, the Declaration Regarding Non-Self-Governing Territories. Under Article 73 of the charter, member-states administering “territories whose peoples have not yet attained a full measure of self-government” have a duty, *inter alia*, “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 question arose under what circumstances a territory ceases to be “non-self-governing,” thus releasing the administering power from the duty of submitting information.⁴⁶ The administering powers favored a broad interpretation of the term, in order to be freed as early as possible from the obligation to report, while other member-states preferred a narrow interpretation, so that only upon reaching independence would a territory be considered as possessing self-government. The General Assembly adopted lists of factors to serve as guidelines when determining whether a certain territory has achieved self-government.

Certain elements of self-government, which were suggested by a subcommittee and approved by the General Assembly in 1952, may perhaps serve as a source of some inspiration:

1. *Territorial government*: Freedom from control or interference by the government of another State in respect of the internal government (legislature, executive, judiciary) and administration of the territory.
2. *Participation of the population*: Effective participation of the population in the government of the territory by means of an adequate electoral and representative system.

⁴⁶ The deliberations on this matter were reviewed in Emil John Sandy, *The United Nations and Dependent Peoples* (Washington, D.C.: Brookings, 1956), pp. 81-83.

3. *Economic and social jurisdiction*: Complete autonomy in respect of economic and social affairs.⁴⁷

A comparative study of self-government and autonomy shows a great resemblance, so much so that Louis B. Sohn compares self-government to autonomy, and considers a “full measure of self-government” to be equivalent to “full autonomy.”⁴⁸ Yoram Dinstein has also expressed the opinion that “autonomy ... denotes self-government.”⁴⁹

Despite the great similarity between autonomy and self-government, one may point out that there are several differences between the two concepts. It appears that the term self-government implies a considerable degree of self-rule, whereas autonomy is a flexible concept, its substance ranging from limited powers to very broad ones.

At first sight it may seem that self-government amounts to autonomy with broad powers. However, according to some experts, autonomy is a much broader concept than self-government. At a conference in Greenland in September 1991, Augusto Willemsen Diaz, an expert on the subject of autonomy of indigenous populations, expressed the view, that at least in the Spanish language, the term autonomy has a much broader meaning than self-government. To emphasize this point, he used a picturesque metaphor: if autonomy were a house, then self-government would be one room in that house.⁵⁰

⁴⁷ Report of the Sub-Committee of the Fourth Committee, UN Doc. A/C.4/L.180 and Corr. 2, of 22 December 1951, and UN General Assembly Res. 567 (VI), Annex II, of 18 January 1952. See also Appendix to Resolution 648 (VII), of 10 December 1952.

⁴⁸ Louis Sohn, “The Concept of Autonomy in International Law and the Practice of the United Nations,” *Israel Law Review* vol. 15 (1980), pp. 58-68, at p. 61.

⁴⁹ Yoram Dinstein, “Autonomy,” in Dinstein, ed., *Models of Autonomy*, pp. 291-303, at p. 291.

⁵⁰ The Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government, Report of the Meeting of Experts to review the experience of countries in the operation of schemes of internal self-government for indigenous peoples, Nuuk, 24-28 September 1991, UN Doc. E/CN.4/1992/42, 25 November 1991. The statement was made by Augusto Willemsen Diaz at the morning session of 28 September 1991. Because of Diaz’s opinion, the term autonomy was added next to the word self-government in all relevant provisions of the Conclusions and Recommendations of the Meeting.

Autonomy and Associate Statehood

According to W. Michael Reisman, “[a] relationship of association in contemporary international law is characterized by recognition of the significant subordination of and delegation of competence by one of the parties (the associate) to the other (the principal) but maintenance of the continuing international status of statehood of each component.”⁵¹ According to Menachem Mautner, it is a functional qualification of a state’s authority, resulting from “an authorization to another State to administer some of its functions.”⁵² The main examples of associate statehood are the Cook Islands and Niue which are associated with New Zealand, and several islands associated with the United States: Puerto Rico, the Marshall Islands, the Federated States of Micronesia and the Palau Islands. There are, however, great differences among the various cases.

An associated status is established with the consent of both the principal and associate. The associate is interested in the relationship in order to enhance its security and its economic viability. It retains full internal self-government regulated by its own constitution, which in most cases is approved by both the principal and the associate. But certain matters agreed upon by the two parties are dealt with by the principal, mainly matters of defense, and, to a certain degree, foreign affairs. There are various nuances with regard to foreign affairs: in some cases they are fully within the responsibility of the principal; according to other arrangements, the principal has to consult with the associate when dealing with the foreign relations of the latter; under other agreements matters of foreign relations are divided between the two parties. Some of the associate states are even members of the United Nations (e.g. the Marshall Islands and the Federated States of Micronesia since 1990 and Palau since 1994). In principle, any two or more states could agree on an association; in practice, however, such arrangements have so far been made only between entities that had been linked by a colonial relationship or a trusteeship.

⁵¹ W. Michael Reisman, *Puerto Rico and the International Process: New Roles in Association* (Washington, D.C.: The American Society of International Law, 1975), p. 10.

⁵² Menachem Mautner, “The West Bank and Gaza: The Case for Associate Statehood,” *Yale Studies in World Public Order*, vol. 6 (1980), pp. 297-360, at p. 305.

The United Nations has recognized an association as a valid act of self-determination, but only if certain conditions are fulfilled.⁵³ It is believed that associated status may be a helpful solution to the many small territories and entities that strive for self-determination but cannot afford independence.

It follows from this short survey that associate statehood can be described as autonomy with very broad powers.

This survey has shown some of the variety of means available in order to diffuse power from the center. In each prospective case the experts – politicians and lawyers – have to examine carefully which mechanism best fits the particular circumstances. However, as already mentioned, neither the concepts themselves nor the differences among them are quite clear. Thus, in each case one has to study the details of the specific regime already established or to be established, and not merely rely on the title used.

We have seen that autonomy has much in common with some of the other arrangements, but there are also considerable differences. Since all the mechanisms are intended to achieve similar goals, it may occasionally be helpful to resort to analogies despite the differences.

IV. Institutional Arrangements

The success or failure of an autonomy may depend to some extent on institutions. The Lund Recommendations give only a rather general advice: “Institutions of self-governance must be based on democratic principles to ensure that they genuinely reflect the views of the affected population.”⁵⁴ Whenever an autonomy is established, one has to consider carefully what its institutions are to be, how the members should be appointed or elected, and what the limitations on their power should be.

⁵³ See UN General Assembly Resolution 1541 (XV), of 15 December 1960, Principle no. VII; compare with Resolution 648 (VII) of 10 December 1952, Annex, and Resolution 742 (VIII) of 27 November 1953), Annex, Third Part. See also James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979), p. 12. The need for the population’s consent, in contrast to a mere decision of the rulers, distinguishes associate statehood from the status of protectorates that existed in the past – see Reisman, *Puerto Rico*, p. 12.

⁵⁴ Lund Recommendations, no. 16, p. 11.

In most autonomies, the basic structure and composition are laid down in the text that establishes the autonomy. However, sometimes a local organ or assembly is authorized to decide on the rules concerning the composition of some of the institutions, subject to approval by the central authorities (e.g., in Eritrea and Puerto Rico). In other cases only the details are left to be decided by the regional authorities (e.g., in Greenland).

If a territorial political autonomy is to adopt its own constitution, provision must be made for a constituent assembly. In addition, one has to lay down whether this constitution will require the approval of an organ of the central government, a local referendum, or perhaps both.

The legislature of the territorial autonomy is usually a representative body elected periodically by the local population. Several questions related to this organ have to be dealt with. Does the central government have the authority to dissolve this autonomous legislature, and if so, under what circumstances? Thus, in Memel/Klaipeda the governor, who was appointed by Lithuania, could dissolve the Chamber of Representatives “in agreement with the Directorate” – the local executive branch whose president was appointed by the governor but also had to enjoy the confidence of the Chamber of Representatives (Seimelis).⁵⁵

Should (as is often the case with autonomies, e.g., in Åland⁵⁶) the laws adopted by the legislature require approval by an organ of the central government, and, if so, which organ – e.g. the President of the state, or the state’s representative in the autonomous area? Moreover, one has to enumerate in advance the grounds that will justify the denial of such approval (that is, the application of a veto). Possible reasons for refusing to approve a law may be excess of power, incompatibility with the state’s constitution or with its international obligations, or endangering of the state’s security or its vital interests (e.g., South Tyrol/Alto Adige). One must also establish what organ (the supreme court or the constitutional court of the state, for example) has to

⁵⁵ Articles 12 and 17 of the Statute of the Memel Territory (annexed to the 1924 Convention of Paris), *supra* note 16.

⁵⁶ On the case of Åland, see Lauri Hannikainen and Frank Horn, eds., *Autonomy and Demilitarization in International Law: The Åland Islands in a Changing Europe* (The Hague: Kluwer Law, 1997); Elisabeth Nauler, “Presentation of the Åland Autonomy,” paper submitted to the International Conference on Ethnic Autonomy Systems, Beijing, 2001; Lapidoth, *Autonomy*, pp. 70-77, and references on page 235.

be consulted to determine whether the use of the veto power is warranted in a particular case, and what is to be the effect of this veto: Should the law be definitely rejected, or may it be reintroduced to the autonomous legislature and eventually adopted by a qualified majority (e.g. in Eritrea)?⁵⁷

A parallel or complementary question is whether a procedure should be established by which the legislature of the center would be prevented from encroaching upon the powers of the autonomy's legislature.

As with all political entities, the head of the executive branch in an autonomous regime can be elected either by the population (e.g. in Puerto Rico)⁵⁸ or by the members of the local legislature. There may also be a need to obtain the confidence of the legislative assembly. The central government may also have a say in the designation of the head of the executive branch: That person may be appointed by the center with the approval of the local legislature (as in Memel/Klaipeda), or vice versa. Parallel procedures may be envisaged for dismissal.

The powers and responsibilities of the local executive organ may be limited to implementing laws of the autonomous area, but they may also encompass the implementation of laws and regulations of the central government. Moreover, one can imagine a phased system under which in the beginning the local executive is only in charge of local legislation but the central government may delegate to it certain powers related to the implementation of powers of the state.

When considering the judiciary, the primary question is whether the specific regime under discussion should have its own system of courts. At least three possibilities have to be considered: (1) the central state remains in charge of all matters of adjudication (e.g., in Greenland); (2) the whole sphere is transferred to the autonomous body; and (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

⁵⁷ On the autonomy in Eritrea (1952-1962), see Lapidoth, *Autonomy*, pp. 124-130, and references on pp. 256-257.

⁵⁸ On the autonomy of Puerto Rico, see Reisman, *Puerto Rico*; Lapidoth, *Autonomy*, pp. 130-143, and references on pp. 259-260.

central authorities (e.g., in Puerto Rico). The division of powers between the two sets of courts could also have a personal element: People who do not belong to the group for which the autonomy was established may be permitted to have their grievances decided by the courts established by the central authorities.

Provisions would have to be made for cases where there is disagreement on the question of which court system has jurisdiction over a certain dispute. One could also consider granting the possibility of appealing on certain points against decisions of the highest instance of the autonomy's judiciary to the supreme court of the state. If such action is permitted, one has to decide whether the state's supreme court should have a special chamber which would deal with appeals from the autonomous area, and whether the bench of this chamber should include jurists that belong to the ethnic group for which the autonomy was established (like for Memel/Klaipeda). The local judges of the autonomous region can be appointed locally, and some of them may need the approval of the central authorities.

The official who represents the central government in the autonomous area can be appointed either by the center alone (e.g., in Eritrea) or by the center with the approval of the local legislature (or its chairperson, e.g., in the Åland Islands). The representative's task should be to oversee the implementation of laws and policies in the spheres reserved for the state. The smooth functioning of an autonomy depends to a considerable extent on the wisdom and tact of this official. Thus, it has been claimed that it was the unwarranted increase of the powers of the *enderasse* (the representative of the Emperor of Ethiopia) and his abuse of these powers that eventually destroyed Eritrea's autonomy.

An efficient joint organ can enhance the chances of success of autonomy. That organ should address matters that require coordination and cooperation between the center and the autonomous region, like the Åland Delegation. That organ could also serve for consultations and negotiations in order to prevent or settle disputes. The composition should ensure adequate representation to both parties, preferably with a chairman agreed upon by both parties (e.g., the chairman of the Åland Delegation).

To conclude: it is generally agreed that autonomous regimes should be endowed with democratic institutions. The system can vary – parliamentary, presidential or semi-presidential democracy. The central authorities often retain some limited powers of

control in the institutional sphere, such as a veto power over certain laws, and a right to dissolve the local legislature in extreme circumstances, usually after consultation with a local organ. In some cases holders of certain local functions need the approval of the center. This need may create friction, but on the other hand since the person is supposed to enjoy the trust of both parties, he can contribute to the smooth functioning of the system.

It is strongly recommended to establish a joint organ, which should deal with matters that require cooperation and with the prevention and settlement of conflicts.

V. Prevention and Settlement of Disputes

The methods for the settlement of disputes vary considerably among the different cases of autonomy. The Lund recommendations include the following advice: “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.”⁵⁹

These recommendations are only partly relevant for autonomy, since they envisage also the protection of minorities by other means.

It is important to make every effort to *prevent* conflicts from arising. This aim can be achieved by having frequent meetings of members of the center and of the

⁵⁹ Lund Recommendations, no. 24, pp. 13-14.

autonomous authorities, *inter alia* in a permanent joint organ, for the purpose of exchanging information and consultation.

If a dispute nevertheless arises, it is important to decide in advance what mechanism should be used to settle it. A first stage could be settlement by diplomatic means; namely, negotiation, mediation, fact-finding (enquiry), or conciliation.⁶⁰ If that mechanism is not successful, one can envisage a resort to a judicial means, namely, arbitration or settlement by a court.⁶¹ Different modes could be established for different kinds of disputes, but it must be clear who decides to which category a specific dispute belongs. In all cases, the first attempt should be made by negotiations – the most common means for the settlement of disputes.

One has also to determine whether the dispute should be settled by an international organ, or by a joint body with members from both the central authorities and the regional ones, or by the highest court in the state. If the task of settling disputes is entrusted to a nonpermanent organ, one has to establish in advance the composition of the ad hoc body and the procedure it should follow.

In the various cases of actual autonomies one can find examples of all of the above alternatives. With regard to Memel/Klaipeda, members of the Council of the League of Nations were authorized to draw the attention of the Council to any violation of the Convention, and the signatories of the 1924 Paris Convention could submit disputes to the Permanent Court of International Justice;⁶² for Åland there existed in the past the possibility to apply to the Council of the League of Nations; and in Spain and the UK respectively the Constitutional Court and the Privy Council have the ultimate jurisdiction. An interesting two-tiers procedure has been foreseen for Greenland:

“(1) Should any doubt arise between the central authorities and the home rule authorities concerning their respective jurisdictions, the question shall be laid before a board consisting of two members nominated by the Government, two members nominated by the home-rule authorities and three judges of the

⁶⁰ J.G. Merrills, *International Dispute Settlement*, 3rd ed. (Cambridge University Press, 1998).

⁶¹ *Ibid.*

⁶² Article 17 of the Memel Statute. For a Case before the Court, see *Interpretation of the Statute of the Memel Territory*, PCIJ, Ser. A/B, no. 49 (1932).

Supreme Court nominated by its President, one of whom shall be nominated as Chairman.

(2) If the four members nominated by the Government and the home-rule authorities reach agreement, the question shall be considered settled. If these four fail to reach agreement, the question shall be decided by the three Supreme Court judges...⁶³

VI. The Division of Powers between the Center and the Periphery

As already mentioned in chapter II, some of the powers will remain with the center, while others will be transferred to the autonomous authorities; some will require joint action by the two, and still others will be held by both the center and the region so that both can act in those spheres independently.

When establishing a regime of autonomy, these classifications may help allocate power. In addition, there might be a fifth category of powers: those that belong to neither the center nor the region but are vested in or transferred to an international institution (e.g., the European Community or the European Union).

The Lund recommendations include two short lists of powers to be transferred and those to be retained by the center (supra, chapter II). In the following pages we intend to deal in more detail with some of the relevant spheres. It should be emphasized that what follows, is not an exhaustive list of powers that have to be considered, and hence other matters may also require a settlement. On the other hand, there may be cases of autonomy where some of the powers explored in the following pages may not be relevant.⁶⁴

⁶³ Greenland Home Rule Act, 1978, Section 18, reproduced in Hurst Hannum, ed., *Documents on Autonomy and Minority Rights* (Dordrecht: Nijoff, 1993), p. 217.

⁶⁴ Usually financial and monetary matters are crucial for the establishment of a regional autonomy, but these elements are not part of this study. For an exploration of these questions see Roland Sturm, "Die finanziellen Auswirkungen der Gewährung regionaler Rechte", study prepared for the Workshop "Regionale Autonomie unter den Bedingungen von Globalisierung und staatlichen Transformationsprozessen", held in Munich on 3 December 2001.

Security

When deciding who should be in charge of security, a distinction can be made among external security, internal security (that is, confronting the threat of terror or subversion) and public order (preventing crimes). External security is always left within the responsibility of the central government. The term, however, can be subject to differing interpretations and, hence, should be defined in advance.

Public order is the domain of a police force, which often is under the control of the local authorities. It may, however, be necessary to grant to the police or the army of the central authorities some power to intervene – upon their own initiative or at the request of the autonomous authorities – in the autonomous area in case of emergency. Joint activities in the sphere of security (such as joint patrols in certain areas) should also be considered.

In addition to the basic distinction among external security, internal security, and public order, the division of powers and responsibilities could also be based on a territorial distinction – that is, certain areas would be within the responsibility of the center and others within the powers of the autonomous authorities. Moreover, one could also add a personal division: certain persons would be protected by the central authorities, and others by the autonomous ones.

Since the various aspects of security are interrelated, it may be helpful to establish a joint security committee that handles cooperation and the division of responsibilities.

Foreign Relations

Although in most cases of autonomy foreign relations are in principle reserved to the central authorities, a number of possible variations should be considered. The central government is usually in charge of the treaty-making power, but the autonomous area may be granted a limited right to conclude treaties in a number of spheres (such as economic or cultural matters, e.g., Hong Kong). The autonomous entity may also be allowed to conclude agreements limited not by subject matter, but by the identity of the other party – for example, the autonomous area may be permitted to conclude agreements only with neighbouring states. These activities may or may not require the authorization or approval of the central authorities.

Similarly, the center may commit itself to consult the regional authorities before it concludes agreements that may have an impact on the region (e.g., Åland). It may even include members of the regional group in the delegation that negotiates the agreement (e.g., The Faroe Islands).

The implementation of a treaty may require the introduction of changes into the laws in a sphere in which powers have been transferred to the autonomous entity. When establishing the autonomy, one must decide whether the legislature of the state will be authorized to effect this incorporation.

Although an autonomous entity does not usually have the right to establish embassies or consulates, it may be permitted to open offices in foreign countries for developing relations in the spheres in which it does have authority (for instance, trade and tourism).

Several options exist when considering membership in international organizations. Although states are the main members of inter-governmental organizations, an autonomous entity may have a certain standing in this sphere. One can imagine at least three possibilities: (1) The autonomous entity – by virtue of its being part of the central state – is automatically a member of all, and none but, the organizations in which the central state participates (in such a situation, the autonomous entity's membership would not be separate from the central state's); (2) the entity may be allowed not to be a member of such an organization (e.g., Greenland and Faroe); and (3) the entity may be allowed to be a member of an organization, even if the center is not (e.g., Hong Kong). Such "autonomous" membership would of course be limited to organizations of a technical or economic nature. The status of the autonomous entity in the organization would probably be different from the status of a state, which can be a full member. Both nonparticipation in an organization in which the center is a member, and membership in an institution without the center would normally require the consent of the central authorities.

A relatively new phenomenon is the participation of certain areas in regional arrangements, which can be either a group of areas within one state, or a trans-border grouping. Thus, Alto Adige/South Tyrol is a member of various trans-boundary regional organizations of the Alps, in particular the ARGE ALP (Arbeitsgemeinschaft Alpenländer). This group was established in 1972 and includes certain

areas of Germany, Austria, Switzerland and Italy. Its aim is to further cooperation on matters of common concern, such as protecting the environment, planning roads and railways, and engaging in economic cooperation.⁶⁵

Economic Matters

The division of powers is perhaps hardest to define in this area. The economic realm includes, *inter alia*, commerce, trade (within the autonomous area, between the area and the rest of the state, and between the area and foreign countries), industry, agriculture, tourism, natural resources, land, public works, roads and highways. For each sphere of economic activity, there are a variety of possible approaches, in addition to the five general categories mentioned above.

- While reserving the power to the center, the state could commit itself to consult the autonomous authorities before adopting any measures that would have an impact on the local situation.
- The center could retain control, but permit the autonomous entity to initiate or recommend activities in the area.
- The autonomous authorities could have powers limited territorially to the autonomous area (such as trade within the area).
- The autonomous entity could be authorized to act in those spheres within the framework of a general policy established by the central government.

Matters of land ownership and of traditional economic activities are of particular importance to indigenous populations and would require careful consideration.

Natural resources have been a bone of contention in several cases of autonomy. Different solutions may be adopted for above-ground resources, on the one hand, and underground minerals, on the other hand. With regard to fishing, a distinction can be

⁶⁵ Rudolf Hrbek and Sabine Weyand, *Betrifft: Das Europa der Regionen: Fakten, Probleme, Perspektiven* (Munich: Beck, 1994), pp. 53-57. For an interesting analysis of the involvement of the Åland Islands in international matters, see Niklas Fagerlund, "The Special Status of the Åland Islands in the European Union," in Hannikainen and Horn, eds., *Autonomy and Demilitarization*, pp. 189-256, and Athanasia Spiliopoulou Akermark, "The Åland Islands in International Law and Cooperation: The Legal Capacity of an Autonomous Region," *ibid.*, pp. 257-279.

made among fishing in a river or lake that is wholly in the autonomous area, fishing in waters that are common to this area and to other parts of the state, fishing in the territorial sea (up to 12 miles from the coast) and fishing in the exclusive economic zone (up to 200 miles from the coast).

Water and Energy

Although control over water and energy can be divided according to one of the principles described above, one should note the special character of these two resources. Since the autonomous area and the rest of the state may have common or interdependent aquifers, this area will usually require coordination and cooperation. In those parts of the world where water is scarce, it is particularly important to establish a system of dividing and controlling water resources. Moreover, since the availability of water and the need for this precious resource are often subject to change, a procedure should be agreed upon for introducing the necessary changes. A joint organ should review requests for permits to undertake development projects. Furthermore, water sources are in constant danger of pollution. Hence, the agreement on autonomy should also include provisions for protecting joint water sources against contamination. Last but not least, one has to take into consideration that in certain cases water, or certain rivers, have also a religious connotation.

Cooperation and coordination may also be needed in matters of energy. Due to the high cost of producing energy, the autonomous area may not be able to provide its energy independently. Moreover, the sources of the area's energy may be beyond its territory, or vice versa - the sources of the energy of other parts of the state may be located in the autonomous area (e.g., Alto Adige/South Tyrol).

Communication and Transportation

While intraregional communication and transportation can easily be transferred to the autonomous entity, a different solution may have to be found for interregional or interstate activities. Since strong interests of the central government may be involved, it may wish to reserve these powers to itself, including ancillary matters such as

maritime ports and airfields. However, various possibilities of cooperation and consultation may be considered.

The sphere of communication also includes telecommunications. If the autonomous area is allowed to operate its own radio and television transmitters, the parties have to make arrangements for a proper allocation of frequencies.

It may be more efficient to have postal services within the responsibility of the central authorities. However, if the parties agree to transfer these powers to the autonomous area, detailed provisions should prevent unfair competition between the services of the autonomous area and the state at large. In addition, cooperation has to be established with regard to interregional and international postal service.

Protection of the Environment

The importance of cooperating to prevent water pollution has already been mentioned. But arrangements must be made to protect the environment in a larger context. This matter cannot be addressed on a strictly local basis and requires coordination with the state. Moreover, environmental issues are increasingly subject to international cooperation, perhaps justifying an increased role for the central government. On the other hand, because international bodies establish many of the rules that have to be obeyed by both the center and the autonomous region, it is immaterial whether the center or the region is in charge of legislation in this sphere. Questions related to protecting the environment are of particular importance in those cases where autonomy is granted to an area inhabited by indigenous populations.

Matters of Culture

The acquisition of powers in the sphere of culture is one of the core wishes of most claims for autonomy. The main elements of culture are religion, education and language. The right of an ethnic group to regulate its religious life is usually recognized - subject, of course, to general standards of public order and human rights. The situation may be a little tricky if some places that are holy for the majority of the population of the state are located in the autonomous area and vice versa. Provisions have to be made for freedom of access and freedom of worship.

The questions that surround the issue of education may be more complex: Who has authority to decide on the construction of new schools? Who employs and supervises the teachers? Should there be both state schools and schools of the autonomous entity within the autonomous region? What will be the language of instruction in the schools? Will the official language of the state have to be taught in the autonomous schools, and from which grade on? What levels of education are included in the powers of the autonomous region - kindergarten, elementary school, high school, higher education? Is the autonomous entity free to establish its own curriculum, or does it have to meet some requirements of the state? Are the diplomas of the institutions of the autonomous entity recognized by the state, and vice versa?

Questions related to the issue of language can also have many alternative solutions. Autonomy, of course, involves as a bare minimum the permission to use the language of the ethnic group for which the autonomy was established. Moreover, this language may be recognized either as the only official language (like Swedish in Åland) or as a second “official” or “national” language in the region (like Spanish in Puerto Rico). The use of this language may be either compulsory or optional in the dealings with the autonomous authorities and perhaps also with the local organs of the central government.

In this context, reference should be made to the European Charter for Regional and Minority Languages, adopted by the Committee of Ministers of the Council of Europe in 1992.⁶⁶ It establishes an obligation for states to protect and promote regional and minority languages by education and research and by permission to use those languages in official legal documents, as well as in legal proceedings, in the media and in the economic life. In particular, all discrimination with regard to the use of those languages must be eliminated.

Social Matters

This topic includes questions of public health, welfare, social security, and labor. Usually the autonomous region is granted powers in these spheres, but each area must be examined to determine whether the local arrangements should be completely

⁶⁶ Reproduced in Hannum, Documents on Autonomy, pp. 86-101.

independent or whether they should conform to some general guidelines established by the central government. In particular, when these services are subsidized by the center, they may have to be adapted to the latter's guidelines. As in most other spheres, cooperation and coordination are necessary.

In the realm of labor, it is important to decide whether the local labor exchanges should have the right to grant preference to those candidates who live in the autonomous area (like in South Tyrol/Alto Adige), or whether they should have to treat all candidates with complete equality.

The Legal System

When establishing an autonomy one has to determine which legal system should apply in the various areas of the law (private law, criminal law, commercial law, and so forth). One possibility would be that a special legal system adopted by the autonomous legislature would be applicable, except for those matters regulated by the center (in the spheres in which the latter has jurisdiction). The opposite may also be an option; that is, the laws of the center apply, except for the spheres specifically within the powers of the autonomous area. A common variation recognizes the right of the region to legislate on various legal matters, within the framework of general principles established by the center.

In those spheres in which the center is in charge of the legal system that applies in the autonomous area, the question arises whether one and the same set of laws should apply in the whole country, or whether the central authorities may adopt special laws for the autonomous area, taking into account its particular social and ethnic makeup (for example, Denmark has adopted a special criminal code for Greenland). It appears that such a differentiation would be quite legitimate and would not be considered illegal discrimination, in view of the opinion expressed by the Human Rights Committee established under the 1966 International Covenant on Civil and Political Rights. In its general comment on discrimination, the Committee stated that “[t]he enjoyment of rights and freedoms on an equal footing... does not mean identical treatment in every instance... [N]ot every differentiation of treatment will constitute

discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”⁶⁷

Since there may be areas of parallel powers of the center and the region, guidelines should be established in advance for cases of a contradiction between rules of these two sources. It should also be decided in advance whether the laws of the autonomous parliament may diverge from all or some of the provisions of the constitution and the laws of the state. Provisions on the applicable legal system should also include directives on legal assistance and on the transfer or extradition of criminals between the autonomous area and the rest of the state.

If autonomy is granted to an indigenous group, special provisions may allow the group to live by its traditional customs. It will be necessary to decide in advance in what spheres and under what conditions the tribal customs should be applicable.⁶⁸

Residual Powers

Since it is practically impossible to foresee and solve in advance all issues that may come up, it is important to include in the autonomy arrangements a provision on residual powers, establishing who is authorized to deal with matters that have not been regulated in advance. There are at least four possible solutions:

1. Residual powers are reserved for the center (a solution adopted for Memel/Klaipeda and in Spain).
2. They belong to the autonomous authorities (a solution adopted for Eritrea and Scotland).

⁶⁷ UN Doc. CCPR/C/21/Rev. 1/Add.1 (1989), para.13.

⁶⁸ See e.g. Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (1989), International Labour Office Official Bulletin ser. A, 72, no. 2 (1989), Articles 13-19; Draft Declaration on the Rights of Indigenous Peoples, prepared by the Working Group on Indigenous Populations of the Sub-Committee on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub. 2/1994/56, of 28 October 1994, Articles 31, 32, 33. It is likely that many of the ideas included in this draft may ultimately be adopted by the General Assembly, but probably in a somewhat watered-down version – Alfredsson, “Indigenous Peoples and Autonomy” at p. 129.

3. They should be allocated to either the center or the region on the basis of resemblance to and analogy with other powers that have been expressly allocated (the solution adopted for Åland).
4. They should be exercised by a joint body.

Logically, one could have assumed that there should exist a close relationship between sovereignty and residual powers. The sovereign, who usually possesses the totality of powers except for those expressly excluded, would reasonably be assumed to be also in charge of residual powers, and vice versa, he who has the residual powers could be expected to be the sovereign.

However, some of the examples contradict this assumption. True, in the case of Memel/Klaipeda the bearer of residual powers was also the sovereign (the State of Lithuania⁶⁹), and Spain is both the sovereign⁷⁰ and in charge of residual powers. But the situation is different with regard to Eritrea and Scotland. Sovereignty over these two belonged (for Eritrea) and belongs (for Scotland) to Ethiopia⁷¹ and the U.K.⁷² respectively, while the two autonomous areas had (for Eritrea) and have (for Scotland) the residual powers.⁷³ As for the Åland Islands, sovereignty over the islands is in the hands of Finland,⁷⁴ while residual powers are allocated on the basis of analogy either to the center or to the periphery.⁷⁵

⁶⁹ The 1924 Paris Convention, League of Nations Treaty Series, vol. 29, p. 87, Article 2; Hannum, Documents on Autonomy, p. 663, at p. 664.

⁷⁰ The 1978 Constitution, Sections 1 and 2, Hannum, Documents on Autonomy, p. 145.

⁷¹ Federal Act (which was part of the UN General Assembly Resolution – supra note 15), paragraph 1, and the Constitution, Section 3. Final Report of the United Nations Commissioner in Eritrea, 17 October 1952, GAOR, 7th session, supplement no. 15 (A/2188), at p. 74 and 79; also reproduced in Hannum, Documents on Autonomy, p. 629 and 633.

⁷² Sovereignty is not expressly mentioned in the Scotland Act of 1998, but the sovereignty of Westminster is implied in the text, in particular in sections 28, 29 and 37. Sovereignty was, however, expressly mentioned in the White Paper on Scotland's Parliament, presented to Parliament [in London] by the Secretary of State for Scotland by Command of Her Majesty, July 1997, Cm 3658, at p. x.

⁷³ Federal Act, paragraph 3, and Constitution, Section 5, for Eritrea; 1997 White Paper, p. 3, for Scotland.

⁷⁴ Council of the League of Nations Resolution of 24 June 1921, reproduced in Hannum, Documents on Autonomy, pp. 141-142, paragraph 1.

⁷⁵ Autonomy Act of 1991, Section 18 (27), and 27 (42), reproduced in Hannum, Documents on Autonomy, pp. 122 and 126.

One may perhaps submit the following hypothesis: in the absence of a different solution in the relevant texts, residual powers will be vested in the sovereign. But the parties may agree on different solutions, since there is not necessarily identity between the sovereign and the bearer of residual powers.

VII. Substantive Rules that Have to be Agreed Upon

So far we have dealt mainly with framework issues – the way to establish autonomy, the appropriate institutions, and the division of powers and responsibilities. But it may also be necessary to establish in advance some substantive principles that have to be implemented. This need concerns mainly the field of human rights. The place of human rights in the autonomous system is very important. Within the autonomous territory there may live people of ethnic groups other than the one that is the majority in that region, either members of the group that is the majority in the state or members of another minority. When establishing an autonomy, the rights of these groups must be guaranteed. Moreover, certain basic rights of members of the group for which the autonomy is established must be protected, regardless of the traditions of the group.

How can these basic rights be ensured? The text may include a reference to “public order” (or “*ordre public*”), to the fundamentals of human rights applicable in the central state, or to certain international standards of human rights (for example, the two 1966 international covenants or the various human rights documents of the OSCE). Another possibility would be to refer to international standards of human rights, without specifying particular documents.

The importance of the human rights factor has also been underlined by the 1999 Lund Recommendations: “Local, regional, and autonomous authorities must respect and ensure the human rights of all persons, including the rights of any minorities within their jurisdiction.”⁷⁶

Another subject which may have to be settled in advance concerns measures to preserve the special character of the area. The local population may be keen on adopting such measures, while the central government may prefer that the door be left

⁷⁶ Lund Recommendation, no. 21, p. 12, and Explanatory Note, p. 31.

open for demographic changes, in order to bring the area closer to the mainstream character of the state. In the case of the Åland Islands, the autonomy arrangements go to great lengths to preserve the distinctive character of the population, by far-reaching provisions concerning the language, the right to domicile, provincial citizenship, and the severe restriction on the sale of land to outsiders.⁷⁷ In some cases where no such restrictions have been established, the distinctive demographic character of the autonomous area has been changed by large-scale immigration into the area, e.g. the movement of Chinese (Han) people into Tibet and into Xinjiang.

Measures to keep others out of an autonomous area may enhance the preservation and the development of the local ethnic group's tradition, culture, and language. On the other hand, such measures could also be considered contrary to the right to freedom of movement, which is a recognized human right.⁷⁸ Perhaps one should distinguish between free movement of individuals on the one hand, and the movement of large groups initiated by the state.

Other substantive matters of concern may of course also be determined in the relevant texts, such as budgetary arrangements.

VIII. Supervision by the Central Authorities

How and to what extent may the central government supervise the activities of the autonomous entity? As mentioned earlier,⁷⁹ the center does not have a general power of control, as it would have in case of decentralization. Nevertheless, it follows from some of the above analyses that the center may keep certain means of supervision or direction. Thus, fiscal measures may serve as an efficient means of control (through periodic negotiations on the allocation of resources to the autonomous entity). The need for confirmation of the laws of the autonomous entity and the important - though limited - power of veto of the center can be quite significant. Moreover, the power

⁷⁷ Lapidoth, *Autonomy*, pp. 74-75.

⁷⁸ E.g., *International Covenant on Civil and Political Rights*, 1966, Article 12.

⁷⁹ *Supra*, chapter II.

reserved to the central government to appoint or confirm some of the key figures of the self-governing authorities may give the center considerable leverage.

When dividing powers, the center can retain some of the more important competencies. Alternatively, the arrangement could provide that the local authorities may act in a certain sphere only within general guidelines established by the center or in accordance with national planning. The center may also retain the residual powers. An important means of control exists if the judicial organ of the central state plays a leading role in the settlement of disputes between the autonomous region and the center.

Another matter to be considered is whether the central organs should be authorized to act instead of the autonomous ones in case the latter do not function or do not fulfill their responsibilities. Moreover, should the central government have the power to impose sanctions on the local authorities (for example, to dissolve the legislature of the autonomous entity, or to dismiss its executive organ)? All these possibilities must be considered when establishing a regime of autonomy.

IX. Factors that May Enhance the Prospects of Success

A preliminary question to be answered is: how do we evaluate the success of a regime of autonomy? According to one expert, it should be measured by its durability.⁸⁰ To this criterium one may perhaps add social and economic aspects, as well as smooth functioning – elements that are difficult to define and appraise.

Although each case of autonomy is different, it seems that certain ingredients may generally be counted on to enhance the chances of success.

1. A regime of autonomy should be established with the consent of the population intended to benefit from it. (Thus, due to the objection of the Palestinians, the autonomy negotiations between Egypt and Israel from 1979 to 1982 were doomed to failure). However, sometimes a population that at first

⁸⁰ Kjell-Ake Nordquist, "Autonomy as a Conflict-Solving Mechanism – An Overview" in Suksi, ed., *Autonomy*, pp. 59-77.

only reluctantly accepts a regime of autonomy, later comes to favor it (as happened in the Åland Islands).

2. The regime should be established with the consent, express or implied, of a foreign state to which the autonomous group may have an ethnic or other affiliation. (Thus, Sweden's positive attitude has contributed to the success of the regime of the Åland Islands).

3. The regime should be beneficial for both the state and the population of the autonomous region.

4. The local population should be permitted to enjoy the formal or symbolic paraphernalia of self-determination, such as a flag, an anthem and an officially recognized language. (Most of the successful autonomies enjoy these privileges, including the Åland Islands, Greenland, and Scotland).

5. The division of powers should be defined as clearly as possible. (The texts concerning the Åland Islands, South Tyrol/Alto Adige, Memel/Klaipeda, and Eritrea are quite detailed; however, although the documents concerning Greenland and the Faroe islands are rather short, their autonomy has nevertheless been a success).

6. If activities of the central government in spheres that are under its authority directly affect the autonomous region, the local authorities should, if possible, be consulted. (This practice is particularly conspicuous in the case of the Åland Islands and Greenland).

7. An organ (or several specialized organs) for cooperation between the central government and the local authorities should be established. Its composition, powers, responsibilities and procedures should be established, as far as possible, in advance. (Thus, the Åland Delegation has prevented many misunderstandings).

8. Modes and mechanisms for settling disputes between the center and the local authorities should be established, with a maximum of detail. (However, when relations between the center and the autonomous authority are good, disputes can often be prevented at an earlier stage by the organs of cooperation).

9. Under certain circumstances it may be preferable to establish the autonomy in stages, that is, to transfer the relevant powers (and perhaps also the territory involved) gradually. (Gradualism was particularly efficient in the case of Greenland).

10. The prospects for success are greater if both the central government and the autonomous authorities are based on democratic regimes. (As examples one may refer to Puerto Rico, Greenland, the Åland Islands and Scotland).

11. Every regime of autonomy must include guarantees for the respect of human rights, including the principle of equality and non-discrimination among all the inhabitants. Similarly, a minority that lives within an ethnic group that has been granted autonomy should enjoy minority rights. (This is particularly important in cases where there are considerable ideological or traditional differences between the center and the autonomous population on matters of human rights - for example, the status of women and the rights of the child).

12. A rather similar stage of economic development and standard of living in the autonomous region and in the state as a whole may enhance the chances of success. (Thus, Denmark's efforts to raise the standard of living in Greenland have helped to make this autonomy a success, while the economic and social differences between the North and the South may have contributed to the failure of the autonomy in southern Sudan).

13. If autonomy is established for a limited period, the procedure to be followed at the end of that period should be established. If possible, a list of tentative options to be considered at that stage should be drafted.

14. If the autonomy arrangement includes a commitment to certain rules of behavior, it may be helpful if those rules can be based on international norms (e.g., references to international standards of human rights, health, and environmental protection).

15. A tradition of strong local government may also be helpful.⁸¹

⁸¹ Oral intervention by Hans-Jürgen Puhle, professor for political science at the Johann Wolfgang Goethe-Universität, Frankfurt a.M. at the Workshop "Zwischen staatlicher Integrität und

16. In some cases a regime of demilitarization and/or neutralization may enhance the prospects of success.⁸²

17. The most important and indispensable condition for a successful autonomy is a prevailing atmosphere of conciliation and goodwill. This condition must be generated by an energetic and sustained effort to explain and to engage in patient dialogue. (So far, no arrangements of autonomy have succeeded in a hostile atmosphere. The atmosphere may, however, improve with time, as happened in the Åland Islands).

18. Autonomy should be established before the relations between the majority in the state and the majority in the region deteriorate considerably. If there is hatred and frustration, it is too late, and autonomy will not be able to calm down the strained atmosphere.

X. Conclusions

Autonomy is a means for diffusion of powers. In each prospective case one has to consider what is the most suitable means to achieve that purpose – whether one should prefer autonomy (including devolution and self-government), or a federal structure, or associate status, or mere decentralization. Autonomy should be preferred if the intention is to grant self-governance to only some parts of the state, and in particular if there should be a difference in the regime of various self-governing areas within the same state. Opinions on autonomy vary remarkably.⁸³

Every text establishing autonomy should deal at least with four matters: the institutions of the autonomous area, the division of powers between the center and the periphery, a mechanism for the prevention and solution of disputes, and substantive

gesellschaftlicher Vielfalt – Modelle regionaler Autonomie”, held in Gütersloh on 4 September 2001.

⁸² H.E. Martii Ahtisaari, “Opening Address at the Seminar on the Åland Islands as an Example for Peaceful Governance”, in *Autonomy – an Alternative to Secession? A Seminar on the Åland Islands as an Example for Peaceful Governance*, New York, 15 March 2001, published by the Ministry for Foreign Affairs of Finland, pp. 6-9.

⁸³ Thomas M. Franck, “The Åland Islands and the Project of Political Autonomy within ‘A More Perfect Union’”, in *Seminar of 15 March 2001* (supra note 81), pp.34-38; Lapidot, *Autonomy*, pp. 203-204.

rules on certain matters, such as human rights. The institutions must be democratic and should include an organ (or several organs) for cooperation and coordination with the center.

This cooperation and coordination could be enhanced by the conclusion of specialized, perhaps technical, agreements between the parallel offices of the center and the autonomous area – a system foreseen for Scotland: “[E]ach central Government Department will be expected to lay down with each of the devolved administrations in advance how they will operate their mutual relations in practice. These documents will be known as *Concordats* and they will be administrative agreements in the purest sense, not legally binding and not enforceable ...”⁸⁴

Although there exists a general idea on what powers may be transferred (i.e. matters of culture, economics and social affairs), each case has to be studied carefully. In deciding on the division of powers, one has to take into consideration the specific interests of the local population and those of the center respectively. One may also have to take into account certain geographic, historical, political, and demographic circumstances. For practical reasons, the geographic proximity or remoteness of the center of the state in relation to the autonomous region may have to be taken into consideration. In addition, the past relations between the center and the periphery may determine some of the content of the regime. For instance, the autonomous region may have had the status of a colony; it may have been an independent but weaker state; it may have been transferred from one state to the other; it may have been one of several semi-independent units that merged into a unitary state; or it may have been detached from a state and become internationalized.

When deciding what powers should be transferred, one has also to consider the more technical question, whether it is advisable to enumerate the powers that remain with the center (“reserved matters” in the Scotland Act), or those that should be transferred (a procedure followed for Alto Adige/South Tyrol), or both (as was done for the Aland Islands).

Another significant parameter is the question of sovereignty. If it is agreed that the center is the sovereign, this center may be more generous in granting autonomy than

⁸⁴ Berman, “Treaty Implementation in Great Britain After ‘Devolution,’” at p. 257.

if there is disagreement over sovereignty or the relevant area is the object of a territorial dispute.

The basic ideology and international outlook or alignment of the center and the autonomous entity will also have an impact upon the extent of the autonomy arrangements. It may be expected that if there is parallelism or similarity between the attitudes of the central government and those of the autonomous authorities, the former is likely to be disposed to grant the latter extensive powers. On the other hand, if there is a sharp discrepancy, the center will hesitate to divest itself of major powers, in particular in security matters.

The nature of the group that is granted autonomy has also to be borne in mind. An ethnic or linguistic minority may be satisfied with few powers, a group that considers itself to be a “people” - whatever that may mean - will seek maximum of powers and responsibilities.

The type of the autonomy to be granted will depend on the demographic composition of the autonomous area: Is it inhabited mainly by one ethnic group, or are there members of more than one group? If there are several groups, what is the numerical ratio among them? What are the relations among the various groups, and how does each group relate to the center? What is the ratio between the minority for whom the autonomy is granted and the members of the majority in the state who live in the autonomous area?

Finally, the division of powers in matters of security will depend on whether the regime of autonomy is welcomed by all the members of the group, or whether some are not satisfied and may resort to violence.

Although foreign relations are usually considered to be within the jurisdiction of the center, in recent years a trend can be discerned of granting some of the autonomous authorities a limited say in this sphere.⁸⁵ A similar development occurred also in some federal states, e.g., the United States and Germany.⁸⁶

⁸⁵ On the special situation of autonomous regimes in the European Union, see Inigo Bullain, “Autonomy and the European Union,” in Suksi, ed., *Autonomy*, pp. 343-356, who recommends to connect the autonomous units to the European institutions (on p. 355).

⁸⁶ E. Brown Weiss, “The Rise or the Fall of International Law?”, at pp. 363-365; Georg Nolte, “Constitutional Implications of German Participation in Treaty Regimes,” in Thomas Franck, ed., *Delegating State Powers*, pp. 261-277, at pp. 264-265.

Another interesting trend is the holding of consultations in both directions: the center consults the periphery if it deals with matters that are within the center's jurisdiction but may have some special significance for the region, and vice versa, the periphery consults the center when it deals with matters that are within the region's jurisdiction but may have an impact on the center.

It may be advisable to foresee a process of periodic review, as recommended by the Lund text.⁸⁷

We have seen several factors which may enhance the success of a regime of autonomy. Some of them are *sine qua non*: democratic governance, respect for human rights, and a readiness for compromise. Due to its flexibility, autonomy can play a beneficial role in the process of fragmentation and regionalization that is developing. The right balance will have to be established between the special character of the region and the wish to preserve it, on the one hand, and the tendency towards openness and multiculturalism.

⁸⁷ Lund Recommendations, no. 22, on p. 13.

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