Thomas Benedikter (ed.)

Solving Ethnic Conflict through Self-Government

A Short Guide to Autonomy in Europe and South Asia

Autonomy, in the framework of a modern democratic state, was first established in 1921 in Finland's Aland Islands. Later such concepts of power sharing have been implemented in all continents, and, in 2009, operate in at least 60 regions in 20 states. Particularly after World War II, the idea of autonomy for the protection of ethnic or national minorities and the resolution of self-determination conflicts became a political reality in various European states as well as in India. In most cases, regional autonomy provided the legal-political framework for the "internal self-determination" of a smaller or indigenous people or of an ethnic minority, preserving a specific ethnic-cultural identity while maintaining the sovereignty of the state in which they live. Not only could autonomy bring about peace and stability in conflict-ridden societies, but it could also enhance new partnerships between the central state and the regional community.

In the framework of the EURASIA-Network, an EU-funded exchange program of seven South Asian and European university departments, research institutes, and human rights institutions, the European Academy of Bolzano/Bozen (EURAC) has chosen the issue of regional autonomy for sharing experiences and insights highlighting its significance for the protection of human and minority rights and the resolution of ethnic conflicts. The publication, collecting twenty short essays by fifteen authors from both areas, should provide an overview of some of the most relevant cases of autonomy in Europe and South Asia. It aims to shed light on current developments in autonomous regions, as well as to explore the likelihood of implementing autonomy in societies still affected by ethnic conflict. The Editor's wish is to enhance a common critical discourse about autonomy and its potential to combine minority rights protection and self-government in South Asia and Europe.

Thomas Benedikter (ed.)

Solving Ethnic Conflict
through Self-Government

A Short Guide to Autonomy in South Asia and Europe

Solving Ethnic Conflict through Self-Government
A Short Guide to Autonomy in South Asia and Europe

Bozen/Bolzano, June 2009

Edited by

EURAC research

Glossary

AJK	Azad Jammu and Kashmir
ADC	Autonomous District Council
ASDC	Autonomous State Demand Committee
ABSU	All Bodo Students Union
BLT	Bodoland Liberation Tigers
BAC	Basque Autonomous Community
BTC	Bodoland Territorial Council
BLT	Bodoland Liberation Tigers
CPN (M)	Communist Party of Nepal (Maoist)
CHT	Chittagong Hill Tracts
CIS	Confederation of Independent States
DAHR	Democratic Alliance of Hungarians in Romania
DGHC	Darjeeling Gorkha Hill Council
ETA	*Euskadi Ta Batasuna* (Basque Country and Freedom)
FATA	Federally Administered Tribal Areas
FCR	Frontier Crimes Regulation
FNLC	Fronte Naziunale di Liberazione di a Corsica
GJMM	Gorkhaland Janmukti Morcha (*Gorkhaland People's Freedom Movement*)
HAR	Hungarian Autonomous Region
HNCT	Hungarian Council of Transylvania
KANA	Ministry of Kashmir Affairs and Northers Areas
LBA	Ladakh Buddhist Association
LGO	Local Government Ordinance
LTTE	Liberation Tigers of Tamil Eelam
NWFP	North Western Frontier Province
NDFB	National Democratic Front of Bodoland
NALC	Northern Areas Legislative Council
PNC	Partitu di a Nazione Corsa
PMR	Pridnestrovian Moldovan Republic (Trans-Dniestria Moldovan Republic)
PNV	*Partido Nacional Vasco* (Basque National Party)
PSOE	*Partido Socialista de Obreros de Espana* (Spanish Socialist Workers Party)
PATA	Provincially Administered Tribal Areas
SPA	Seven Party Alliance
SzNC	Szekler National Council
ST	Scheduled Tribe
SC	Scheduled Caste
UT	Union Territory
UPC	*Unione di u Populu Corsu* (Union of the Corsican People)
UNDRIP	UN Declaration of the Rights of Indigenous Peoples
TTAADC	Tripura Tribal Area ADC
TMDP	Terai Madhes Democratic Party

Content

Preface

Exploring territorial and cultural autonomy as a means of conflict resolution and minority protection

The political management of ethno-cultural diversity and the protection of the rights of ethnic or national minorities is a burning issue in contemporary societies of both Europe and South Asia. To govern oneself without questioning the sovereignty of a state, to approve one's own laws and to apply them as a regional community through democratically elected bodies and politicians, to protect a minority culture and identity without having one's own independent state, while retaining all the necessary powers to safeguard one's own collective rights in almost all salient cultural, social and political areas: these are the basic aspirations of ethno-linguistic groups, national minorities or regional communities that seek territorial autonomy and self-government as a means of"internal self-determination without secession."

Autonomy, in the framework of a modern democratic state, was first established in 1921 in Finland's Aland Islands. Later such concepts of power sharing have been implemented in all continents, and in 2009, operate in at least 60 regions in 20 states. Particularly after World War II, the idea of autonomy for the protection of ethnic or national minorities and the settlement of self-determination conflicts became a political reality in various European states as well as in India. In most cases they brought about a stable political climate. With the consensus of the majority of the population, regional autonomy provided the legal-political framework for "internal self-determination" in order to preserve a specific ethnic-cultural identity or give self-rule to a smaller people, while keeping the sovereignty of the state in which they live.

If Europe was the cradle of modern political autonomy, in Asia the role of a pioneer was played by India, which established regional autonomies under the 6th Schedule of the Constitution approved in 1950. Some forms of autonomy, but in a questionable democratic framework, are in force in Pakistan as well, whereas Bangladesh has not yet fully accomplished its autonomy arrangements for the Chittagong Hill Tracts. Nevertheless, South Asia, with its vast ethnic diversity and political complexity, remains one of the regions on earth most challenged to find new answers for the self-determination-struggles of smaller communities and the protection of ethno-linguistic minorities. The same applies to Europe, which is far from having exhausted the potential of autonomy as a device for regional democratic self-government and minority rights protection. Autonomy not only comes in this well-known territorial form, but also in the form of cultural autonomy, which is considered a useful device for the protection of cultural rights of minorities not settled in a territorially compact form. Finally, just as every state's constitutional development, autonomy should be considered a "work in progress" that is continuously challenged to adapt to new requirements raised by modern societies.

In the framework of the EURASIA-Network, an EU-funded exchange program of seven South Asian and European university departments, research institutes, and human rights institutions, the European Academy of Bolzano/Bozen (EURAC) has chosen the issue of regional autonomy for sharing some recent experiences and insights highlighting its significance for the protection of human and minority rights and the resolution of ethnic conflicts. This short guide should provide an overview of some of the most relevant cases of autonomy in Europe and South Asia. It aims to shed light on current developments in autonomous regions, as well as to explore the likelihood of implementing autonomy in societies affected by ethnic conflict. In order to create a common foundation of terminology and fundamental criteria, the publication is introduced with an overview of the general concept of political autonomy, which clarifies fundamental criteria and minimum standards for "genuine political autonomy."

A dozen scholarly colleagues and experts from ten different countries have agreed to contribute articles explaining the most relevant case studies in Europe and reporting on recent developments in the major states of South Asia. Some articles allow a "look at autonomies through foreign eyes," such as an Indian EURAC-colleague writing on South Tyrol and a Tyrolean author commenting on Darjeeling and Bodoland. Others reflect new approaches and outlooks on current

debates concerning decentralization and territorial power sharing in the multi-ethnic societies to which they belong. I extend my heartfelt acknowledgement to all the authors as well as to the Editor, Thomas Benedikter. The text is completed by a broad range of information on autonomies and ethnic minorities, all brought together in a well-developed format by our Graphic Designer, Hanna Battisti. Proofreading was provided by Ms. Catherine Gordley. Hopefully with this short guide we can add a new stimulus to the debate and to efforts to make autonomy a viable means of minority protection and ethnic conflict resolution in South Asia and Europe.

Dr. Günther Rautz,
Co-ordinator of the Institute for Minority Rights
European Academy Bozen/Bolzano

June 2009

1. What is political autonomy about? Fundamental features of political autonomy

Thomas Benedikter

The ideal propagated by Europe's nation-state builders in the 19th century was "One nation – one state". But in scarcely any of these states has this ideal ever been achieved. All European states, excluding the micro-states (1), are hosts to national minorities. The overwhelming majority of European states have populations composed of several different peoples, featuring a majority (titular nation or ethnic group) and from 3 to 45 national minorities.(2) Most likely the majority of the currently 191 UN member states share these fundamental characteristics. Most of South Asia's states display an even stronger multilingual or multiethnic character: Nepal has more than 100 ethnic groups; 114 languages are spoken in India; Afghanistan is home to a dozen major ethnic groups and 57 languages.

Generally speaking, most national or ethnic minorities live in their traditional homeland, but over the course of history have found themselves included in a state dominated by a major "titular nation". This national majority typically exerts cultural hegemony by the sheer effect of its demographic, economic, social and political power. Minority ethnic groups in such states are structurally disadvantaged and often excluded from power. This can occur in both centralist states such as France or Bangladesh, or in federal countries such as Russia or India, whose single federate units are mostly dominated by one "titular ethnic or linguistic majority". How can this implicit bias be redressed? Are anti-discrimination provisions on an individual basis sufficient? How can equal chances and opportunities be ensured for majority and minority identities?

A legal device to redress the imbalance between a state majority and ethnic minorities settling compactly on their traditional territory has been to endow a regional community (3) with all necessary powers to ensure both the protection of minority rights and the exercise of regional self-government. This is a first, simplistic understanding of the rationale of regional territorial autonomy. Nevertheless, autonomy can also be established without a precisely defined

territory, namely for all members of a group living dispersedly or intermingled with other groups. This form of autonomy is termed "cultural" or "personal autonomy". In such cases autonomy is attributed to an institution or an association under public law, elected by the individual members, vested with a range of public, mostly cultural and social responsibilities, and supported by public funds.

The first step: recognition

The growing number of intrastate conflicts after decolonization in the aftermath of World War II and the collapse of the Soviet block revealed the shortcomings of a strict, individualistic approach to minority rights and called on the concerned states to face the collective dimension of minority rights. This meant facing power sharing between a central state and one or more regions with a mostly ethnically diverse population. The concept of political autonomy originated from the recognition of ethnic or national groups as subjects of collective rights, entitled to self-government in order to ensure their cultural survival and ethno-linguistic identity (in Europe: "national identity"; in India "tribal peoples" with a right to rule their traditional areas and preserve their identity). Minority rights are a part of the fundamental human rights that defend human dignity against the state. A purely individual dimension of human and minority rights, as reflected in regulations on non-discrimination, in many cases is weak in ensuring protection as a group. But in addition to individual rights, several very important minority rights can be exercised only collectively (religious and cultural activities, education, the use of minority language in the public sphere, media and the right to information etc.). The control of the state apparatus, articulated in different government levels, provides for access to social status, distribution of economic and financial resources, and political power in society. Therefore, fierce and permanent competition for control over the state and its different levels arises from the struggle for a decisive share of power. These conflicts can be regulated or prevented – thereby avoiding secession - by redistributing resources, reforming the state structure, recognising minority rights, allowing effective representation and participation of all concerned groups. A productive strategy to ensure both the state's integrity and the collective rights and self-government of minority groups is based on power-sharing between diverse institutional tiers of a state.

In addition to endowing regional communities with extended legislative and executive powers, autonomy also meets a fundamental request of democracy, defined as "subsidiarity". Self-government, indeed, provides the opportunity for local resolution of local problems, and choosing locally the political elite entitled to perform this job. Power sharing not only strengthens the protection of ethnic minorities, but increases political representation or participation. In a genuine democracy this aspiration is felt and needed more strongly wherever the population concerned is distinct from the titular majority nation of a given state by virtue of ethnic, linguistic and religious features.

Hence, the whole process has to start from recognition. In both Europe and South Asia as in other continents ethnicity is still of utmost significance in shaping political and social interaction and organizing state structures. Although multi-cultural and multi-national principles are praised as basic principle of liberal democracies, still the dominant form of state in the world is the "nation-state" with one ethnic majority, well entrenched with political power, while ethnic minorities, if not even discriminated against, are placed in a structural disadvantage. The inevitable structural hegemony of the titular majority of a State can be counterbalanced by territorial power sharing. When the 19th century nationalist ideologies were formulated in Europe, the right to national self-determination was rather attributed to larger peoples who could form a major state. Smaller groups were tought of to play a divisive role and were denied this right.

India, Pakistan, Sri Lanka, Bangladesh shared the common colonial power and also colonial cultural heritage. After independence, again, self-determination – as in Europe – was a matter of power and to be subordinated to the state's unity and nation building. India denied self-determination to Kashmir and indigenous peoples, Pakistan to Baluchistan and Gilgit-Baltistan, later Bangladesh to the peoples of the CHT and Sri Lanka to Tamils of the Northeast. Some of the separatist tendencies in Pakistan and India could later be harnessed within the federal structure, but federalism alone could not accommodate all ethnic groups and regional communities, especially where federal units were built upon units inherited from the colonial powers (CHT, Gilgit-Baltistan, Darjeeling, Ladakh, Kamtapur, several areas in the Northeast). Such conflicts are not isolated disruptions of the state and society, but expressions of structural shortcomings

of states, dominated by different ethnic majorities, still locked in a inherited doctrine of unitary state and given territorial power sharing.

The nation itself is a political construction, but the concept of nation in modern states tends to include all citizens, independent from ethnic, linguistic, religious and social features.(4) A democratic territorial concept of state confers equal rights on all citizens irrespective of their ethnicity, religion and caste or class. The hegemony of cultural majority is intrinsic, but ways including ethnic minorities and balancing structural disadvantages can be devised. Minority rights are no longer just a matter of moral attitude and good will, but enshrined in most constitutions and several international covenants. The point is that the liberal concept of equal individual rights alone and the ban to individual discrimination won't provide substantial equal rights. Ethnicity as fundamental right to preserve and develop one's cultural identity can unfold only in community. Neither denying ethnicity as a political category nor exacerbating ethnic differences can bring about a common ground of state building, peace and equal right. Minorities have to be entitled to group rights, under certain conditions linked to their traditional territories, to redress the structural inequality they are exposed to in nation states.

Regional autonomy: a form of "internal self-determination"

Two alternative responses have been created throughout the world to cope with the necessity of power sharing between the levels of governance of a given state: symmetrical federalism (with some asymmetrical exceptions depending on the political, cultural, and historical context) and political autonomy in different forms. Federalist states are usually "symmetrical" in the sense that the scheme of power-sharing affects all constituent units of the state. In asymmetrical federations, one or more regions (federated states) are vested with special powers not granted to other states or provinces that allow for the preservation of a specific culture, language, form of living. Sometimes federalism and autonomy come in combined way, as the federal states of Canada, India and Russia demonstrate. Being basically federal systems, these states also encompass some entities with special powers (asymmetrical federal system).(5) Such entities could also be denominated as "special territorial autonomies in the framework of a federal state". Thus, there is a variety of forms of territorial power-sharing, which are often not mutually exclusive, but flexible, depending on the political context.

Federalism is the best-known system of territorial power-sharing. It basically claims equal powers for all constituent territorial units, which share an identical relationship with the central

Forms of territorial power sharing in modern states

* One or more units retain a different amount of powers than the ordinary member state units of a federation.
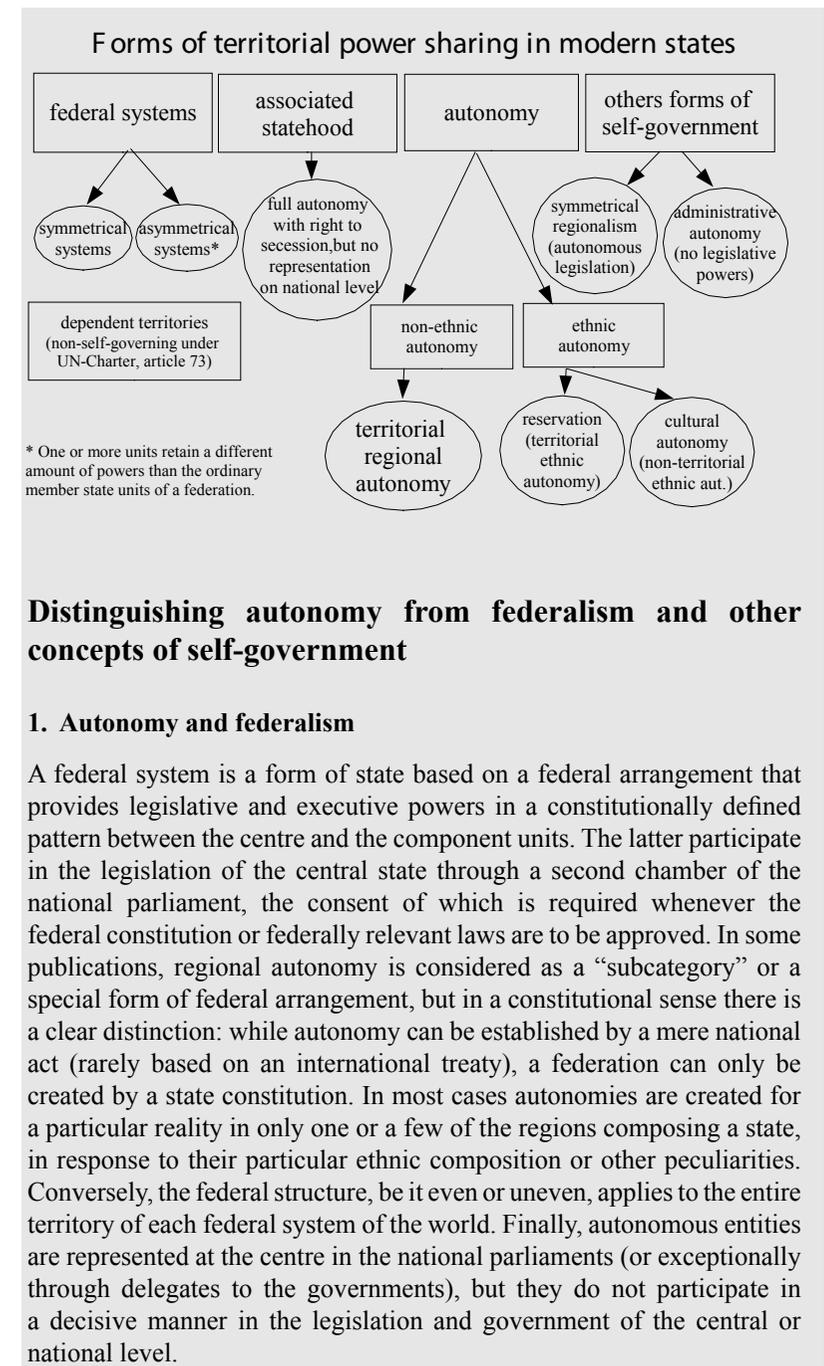
Distinguishing autonomy from federalism and other concepts of self-government

1. Autonomy and federalism

A federal system is a form of state based on a federal arrangement that provides legislative and executive powers in a constitutionally defined pattern between the centre and the component units. The latter participate in the legislation of the central state through a second chamber of the national parliament, the consent of which is required whenever the federal constitution or federally relevant laws are to be approved. In some publications, regional autonomy is considered as a "subcategory" or a special form of federal arrangement, but in a constitutional sense there is a clear distinction: while autonomy can be established by a mere national act (rarely based on an international treaty), a federation can only be created by a state constitution. In most cases autonomies are created for a particular reality in only one or a few of the regions composing a state, in response to their particular ethnic composition or other peculiarities. Conversely, the federal structure, be it even or uneven, applies to the entire territory of each federal system of the world. Finally, autonomous entities are represented at the centre in the national parliaments (or exceptionally through delegates to the governments), but they do not participate in a decisive manner in the legislation and government of the central or national level.

government. Federalism in various instances of history and political reality has proved to accommodate ethnic diversity, as the examples of Switzerland, Canada and to some extent Russia show. Federalism has also been used to settle ethnic conflict after a period of centralist structure, as in Belgium, Malaysia and Nigeria. But if just one or a few minority groups settling on a smaller part of the national territory are to be accommodated, federalism may not be entirely necessary. In some cases, the very particular nature of one ethnic national minority and region might require a particular arrangement that is neither demanded nor necessary for other units of the state. This has happened with some islands of Scandinavia (Aland, Faroe, Greenland) as well as with historically distinct regions of unitary states (Wales, Scotland, Northern Ireland in the United Kingdom, Crimea in Ukraine, Sicily, Sardinia, South Tyrol, Friuli and Aosta Valley in Italy). It has happened with ethnically composite federated States of India such as Assam and West Bengal and with indigenous peoples struggling for their rights within their traditional territories (again in India and Bangladesh).

Autonomy and federalism (also asymmetrical federalism) are clearly distinguishable, despite their blurring boundaries. The basic distinction is that in a federation, the federated states or regions are generally involved in central policy making, whereas autonomous entities rule themselves, but normally have no special rights regarding the central power. They participate in national institutions by democratic means, but have no special level of representation at the centre as in federations (e.g. with a second chamber composed by representatives chosen by the regions). As in most regulations of state powers in the world, there are exceptions.(6)

If only one or a few regions are to be treated in a specific manner, political autonomy is an appropriate way of structuring the state. By its very nature, autonomy is asymmetrical and case-specific. Regional territorial autonomy, widely considered the most advanced device of minority protection (7), provided the possibility of sharing legislative and executive powers between the central state and national minorities while safeguarding both aims: the fundamental right of national minorities to enjoy at least internal self-determination without changing international borders, and the integrity of the state they are living in. The legal design of an autonomy depends on the demands, needs and interests of the minority groups or peoples living in the region concerned. However, within the autonomous unit a minimum of unity and willingness to share the power and responsibility over the entire regional community is required if self-government is to be accepted by all.

Regional autonomy can be defined as a form of collective internal self-determination in contrast to the "external self-determination" enshrined in the UN-Charta as a fundamental right of peoples. Although the concept is disputed, the idea means that through autonomy a given community can determine its cultural, social, economic and political development to a high extent, just short of independence. The central state's prerogatives remain limited to defence, foreign affairs, monetary policy, constitutional affairs and most sectors of criminal and civil law. In practice, there is a considerable difference among the degree of autonomy, but all of them must meet some minimum criteria as listed in the next essay.

20 states have established regional autonomies

In 2009 at least 20 independent democratic states have established about 60 such autonomous regions with a special legal status. Europe has been the cradle of territorial autonomy, since Finland created the first modern autonomy system in a democratic framework in 1921 on the Aland Islands, which were mostly inhabited by Swedish people. Later, 10 other European states adopted regional autonomy as a means of solving ethnic conflicts, of accommodating ethnic minorities and of enhancing regional democracy. Among those states, Spain is a special case as it has endowed all of its regions with different levels of autonomy, transforming itself into a "State of Autonomous Communities".(8)

An early autonomy was created in Panama in the 1930s (Comarca Kuna Yala), followed later by Nicaragua's Atlantic Coast and Nunavut in Canada in 1999. In Africa, autonomy in a modern democratic sense exists only in Tanzania (Zanzibar) and in South Sudan, the latter being likely to opt for an independent state in the referendum on self-determination scheduled for 2011.

Asia has become the second hub of autonomy solutions, and India played the

avantgarde. Under the 5th and the 6th schedule of its Constitution, India created two distinct forms of sub-state autonomies. The 5th schedule is meant to protect the interests of smaller tribal peoples by vesting so-called "Tribal Advisory Councils" with some very limited powers. The 6th schedule provides genuine territorial autonomy for districts and regions in some vital political areas. On the other hand the special autonomy accorded to Jammu and Kashmir in 1947 has not been in force for more than 50 years. Other Asian states such as Indonesia, the Philippines and Papua-New Guinea in Oceania established autonomy to end long lasting bloody conflicts with minority peoples.

Autonomy has also been established in some states that cannot be qualified as democratic based on the rule of law and free and fair elections (e.g. People's Republic of China, Azerbaijan, Tajikistan). Autonomy in a modern sense is defined by the basic prerequisite of democracy and the rule of law. Not only can a modern regional autonomy not exist within an authoritarian state that does not allow all democratic rights and freedoms, but it isn't seen compatible with a concept of exclusive ethnic self-rule as expressed by the form of government of "reservations". Such reservations, originally created in North America for threatened tribal peoples, followed by Brazil and other states, aim to protect the indigenous peoples on their traditional land, as a kind of "conservation area". These entities enjoy limited self-government, mostly linked to individual membership in an ethnic or tribal group, but are excluded from participation in the democratic institutions of the republic they belong to. Autonomies, on the contrary, are fully part of the constitutional and political order of a State and their inhabitants participate in democratic life on both the regional and national/central level.

A quite subtle distinction has to be made between autonomy and general sub-state entities with legislative powers. In some European and Asian states under a general constitutional principle, all sub-state units have been vested with some legislative powers exercised by elected local assemblies and carried out by democratically legitimized local governments (e.g. the Panchayats in India). But this power sharing mostly refers to the local, not the regional level. Moreover, in states such as Italy, all regions enjoy a certain minimum level of legislative and administrative power. But some regions, for ethnic, linguistic and historical reasons have been accorded a special, more far reaching autonomy. The boundaries are blurring, but autonomy in today's political reality remains a special 'exceptional' arrangement for a particular part of a state with a population differing from the majority population of that state. Ethnic-linguistic minorities (or national minorities) are the classic subjects to demand autonomy, especially when settling homogeneously in their original homeland. In some rarer cases, geographical

2. Autonomy and asymmetrical federations

Asymmetrical federations are federations that attribute a different scope of powers to different component units. The Russian Federation brought the feature of asymmetry to its most advanced degree, whereas Spain stretched territorial autonomy to embrace all its 17 regions, or so-called "autonomous communities". It can be considered an asymmetrical regional state, as every region may adopt its own statute with various degrees of autonomy. Hence, asymmetrical federalism is a system in which the single constituent entities have different layers of self-governance. If the ordinary status as federal unit is not sufficient to accommodate the particular needs of a particular community, which requires a major measure of self-government, federal systems can vest such regions with forms of territorial autonomy.[1] On the other hand, federalism may seem unnecessary if there is just one region or one national minority to be accommodated with special rights and institutional arrangements[2].

3. Autonomy and reservations

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

4. Autonomy and dependent territories

Dependent areas are territories that do not possess full political independence or sovereignty as states. There are varying degrees and forms of such dependence. They are commonly distinguished from sub-national entities in that they are not considered to be part of the motherland or mainland of the governing state, and in most cases they also represent a different order of separation. A sub-national entity typically represents a division of the

---

[1] Rudolf Bernhard, *Autonomy and Federalism*, in Yoram Dinstein (ed), *Models of Autonomy,* Tel Aviv 1981, p.25

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

peculiarity is at the root of an autonomy (islands, former colonies and dependent territories, Netherlands Antilles and New Caledonia, Madeira and Azores, Sicily and Sardinia) or the status of former colonies located very distantly from the mainland (Netherlands Antilles and France's New Caledonia). Autonomy has also been established for economic and political reasons, based on the principle of "Two systems – One country" (as is the case with Hong Kong and Macau) or because of the national interest of certain metropolitan areas (Moscow, St. Petersburg, Buenos Aires).(9)

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

The table gives a schematic overview of decentralization and power sharing in existing political systems, subsuming all these forms under the label of "power sharing arrangement".(10) In this text, the term autonomy is used as a clear-cut political and legal concept with specific features.

What is political autonomy? A definition of autonomy

There is no generally accepted definition of autonomy, and no general consensus among scholars and politicians about what political autonomy exactly means as a concept of public or constitutional law. Autonomy can be defined as a means of internal power sharing aimed at preserving the cultural and ethnic character of a

Government arrangement	Description of the arrangement	Examples
Associated state	A federal (treaty) relationship wherein the smaller polity is linked to a larger state. It has substantial authority over its own affairs, but very little influence on those of the larger state. Usually either party may dissolve the relationship at any time.	Cook Islands, San Marino, Micronesia, Holy See
Condominium	A polity is jointly ruled by two authorities in a way that permits substantial self-rule.	Andorra
Confederation	A loose, but institutionalized co-operation of two or more independent states without federal constraints	CIS, EU, Serbia-Montenegro (until 2006)
Reservation	A form of self-governance of a smaller people on a given territory, with separate "citizenship" as legal members of the titular ethnic group of the reservation, almost no participation to general affairs of the state	Navajo, Sioux, Hopi (the United States), Yanomami (Brazil) etc.
Federation	Two or more constituent entities enter into a constitutional framework with common institutions. Each member state retains certain delegated powers and the central government also retains powers over the member states.	Belgium, Germany, Switzerland, USA, India, Russia, Brazil, Canada etc.
Dependent territory	A political dependency, as defined under Article 73 of the UN Charter, is not considered to be part of the motherland or mainland of the governing state	Gibraltar, Virgin Islands, Tokelau etc.
Territorial autonomy (also called "home rule")	Integral parts of a political sovereign state that have legislative and executive powers entrenched by law. Specific solutions for one or more units of a state, but not for the whole territorial state structure	Aland Islands, Gagauzia, Aceh, Green-land, Muslim Mindanao etc.

region and ensuring a major dimension of regional democratic self-government. Autonomy consists of permanently transferring a certain minimum amount of powers suitable to this purpose to a clearly defined territory, leaving only residual responsibilities to the central state.

Territorial autonomy in a proper sense not only encompasses administrative powers of local bodies. It also requires the existence of a locally elected legislative assembly independent from central state institutions with a minimum power to legislate in some basic domains, as well as an elected executive who implements this legislation in the given autonomous areas. In practice, not every form of government body labelled "autonomous" is consistent with the criterion of a region governed by democratically elected autonomous bodies, especially if the concerned region is part of a non-democratic state. However, if the local or regional population and the national minorities are involved in the management of the affairs of the territory, "autonomy" in a proper sense may not be fulfilled, but we can nonetheless speak about "autonomy-based sub-state arrangements".(11)

Neither in political practice nor in scholarly literature is there a clear distinction between various devices of power sharing. Not every region officially labelled as "autonomous" is a genuine autonomy, meeting all required criteria. On the other hand, several regions in different states avoid the term "autonomous," although they are autonomies according to the legal criteria. In order to determine exactly what autonomous regions exist in the world today (or in Europe and South Asia), objective, scientifically grounded criteria have still to be set. Ruth Lapidoth suggests that when definition criteria are to be chosen, one should start from the three classic elements of a state (territory, people and control by a government): (12)

1. Territorial government: freedom from control or interference by the government of another state in the internal affairs of the state in the executive, legislation and judiciary.
2. Participation of the population: democratically elected representatives of the whole regional population are vested with political power.
3. Economic and social jurisdiction: complete autonomy with respect to economic and social affairs, but not in external affairs. This could be enlarged to the term "internal affairs," which embraces cultural affairs and all core powers to preserve cultural identity.

The main prerequisite of a regional autonomy is, however, the presence of legislative powers of a regionally elected democratic body. Any form of decentralization of a state that does not encompass legislative powers cannot be qualified as territorial autonomy. Typically, France in Europe and Sri Lanka in South Asia have adopted such a scheme of power sharing limited to decentralized administrative powers. The classic example of decentralisation is France, where the region, although vested with an elected assembly, does not have a genuine statute or constitution, but merely decentralised administrative powers. The major distinguishing feature is the kind of control exerted: whilst the government principally cannot interfere directly with the legal acts of autonomous organs except by judicial procedure (Supreme or Constitutional

country proper, while a dependent territory might be an overseas territory that enjoys a greater degree of autonomy. For instance, many of them have a more or less separate legal system from the governing body. The areas separately referred to as non-independent are territories that are disputed, are occupied, or are internationally not recognized break away regions.[3]

5. Autonomy and administrative decentralization
The mere transfer of administrative powers to regional bodies reduces the "self-government agencies" to a sort of peripheral branch of the state administration, subordinated to carry out decisions taken at the centre.[4] For this reason Corsica, for example, does not qualify as an autonomous region, since its regional assembly may only propose legislative acts to the French government in Paris. A real autonomy must comprise the right to set out its own laws, in both forms, as an exclusive domain or as a concurrent domain within a legal framework set by the central state. Otherwise there is nothing more than the decentralisation of administrative or executive functions. Conversely, Italy's and some other countries' "ordinary regions" are endowed with a legislative council and legislative powers, and thus form the principal second tier of the regional structure of the state.

6. Cultural autonomy
"Cultural" or "Personal autonomy" is granted to the members of a specific community (ethnic, religious, linguistic) and provides for them to be governed through their own institutions and regulation in cultural and social affairs. In contrast to territorial power sharing, as listed above, in this case no special status is granted to a specific territory. This type of autonomy will be illustrated in chapter 10 and 11 of this volume.

6. Related terms
"Devolution" is used to describe the process of transfer of powers in the United Kingdom from the centre to three of its historical regions: Northern Ireland, Scotland and Wales, ultimately transforming them into autonomous regions.
"Self-administration" is not equivalent to autonomy or self-government, as it refers to the transfer of administrative powers, whereas autonomy necessarily has to include legislative powers.
Some times in legal vocabulary as in political speech, the term "self-government" is used in place of autonomy. Self-government can be considered an appropriated term for complete autonomy.

---

3 All present day's dependent territories are listed at: http://en.wikipedia.org/wiki/List_of_dependent_territories
4 See also Council of Europe, *Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe* (rapporteur: Andi Gross), DOC 9824. 3 June 2003. part VI. iii and iv. http://www.coe.int/

Courts), in a regime of decentralisation the central government is fully empowered to control and supervise the acts of the decentralised authorities. In the case of only decentralised powers, the ultimate responsibility lies with the respective central ministries. Autonomy means the definitively enacted and legally entrenched transfer of a minimum amount of legislative and executive power to a regional territorial entity governed by a democratically elected body. The flexibility of the concept of autonomy lies in its scope, the amount of power transferred to the autonomous entity, and the form of entrenchment and legal remedies available in cases of conflict.

There are still huge differences in the quality of existing autonomy arrangements and their practical performance. It would not make any sense to formulate an "optimal standard" of an autonomy, as territorial autonomy must be moulded according to the context and conditions of every single case. Thus, in order to give an overview on which functional autonomy requirement can be met in which form, just minimum standards will be listed along with "best practises" as found in reality. The latter can be formulated by evaluating and comparing the single elements of the applied autonomy system under the criteria of efficiency and stability, of protection of minority rights and a maximum of political participation. Comprehensive autonomy models cannot be exported and applied to an other context, region or community elsewhere in the world. But single elements, duly adapted to the local requirements and designed to cater the specific local needs, can. It will be a main task of future research and consultancy in the field of autonomy arrangements to filter out which of these elements can be regarded as "best practises" when there is agreement among the conflicting parties on common aims to be achieved.

Thomas Benedikter,
economist and social researcher in Bozen (South Tyrol, Italy) writes for several magazines and reviews on ethnic minorities and ethnic conflicts. Currently he collaborates with EURAC (Institute for Minority Rights) for the EURASIA-Net-program with South Asian partners. Apart from other books on ethnic conflicts and minority protection systems (Nepal, Kashmir, Kosovo, Europe's Ethnic Mosaic) in 2007 he published "The World's Working Regional Autonomies" (ANTHEM Press, London/New Delhi) and "Language Policy and Linguistic Minorities in India" (LIT Berlin/Münster, 2009).

References: see the annex 3, bibliography, general section on autonomy.
Some definitions of autonomy are to be found at page 34 of this volume.
As editor of the present volume Thomas Benedikter is also responsible for all texts not specifically countersigned.

Endnotes
1 European states with fewer than 1 million of inhabitants: Andorra, Cyprus, Iceland, Liechtenstein, Luxembourg, Malta, Monaco, Montenegro, San Marino and the Vatican. Cyprus and Montenegro are also home to minorities.
2 There are 45 national minorities officially recognised in the Russian Federation, the major European state in terms of population (143 million in 2005). Information on Europe's ethnic minorities in a condensed form: Thomas Benedikter (ed.), Europe's Ethnic Mosaic – A Short Guide to Minority Rights in Europe, EURAC, Bozen/Bolzano 2008, available at: http://www.eurac.edu/NR/rdonlyres/51B280EF-2EA8-4DFA-AC78-85AA5705244F/0/EuropesEthnicMosaic_FINAL_for_website.pdf
3 The term "regional" in this publication is used in the European sense, by which a general sub-state territorial unit is usually placed between the central state and the local government level. The equivalent in India are the 330 districts and for Europe the 250 regions of the EU. The term "regional" here is not used to cover the areas of South Asia or Europe.
4 In India the concept of nation refers only to the Union, whereas single ethnic groups officially are never termed as 'peoples' or 'nations'.
5 This is the case with Quebec and Nunavut in federal Canada, and with Tatarstan and many other federal subjects in the Russian Federation. It has been the case of some states of the Northeast of federal India and once for Jammu and Kashmir; the federal state Belgium has accorded autonomy to the German Community. Regarding the criteria of distinction see chapter 2.2
6 A good overview on all possible power sharing solution is also given in: Venice Commission, A general legal reference framework to facilitate the settlement of ethno-political conflicts in Europe, adopted by the Venice Commission on the 44th plenary meeting, 13-14 October 2000
7 Yash Ghai, Ethnicity and Autonomy: A Framework for Analysis, in Yash Ghai (ed) Autonomy and Ethnicity – Negotiating Competing Claims in Multi-ethnic States, Cambridge University Press 2000; and Christoph Pan/Beate Pfeil, National Minorities in Europe – Handbook, Vienna 2003, p.190-196
8 For the complete list of autonomous regions see the annex.
9 The latter are rather subjects of an extended administrative autonomy, whereas Hong Kong deserves a separate consideration. See the chapter on China' special forms of autonomy in: Thomas Benedikter, The World's Working Regional Autonomies, p.317-346
10 This table is following the scheme published by the Tibet Justice Center under the title "Autonomy types". See: http://www.tpprc.org/scripts/conceptofautonomy.aspx. For the dependent territories and associated states see the complete list in Thomas Benedikter, The World's Working Regional Autonomies, London/New Delhi 2007, in the Annex at page 134
11 This is the case with the regional autonomies in the People's Republic of China, in Uzbekistan (Karakalpakstan) and Tajikistan (Gorni Badakshan).
12 Ruth Lapidoth, Autonomy: Flexible Solutions to Ethnic Conflicts, 2001, p.18

Minimum standard and "best practises" of regional territorial autonomy

Functional elements	Minimum standard of regulation	Best practises
1. Political representation in the autonomous region (A.R.)	Democratically elected regional assembly and president, independent from the central state. Special arrangements to ensure representation in the legislative and executive bodies to internal ethnic minorities within in the A.R.	Wherever internal minorities are represented not only in the territorial autonomous assembly, but also in the autonomous government.
2. Political representation at the national level	Regardless of its geographical and demographic size, the A.R. should be entitled to representation in the central parliament (to be ensured through specific constituencies or exceptions from the electoral laws for ethnic minorities in A.R.	Every small A.R. represented in the national parliaments (Nordic Islands, New Caledonia, Comarca Kuna Yala, Nunavut, Italy's small A.R., South Sudan)
3. Legislative and executive powers	Basic powers to achieve the fundamental aim of the autonomy as shared by both parties (state and region), in particular with regard to the protection of cultural identity and the material basis for autonomy. Taxation, police, judiciary and most parts of civil and penal law are only exceptionally part of autonomous powers, let alone foreign affairs, defence, currency and macroeconomic policy.	Associated statehood offers the maximum extent of autonomy (only defence, foreign affairs and monetary policy left to the central state) and includes the possibility to freely terminate this kind of relationship. Almost no A.R. has achieved this level.
4. Entrenchment of the autonomy statute or law	The autonomy arrangement should be legally entrenched by nothing less than a constitutional law. An ordinary state law should be amendable only by a qualified majority of the national parliament, but after consultation with the concerned A.R.'s regional assembly or government.	All autonomies entrenched by international or bilateral agreements like South Tyrol and the Åland Islands; Spain with a constitutionally enshrined "right to autonomy".
5. Procedures of revision of the autonomy	Only with the consensus of the majority of the representatives of the elected bodies of the region, and after conclusion of a mediation procedure within a commission with equal composition between the central government and the A.R.	The Ålands, Catalonia and Basque Country (requisite consent of regional assembly, popular referenda required when the autonomy statute is amended).
6. Settlement of disputes between the centre and region	The first level of mediation in case of disputes about the autonomy of the A.R. occurs in appropriate joint A-R.-state commissions. The second step has to consist in two levels (regional and state) of the judiciary with appeal to the Constitutional Court.	South Sudan, South Tyrol, Greenland, Faroe, Åland Islands
7. Legal remedies for individuals and groups	At least two tiers of legal remedies are required: a first instance at regional level, a second one at the national level (Supreme Court or Constitutional Court). The legal remedy is required for both the individuals concerned by legal acts of an autonomous body, and for the autonomous institution concerned by state interventions.	In European states citizens can complain before the European Court for Human Rights. With international entrenchment, complaints can be addressed to an International Court and to kin-states (South Tyrol).

9. Control of regional economic resources	The autonomous powers must include the regulation of the exploitation of the basic economic resources of a region. Regional economic policies, labour market, environmental protection, urban planning must be under the A.R.'s legislation. Collection of taxes by the A.R.	Nunavut, Comarca Kuna Yala, the Åland Islands, Aceh, Greenland and Faroe, Catalonia, Basque Country and other A.R. in Spain.
10. Forms of regional citizenship	Forms of control of the degree of migration into and out of the A.R., endowing the A.R. with some possibilities of control over immigration, attributing its inhabitants specific rights linked to the duration of residency in the A.R.	The Ålands, New Caledonia and French Polynesia, Comarca Kuna Yala, Nunavut, South Tyrol
11. Powers in international relations	Possibility of autonomous representation in an international context, right to stipulate international agreements with sub-state entities; right to be a party to international organisations; right to be consulted if international agreements affect the A.R.	Faroe, Greenland, the Ålands (especially the right to opt out from affiliation to supranational organisations), Spain's A.R., Netherlands Antilles, Bougainville and New Caledonia and French Polynesia
12. Language rights	The languages of the minority groups, along with the state language, must be recognised as "official". All citizens of the A.R. must be entitled to communicate and be assisted by all public instances in their mother tongue, choosing freely among the official languages recognized within the A.R.	Most A.R. have appropriated practises in this regard. Optimal forms in Spain, South Tyrol, Crimea and in the Nordic islands.
13. Protection of national minority rights	All powers needed to ensure cultural development as if the region would be part of the kin-state or an independent state. For the language policy, media, education system, information rights, preservation of cultural heritage for A.R. primary powers are needed.	Nunavut, Greenland, Faroe, the Ålands, South Tyrol, Spain's autonomies, Gagauzia, Crimea, Comarca Kuna Yala
14. Consociational structures and internal power sharing	Complex power-sharing among distinct ethnic groups of an A.R. in order to ensure political inclusion of each group and maximum of democratic participation in decision making. The prerequisite is the recognition of group rights.	Northern Ireland, Crimea, South Tyrol, South Sudan
15. Autonomous administration	All autonomous powers must be carried out by autonomous administration under the control of the A.R. The rules of recruitment to these bodies must reflect the multicultural features of a region in both linguistic requirements and individual capacities.	South Tyrol, the Ålands, Greenland and Faroe, Spain's Autonomous Communities, Nunavut, Comarca Kuna Yala
16. Autonomous judiciary	The administration should ensure neutrality of the judiciary within the autonomous region. In A.R. with indigenous peoples the compatibility of public law and traditional and customary law has to be regulated.	Greenland, Basque Country and Catalonia, South Tyrol
17. Human and rights and political freedoms	Important issue for post-conflict areas, where normal legal remedies are too slow or lack efficiency. Special bodies have to monitor the protection of human rights and cater for immediate redress.	In principle ensured in every working autonomy.

Source: the author's elaboration on autonomy statutes and other relevant regulations.

2. The first modern autonomy: the Åland Islands

Thomas Benedikter

Population (2005 estimate)	26,711
Land area	1.527 km²
Total area	6.784 km²
Capital	Mariehamn
Official language	Swedish
Autonomy since	1921

http://en.wikipedia.org/
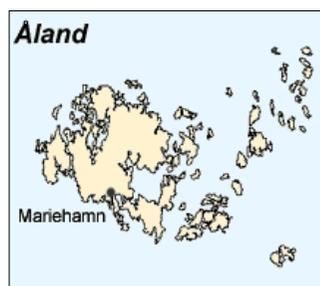
A group of 6.500 tiny islands in the Baltic Sea between Finland and Sweden is the cradle of modern territorial autonomy in the context of a democratic state with rule of law. Most of the 27.000 Ålanders are ethno-linguistically Swedish, but the islands since 1809 are possessed by Finland, which previously was a part of Tsarist Russia. When after 1917 the Ålanders demanded self-determination, the issue was settled by the League of Nations in 1920, when Finland recognized their right to maintain their culture, language and traditions and to enjoy a demilitarized and autonomous status, by the Autonomy Act of 1921. Finland undertook a series of commitments concerning the language of instruction in schools, the limitation of the sale of land to non-residents, financial matters and the supervisory function for the Council of the League of Nations. These guarantees reached by agreement between Sweden and Finland and approved by the League of Nations on 27 June 1921, were incorporated into the Finnish legal system by the 1922 Åland Guarantee Act[1].

While Åland's autonomy arrangements contain many elements of minority protection, the territorial aspect has always been the main concern. The autonomy of Åland has been expanded through two major revisions to the autonomy act in 1951 and in 1991. The first revision, initiated after World War II, when in Finland a new generation of politicians came to power, introduced the specific "right of domicile" (a kind of regional citizenship), although elements

had already been included in the previous act. National symbols were created (a flag, stamps and a national museum). A regional movement to reinforce the existing autonomy developed in Åland over the following decades, leading to the approval of the third Autonomy Act on 16 August 1991, n.1144 (in force since 1 January 1993)[2]. The aims of the 1991 revision, enacted with the mutual consent of both the Finnish government and the Åland legislative assembly, was to more clearly define the legislative responsibilities of the state and of the provincial authorities, to transfer additional areas of responsibility to Åland and to provide for later transfer of increased authority in other areas, expanding the autonomy into the economic sphere. Satisfactory knowledge of Swedish was added as a requirement for regional citizenship.

Today the attitude of most Ålanders towards autonomy is positive, and both the Finnish and the Åland governments present this autonomous region as one of Finland's successful policies for safeguarding the rights of minorities in Finland. The preservation of the identity of the Swedish-speaking minority in Finland has largely been achieved. The combination of wide-ranging provisions in the spheres of language and education, as well as regional citizenship aiming at the protection of the cultural peculiarity of Åland, has contributed to allaying fears that the language and identity of the Ålanders would be lost through eventual assimilatory state policies or immigration processes. Ever since 1921, the political and institutional situation has been stable and peaceful. By clarifying the division of powers and increasing economic autonomy, the effectiveness of the institutions has been enhanced. The Åland Islands can be considered a successful case of conflict regulation through the gradual development of autonomy based on compromise between the conflict parties, although in its early years the establishment of autonomy did not always go smoothly.

References:
http://www.aland.fi and www.ls.aland.fi: The Ålands Government official website
http:///www.lagtinget.aland.fi : The Åland Parliament's website
http://www.finlex.fi/pdf/saadkaan/E9911144.PDF or at:
http://www.lagtinget.aland.fi/eng/act.html: The Åland Autonomy act, 1991
http://virtual.finland.fi/finfa/english/minorit2.html: The autonomy of Åland
http://www.vn.fi/vn/english/index.htm: The Finnish constitution, in force since 1 March 2000

---

1 This agreement is often quoted as an example of a longstanding bilateral treaty. However the Åland Agreement was not a legally binding treaty. Later it developed into international customary law obliging Finland to safeguard the Ålanders' autonomy. For the text see Hurst Hannum (ed), *Documents on Autonomy and Minority Rights*, Dordrecht 1993, p.141-143

---

2 Act on the Autonomy of Åland, 1991

3. Italy's autonomous regions

Italy was founded as a unitary state in 1861, assembling under the Savoy dynasty other states and reigns of the Italian peninsula. The territories inhabited by Italians were unified only after World War I, when Trent and Trieste joined the Italian Reign. But at the same time, other regions with non-Italian populations (South Tyrol, Istria, Dalmatia) were annexed to Italy. In the first period of nation building, the question of regional autonomy was not on the agenda, as the search for national identity and unity was strong. The fascist regime under Mussolini (1922-1943) exacerbated this tendency to authoritarian centralism.

After World War II, Italy changed its political system: in 1946, it replaced the monarchy with a democratic republic and in 1948, with the new constitution, it transformed from a unitary into a regionalist state, recognising the 19 constituent Regions (one – Molise - was added later) as the most important territorial bodies with legislative and executive powers. While four "Regions with a special statute" (Friuli-Venezia Giulia followed later) were established in 1948, it took the ruling political parties until 1970 to establish the 15 "Regions with ordinary statute" as territorial entities with democratically elected legislative and executive bodies. The former were created in order to tackle some specific situations for historical and ethnolinguistic reasons. In the North, three regions with ethnic minorities claimed self-determination or at least a special autonomy: the Aosta-Valley with its French-speaking population, Friuli-Venezia Giulia with Rhaetoromanian and Slovenian minorities, and South Tyrol, inhabited predominantly by German-speaking Tyroleans. In the South, Sicily first claimed independence, later autonomy along with the second major island Sardinia, which is considered linguistically distinct from the Italian mainland. Hence, five of the 20 regions (Aosta Valley, Trentino-South Tyrol, Friuli-Venezia Giulia, Sicily and Sardinia) were granted a special status, based on constitutional law. Trentino-South Tyrol is a special case as this region is composed by two distinct autonomous provinces, Trentino and South Tyrol/Alto Adige, which are endowed with the largest part of the autonomous powers. In addition, South Tyrol's autonomy status is entrenched in an international peace treaty signed in 1946 between Austria and Italy.

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

- foreign and defence policy
- co-ordination of EU-policies
- citizenship and immigration
- civil and penal codes
- judiciary local authorities
- protection of environment (first level)
- protection of equality of civil and social rights

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

Italy's five regions with a special statute

But on the way towards federalism, or to a "State of autonomous communities" like Spain, Italy still has a long way to go. Presently, Italy's "ordinary regions" not only face the task of building up more efficient and comprehensive administrative capacities, but also of increasing their fiscal capacities in order to establish a genuine fiscal federalism. In the 1990s, strong political pressure arose in Italy's northern, highly industrialised regions, whose economies grew faster than in the rest of Italy, but which carried the burden of financing the central state and the less developed South. The richer regions claimed the devolution of additional powers in search of various regional solutions in the North and an easing of the tax burden. The central state is widely perceived as an unproductive mechanism, and citizens demanded that decision-making with regard to the modern welfare system should be transferred on the regional level.

References
The Italian Constitution can be found at: http://www.eurac.edu/miris.
The statute of South Tyrol at: http://www.provinz.bz.it/lpa/autonomy/autonomy_statute-eng.pdf

4. Devolution in Scotland, Moving Forward

Rami Ousta

'Well done. This is a good day for Scotland, and a good day for Britain and the United Kingdom… the era of big centralized government is over!' [1] This was the statement made by Tony Blair, previous UK Prime Minister, on 13th Dec 1997, commenting on the positive outcome of The Scottish Referendum on Devolution which was concluded on 11th September 1997, paving the way for the introduction of The Scotland Bill on 17 December 1997, which received royal assent and became the Scotland Act on 19 November 1998. The Scotland Act 1998 design and arrangements conferred official as well as legal frameworks for the Scottish devolution stipulating administrative, legislative and executive powers.

The main outcome of that phase entailed, through the legislative devolution scope, the setting up of a devolved Parliament and 'Executive'[2] to Scotland away from Westminster centralized settings: the act constituted the creation of the Scottish Parliament, the first elections of which took place 6 May 1999 as elected members came to be acknowledged as Member of Scottish Parliament (MSPs) who serve a four year fixed term of office.

However, the parliament is given limited powers which are stipulated in the legislations of the Act which, in turn, can be outlined in two main settings or contexts:

- Reserved matters that are preserved or retained in the experience of Westminster United Kingdom Parliament.
- Devolved matters which are focused on matters that are not reserved.

The setting up of the Scottish Parliament marked a turning point on the road to devolution; however, the Scotland Act 1998[3] stipulated various frameworks of operation and structuring that maintained centralized limitations reserved to Westminster. In other words, the Act granted the Scottish Parliament powers of legislation on areas which are not kept reserved for central government. Schedules 4 and 5 of the Act[4] stipulate areas where legislative scopes and contexts are reserved and / or protected from modifications and where the Scottish Parliament will not have control over this.

Population (2005)	5,062,011
Land area	78.782 km²
Capital	Edinburgh
Official language	English, Scots, Gaelic
Autonomy since	1998

http://en.wikipedia.org/

The Ben Nevis, Scotland's highest mountain.
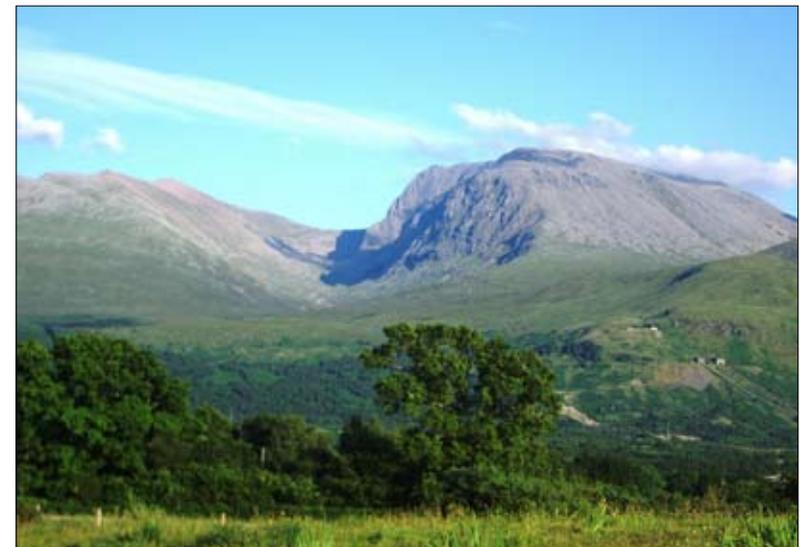
This has not been a straightforward clear cut introduction and the area of reserved matters remains convoluted and complex. For example, the issue of legislative competence notes comes into mind when considering the executive powers devolved to the administrations under section 63 where the Parliament has no legislative competence. It is noteworthy here that the Scotland Act 1998 stipulates that legislative devolution, which is provided for the Scottish Parliament, should not and can not limit the competence of the UK Parliament to legislate for Scotland under section 28. Any possible changes or transformation of any matter in either setting into the other can only be granted or made by Order in council under section 30 of the Act, and when both Westminster and Scottish Parliaments agree on such change. In addition, for the Order in Council to be approved, in draft, both Houses at Westminster and the Scottish Parliament need to be in agreement.

The noted reserved matters as outlined in the Scotland Act cover diverse settings politically, economically, civic and in other dimensions, and can be highlighted in restraints such as: the constitution; fiscal and economic; trade and industry including customer protection; social security; defence and national security; national transport regulations; broadcasting; civil service; foreign affairs; race, immigration and nationality; equal opportunities; employment; energy; medical ethics.

However, there are areas where the Scottish Parliament remains responsible for, and these are known as devolved matters: devolved matters reflect areas which do not fall under the reserved grouping, or are outside the legislative competence of the Scottish Parliament. Devolved matters can be outlined in the following (not conclusive): Health; Education; Housing; Sport and Arts; Agriculture and Environment; Forestry & Fishing; Emergency Services Planning; Social Work; Heritage; some Transport (Scottish road networks ports); Tourism; Local Government; Law and Home Affairs; the Prosecution System and the Courts; the Police and Fire Services; Statistics /census data, etc.

While the Scottish parliament is placed in a position to debate and consider issues and subjects related to reserved matters, they are not in a position to legislate on these matters. However, on the other hands, the Westminster Parliament is able to continue to legislate on devolved matters to Scotland if and when the latter gives consent to doing so. This is an arrangement that was introduced through what is known as the Sewel Convention.[5]

It is relevant to note that The Scotland Act further entailed, as part of the devolution context, the setting of what is known as the Scottish Executive[6] which was given executive functions in devolved matters; the setting, which includes a First Minister, ministers appointed by the First Minister and the Scottish Law Officers, acts like a cabinet-style and cabinet members who are jointly and independently responsible to the Parliament. The Scottish government (Executive) is compelled to effect and implement duties and responsibilities stipulated by European Community and UK obligations in the devolved area.

In a nutshell, the context of the devolution in the UK is reflected in the relative enacted statutes as well as through a variety of comparatively formal arrangements paired with a series of agreements between the United Kingdom Government and the devolved administrations stipulating the principles, standards and notions which regulate and structure the conduct of their mutual relations.[7] Although the agreements ".. are not legally binding but there is nevertheless a clear expectation that the spirit and letter will be observed by all parties." [8]

It is a fact that devolution does not constitute mere definitions or static structures; it is a dynamic process that entails developments and reactive growth to various political, economic, civic and other factors that dictate advances, improvements and maturity. This is a view that is shared with all concerned stakeholders including politicians, academics and all civic structures. Stimulated by such vision and viewpoint, it became a natural progression for Scotland to visit on and evaluate the established structures of devolution measuring its effectiveness and efficiency as well as assessing the Scottish needs in response to such enhancing experience. Undoubtedly, the devolution is Scotland has proved a massive constitutional progress, which, in various settings, proved very successful. However, ten years on from devolution, the need to assess such success became a necessity rather than a choice for the Scottish parliament and government. This has been progressed through the new government push for a referendum addressing the issue and seeking the Scottish peoples' views.

The Scottish Government launched in August 2007 a consultation manifesto

entitled: Choosing Scotland's Future: a National Conversation,[9] in which the government sought to establish and set a change in the context of questioning the significant powers that are currently reserved to the United Kingdom Parliament. This national conversation, as the government states in the document, will allow the people of Scotland to consider all the options for the future of the country and make informed decisions. This paper invites the people of Scotland to sign up for the national conversation and to suggest how the conversation should be designed to ensure the greatest possible participation. In the Scottish Government's view there are three choices:

- First, retention of the devolution scheme defined by the Scotland Act 1998, with the possibility of further evolution in powers, extending these individually as occasion arises.

  This is an option that does not really stand as there is a serious commitment from all stakeholders and concerned people that devolution has been very successful and rewarding to the people of Scotland and that there is no way that can or should be kept static or reversed.

- Second, redesigning devolution by adopting a specific range of extensions to the current powers of the Scottish Parliament and Scottish Government, possibly involving more enhanced autonomy, but short of progress to full independence.

  In this option, attention is given to exploring many of the policy areas currently reserved to the UK Parliament and UK Government under the Scotland Act and how increased benefits can be gained from transferring such powers into the Scottish Parliament and Scottish Government: power to legislate and exercise executive responsibility in these reserved areas, which include matters such as fiscal policy, social security, employment law, health and safety law, regulation of certain professions, energy policy, company law, competition law, firearms, broadcasting, elections and equal opportunities. It is believed that 'enhanced devolution could clarify responsibilities and increase the accountability and effectiveness of Government and Parliament'. [10]

  This option seems to attract most attention among diverse stakeholders such as politicians, academics, civic bodies and the Scottish population. Most people and stakeholders feel that the initial devolution experience deserves to be enhanced and progressed beyond the present settings as the Scotland Act left gaps and restrictions that should be rectified through seeking more powers for the Scottish Parliament and the Scottish Government (executive).

- Third, which the present Scottish Government in power favours, extending the powers of the Scottish Parliament and Scottish Government to the point of independence. This option is mainly called for by the newly elected administration (May 2007) led by the Scottish

Northern Ireland

Population (2005 estimate)	1.789.000
Land area	13.843 km^2
Capital	Belfast
Official language	English, Irish, Ulster Scots
Autonomy since	1998

Retrieved from: http://en.wikipedia.org/

Northern Ireland consists of six of the traditional nine counties of the historic Irish province of Ulster. It was created as a distinct subdivision of the UK on 3 May 1921 under the Government of Ireland Act 1920, though its constitutional roots lie in the 1800 Act of Union between Great Britain and Ireland. For over 50 years it had its own devolved government and parliament. These institutions were suspended in 1972 and abolished in 1973. Repeated attempts to restore self-government finally resulted in the establishment of the present-day Northern Ireland Executive and Northern Ireland Assembly. The Assembly operates on consociational democracy principles requiring cross-community support.

Northern Ireland was for many years the site of a violent and bitter ethno-political conflict ("The Troubles") between those claiming to represent Nationalists, who are predominantly Roman Catholic, and those claiming to represent Unionists, who are predominantly Protestant. Unionists want Northern Ireland to remain part of the United Kingdom, while nationalists wish it to be politically united with the rest of Ireland. In general, Unionists consider themselves British (or "Ulstermen") and Nationalists see themselves as Irish, though these identities are not necessarily mutually exclusive. Since the signing of the Belfast Agreement (or "Good Friday Agreement") in 1998, most of the paramilitary groups involved in the Troubles have ceased their armed campaigns.

In recent years there has been noticeable changes to classification of nationality of people living in Northern Ireland. Since the start of the Peace Process it has appeared that a growing share identity of Northern Irish is beginning to emerge from the usually British/Irish nationality cleavage. The terms seems to show a coming together of both British and Irish tradition to create a tradition of which is both noticeable of British and also of Irish origins. Other traditions like the Scotch Irish, Ulster Scots, and Ulster Irish have appeared in areas were there is close cultural ties with Scotland or the Irish Republic, most notable through history, culture, identity, and language.

National Party (SNP), which formed part of their constitutional objectives. However, this option remains ambiguous and has had various challenges by various stakeholders including political parties, institutions and a large section of the Scottish society in addition of course to the Westminster government. Of course, such scope of addressing and advancing the question of Scottish independence would require the consent of the Scottish people through a referendum. This context is stimulated in the discussion as one of the options for such a referendum where 'questions on the principle of independence, on agreement for the Scottish Government to negotiate with the UK Government to achieve independence for Scotland or on agreement to a concluded Act or Treaty with the UK Government.

Within the scope of this report, the focus is on the second option where the government seeks to establish input and support from the Scottish people with regards to gaining or requesting further devolution powers which, in such important areas, will reflect on the Scottish scene very positively allowing the Scottish Parliament and Scottish Government to take their own decisions on these issues in the interests of Scotland and in response to the views of the people of Scotland, in addition to achieving greater coherence in decision-making and democratic accountability for delivery of policy.

Following on the launch of the National Conversation seeking opinions of the Scottish people, political parties' differed in their response and acceptance of this conversation in the context it was proposed by the minority government in power (SNP) within their agenda of independence. The argument was around how such National Conversation can be transparent and realistic while it is stimulated by the Scottish National Party's line of independence.[11] The Scottish Parliament, motivated by a unified approach to review the Scotland Act 1998, voted to set up an independent body for such task, and on the 6th December 2007 a Commission on Scottish Devolution was created, and Chairmanship of this Commission was given to Sir Kenneth Calman. And this setting was supported by the three main political parties in Scotland: Labour, Conservatives and Liberal democrats while opposed by SNP. The remit of this Commission is assigned to:

".. review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present

constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom."[12]

While the rejection of the national Conversation at the Scottish Parliament raised questions around its context and legitimacy, the remit of the Commission was directed into excluding the framework of considering the question of Scottish independence in the context of its work. Following on the establishment of this Commission, support from the United Kingdom government was clearly expressed and full support to the remit of this Commission was conveyed. Although it acknowledged that the legal supremacy of the Westminster Parliament is integral, the formed Commission on Scottish Devolution is given specific tasks and remit to explore the future of Scottish devolution within the UK: since its inception, the Commission has been involved with various stakeholders seeking ongoing consultations assessing the Scottish voice in relation to devolution and what additional powers can be gained or adjusted to the original setting assigned by the Scotland Act 1998 and how the binding of reserved matters by Westminster Parliament can be negotiated in an enhancing power to Scottish devolution.

The general view in Scotland at several levels, paired with various responses to the Commission's continuous consultations, can only be described as extremely complementary to the whole devolution issue and progress over the last ten years. In addition, the first report produced by the Commission,[13] published in December 2008, and the feedback direction from various responses have been outlined in this document reflecting the general direction and options, which could potentially serves the Scottish devolution more effectively and efficiently. The whole context of Reserved or Devolved matters reflect divisive framework of responsibilities that affects not only government's settings but also the whole social, political and economic perceptions. There will be more merit in visiting on these terms and structures not only in terms of language but also in terms shared accountability and establishing a cooperative responsive and responsible culture within such framework.

As mentioned earlier, the overall experience and progression of devolution in Scotland have witnessed over the last ten years a very positive impact and

outcomes that have definitely benefited the whole Scottish context at various levels. This has been reflected at various dimensions not only in relation to effective government and parliamentary issues, but also in relation to building a new sense of confidence and ownership and a sense of belonging among the Scottish community. The structures created by devolution in Scotland have brought clear advantages and benefits some of which can be outlined as follows:

- More open and transparent structures of government and more accountability contexts to dealing with policies in response to Scottish issues.
- More engagement structures with stakeholders and community groups and issues.
- Stronger presence and support to the voluntary sector and community groups.
- More openness into parliamentary working and accountability and much enhanced awareness and involvement of civic society in governmental and parliamentarian structures.
- Devolved government have been able to respond more effectively to local issues and needs and the Scottish Parliament has become more engaged and responsive to the needs of the Scottish community.

While the above might sound generic, there are various settings and structures where this can be supported by examples and outcomes, which have been widely acknowledged, documented and evidenced through various developments and changes on the Scottish scene. Good examples are stimulated by a voluntary sector and community perspective where, over the last few years, the Scottish scene witnessed several developments that helped:

- Establish stronger voluntary sector and community presence with more focused attention to Scottish settings within policy and strategic contexts.
- Establish more empowered and engaged communities and more direct links to policy and decision makers, as well as the political agendas of political parties.
- Generate a more accountability and direct ownership of decisions relevant to community cohesion and development.
- More focused attention to Scottish issues in relation to issues like health, education, policing, etc.

It will be naïve to assume that devolution can be achieved or progressed through a set of definitions or concepts; devolution is a process and a progressive structure that entails various dimensions of planning and compositions that emerge within the legal, civic, political, economic and other frameworks of operation as well as legislative and constitutional frameworks. Thus, it is vital to remember that devolution is not and should not be a static context but rather

The Scottish Parliament's new assembly hall in Edinburgh

a dynamic process which, in turn, should be stimulated by pro-active rather than reactive responsibilities to the needs of the stakeholders concerned. The Scottish devolution, with its limitation, reflects a success story; ten years on, this story is still unfolding and progressing within a vibrant perspective and focused opportunities. However, the question of this journey turning into a full independence setting is still around provoking contradicting views and stimulating convoluted perspectives. The unique setting of the UK, many argue, would entail it a big mistake for Scotland to seek or exist as an independent country. This is due to various economic, societal, political, demographic and geographic settings that render independence an unpractical and unrealistic choice. The present global economic crunch provided one example where interference of the UK government helped saving Scottish financial institutions from disaster.

Rami Ousta,
CEO of the Black & Ethnic Minorities Infrastructure in Scotland (BEMIS), has an extensive experience in policy & strategic development in relation to equality, human rights, community regeneration, social justice, research and consultation work an national and EU levels. This is complemented by extensive representation at various national and EU policy forums and committees.
rami.ousta@bemis.org.uk
www.bemis.org.uk

References:
Evans, Mark, Devolution to Scotland and Wales: Is 'Power Devolved Power Retained'? in Steve Lancaster (ed.) Developments in Politics Vol. 10, 1999, p68.
http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_1
http://www.opsi.gov.uk/acts/acts1995/ukpga_19950004_en_22
http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_14
http://www.parliament.uk/commons/lib/research/briefings/snpc-02084.pdf
Turpin, Colin, British Government and the Constitution 5th Ed., Butterworths, 2002, p.265
Scotland Office Departmental Report, Cm 5120/2001, par. 3.2, p.10; at: http://www.scotlandoffice.gov.uk/scotlandoffice/files/SO_RPRT.pdf

http://www.scotland.gov.uk/Resource/Doc/194791/0052321.pdf
http://www.andersonstrathern.co.uk/knowledge/html/NationalConversation.pdf
See debate at: http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor1206-02.htm#Col4133
Further info and link at: http://www.commissiononscottishdevolution.org.uk/about/
See as well reports at: http://www.commissiononscottishdevolution.org.uk/papers.php
http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-01-new-scot-dev-summary_v6.pdf

Endnotes

1 Evans, Mark, Devolution to Scotland and Wales: Is 'Power Devolved Power Retained'? in Steve Lancaster (ed.) Developments in Politics Vol. 10, 1999, p68.
2 The Scottish National Party (SNP) administration that won power in the 2007 elections re-branded the Scottish Executive, which stood and had been known for Ministers and their civil servants, as the Scottish Government.
3 http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_1
4 http://www.opsi.gov.uk/acts/acts1995/ukpga_19950004_en_22
5 http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_14
6 http://www.parliament.uk/commons/lib/research/briefings/snpc-02084.pdf
7 Please note that The Scottish National Party (SNP) administration that won power in the 2007 elections re-branded the Scottish Executive (Ministers and their civil servants) as the Scottish Government.
8 Turpin, Colin, British Government and the Constitution 5th Ed. , Butterworths, 2002, p.265
9 Scotland Office Departmental Report, Cm 5120/2001, par. 3.2, p.10; at: http://www.scotlandoffice.gov.uk/scotlandoffice/files/SO_RPRT.pdf
10 http://www.scotland.gov.uk/Resource/Doc/194791/0052321.pdf
11 http://www.andersonstrathern.co.uk/knowledge/html/NationalConversation.pdf
12 See debate at: http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor1206-02.htm#Col4133
13 Further info and link at : http://www.commissiononscottishdevolution.org.uk/about/
See as well reports at: http://www.commissiononscottishdevolution.org.uk/papers.php
14 http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-01-new-scot-dev-summary_v6.pdf

Wales

Population (2005 estimate)	3.004.600
Land area	20.779 km²
Capital	Cardiff
Official language	English, Welsh
Autonomy since	1998

http://en.wikipedia.org/

Wales (Welsh: Cymru) is a country that is part of the United Kingdom, is officially bilingual, with both Welsh and English having equal status. Originally (and traditionally) a Celtic land and one of the Celtic nations, a distinct Welsh national identity emerged in the early fifth century, after the Roman withdrawal from Britain. The 13th-century defeat of Llewelyn by Edward I completed the Anglo-Norman conquest of Wales and brought about centuries of English occupation. Wales was subsequently incorporated into England with the Laws in Wales Acts 1535–1542, creating the legal entity known today as England and Wales. However, distinctive Welsh politics developed in the 19th century, and in 1881 the Welsh Sunday Closing Act became the first legislation applied exclusively to Wales. In 1955 Cardiff was proclaimed as national capital and in 1999 the National Assembly for Wales was created, which holds responsibility for a range of devolved matters. The UK Parliament retains responsibility for passing primary legislation in Wales, but since the Government of Wales Act 2006 came into effect in 2007, the National Assembly for Wales can request powers to pass primary legislation as Assembly Measures on specific issues. The National Assembly is not a sovereign authority, and the UK Parliament could, in theory, overrule or even abolish it at any time.

The National Assembly was first established in 1998 under the Government of Wales Act. There are 60 members of the Assembly, known as "Assembly Members (AM)". Forty of the AMs are elected under the First Past the Post system, with the other 20 elected via the Additional Member System via regional lists in 5 different regions. The largest party elects the First Minister of Wales, who acts as the head of government. The Welsh Assembly Government is the executive arm, and the Assembly has delegated most of its powers to the Assembly Government. The new Assembly Building designed by Lord Rogers was opened by The Queen on St David's Day (1 March) 2006.

After the National Assembly for Wales election, 2007 Welsh Labour and Plaid Cymru, the Party of Wales, which favours Welsh independence from the rest of the UK, entered into a coalition partnership to form a stable government with the "historic" One Wales Agreement. As the second largest party in the Assembly with 15 out of 60 seats, Plaid Cymru is led by Ieuan Wyn Jones, now the Deputy First Minister of Wales. In the British House of Commons, Wales is represented by 40 MPs (out of a total of 646) from Welsh constituencies. A Secretary of State for Wales sits in the UK cabinet and is responsible for representing matters that pertain to Wales. The Wales Office is a department of the UK government, responsible for Wales.

Wales' National Assembly building in Cardiff
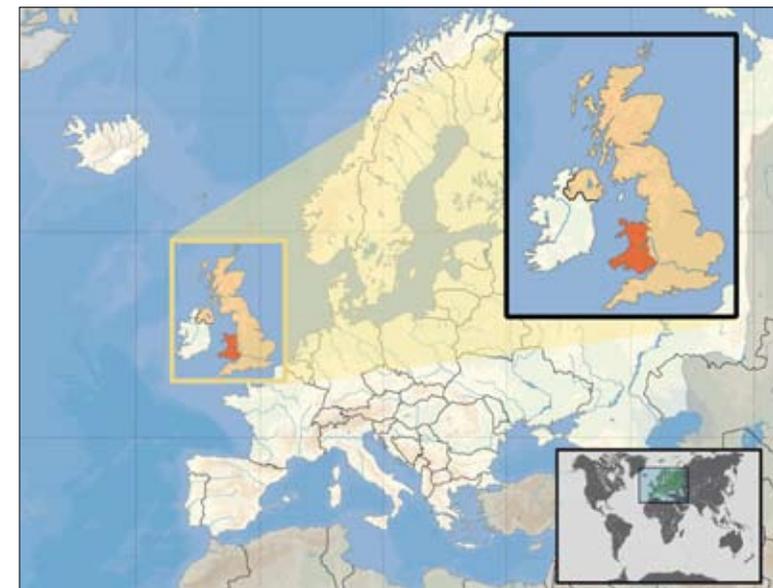
5. The autonomy of Catalonia

Xabier Arzoz

Population (2007)	7,197,174
Area	32.091 km²
Capital	Barcelona
Official languages	Catalan (lengua propia), Spanish, Aranese
Autonomy since	1977

http://en.wikipedia.org/

1. Introduction

The Spanish Constitution of 1978 attempts to combine the traditional ideology of the nation-state with a limited recognition of ethno-linguistic diversity. Two fundamental rights recognize collective identities: the right to autonomy of the nationalities and the regions (Article 2) and the right to use the various regional languages (Article 3).

Spain's decentralization is based on a territorial rationale, and the state avoids employing multi-ethnic and multinational undertones. Legal devices to assess ethnic group affiliation as well as juridical institutions based on ethnicity that create individual rights based on ethnic grounds are alien to the Spanish legal tradition.

Spain has accorded territorial autonomy not only to the "nationalities", but also to the regions as such, giving rise to the establishment of 17 so-called "Autonomous Communities" and two "autonomous cities", Ceuta and Melilla. Nationalities that are settled compactly on a territory are permitted self-government. Three of the Autonomous Communities are populated by Basques, Catalans and Galicians; they are not considered national autonomies in a strict sense, but are first of all territorial bodies. Whether a citizen belongs to one nationality or another is simply not a matter of legal interest. Rather, an individual's affiliation to an Autonomous Community, which is linked to the residency in one of its municipalities, is legally registered.

Hence, the national character of a territorial autonomy results both indirectly from the ethnic self-identification of the overwhelming majority of its inhabitants, as well as from the concrete exercise of autonomy through the various powers and functions of the Autonomous Community in education, language policy, media etc. Most nationalities have also used their powers to define their national symbols (anthem, flag, national festival days etc.) and to emphasize their cultural specificity.

Catalan autonomy, currently enshrined in the Autonomy Statute of 2006, incorporates the two basic features – linguistic and the territorial autonomy – that the Spanish Constitution provides to accommodate the country's national diversity. In the European context, Catalonia, with a population of 7,248,300 (1 January 2009, ca. 16% of Spain's total population)[1] is the major European "nation without a state". Furthermore, Catalan is one of the few major languages that managed to survive more than three centuries within a national state with a different linguistic community.

2. Catalonia's new autonomy statute

After 25 years, Catalonia's Autonomy Statute of 1979 had to be thoroughly amended to meet new social and political challenges. These efforts to reform Catalan autonomy began with a diagnosis of the degree of quality Catalonia's self-government had achieved that far. Some observers commented that after 25 years under the first Autonomy Statute, Catalonia had only a "broad autonomy of low quality". The three historical nationalities – Basques, Galicians and Catalans – had been vested with a quite extended autonomy in 1979-80, but these statutes were widely deemed to have exhausted their original goals. Most Catalan political forces and the scholarly world agreed on the need for comprehensive reform, as centrist tendencies in implementation and interpretation had increasingly eroded the scope of the autonomous self-government. Moreover, after a moderately nationalist party held power in Barcelona for 20 years, in 2003 three new parties gained a majority in the regional elections for Catalonia's Assembly. The new left-nationalist coalition set a clear goal of amending the Autonomy Statute of 1979 in order to expand the scope of Catalonia's self-government. In September

---

1 15% of the registered total population of Catalonia (7.248,300 inhabitants) has not the Spanish citizenship, as they have migrated to Catalonia in recent times, mostly after 2000. In Spain as a whole the resident population without Spanish citizenship accounts for about 16%.

2005, 90% of the members of the Catalan parliament approved the new draft statute, which was opposed only by the Partido Popular, the Spanish Conservative Party. Subsequently, negotiations to have the statute approved by Madrid, as required by the Constitution, were held between a Catalan delegation and a commission of the Spanish Parliament.

Finally, after two thirds of the original version were amended, a new version of the Statute was accepted. The significant curtailment of the initial text approved by the Catalan political forces led Esquerra Republicana, a Catalan nationalist party that was a member of the government coalition in Barcelona, to reject the new statute, along with the Spanish PP, which opposed it for completely different reasons. On 30 March 2006, the Spanish Parliament approved the new Autonomy Statute with 189 to 154 votes. The Catalan people immediately accepted the new statute in a popular referendum, but the turnout of 49.41% was relatively low. 73.23% voted in favour of the new Autonomy Statute, while in 1979 88.1% had voted for the previous Autonomy Statute. The new Autonomy Statute came into force on 20 July 2006 after a three year long of amendment process, supported by widespread public attention. Catalonia's new statute[2] was completely reshaped in form and content, embracing 223 articles instead of 57. The most important innovations concerned the introduction of new rights and duties for Catalan citizens and of new principles orienting the public policies of Catalan institutions. These included: the establishment of new competences and the controversial introduction of legal techniques to define precisely and to protect Catalan competences from erosion and centralisation by the state legislative and executive; new, hotly debated finance regulations; new instruments for cooperation with the state and for participation in state organs and in state decision processes that deal with European matters or affect Catalan interests; the regulation of the official status of the Catalan language and of the language rights and duties of Catalan citizens; and, last but not least, symbolic aspects concerning the identity of Catalonia as a sub-state nation.

Catalonia is subdivided in provinces. Between France and Catalonia the micro-state Andorra, which has Catalan as official language.

The capital Barcelona.

3. The fundamental elements of Catalonia's autonomy

3.1 Territorial autonomy

The Spanish approach to solving ethno-national conflict is based on territorial autonomy for the nationalities. Catalonia's autonomy, as enshrined in the new Statute of 2006, endows its institutions with legislative and executive powers in:
- the regulation of its institutions

2 The full text of the new statute in English is available at: http://www.gencat.cat/generalitat/eng/estatut/index.htm

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

Based on the respective Autonomy Statute, Spanish Autonomous Communities are allowed to assume all powers not explicitly attributed to the central state by the Constitution (article 149, paragraph 3). The two lists of powers, pertaining to the regions and to the central state respectively, did not set a clearly defined pattern of power sharing, but sometimes overlapped. Often the individual powers were of a concurrent type. This brought about major conflicts, as the real regulatory power of the Autonomous Communities depends on how far the central state exerts its own framework of legislative power. Moreover, the Constitutional Court was often called upon to solve such conflicts, and in most cases decided in favour of the central institutions. From a detailed analysis of the Constitutional Court's case law over the 25 year application of the former Autonomy Statute, one can observe that state legislative and executive acts encroached rather arbitrarily on autonomous powers.

As a result of this experience, Catalonia's new Autonomy Statute tries a different approach by defining with extreme precision every single section and subsection of autonomous powers. 58 articles punctiliously demarcate and attribute each single power, regarding not only primary fields of public activity, but also secondary and tertiary fields. This system should prevent possible conflicts between government levels in the future and ensure maximum legal security in the division of powers between Barcelona and Madrid. For instance, agriculture powers are split into eleven single sub-activities, nine of which are under the exclusive legislation of Catalonia while the rest are shared with the State.

3.2 Linguistic autonomy

The Constitution endows the bilingual autonomous communities with the power to recognize and promote the autochthonous language (article 148, paragraph 1). Nevertheless, the precise scope of the official character of the local or regional language should be determined by the respective autonomy statute. The central state is allowed to regulate the usage of non-Castilian languages only within its own sphere of powers. This basic principle results in as many language regulations as there are autonomous communities with a distinct language. The Catalan language policy, however, differs considerably from the legal provisions applied by other Communities. In international comparison it is considered the most far reaching language legislation coming from a sub-state entity alongside Québec's legislation, its primary source of inspiration.

Since the first Catalan Autonomy Statute entered into force, Catalonia's inhabitants have had the right to learn both Catalan and Castilian and to use both languages in almost all public domains. Discrimination on linguistic grounds is strictly forbidden. Catalonia has declared Catalan to be the second official language, as well as the "Community's own language" (lengua propia). Hence, the Autonomy Statute symbolically distinguishes between the territory's "own language" on the one hand and the "official language" on the other.

In fact, there is a comprehensive legally equal status (equality provision) between both official languages in the respective autonomous territories. Each citizen has the right to use one of these languages when addressing public authorities. Conversely, public offices must use the language of a citizen's choice when addressing him personally though official communication. Every official act concerning all citizens has to be published in bilingual manner. When displaying official toponymics, only the Catalan version is legally valid. Even traffic signs in Catalonia are generally monolingual.

Catalan is defined as the official language with respect to all public authorities with services or offices in Catalonia, regardless of whether they pertain to the Central State, the Autonomous Community or to municipalities. Whenever legal acts do entail legal effects outside Catalonia they must be translated into Castilian, with the exception of the Balearic Islands and Valencia, which have also recognized

Catalan as an official language. Hence, according to Catalonia's Language Act, Catalan must be the language of all public institutions in Catalonia, but upon request directly concerned citizens can also interact in Castilian orally and in writing. This first Catalan Language Act of 1983 was declared compatible with the Spanish Constitution. On the contrary, the Catalan education system was much more contested and disputed in political and legal constitutional terms. Catalonia has opted for an "immersion model" in the education sector. Catalan is the medium language in all schools and a compulsory subject at all levels of school education. Yet, pupils whose mother tongue is Castilian are entitled, upon request, to have education in their mother tongue at the beginning of their primary education. The fundamental goal of this legal provision is to provide students with full linguistic competence in both languages by the end of their school careers. This system of education triggered quite serious controversies outside Catalonia. Nevertheless, in 1994, the Constitutional Court declared it compatible with the Spanish Constitution, thereby accepting the Catalan legislature's main assumption that the fundamental right to education does not encompass the right to free choice of medium language. The right to education can also be met providing education in a language understandable to students. This verdict has considerably strengthened the consensus on language policy within Catalonia and has contributed to improving the relationship between Madrid and Barcelona.

The new Autonomy Statute of 2006 further strengthens the legal position of the Catalan language. Over the long run, Catalonia is making use of its autonomy to establish an asymmetric system of official languages that benefits Catalan. The main principles of the Catalan language have now been entrenched in the Autonomy Statute, which is a piece of legislation with a constitutional character. Catalan now is Catalonia's "own language;" it is to be used preferably and prevailingly by all public institutions and public media and also as the regular medium for instruction in the educational system. Furthermore, Catalan is the official language of Catalonia as Castilian is the official language of the State. Compared to India, this situation would be fully equivalent to the official languages of the States and the corresponding State policies.

Everyone has the right to use both official languages, and Catalonia's citizens, according to the new Statute, have the right and the duty to know both languages. This duty is a considerable innovation for Spain as a whole, as the Constitution prescribes only that all citizens have the duty to know the state's official language, Castilian. Thus, all public authorities of Catalonia are called to take all necessary provisions to allowing compliance with this duty.

The new Autonomy Statute puts special emphasis on the linguistic rights of the Catalan speaking citizens when interacting with the judiciary and other authorities of the central state.

Spain's Autonomous Communities

Autonomous communities	capital	Population (last census)
1. Andalusia	Sevilla	7.849.799
2. Catalonia	Barcelona	6.995.206
3. Madrid	Madrid	5.964.143
4. Valencia	Valencia	4.692.449
5. Galicia	Santiago de Compostela	2.762.198
6. Castile-Leon	Valladolid	2.510.849
7. Basque Country	Vitoria/Gasteiz	2.125.000
8. Canary Islands	Las Palmas de Gran C.	1.968.280
9. Castile-La Mancha	Toledo	1.894.667
10. Murcia	Murcia	1.335.792
11. Aragon	Zaragoza	1.269.027
12. Extremadura	Mérida	1.083897
13. Asturias	Oviedo	1.076.635
14. Balearic Islands	Palma de Mallorca	983.131
15 Navarre	Pamplona	593.472
16. Cantabria	Santander	562.309
17. La Rioja	Logrono	301.084

Note: Spain has also two "Autonomous Cities", Ceuta and Melilla. Each autonomous entity has its own autonomy statute and the "right to autonomy" of the Communities is enshrined in the Constitution.

All judicial public officials and employees must demonstrate sufficient command of both official languages to handle their specific responsibilities. Furthermore, the state administration (peripheral) in Catalonia must ensure that its employees are sufficiently fluent in both languages. All Catalan citizens are also entitled to address many relevant organs of the state such as the Parliament, the Constitutional Court and the High Court in Catalan in writing.

A further step in upgrading the status of the Catalan language requires addressing its position on international level. Catalonia and the Spanish State are required to perform all necessary steps to have Catalan officially recognized within the European Union and to ensure the usage of Catalan in international organisations and covenants referring to language and culture. In addition, Catalonia is called to foster contacts and collaboration with communities using Catalan within and outside of Spain.

4. Catalonia's new autonomy statute as a constitutional experiment

Without the political pressure for democracy and autonomy exerted by Basques and Catalans before and during Spain's democratization in the 1970s, and without the autonomy statutes they were able to negotiate, the Spanish model of a state of autonomous communities would not have come into being, at least not with its current features. The accommodation of Catalonia within the Spanish state, from a Catalan point of view, has not yet been resolved in satisfactory manner. The new autonomy statute has set the goal of putting Catalonia within Spain and Europe in a new position on the long run. It certainly gives a new push toward the further development of the whole system of Spain's regional autonomies.

Initially disputed institutions and provisions have been incorporated into the reformed autonomy statutes of other autonomous communities, such as, e.g. the recognition of civil rights and civil duties, the proclamation of programmatic principles, references to historical rights, the enlargement of rights of the Autonomous Communities to participate in the state-wide decisions of central institutions whenever regional interests are concerned, the extension of the scope of autonomous powers, stricter financial obligations of the state vis-à-vis

the Communities, the decentralization of the judiciary. All such provisions have contributed to enhance constitutional progress for the regional autonomies.

Nevertheless, Catalonia's new Autonomy Statute has been contested by the second largest political force in Spain. Although approved by 90% of the Catalan parliament and by 73% of Catalonia's electorate in a subsequent referendum, the approval of Spain's conservative party, the Partido Popular, has not yet been ensured. Immediately after the proclamation of Catalonia's new Autonomy Statute, the PP lodged an appeal, on the grounds of unconstitutionality, against more than half of the text –over one hundred provisions. It is the first time in Spain's constitutional history that an autonomy statute has been so massively appealed, and there is no precedent for quashing a single autonomy statute provision. The conservatives have even appealed articles of Catalonia's Statute that they previously approved in the statutes of other Communities. More worryingly, in the last two years the Constitutional Court has been the target of unprecedented overt manoeuvres by the two main political parties to dominate the composition of the Court and to influence an eventual ruling on the constitutionality of the Catalan Statute. As side-effect of those manoeuvres, no ruling could be made for almost three years, since the Constitutional Court is divided on the issue according to different political philosophies. Indeed, the new Catalan Autonomy Statute is a historical test for the whole structure of the Spanish "State of Autonomous Communities". It is yet to be seen whether the Statute will bring about progress or a second standstill in the development of the autonomies.

Prof. Dr. Xabier Arzoz,
BA (University of Deusto), LL.M. (University of Saarland), PhD (University of the Basque Country). Xabier Arzoz is Professor of Administrative and EU Law at the University of the Basque Country. He is the author of several books and articles in Spanish, Basque, English and German on Spanish and EU administrative law; human and fundamental rights; autonomy and federalism; and language legislation and language rights in domestic, comparative and international perspective. Recently, he edited the volume "Respecting Linguistic Diversity in the European Union" (Amsterdam: John Benjamins 2008).

6. Romania and the Szeklerland – Historical claim and modern regionalism

Miklós Bakk

1. Historical antecedents, ethno-demographic data

Hungarians living in Romania (citizens of Romania) are historical inhabitants of the region of Transylvania. Transylvania is a region located in the northwestern part from the Carpathians, which was part of the Kingdom of Hungary from the 10th century to 1526. Between 1541 and 1690 Transylvania was an autonomous principality (which was an important European political actor under the reign of the protestant Gábor Bethlen, in the period of the Thirty Years' War); after 1711 it became a Habsburg controlled Principality. After the Ausgleich of 1867 Transylvania was reabsorbed into Hungary as part of the newly established Austro-Hungarian Empire. After the World War I, as consequence of the peacemaking during 1919-20, Transylvania became part of Greater Romania. In this period the ethnic Hungarians (Magyars) constituted about 30 percent of the total Transylvanian population.[1] This percentage decreased to 25 percent in 1956 and to under 20 percent in 2002. According to the 2002 census about 1,432 million ethnic Hungarians live in Romania (5.6 percent of the total population). In 1956 this ethnic proportion was still 9.1 percent.

Szeklerland[2] is located in the eastern-southeastern part of Transylvania, and it covers the present-day counties Hargita/Harghita and Kovászna/Covasna and the southeastern part of Maros/Mures county. The name-giving people of this land, the Széklers were a Hungarian speaking tribe at the time they settled the Carpathian basin, but they had their own military and social structure and self-rule, which made them differ from the other Hungarian groups.[3] According to the 2002 census data, the number of inhabitants in the historical territory of Szeklerland is about 870-880.000, and about 635.000 (72-73 percent) are Hungarian-speaking people.[4]

All the ethnic Hungarians from Transylvania, as a national minority, expressed their political desire for autonomy from the beginning (from 1919-1920). On 1 December 1918 the Romanian National Assembly at Alba-Iulia proclaimed the union of the Romanians from Transylvania and Hungary with the Romanian Kingdom, but the Union Resolution from Alba Iulia stipulated a kind of autonomous status for ethnic Hungarians in Transylvania. On the other hand, the Paris Treaty of 1919 granted (Article 11) some local autonomy to Szeklers and Saxons in educational and

Below: Targu Mures/ Maros-vásárhely is a kind of capital of Transylvania.

Hungarians in Romania per district
(percentage on total population)

denominational matters. Between the two World Wars more than fifty drafts, documents, and proposals were made attempting to arrange the status of the Hungarians in Romania so as to "solve the minority question".[5] A quarter of these proposals refer to the Szekler territorial or cultural-denominational autonomy as the Szeklers constituted nearly half of the Hungarians living in Romania.

In the short period between the end of World War II and concluding the Paris Peace Treaties (1947) another thirty documents and blueprints were mapped out regarding the "Transylvanian question" and put before the decision-makers.[6] Amongst them were drafts regarding the autonomy of the Szeklerland, while others discuss the status of Transylvania and took in account the possibility of returning to the pre-1940 territorial status quo.

Immediately after World War II the Romanian Government took steps towards making an arrangement regarding the Hungarians living in Romania, motivated by the goodwill of the peacemakers in Paris. The Statute of Nationalities issued in 1945 guaranteed the rights to education in the mother tongue and of the official use of the Hungarian language. In 1945 the Bolyai University was established; it functioned until 1959.

The Hungarian Autonomous Region (HAR), which territorially covers mainly the Szeklerland,[7] was created based on the 1952 Constitution, following the Soviet model. But the autonomy of this region was not a real because of communist one-party rule. After Romanian communism took a nationalistic turn, it abolished the HAR (1960, 1968). The Ceauşescu era began with the annulment of rights in the field of education and in the official use of the mother tongue.

2. Aspirations for autonomy after 1990

After the fall of communism in December 1989, the Democratic Alliance of Hungarians in Romania (DAHR) was established as an ethnic party of Hungarians in Romania. This party, which roughly obtains the votes of ethnic Hungarians, raised the autonomy-question. But the guidelines corresponding to this aim were not formulated in that moment, but required longer, controversial debates. There were four true to type drafts outlining possible concepts: a) the autonomy proposals between the two World Wars; b) the Statute of Nationalities adopted in 1945; c) the international documents regarding human and minority rights that had arisen during European integration as requirements of the European unification process; d) functioning examples of autonomies within the European Union, as good practices.

The first proposals made by the Hungarians, including the concepts 'internal self-determination' or 'co-nation' (joint nations of Romania), portrayed an expectation for a possible rapid and fundamental change in the structure of the Romanian state with elements favouring the collective status of Hungarians. But in the early nineties the Romanian post-communist parties and elites used nationalistic political course to legitimize their leading role, and this moved to the forefront the Jacobin style of state organization, which was stipulated in the Constitution and defined Romania as a "unitary and indivisible National State" (Art.1.). The consolidation of the Romanian right-wing, where the DAHR had placed itself, did not result in another definition of the state and political community.

After the adoption of the new Constitution (1991) the DAHR, enjoying strong support from ethnic Hungarian voters, in 1993 put forward a law about national minorities and autonomous communities. It was a draft of a framework law with three possible forms of autonomy: personal autonomy, regional autonomy and special status for local governments. In the DAHR conception the law was not in contradiction with the Constitution, as the Constitution was only a regulatory frame on a conceptual level, without concrete institutional solutions. The draft was based on the idea that autonomy is a sustainable project whether in the internal or external political context. That is because on the one hand in this period the Council of Europe seemed to urge a politics of enlarging of specific minority rights in the direction of autonomy-solutions.[8] On the other hand, the DAHR was not captured by the middle right-wing parties, who offered the DAHR a coalition membership in return for the resignation of its aspirations for autonomy.

After the rejection of autonomous communities bill, the question of the autonomy within the DAHR became marginal, despite the fact that the autonomy was not cancelled from the political programme: it remains a central point of identity but not a source of initiatives. The politicians who from 1990 to 1995 urged the development and the proposal of autonomy projects, became unnoticed inside

the DAHR. In 1995, a group presented a statute about Szeklerland's autonomy, but it remains a solitary initiative, without legislative proposals.

From 1996 onwards the DAHR's political course was shaped by its opportunities from participating in governmental coalitions. This political attitude was specific to ethnic parties in the Central and Eastern-European region and was fostered by the European integration process and the basic treaties. A kind of 'consociational strategy' came to the front in contrast to the barren autonomy strategy, and this orientation was supported by the process of European integration. The EU, in the absence of a minority rights acquis, was guided by a security approach that prioritizes the consensual settlement of disputes over the enforcement of universalist norms.[9]

At the same time, the short period before EU-accession raised the possibility, by reference to the Copenhagen criteria, of finding a path towards an internal autonomy arrangement or, at least, to settle the framework for such an arrangement. In the case of the Hungarians of Transylvania, this possibility appeared simultaneously with the founding of new political organizations that claim to represent an alternative to the DAHR.

In 2003, a group leaving DAHR founded the Hungarian National Council of Transylvania (HNCT – EMNT), which focused on autonomy projects, but was neglected by the DAHR. In addition, the movement of the Szekler National Council (SzNC – SZNT) came into existence and advocated the territorial autonomy of the Szeklerland. At the beginning of 2008, a new party, the Hungarian Civic Party (HCP – MPP), was formed, mainly by mayors and local councillors from Szeklerland. The party also focuses on Szekler territorial autonomy.

In the context of EU-accession, influenced by the competition between the aforementioned political organizations, three strategic concepts took shape regarding the territorial autonomy of Szeklerland:

1) If we take into account the history of the drafts, we should first mention the autonomy statute adopted by the Szekler National Council, which was elaborated in 1995, prior to the Council's founding. It is based on the concept of internal self-determination. From 1995 onward this draft was modified in some respects, adopted by the leading assembly of the SzNC, and introduced as a bill in the Romanian Parliament in February 2004. The bill was introduced by some MP-s from the DAHR-faction who were politically close to the SzNC-movement, despite the political unpleasantness. In March 2004 the Parliament rejected the autonomy bill.

2) At the DAHR party's congress in 2003 another strategic concept based on territorial

The autonomous province of Vojvodina (Serbia)

Population (2002 census)	2.031.992
Total area	21.500 km²
Capital	Novi Sad
Ethnic composition	Serbs (65,05%), Hungarians (14,28%), Yugoslavs (2,45%); Croats (2,55%), Montenegrins (1,75%), Romanians (1,5%), Gypsies/Roma (1,5%), smaller groups.
Provincial autonomy	1945-1990

The multiethnic region of Vojvodina, situated in the northern part of the Republic of Serbia, bordering Hungary, Croatia and Romania, until 1990 was an autonomous province of the People's Republic of Serbia within the federal state of Yugoslavia. From 1945 to 1988 it enjoyed autonomous status along with the province of Kosovo. As for more than eight centuries the Vojvodina was a part of the Hungarian kingdom, it is deeply influenced by Hungarian culture and for long periods had a Hungarian population majority. Already under the Habsburg rule the region was granted some autonomy as a border bulwark against the Turkish empire and later against

precedent was outlined. The starting point of this idea is the possibility of reshuffle of the development regions of Romania into political-administrative regions. These development divisions do not have an administrative status. They were created in 1998 and correspond to NUTS II-level divisions in EU member states, but were shaped regardless of historical-cultural traditions. Therefore DAHR aims, as a first step, to shape the Development Region of Szeklerland by gathering three counties. The SzNC criticized this concept because the three counties do not coincide with the historical territory of Szeklerland.

3) The third concept appeared in the package offer elaborated by the HNCT – EMNT. The package contains three drafts: a framework bill about regions (without a geographical layout of the regions), the bill on the creation of the Szeklerland region with special status, and the statute of the Szeklerland region. The fundamental concept of this package was a vision of asymmetrical regionalism, based on the assumption that Romania will undergo regionalization similar to the Spanish and Italian experience. So, the concept of Szeklerland's territorial autonomy must be included in the project of Romania's regionalization, and must be presented in the 'language of the regionalism' (and not based on 'internal self-determination'). This concept includes the supposition that such a concept will get more support from several Romanian political actors unlike the projects that focus only on Szeklerland.

These bills were not introduced on the parliamentary agenda, but it must be remarked that the expert commission called upon for constitutional reform by head of state Traian Băsescu in autumn 2008 (the so called Stanomir-commission) elaborated a study which contains a possible method for administrative reform using asymmetrical regionalism.

In addition to territorial autonomy, two proposals were elaborated for the cultural autonomy of Hungarians not living in Szeklerland. Firstly, in June 2004 the HNCT – EMNT put on the parliamentary agenda a framework law about personal cultural autonomy which could help 15 autochthonous national minorities of Romania in grounding and managing their institutions. Based on this draft it remained unclear how Szeklerland's territorial autonomy is correlated to cultural autonomy for ethnic Hungarians not residing in the Szekler region. The proposal was rejected by the Parliament and was not supported by the DAHR.

Another bill was introduced by the DAHR as the member of the newly created (in December 2004) governmental coalition. This bill has not succeed either, as it was not supported by the DAHR's coalitions partners.

3. Conclusions and perspectives

Although academic works concerning autonomous self-governments say that chances for autonomy arrangements are the best immediately after regime changes,[10] ethnic Hungarians from Transylvania did not succeed in exploiting such an opportunity. A possible explanation could be that the atomized society of Hungarians was not able to work out, in an expedited fashion, a concerted project about the institutional framework of the autonomy. The ethnic Hungarian society, due to its ethno-demographic situation, regional-territorial fragmentation, and composite social structure, needs a combined autonomy arrangement based on political consent that can be built over time.

The relatively numerous autonomy drafts show that this political consent is missing, with regards to both the institutional framework and the subsequent strategies. Although the political actors representing the ethnic Hungarians accept this diagnosis, very few efforts were made to reach a minimum consensus in the last twenty years.

EU-accession was an important turning point because this period offered some arm-twisting possibilities for launching negotiation process for autonomy arrangements. But a creative and consensus-oriented politics on behalf the interested political actors was absent. It was lacking both in Hungary as kin-state and in among political groups in Romania, who assumed the task of representing the Hungarian minority.

After Romania gains EU-membership, Szeklerland's regional autonomy can be successful only when it backs away from the idea of minority rights as a question of individual rights and from viewing cultural autonomy as a solution for all the Hungarians in Romania (these two were combined in the strategy of the DAHR). A successful policy will follow those successful western ethnoregional movements

(their models) that saw territorial autonomy as part of a regionalizing process corresponding to some internal and EU-level policies. In this context, the achievement of territorial autonomy for a specific linguistic/cultural group is a mutual accommodation between two processes: one coming 'from above' (like a reform of a state structure or of an administrative system) and another coming from 'overhand' (like a communitarian movement). This mutual accommodation means that the regional movements and parties must accommodate and redefine their goals.[11] The way this process is carried out depends on the measure of decentralization, and on the available means of direct democracy (local initiatives, local referendums etc), identity and solidarity of community.

It seems that coincident with the coming into existence of the Szekler National Council the need emerged to find a movement component beyond the purely political (the SzNC's initiative by forcing an unofficial referendum can be considered in this way). In the case of a unitary state like Romania, regional autonomy cannot be achieved only by means of party politics; a movement that acts outside of the party system is necessary as well.

Another question arose: has the failure of autonomy aspirations so far been due to the structural aptitude of our region? It is encoded in a specific part of Central and Eastern Europe, and specifically in some consolidated level of democracy? In the eastern post-Soviet areas the former territorial autonomies remained and new ones were constituted,[12] and in Western Europe other autonomies succeed in proving their contribution to democratic consolidation. In our region,[13] which is more developed and has more western features than the eastern post-Soviet area, territorial autonomy projects did not succeed.

A possible explanation seems to be an unfavourable ratio between the two powers of the state: the despotic and the infrastructural.[14] In the more 'oriental' region, where the despotic power of the state is greater, the state itself is based on the consent between territorial-oligarchial elite-groups. Here autonomy does not need democratic legitimacy; it is established sufficiently through this elite-consent. However, in Western Europe, autonomy movements were considered to aim at a reorganization and a democratic sharing of the infrastructural power to serve the public weal.

In the aforementioned central- and eastern-European area, democracy and its legitimacy weakened the despotic power of the state to such a degree that the territorial-oligarchial elite-groups cannot entirely control the state against the public (democratic) will. Still, this consolidation does not mean that the state is able to construct inter-group legitimacy based on democracy or a contractual share of power between several communities.

the Balkan states. The Peace Treaty of 1918 after World War I gave the Vojvodina to the Kingdom of Serbs, which encouraged the settlement of Serbs.

The Vojvodina gained extensive rights of self-rule under the 1974 Yugoslav constitution, which granted both Kosovo and the Vojvodina a *de facto* veto power in the Serbian and Yugoslav parliaments, as changes to their status could not be made without the consent of the two Provincial Assemblies. Under the rule of the Serbian president Slobodan Milosevic, both Vojvodina and Kosovo lost most of their autonomy in September 1990. Although still referred to as an autonomous province of Serbia, most of Vojvodina's autonomous powers were taken over by Belgrade, leaving the province its almost powerless parliament and government. The fall of Milosevic in 2000 created a new climate for reform on Vojvodina. Following talks between the political parties, the level of the province's autonomy was increased by the omnibus law in 2002. The Vojvodina assembly adopted a new Statute on 15 October 2008. 89 out of 120 councillors voted in favour of the bill, while 21 voted against. The statute will officially come into effect after its confirmation by the Parliament of Serbia, requiring a simple majority.

Source: *http://en.wikipedia.org/*

Miklós Bakk
was born in 1952 in Săcuieni/Székelyhid, Romania. He graduated from the Technical University Timisoara/Temesvár (Romania). He was editor (weekly journal A HÉT, 1991-99), columnist and editor in chief (KRÓNIKA – Cluj/Kolozsvár, 1999-2004). He obtained Ph.D. in Philosophy at the Babes-Bolyai University - Cluj/Kolozsvár and is teacher (associate professor) at the Political Sciences Department of this University. He published studies on protection of the rights of minorities, the question of the autonomy and political theory in Hungarian, Romanian and German. He published three books in Hungarian. He was participant as expert in several commissions for bills and autonomy-drafts (1993-1995, 2003-2004).

Endnotes

1 See Minorităţi în tranziţie. Raport privind politicile publice în domeniul minorităţilor naţionale şi etnice din România. [Minorities in transitions...] Centrul de Resurse pentru Diversitate Etnoculturală, Jan. 2005, Cluj, p.10. http://www.edrc.ro/docs/docs/minoritati_in_tranzitie.pdf

2 There are more name in use for this territory: Terra Siculorum (medieval Latin), Székelyföld (in Hungarian), Secuime or Tinutul Secuiesc (in Romanian), Szeklerland and Székler Land (German, English). We use the term Szeklerland

3 The History of Transylvania, see: http://mek.oszk.hu/03400/03407/html/71.html

4 This number is varying in several publications depending on how the historical border of Szeklerland is considered (including or excluding some border-villages).

5 See Bárdi Nándor: Javaslatok, tervek, dokumentumok az erdélyi kérdés rendezésére (1918-1940). [Proposals, drafts, documents regardings to solutions in the question of Transylvania, 1918-1940] In: Magyar Kisebbség, 1997/1-2. p.281-282.

6 See Vincze Gábor: Javaslatok, tervek, dokumentumok az erdélyi kérdés rendezésére (1945-1946). [Proposals, drafts, documents regardings to solutions in the question of Transylvania, 1945-1946] In: Magyar Kisebbség, 1997/1-2. p.283-285.

7 See Stefano Bottoni: Sztálin a székelyeknél.[Stalin by the Széklers] Pro Print Könyvkiadó, Csíkszereda, 2008.

8 The Recommendation Nr. 1201/1993 could be interpreted in this sense.

9 See Martin Brusis: The European Union and Interethnic Power-sharing Arrangements in Accession Countries. www.ecmi.de, JEMIE, Issue 1/2003 (downloaded: 2006-07-31).

10 See Yash Ghai: Autonomy and Ethnicity. Negotiating Competing Claims in Multi-ethnic States, Cambridge, 2002. (quoted by Salat Levente: Autonómiák évadja Erdélyben. Krónika, 2004. jan. 11.)

11 See Frans Schrijver: Regionalism after regionalisation: Spain, France and the United Kingdom. Amsterdam University Press, 2006.

12 See Pål Kolstø: Territorial Autonomy as a Minority Rights Regime in Post-Communist Societies. In: Will Kymlicka (ed.): Can Cultural Pluralism be Exported? Oxford University Press, 2001.

13 Latvia, Lithuania, Estonia (Russians in Narva and Sillamäe), Sub-Carpathian Ruthenia (ruthen and hungarian minority), Slovakia (Hungarian minority) and Romania (transylvanian Hungarians) can be considered in this category.

14 Michael Mann: The Autonomous Power of the State: Its Origins, Mechanisms and Results. In: Archives Européennes de sociologie, Vol. 25, 1984, pp. 185-213. The despotic power of the state elite is the range of actions which the elite is empowered to undertake without routine. Infrastructural power is the capacity of the state to penetrate civil society and to implement logistically political decisions throughout the realm.

Definitions of autonomy

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

<div align="right">Kjell-Ake Nordquist [1]</div>

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

<div align="right">Ruth Lapidoth [2]</div>

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

<div align="right">Hurst Hannum [3]</div>

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

<div align="right">Yash Ghai [4]</div>

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

<div align="right">Hans-Joachim Heintze [5]</div>

1 Kjell Ake Nordquist, *Autonomy as a conflict-solving mechanism*, in: Markku Suksi, *Autonomy – Applications and implications*, The Hague 1998 p.7
2 Ruth Lapidoth, *Autonomy – Flexible solutions for ethnic conflicts*, Washington, 1997, part II
3 Hurst Hannum, *Autonomy, Sovereignty and Self-determination - The Accommodation of Conflicting Rights*, Philadelphia 1996, p.8
4 Yash Ghai, *Autonomy and ethnicity: negotiating competing claims in multiethnic states*, Hongkong 2000, p.484
5 H.J. Heintze, *On the legal understanding of autonomy* in: Markku Suksi (ed), 1998. p.7

7. Rebel Island:
Corsica's long quest for autonomy

Alessandro Michelucci

Population (2008)	302.000
Land area	8.680 km²
Capital	Ajaccio/Bastia
Official language	French
Autonomy since	only administrative autonomy

http://en.wikipedia.org/

Note: Corsican is a voluntary subject in schools and adult education. It can be spoken in court or in the conduct of government business if the officials concerned speak it, but it has no official character.

A unique case

Corsica is a Mediterranean island belonging to France and located southeast of that country. Lying in the Tyrrhenian Sea, between North-western Italy and Sardinia, it has been considered significant as a platform for the violent and ongoing military operations between France and Italy, which lasted several centuries.

Corsican is a Romance language closely related to Italian, and, in particular, to some Tuscan dialects. From time immemorial Corsican politics has been marked by rivalry among the clans, resulting in a social system akin to those found in other Mediterranean islands. According to this system, families play a special role in social and political life, and each has definite range of activities. Clanism, despite opposition from many nationalist movements, has survived to the present day.

Corsica is metropolitan France's least economically developed region, with tourism playing a leading role in the economy. The capital of Corsica is Ajaccio (in Corsican: Aiacciu). The ruling body is the Corsican Assembly. The region (officially defined as territorial collectivity) is divided in two départements: Haute-Corse (Northern Corsica) and Corse du Sud (Southern Corsica). The two départements were created on September 15, 1975 by splitting the hitherto united département of Corsica.

The Corsicans represent a unique case among European minorities. They do not amount to millions like the Scots or the Catalans: only some 150,000 Corsicans live on the island. They are not part of a large linguistic community like German-speaking minorities. They are a stateless nation since they have no foreign country to call their homeland. They live in an underdeveloped region that cannot be compared to other French regions such as Brittany or Alsatia. Last but not least, Corsica does not enjoy a kind of autonomy that can be compared to other European regions such as Catalonia, Scotland or South Tyrol.

A historical sketch

Corsica has been occupied since the Mesolithic age. The island was colonized by the ancient Greeks, by the Etruscans and by the Romans. Later it became a province of the Roman Empire alongside neighbouring Sardinia. The two islands developed close cultural links that persist to this day.

In the Middle Ages the island fell under the rule of Pisa (1072-1284); this was followed by the Genoese domination of the island (1284-1768). In 1755, while the island was still under Genoese rule, nationalist leader Pasquale Paoli proclaimed the independence of northern Corsica. Paoli established the capital in Corte, a town located in the centre of the island, where he founded a university and launched an economic policy based on traditional farming. The Corsican Constitution preceded both the French and the American ones. In later centuries Paoli would be remembered as Corsica's national hero, called *u babbu di a patria* (father of the homeland). Many Italian towns would even devote roads and squares to him.

In 1768, Genoa sold Corsica to France. One year later, at Pontenovu, Paoli was definitively defeated by the French army, marking the beginning of French rule of the island. In November 1789, during the French Revolution, the National Assembly declared Corsica an integral part of the new republic. Some years later, thanks to British support, Paoli expelled the French, and in 1794 Corsica voted in favour of union with the British crown. The French, under Napoleone Bonaparte (a Corsican himself), recovered the islands in 1796, and French possession was then granted at the 1815 Congress of Vienna. French rule brought education and relative order to Corsica, but economic life remained agrarian and primitive. Since the French took control in 1768, the island has seen autonomist and separatist movements, with repeated incidents of violence. In the 1800s, a group of intellectuals, led by Salvatore Viale, tried to promote Italian culture. They were in contact with several Italian writers, including Niccolò Tommaseo and revolutionary leader Giuseppe Mazzini. The French language, however, was already taking root on the island.

During World War II, Italian and German forces occupied Corsica. Mussolini claimed the island as an integral part of Italy, due to the close linguistic links. Some local intellectuals gathered around Petru Rocca who advocated union with Italy echoed Mussolini's claims, though they must be considered Italophiles rather than supporters of Fascist ideology. But most Corsicans refused Italian claims: in late 1943 the population revolted and, joined by a Free French task force, succeeded in driving the Axis forces out. A post-war population exodus spurred the French government to announce a program of economic development.

Corsican nationalism slowly resurfaced in the 1950s. Cultural links with Italy had been weakened by wartime events and replaced by an unexpected Francophilia that did not last long. After 1962, when Algeria won independence from France, all French Algerians were forced to leave the new African republic. The French government, led by General Charles de Gaulle, decided to resettle many of them in Corsica. This massive immigration, however, led to widespread discontent among the local population as government aid granted to newcomers damaged existing businesses. Moreover, other critics believed that France's loss of Algeria would be offset by a heavier francisation (frenchification) of Corsica.

Corsica's recent difficulties date from the 1960s, when France came to be perceived as pursuing a colonialist rule on the island. In response, Corsican movements for independence and autonomy began to take shape. In general their proposals have focused on the promotion of the Corsican language, increased power for local governments, and some supplementary tax relief. The French government has remained strongly opposed to the idea, fearing it would threaten the unity of France: Article 2 of the Constitution affirms that "France is an indivisible Republic". This is not a mere assumption, but the very heart of the lay dogma making France the European champion of centralism. This country, which still has several colonies, is nevertheless considered the homeland of human rights.

Autonomy or independence?

The Corsican autonomist movement gained headway in the late 1960s, when brothers Edmond and Max Simeoni founded the Action for Corsican Renaissance (Azzione pe a Rinascita Corsa, ARC). Their organization advocated autonomy similar to that enjoyed by South Tyrol (an Italian region which was once part of the Austro-Hungarian empire) and rejected violence, even though it was involved

in a tragic event. In August 1975, in Aleria, a group of armed men led by the Simeoni brothers occupied the vineyard of Henri Depeille, who had been involved in a scandal of doctoring wine with excessive amounts of sugar. The French government sent troops; a gunfight ensued and two men were shot and killed. Edmond Simeoni was jailed and tried; although the Public Prosecutor demanded the death sentence, Simeoni was sentenced to life imprisonment. Thousands of Corsicans gathered in the streets in a showing of solidarity.

The ARC was banned but was soon revived by Max Simeoni under the new name Unione di u Populu Corsu (Union of the Corsican People, UPC). Edmond Simeoni was pardoned and released in 1976. He and his brother began networking with several European autonomist movements, such as the Basques and the Welsh.

In May 1976, some of those who had been involved in the Aleria, alongside others from disbanded terrorist movements, founded the Fronte Naziunale di Liberazione di a Corsica (Corsican National Liberation Front, FLNC). The acronym overtly recalled the Algerian National Liberation Front (FLN). The new organization issued a manifesto declaring war on the French government and advocating full independence. The FLNC received extensive media coverage due to a series of dynamite attacks in several French cities. For over a decade, however, terrorists carefully avoided killing people. The Simeoni brothers always condemned violence and remained committed to advocating autonomy achieved by means of democratic struggle.

Monument of Corsican freedom hero Giampieru Corsu.

The village Ota (photo: J.-P.Grandmont)

In 1981, before being elected Prime Minister, French Socialist leader François Mitterrand promised that Corsica would be granted a larger degree of autonomy. In the same year, the powers of the Corsican regional assembly, including broadcasting and employment, became wider than those granted to other regions. Most Corsicans, however, were not satisfied with the French government's promises. Meanwhile, clan domination remained strong. The French government banned the FLNC in 1983, although this did not manage to stop the clandestine organization.

The 1990s were marked by several splits that weakened the separatist milieu. Many militants were killed by rival factions. In 1998, the newly-elected Prefect of Corsica, Claude Erignac, was killed by a separatist commando in the centre of Ajaccio. This urged the French government to find a way to settle the question.

In 2000, Prime Minister Lionel Jospin launched a proposal of autonomy for the island in exchange for the cessation of what was beginning to resemble gang violence. Jospin's plan provided greater local powers, including the teaching of the Corsican language within the educational system.

The latter was a major step forward, since France had always discouraged the use of minority or regional languages. The plan was strongly opposed by right-wing politicians in the French National Assembly, who viewed autonomy as the first step towards the balkanisation of France. In other words, they feared uprisings from separatist movements in Brittany and elsewhere: though it may appear strange, according to this view there is little difference between autonomy and independence. One of the most fervent advocates of "indivisible France," Minister of the Interior Jean-Pierre Chévenement, resigned as a gesture of protest against Jospin's proposals. In contrast, Jospin's viewpoints were warmly welcomed by the other French minorities – Alsatians, Basques, Bretons, Catalans, Flemish, Occitans – which amount to several million people.

Recent attempts to gain greater autonomy were unsuccessful. A local referendum held in 2003, aimed at disbanding the two départements and granting extended powers, was narrowly defeated. In late 2004, a group of local entrepreneurs established Corsica Diaspora, an organization hoping to strengthen links with the million Corsicans living outside the island, from mainland France to Puerto Rico. Corsica Diaspora is led by Edmond Simeoni, who is also a local MP in the autonomist group, which includes A Chjama and Partitu di a Nazione Corsa (Party of the Corsican Nation, PNC, the heir to UPC).

The last few years were marked by popular opposition to the new Plan for Sustainable Urban Development in Corsica (Plan d'Aménagement et de Développement Durable de la Corse, PADDUC), which many consider to be contrary to local interests and to encourage environmental exploitation. The many nationalist movements, both autonomist and separatist, play a central role in this opposition. Cultural initiatives were also promoted and modernized. Through events ranging from the Journée mondiale de la Corse (International Day of Corsica) to the Salon de livre corse, which was also held in Paris, more and more is being done to build a better future for this troubled island.

Alessandro Michelucci (1952)
is an Italian journalist living in Florence. He has been involved in indigenous and minority affairs since the early 1980s. He has published several articles and books on this subject, including America indigena (1992) and Popoli indigeni popoli minacciati (1998). He translated books on East Timor, the Armenian genocide, globalization and the U'wa. He contributes to several Italian and foreign publications, including Il manifesto, Il giornale della musica and Corsica. Contact: a.michelucci@fol.it

References:
VV. AA., Pasquale Paoli. Aspects de son oeuvre et de la Corse de son temps, Ajaccio: Albiana, 2008.
Centre européen des questions des minorities (ECMI), Autonomies insulaires: Vers une politique de la difference pour la Corse?, Ajaccio: Albiana, 1999.
Culioli, Gabriel Xavier, Le complexe corse, Paris: Gallimard, 1990.
Jaffe, Alexandra, Ideologies in Action: Language Politics on Corsica, Berlin-New York: Mouton de Gruyter, 1999.
Morucci, Jean-Luc, Les années Corsicada ou L'histoire singulière d'un projet d'économie alternative, Ajaccio: Albiana, 2008.
Sanguinetti, Sampiero, Corse, la syndrome de Pénélope, Ajaccio: Albiana, 2007.
Simeoni, Edmond, La volonté d'être, Ajaccio: Albiana, 1995.
Simeoni, Edmond, Une combat pour la Corse, Paris: Le Cherche Midi, 2003.
Toso, Fiorenzo, Corsica, Recco: Le Mani, 2003.

8. New Caledonia and French Polynesia: France's only working autonomies

Thomas Benedikter

French Polynesia

Whereas Corsica so far could not achieve genuine territorial autonomy, France has granted autonomous status to two of its overseas territories, the former colonies New Caledonia and French Polynesia. Between 1946 and 2003, French Polynesia had the status of an overseas territory (French: territoire d'outre-mer, or TOM). Today the French Polynesia, as New Caledonia, is a "POM" (Pays d'Outre-Mer), based on the Organic Law n. 2004-192 (27 February 2004) endowed with large autonomy. Defence, police, judiciary and the monetary system is under French governments responsibility. France is represented by a High Commissioner. French is the official language of the archipelago, but the local languages are widely used in education. The legislative assembly, composed by 57 directly elected members, is allowed to regulate all internal affairs of the islands. President of French Polynesia, elected by the Assembly, is the head of government, and of a multi-party system. Executive power is exercised by the government. Legislative power is vested in both the government and the Assembly of French Polynesia (the territorial assembly). The highest representative of the State in the territory is the High Commissioner of the Republic in French Polynesia (French: Haut commissaire de la République).

French Polynesia also sends two deputies to the French National Assembly, one representing the Leeward Islands administrative subdivision, the Austral Islands administrative subdivision, the commune (municipality) of Moorea-Maiao, and the westernmost part of Tahiti (including the capital Papeete), and the other representing the central and eastern part of Tahiti, the Tuamotu-Gambier administrative division, and the Marquesas Islands administrative division. French Polynesia also sends one senator to the French Senate.

Political life in French Polynesia has been marked by great instability since the mid-2000s. On September 14, 2007, the pro-independence leader Oscar Temaru, 63, was elected president of French Polynesia for the 3rd time in 3 years (with 27 of 44 votes cast in the territorial assembly). He replaced former President Gaston Tong Sang, opposed to independence, who lost a no-confidence vote in the Assembly of French Polynesia on 31 August 2007 after the longtime former president of French Polynesia, Gaston Flosse, hitherto opposed to independence, sided with his long enemy Oscar Temaru to topple the government of Gaston Tong Sang. Oscar Temaru,

Population (2007)	259.596
Land area	4.167 km²
Capital	Papeete
Official language	French
Autonomy since	2004
Ethnic composition (1996)	66,5% Polynesians, 7,1% Polynesians with light mixing, 11,9% Europeans, 9,3% Demis (mixed European-Polynesian) and 4,7% East-Asians

http://en.wikipedia.org/

The palace of the High Commissioner of France in French Polynesia, Papeete

however, had no stable majority in the Assembly of French Polynesia, and new territorial elections were held in February 2008 to solve the political crisis. The party of Gaston Tong Sang won the territorial elections, but that did not solve the political crisis: the two minority parties of Oscar Temaru and Gaston Flosse, who together have one more member in the territorial assembly than the political party of Gaston Tong Sang, allied to prevent Gaston Tong Sang from becoming president of French Polynesia. Gaston Flosse was then elected president of French Polynesia by the territorial assembly on February 23, 2008 with the support of the pro-independence party led by Oscar Temaru, while Oscar Temaru was elected speaker of the territorial assembly with the support of the anti-independence party led by Gaston Flosse. Both formed a coalition cabinet. Many observers doubted that the alliance between the anti-independence Gaston Flosse and the pro-independence Oscar Temaru, designed to prevent Gaston Tong Sang from becoming president of French Polynesia, could last very long.

Reference: http://www.presidence.pf

New Caledonia

Population (2007)	230,789
Land area	18,575 km²
Capital	Nouméa
Official languages	French, Kanaky
Autonomy since	1999
Ethnic composition (1996)	Kanak 44.6%, Whites 34.5%, Polynesians 11.8%; Indonesians 2.6%; others 6.5%

http://en.wikipedia.org/

New Caledonia was a colony until 1946, then shifted to the status of an overseas territory (Territoire d'outre-mér). After protracted militant struggle of independentist forces, first of all the „Front de Liberation National Kanak Socialiste" (FKNLS), Paris agreed with the indigenous forces for autonomy, opening the option to decide whether to remain with France or to become independent state

in a a referendum to be hold after 2014. Based on this Nouméa Accord 1998 New Caledonia was granted autonomy, a separate local citizenship and separate symbols of Caledonian identity.

According to its statutory organic Law n. 99-209 (19-3-1999) New Caledonia has a democratically elected congress and government, responsible for a broad range of devolved powers. After the current autonomy enactment period, Paris should be left in charge with only the foreign affairs, justice, defence, public order and currency. New Caledonia not only is allowed to regulate immigration, but is also interested to conduct some of its international affairs, particularly with regard to the cooperation with its Pacific neighbours.

The provinces hold all powers not explicitly attributed to the state, region and municipalities. The competencies of the New Caledonian parliament (Congrés du territoire), listed in the organic law of 16 February 1999, comprise fiscal rule, control of economic criminality, the regulation of prices, urban and land planning, health assistance, and public hygiene and social protection. Furthermore, a 16-member "Kanak Customary Senate" has been established, with two members from each of the eight customary areas.

New Caledonia for now remains an integral but autonomous part of the French Republic. The inhabitants of New Caledonia are French citizens and carry French passports. They take part in the legislative and presidential French elections. New Caledonia sends two representatives to the French National Assembly and one senator to the French Senate. The recent elections on NC of 10 May 2009 resulted in a majority of parties opposed to independence of the island (31 of 54 seats) against 23 members favouring independence. These elections confirmed the majority of the political forces opposed to a racial vision of the New Caledonian society, opposing Melanesian native inhabitants and European settlers, in favour of a multicultural, autonomous New Caledonia.

References:
http://www.gouv.nc/portal
http://www.transfersdecompetences.gouv.nc

Thomas Benedikter, *The World's Working Regional Autonomies – An Introduction and Comparative Analysis,* ANTHEM Press, Delhi/London 2007, p. 299-304

9. Recent developments in the autonomy of the Basque Country[1]

Eduardo J. Ruiz Vieytez

1. The Basque Country: a conflict-ridden context for autonomy

The Basque Country[2] is located in South-western Europe, at the western corner of the Pyrenees Mountains. The concept of the country, both in terms of population and territory, is conflicted. In sociological, linguistic or cultural terms, it comprises different territories in the Spanish and French States. The Basque character of the lands in the northern or French parts is not disputed, but in the southern part, the inclusion of Navarre within the Basque Country is largely opposed in Navarre itself and in the rest of Spain. The Navarrese population's affiliation with the Basque identity is extremely uneven, and it does not correspond to their electoral performance. Today, legally speaking, Navarre is an autonomous community in itself, although both the Spanish Constitution and the Acts on Autonomy of the Basque Country and of Navarre foresee the possibility of integrating Navarre into the Basque Autonomous Community. In this paper, henceforth we will refer exclusively to the Basque Autonomous Community.

The current Basque Autonomous Community (henceforth BAC) includes the three provinces of Biscay (Bizkaia), Gipuzkoa and Alava, with an area of around 7,000 km², and a population of 2.2 million people. The population is not ethnically homogeneous. Approximately one third of the actual population moved into the Basque Country from different Spanish regions, particularly in the sixties and seventies, and only one third of the people have native grandparents.

Following the French model, Spanish nationalism began to evolve throughout the 19th century. The attempts to politically unify the kingdom of Spain soon came into conflict with the special political regime of the Basque Provinces. Laws enacted in 1839 and 1876 would suppress the most important aspects of these specific political systems. Nationalism was also to develop among the Basques in the late second half of the nineteenth century; the political party EAJ-PNV[3] emerged as a result and gained ground rapidly.

In the middle of the 20th century, the Franco regime was characterised by the harsh repression of the Basque national and linguistic identity. As a counteraction to this repression, new left-leaning nationalist groups sprang up and, in some cases, used armed struggle to combat the dictatorship. One such group, ETA,[4] was founded in 1962 and still carries out violent action.

Population (2007)	2.141.116
Land area	7.234 km²
Capital	Vitoria-Gasteiz
Official languages	Basque, Spanish
Autonomy since	1979

http://en.wikipedia.org/

A village in the Basque Pyrenees

Donostia/San Sebastian, capital of the Basque province of Guipuzcoa, one of the three provinces of the BAC

Nevertheless, it must be clearly stated that support for the armed struggle carried out by ETA in the Basque Country is becoming marginal. The supposed political branch of ETA (Batasuna[5]) has fallen from 18% of the votes in 1998 to 10% in 2001, 12% in 2005, and 9% in 2009.[6] We know from different surveys that more than half of the traditional voters of Batasuna do not agree with ETA's use of violence. This would mean that direct support for use of violence may be lower than 4%. At the same time, a vast majority of the Basque population has shown its disapproval of ETA's criminal methods many times, and has asked for the dissolution of this terrorist group. After 40 years of violent conflict, an important sector of the population is suffering directly from the conflict (direct victims and relatives, threatened people, more than 600 prisoners and their relatives...). It is clear that ETA's actions involve a clear and extreme violation of fundamental human rights that is totally unacceptable for any democratic society. However, at the same time, there are still repeated and well-founded accusations of torture and ill-treatment of detainees, exceptional anti-terrorist legislation questioned by the Council of Europe,[7] and a very harsh policy against ETA prisoners and their relatives that is also widely contested in Basque society.

In any case, the violent element greatly complicates the search for a lasting resolution and makes the division between the different ideologies bigger and bitterer. Today one can identify three different and very distant blocs in Basque politics: defenders of and opponents to the right of self-determination and a third side represented so far mainly by Batasuna,[8] which does not condemn ETA's violence, making any kind of political collaboration with the other Basque national parties impossible.

Nevertheless, in the Basque case, the bulk of the political conflict relates not to these violent expressions, but to the persistent, strong disagreement on the sovereignty question and the lack of consensus on the legal framework. The Spanish Constitution obtained relatively low support from the Basque population in the referendum held on December 6, 1978 (30% of the census compared to 60% in the rest of the State). On the other hand, the Act on Autonomy (Statute) for the Basque Country did get the support of more than 50% of the census, but an important sector is still outside this system of autonomy and considers it as an imposition from the State. What is more, among the parties that once supported this Statute, today there is deep disagreement on the interpretation of many clauses and, more importantly, on the role to be played by this rule. While for the Spanish parties the Statute represents almost the highest level of autonomy possible within the Spanish Constitution, for the Basque parties the Statute is only a step forward in the process of self-governance and it does not imply that the Basque people have renounced to their right to self-determination. For the former, the Constitution sets the limits for any possible reform in the future; for the latter, the only limit would be the will expressed by the citizens of the Basque Community.

2. The Basque Autonomy at a crossroad

From a constitutional perspective, the Basque Autonomous Community is one of 17 Autonomous Communities of Spain, and enjoys significant devolved powers and institutions, such as a democratically elected Parliament in Vitoria-Gasteiz and a Basque government led by the President or Lehendakari, who is responsible to the aforementioned Parliament. In addition, the BAC, due to its particular history, is organised on a kind of federal basis. Therefore, the three Historical Territories that make up the BAC today enjoy also devolved powers and have their own institutions, including democratically elected parliaments and their corresponding governments. The BAC was the first Autonomous Community to be set up in 1979 after the approval of the Spanish Constitution of 1978. Since 1983, when the last Autonomous Communities were institutionalised, the whole territory of Spain (apart from the small cities in Africa of Ceuta and Melilla) is organised in autonomous communities. Although not all autonomous communities enjoy the same level of self-government, the tendency of the system is to homogenise powers. In this respect, the Spanish model has more in common with the Italian one (although there is no clear division between special and ordinary autonomies) or the moderate federal systems like Austria, than with the asymmetrical autonomy models of Finland, Denmark or United Kingdom.

The Act on Autonomy for the Basque Country[9] is formally speaking an organic law, according to article 81 of the Spanish Constitution. It was the first act on autonomy approved by the Spanish Parliament since the entry into force of the

1978 Constitution. The legislative procedure for the adoption of such an act ("Statute" according to Spanish legal terminology) is a complex one, in which two different wills must merge: the will of the State, expressed through the central Parliament, and the will of the people of the Autonomous Community, expressed in a first stage through its elected MPs, and in a final stage by the people itself via referendum.[10]

Nevertheless, the implementation of the Statute remains controversial in various respects. Defenders of greater autonomy claim that the State has enlarged its original competences through extensive basic regulations in specific matters or via the so-called "horizontal titles", which give to the State the possibility of intervening in fields which were supposed to be exclusively under the competence of the autonomous communities. Generic categories (like "general economic planning") have been used to legitimise a broad range of State interventions via formal legislation or even ordinary regulations; this affects the substance of some of the devolved powers of the autonomous communities. In addition, it is widely held that the work done by the Constitutional Court (whose members are elected only by the central institutions and not by the autonomous communities) when interpreting particular conflicts in this respect has unevenly favoured state positions.

Thus, now the main concern about the Basque Statute from a legal perspective is that some Basque institutions and political parties feel that the significance and content of the Statute approved in 1979 has been limited in different ways in the 30 years since its adoption. Some sectors even consider this a legal violation of the Statute itself, while others now attach themselves to the Statute as the main political consensus to be defended. Paradoxically, unlike in other (most) Autonomous Communities that have already amended their statutes, some of the clauses of the Basque Statute have not been implemented yet, including the devolution of important powers to the regional institutions (employment policies, administration of penitentiaries in the BAC or economic management of Social Security). All this entails a quasi-permanent blockade of the development of autonomy, which is deeply linked to the political conflict that characterises the Basque situation.

In fact, during these 30 years there has only been one serious attempt to amend the Basque Statute. The Basque Government led this attempt in 2003 by sending a bill to the Basque Parliament to reform the whole Statute, which entailed a deep and radical reform of the existing autonomy system. This bill was discussed within the Basque Parliament for approximately a year and was finally approved by an absolute majority in December 2004. However, in the second step of the process, the Spanish Parliament received the proposal, and the First

Left: a vehicle of the Basque autonomous police, the Ertzaintza.

Right: the ETA continues to hit with terror attacks in Spain.

Below: the Basque regional parliament in Vitoria/Gasteiz

Chamber refused to open the process of discussion in a preliminary debate. Therefore the whole proposal was rejected and lost any legal force. Unlike in the Basque case, most Autonomous Communities in Spain have already amended their respective statutes, including those granting autonomy in the first years of the constitutional system, and to date no other amendment proposal has been rejected in the preliminary phase of parliamentary debate.

3. The political debate regarding autonomy and sovereignty

As already explained, Basque society is highly fragmented politically. Among the main political parties present in the BAC, we can distinguish those who favour Basque sovereignty (e.g. right to self-determination) and those Spanish political parties opposed to such an idea. Within the first group, the main political party is PNV. Aralar, "Basque Solidarity" and "United Left" are smaller left-wing parties that have emerged around the same idea of sovereignty. Batasuna, which stands in a different social and legal position, was banned in 2003 for acting as a political branch of ETA. It therefore has no political representation, although it clearly supports the idea of Basque sovereignty. On the other side, the two main Spanish political parties, PSOE (socialist) and PP (conservative) represent the "unionist" political spectrum in the BAC, and radically oppose any idea of self-determination as contrary to Spanish national unity.

The Basque-oriented parties appear either frustrated about the real possibilities of the current Statute or determined to gain formal recognition of sovereignty. On the other hand, Spanish political parties like PSOE and PP are firmly attached to the current autonomy system as part of the Spanish constitutional structure. PSOE shows a more flexible attitude towards a moderate amendment of the Statute, without taking into consideration any formal declaration of self-determination or symbolic issues like specific international representation. From this perspective, it seems extremely difficult for parties on both sides to establish a common ground of political principles, since the Gordian knot of the "right to decide" marks the red line dividing both fields.

In this difficult context, in 2007 former Basque president Ibarretxe (PNV) announced the call for a referendum to press ETA to declare a cease-fire and the central government to negotiate a new political deal based on the Basque population's right to decide. This proposal was opposed from the very beginning by the Spanish political parties. Although the Basque Parliament passed the proposal as a formal act in June 2008, the central government immediately appealed to the Constitutional Court alleging a constitutional violation. In autumn 2008, the Constitutional Court ruled in favour of the central position, excluding any possibility for a legal referendum in the Basque Community on this subject. A large majority of Basque society seems to welcome the vague idea of the right to decide and the possibility of holding a public consultation. However, the implementation of such a proposal raises a significant controversy and the current legal system gives the central government exclusive power to organise any kind of consultation. The proposal therefore collapsed and it was not properly raised again in the last electoral campaign, although the rhetorical call for a referendum is always present in the political discourse of the pro-sovereignty parties.

The electoral behaviour of the Basques hardly changes from one election to another, although the scope of the election (general, Basque, local) is a conditioning factor. Since 1980, nine regional elections have been held. In all of them, pro-sovereignty political parties have obtained an absolute majority of votes and the Basque Nationalist Party has always been the first political force in terms of popular support. A PNV president led every government until 2009. Apart from six years of exclusive PNV governments, different coalitions of PNV with PSOE, Basque Solidarity or United Left have been in office for longer or shorter periods.

Nevertheless, after the last regional elections held on March 1, 2009, a new government was established. It was led by the regional leader of the Socialist Party (PSOE) and supported by the Popular Party. For the first time, the two Spanish parties enjoy an overwhelming majority of seats in the Basque Parliament (39 to 36). This parliamentary score does not, however, fully correspond to the political landscape of the Basque Country, due chiefly to two factors. First, the 2009 elections have been the first regional elections in which no political formation linked to Batasuna has legally taken part. This faction's traditional voters voiced its ideology by formulating non-valid votes, which constituted 9% of the total

number of votes cast. Second, the disproportionate distribution of seats by provinces has created an important shift in the parliamentary representation of political forces. Thus, although pro-sovereignty political parties obtained 52% of the total valid votes, against 47% by the Spanish national parties, the distribution of seats by provinces gives a final count of 36 to 39 in favour of the latter bloc. All this makes it possible to have, for the first time, a pro-Spanish president in the Basque Country and the exclusion of the Basque nationalist party from the regional government.

The new institutional picture after the elections of March 1, 2009 has initiated a new and uncertain period. On the one hand, it is true that the situation of ETA appears weaker than ever before. For the first time, it seems possible to defeat this terrorist group exclusively through legal and police means, instead of through political negotiation. Nevertheless, even if a successful resolution were found regarding the violence carried out by ETA and related groups, the deep controversy about the legal and political framework of the Basque Country would remain alive for the near future. As an opposition party in the Basque Parliament, it does not seem that PNV can play a significant role to support the existing socialist government. The Socialist party must therefore rely exclusively on the support of the Popular Party, thus intensifying the perception of a division in two strong political blocs. In this new period it is likely that central and regional governments can reach important agreements to develop some aspects of the Statute. However, the main controversies about linguistic policy, international representation, symbolic expressions, and, above all, the right to decide, will continue to be hallmarks of the division between Basque and Spanish oriented parties.

Eduardo J. Ruiz Vieytez,
LLM, LLD, is Senior Lecturer of Constitutional Law and Director of the Human Rights Institute at the University of Deusto (Bilbao, Spain). He has published extensively in such fields as immigration and diversity policies, national conflicts, minority rights, and related issues. He has been legal adviser of the Basque Ombudsman and he occasionally acts as an independent expert of the Council of Europe in relation to minority and diversity issues.

References:
Ruiz Vieytez, E. (2008), The Evolution of Autonomy in the Basque Country, in Spiliopoulou Akermark, S. (ed.), Constitutions, Autonomies and the UE, Aland Islands Peace Inst., pp.5-18
E. Ruiz Vieytez and M. Kallonen (2004), Territorial Autonomy and European National Minorities: South Tyrol, the Basque Country and the Aland Islands, European Yearbook of Minority Issues, vol. 2, Martinus Nijhoff publishers, pp. 247-281. ISSN 1570-7865

The proposal for a new Autonomy Statute of the Basque Country:

http://www.nuevoestatutodeeuskadi.net/links.asp?hizk=eng

Endnotes

1 Some particular aspects of this paper can be referred to a previous work: Ruiz Vieytez, E. (2008), "The Evolution of Autonomy in the Basque Country", in Spiliopoulou Akermark S. (ed.), Constitutions, Autonomies and the UE, Aland Islands Peace Institute, pp. 5-18.
2 In Basque language, Euskal Herria (EH); in Spanish, País Vasco; In French, Pays Basque.
3 EAJ-PNV stands for Eusko Alderdi Jeltzalea-Partido Nacionalista Vasco. The name is different in Basque and Spanish versions, meaning respectively "Basque Party of God and Old Laws" and "Basque Nationalist Party".
4 ETA is the acronym for Euskadi Ta Askatasuna, literally meaning "Basque fatherland and Freedom".
5 In this case, we are counting intentional non-valid votes, due to the legal ban of this political option.
6 In March 2003, Batasuna was banned by the Spanish Supreme Court, according to a new Act on political parties, passed by the Spanish Parliament in 2002 with the clear aim of banning this concrete formation. The main unionist parties supported the Act from the very beginning, while Basque national parties oppose it.
7 This can be observed in all the comments made by the UN Human Rights Committee and UN Committee against torture on the Spanish reports. The same can be said in respect to the European Committee for Prevention of Torture.
8 As Batasuna and other related parties have been banned, nowadays there is no legal political formation that can be considered as a clear representative of this sector. Cases about all these illegalization processes are pending before the European Court on Human Rights.
9 Organic Law 3/1979, of December 18th.
10 The referendum on the Basque Statute was held on 25 October 1979. More than 90% of those voting did it in favour, being more than 50% of the census.

10. The Gagauzian Model: A Perspective for Trans-Dniestr?

Benedikt Harzl

1. Introduction

This article attempts to examine whether the relative success story of conflict resolution in Gagauzia could be applied to Trans-Dniestr. At the same time the paper will also critically analyze the underlying presumption according to which decisive factors in both Trans-Dniestr and Gagauzia can be compared without further discussion. The situation in Trans-Dniestr and therefore in Moldova, remains in limbo and has an impact on regional security and EU-prospects. These considerations aside, any kind of legal institutionalization for economic development can hardly be realized without a definite and clear solution of the status question. Yet, it is precisely the disputed status issue that marks the controversial point between Trans-Dniestr's de facto leadership and the Moldovan government. Whereas the former party to the conflict advocates independence and thereby embraces the Kosovo precedent, the latter party denies such claims and emphasizes the uti possidetis principle, according to which the golden price of independence can only be granted to former Soviet republics within their 1991 boundaries.

2. The cases of Gagauzia and Trans-Dniestr

The practice of conflict resolution tends to link territorial autonomy with ethnicity. Thus, an autonomous status appears primarily as means to accommodate a geographically concentrated (and possibly indigenous) ethnic group that forms a regional majority. However, a multi-ethnic society like Trans-Dniestr with its overlapping and cross-cutting ethno-political and socio-economic cleavages challenges this assumption. The same holds true for the Moldovan capital Chisinau/Kishinev, where Russian, Ukrainian as well as Romanian is spoken. Therefore, two general questions must be raised: Firstly, what is the ethnic

notion of conflict – or put differently – is there an ethnic notion of conflict in Trans-Dniestr and Gagauzia? And subsequently, which kind of conflict resolution mechanism should be conceded?

The Gagauzian people are of Turkic origin and live in the relatively concentrated area of Gagauzia, in which they account for 82.5% of the territory's ethnic composition.[1] When the Soviet Union collapsed, the relationship between Gagauz leaders and the newly established independent Moldova became increasingly marked by mutual mistrust and tensions, which never resulted in such massive violence as in Trans-Dniestr. One issue that was perceived as a serious threat to Gagauzian cultural and political development was the public discourse about a possible (re-)unification with Romania. Indeed, the initial stages of Moldova's successful emancipation from Soviet rule and the open atmosphere of Perestroika brought about a reassertion of Romanian ethnic and cultural self-awareness, so that after the overthrow of the Ceausescu regime in Bucharest and under the encouragement by official circles in Romania, the idea of (re-)unification became openly advocated by the Moldovan Popular Front.

Even though support for the Popular Front and its nationalist wing eroded massively, such that it received only some 7.5 % of the votes in the 1994 parliamentary elections,[2] the newly constituted Republic of Moldova did not provide for meaningful Gagauzian autonomy and moreover, it approved a nationalist language legislation centered on the use of Moldovan.[3] Nevertheless, a solution for Gagauzia was found under President Mircea Snegur, who abandoned pro-Romanian rhetoric and pursued a policy that recognized the right of Gagauzia's internal self-determination within the boundaries of Moldova. Finally, a constitutional amendment was approved in 1994 that provided for the special legal status of Gagauzia and established one of the few truly working autonomies in the post-Soviet space.

It was this arrangement that established Gagauzia as territorially autonomous unit. It has its own elected administrative and legislative authorities, and all three languages (Romanian, Gagauz and Russian) are used officially. All of the provisions of the autonomy statute were already implemented in the course of 1994, so that in exchange in 1995 the Gagauz militia turned in their arms and were incorporated into the Moldovan security forces. This was essential in

resolving the security dilemma that became one of the most important arguments for the secession of Trans-Dniestr. Today, opinion polls show that Gagauzians are relatively satisfied with their autonomy, even though some radicals advocate a union with Trans-Dniestr. Indeed, criticism regarding the lack of power-sharing between the central government and Gagauzia is increasing,[4] however, most of the political establishment in Gagauzia calls for greater autonomy only on the basis of what has already been achieved.

What were the parallels and distinctions in the case of Trans-Dniestr? The present-day territory of Moldova has been an object of tug-of-war and external influences as well as under the direct power conquest for centuries. The presence in Moldova of Gagauzians who fled the wars between Russia and the Ottoman Empire in the Balkans underscores this statement. Yet, the fact that great power interventions usually plant the seeds for domestic discontent can even be better exemplified in the example of Trans-Dniestr. The river Dnestr, which today divides Moldova, was for a long time the border between the Russian and the Ottoman Empire. The Berlin Peace Conference of 1878 provided for the incorporation of Bessarabia[5] into Russia. After World War I, only the small narrow strip Trans-Dniestr remained as a "Moldovan Autonomous Soviet Republic," part of the Ukrainian SSR and therefore part of the Soviet Union. Later on, Bessarabia became part of the secret protocol of the Non-Aggression Pact between Germany and the Soviet Union. In August of 1940, Soviet troops crossed the Dnestr and entered Bessarabia, and in the same year Stalin, who believed in the constancy of the treaty, "returned" Trans-Dniestr to Bessarabia. After World War II, the Soviets did not withdraw their troops from Bessarabia, but founded an artificial "Moldovan SSR," which they perceived as their justified spoils of war. So it may be pointed out that on the one hand, geopolitical issues marked this region, but on the other, Trans-Dniestr has never been a cultural part of Bessarabia or even Romania. This background is extremely important to comprehend the discontent of the Slavic population of Trans-Dniestr when Moldova's leadership condemned the Soviet Union for extricating Bessarabia from Romania, but silently and simultaneously accepted the incorporation of Trans-Dniestr into Moldova, which was only possible due to the Hitler-Stalin Pact.[6]

As in Gagauzia, the Moldova's leaning toward joining Romania, the passage of discriminating language laws, and the fear of finding itself in quite alien surroundings from an ethnic and socio-economic point of view provoked serious tensions in Trans-Dniestr. In contrast to Gagauzia, these tensions relatively quickly turned into a military confrontation. None of the conflicting parties showed a readiness to compromise: on the one hand, Moldova refused to grant external self-determination to Trans-Dniestr in the case of unification with Romania (this was seen as

Moldova, Trans-Dniestr and the demilitarized security zone, Source: http://geopoliticalnotes.files.wordpress.com/2008/10/moldova_map_transnistria.jpg

Tiraspol, capital of Trans-Dniestr, monument for the war of independence

general condition by Trans-Dniestr authorities), and on the other hand, Trans-Dniestr declared its secession from Moldova in December 1991.

These mutual provocations resulted in direct military clashes. Trans-Dniestr paramilitary units, joined by Cossack volunteer battalions from Ukraine, and Moldovan defense forces began launching attacks against one another. However, the most important key factor of the military conflict, the Soviet 14th Army, must also be mentioned. In December 1991, Soviet armed forces on the territory of Moldova consisted mostly of units of the 14th Army, which were subsumed into CIS command structures. Moldova tried desperately to secure control over these forces, but in 1992 these forces were already integrated into the Russian armed forces by presidential decree of Yeltsin.[7] It is very often said that the Russian 14th Army became a key factor in the conflict by intervening in favor of Trans-Dniestr, driving armed Moldovan forces out of Trans-Dniestr, and thereby hastening Moldovan defeat. Indeed, the role of the 14th Russian Army during the bloody clashes in Moldova made a contribution to the de facto military success of PMR[8] forces. Corrupt Generals were responsible for illegal arms transfers to civilian and paramilitary groups, and the neutrality of the 14th Army, which serves today as peace-keeping force according to the quadripartite mechanism for settling the conflict, could be heavily doubted more than once. Nevertheless, it can be argued that the resolute and energetic performance of the 14th Army avoided further bloodshed as well as the possibility of massive ethnic cleansing campaigns, which did not take place here, in contrast to Abkhazia, Nagorno-Karabakh and South Ossetia.

Some attempts were made to solve the conflict, but the breakthrough was reached on 21 July 1992 in Moscow, through a fundamentally new initiative. Both conflicting parties agreed on an immediate cease-fire, the creation of a 10 km demilitarized zone on both sides of the Dniestr, the respect of the sovereignty of Moldova and the need for a special status for Trans-Dniestr. In order to implement this treaty, a tripartite Joint Control Commission (JCC) was established, consisting of representatives of the PMR, Moldova and Russia. The treaty also provided for a peace-keeping force under a special military Commission subordinate to the JCC. Today, 17 years after this preliminary settlement, which is still in force, Trans-Dniestr is a de facto independent state, with its own state structures, an anthem and a coat of arms (reminiscent of the Communist period, as hammer and sickle are still the dominant symbols). Consequently, PMR authorities do not feel bound by Moldovan law or even international treaties that Moldova has signed.

3. The ethnic element of the conflict

In order to return to the initial question – is there an ethnic notion of conflict in the Trans-Dniestr crisis – it seems worthwhile to make use of a general definition: "Ethnic conflicts are such conflicts, in which the goals of at least one conflict party are defined in (exclusively) ethnic terms".[9] Is such a statement applicable to Trans-Dniestr? Even though relative importance can be accorded to the ethnic dimension as conflict-generating factor (e.g. discriminatory language laws), it seems to be nevertheless the case that ethnic cleavages were only weakly predominant in Trans-Dniestr during and after the conflict. Pragmatic choices about political and economic policies rather than deeply rooted ethnic cleavages appear to have determined the behavior of the parties to this conflict. In the case of Trans-Dniestr, the development of ethno-political disputes appears closely connected with the dynamics of the rapid socio-political transition experienced by the former Soviet Republic of Moldova since the early 1980s. Nationalist Moldovan/Romanian movements not only challenged federalist, but also Communist values, such that Communist leaders in the heavily industrialized Trans-Dniestr mobilized supporters of "socialist internationalism" as counter-movement of the Soviet multi-ethnic people.[10] Indeed, in Trans-Dniestr the national agenda of the newly established Moldovan Republic clashed with ideological and political conceptions and the economic interests of local leaders. Nevertheless, political and regional elites have always made use of "ethnic camouflage" in order to obscure their real – mostly politically motivated goals. Therefore, we are now arriving at a point that distinguishes Trans-Dniestr from Gagauzia, and which makes conflict resolution even more difficult in the light of multiple factors, complex territorial claims and ethnically-colored motives.

What accounts for the difference is that the Gagauzian people were comparatively much better organized and politically mobilized than their Russian/Ukrainian counterparts in Trans-Dniestr, with structures that originated from de-stalinization in the late 1950s and the collective memory of Stalinist repressions. This of course

led to an eventual conflict that automatically had a much more pronounced ethnic character than was the case in Trans-Dniestr. Furthermore, their aspirations for autonomy were authentic, insofar as they never generally questioned the territorial integrity of Moldova within its Stalinist boundaries. From this general statement we can deduce several arguments that cast another light on conflict resolution in Trans-Dniestr as compared with the Gagauzian model.

4. Why another approach makes sense

Perhaps the title of this paper tends to mislead the reader into thinking that the Gagauzian autonomy is a unique as well as generous approach in terms of accommodating a national minority in Moldova. Only at a second glance does it become clear that this agreement was a direct result of Moldova's defeat during the war of 1991-1992. Moldova's political elite became anxious to go the way of Georgia, whose independence had already become a total disaster by 1992. In view of a radicalization in Gagauzia, and consequently an imminent danger of Moldova breaking into pieces, the political elites of this country had simply no other option than to advocate a moderate policy vis-à-vis the Gagauzian people in order to rescue as much as possible from the Soviet territorial legacy. Therefore, it was Trans-Dniestr that co-generated the Gagauzian autonomy, and whether this autonomy can nowadays positively reflect on Trans-Dniestr is seriously challenged by several factors. One of them, the history of violence, makes conflict resolution in terms of autonomy very difficult. Even though massive ethnic cleansing did not occur, the fact that both sides committed grave human rights abuses during the war means that one precondition for autonomy will require much time to create: mutual trust.

Another factor, as already mentioned above, is the lack of a geographically concentrated area of Russophones. To the contrary, ethnic Moldovans form the largest single ethnic group in Trans-Dniestr, making up 31% of the area's population. Without the capital Tiraspol and its high proportion of native Russian speakers, they would even represent the absolute majority. Slavs only form a majority if the distinction between Ukrainians and Russians is neglected. In addition, most Russians and Ukrainians in Moldova are living on the right banks of the river Dniestr, i. e., in the part of Moldova under the control of the Moldovan government. In the capital Chisinau/Kishinev alone, more than 22% register themselves as Russians and Ukrainians.[11] This data showing how the Slavic population is scattered in all possible directions in Moldova, makes it difficult to argue for the territorial autonomy of Trans-Dniestr. In the light of the high concentration of Gagauzians in their autonomous region, a confederation of Trans-Dniestr and

Gagauzia

Population (2001)	171,500
Land area	1,831.5 km²
Capital	Comrat
Ethnic composition	82.5% Gagauzians, 5.2% Bulgarians, 4.4% Moldavians, 4.6% Russians, 3.3% Ukrainians, 1.3% other ethnic groups
Official languages	Gagauzian, Moldovian, Russian
Autonomy since	23.04.94

The Gagauz people descend from Seljuk Turks, converted from Islam to Orthodox Christianity after settling in Eastern Bulgaria in the 11th and 12th century. Gagauzia, for centuries part of Bessarabia, has been ruled by the Russian Empire (1812-1917), Romania (1918-1940 and 1941-1944) and the USSR (1944-1991) and Moldova (1991 to date). In March 1991 there was an almost unanimous vote in favour of remaining a part of the USSR. In February 1994, President Mircea Snegur promised the Gagauz autonomy, but he was against outright independence. Snegur also opposed the suggestion to transform Moldova into a federal state, made up of three republics, Moldova, Gagauzia, and Transdniestria. In 1994, the Parliament of Moldova awarded to "the people of Gagauzia", through the adoption of the new Constitution of Moldova, the right of external self-determination, should the status of the country change. In other words, if the case was that Moldova decided to join another country (by all accounts, that would be Romania), then Gagauzians would be entitled to decide, by means of a self-determination referendum, whether to remain part of the new state or not. On December 23, 1994, the Parliament of the Republic of Moldova accepted the "Law on the Special Legal Status of Gagauzia" establishing the "Autonomous Territorial Unit of Gaguzia" (*Gagauz Yeri*), resolving the dispute peacefully. This date is now a Gagauzian holiday. Gagauzia is now a "national-territorial autonomous unit" with three official languages, Moldovan, Gagauz, and Russian. Three cities and twenty-three communes were included by their own decision in the Autonomous Gagauz Territory: all localities with over 50% Gagauz, and those localities with between 40% and 50% Gagauz which expressed their desire to be included as a result of referendums to determine Gagauzia's borders.

Source: http://en.wikipedia.org/

*Lenin's monument
in Tiraspol,
capital of Trans-Dniestria*

autonomy was also the result of a package deal: Ukraine agreed to ship all its nuclear warheads to the Russian Federation for dismantlement. In exchange, Ukraine's territorial integrity was recognized by Russia and undersigned by the US. At the same time, the nationalist leadership of the Meshkov movement began to decline. The "big treaty" was Russia's international recognition of the fact that Crimea and Sevastopol are integral parts of the Ukrainian state.

The first step that would contribute to a solution of the Moldovan issue is a rhetorical demobilization on all levels (and this seems highly important after the recent pro-Romanian demonstrations in Chisinau/Kishinev). Subsequently, a package deal that would involve not only the EU, but also Russia and possibly the US could avoid what happened in August 2008 in South Ossetia. Is it really so hard for NATO states to ratify the CFE treaty that has often been mentioned as a precondition for Russia to consider a withdrawal of the 14th Army? This "external dimension" has to be complemented by an internal one. The international community should not depart from the idea of a contemporary settlement mechanism, and should recognize the Trans-Dniestrian leadership as a negotiation partner on an equal level. In summary, the dispute surrounding Trans-Dniestr, its implications for NATO enlargement and a geopolitical chessboard strategy certainly extend beyond the realities of the Gagauzian autonomy.

Moldova on an equal institutional level seems more plausible.
The "kin factor" represents an additional problem. From the very beginning, the Gagauzian population did not have a strong kin state in its background that perceived the region to be within its sphere of influence. History teaches that an ethnic minority with a kin state as lobbyist has a greater chance of achieving its goals. Nevertheless, the absence of a kin state in the Gagauzian case clearly made conflict resolution on the basis of autonomy easier. The support of Trans-Dniestr by Ukraine and Russia, and correspondingly the support of Moldova by Romania have not contributed to a meaningful solution of the conflict so far.

Yet to argue that Trans-Dniestr is an outpost of Moscow would be an irresponsible oversimplification: PMR authorities very often rejected invitations to settlement talks from the Russian side.[12] Furthermore, Trans-Dniestr President Smirnov has affronted Moscow by nationalizing all military units and equipment from the Soviet period.[13] This has had serious consequences: even if a withdrawal of Russian soldiers from Trans-Dniestr was adopted, the PMR leadership would nevertheless insist that weaponry (especially artillery) and other military equipment should remain in its possession. Given the fact that most of the peace-keeping soldiers are also inhabitants of Trans-Dniestr, it would be clear that a removal of the armed forces before an agreement is in place is doomed to failure. Nevertheless, the existence of a strong player in the background who hardly obscures his support for one party to conflict highlights the need to adopt other strategies. The Crimean

*Benedikt Harzl
graduated in Law at the Karl-Franzens University of Graz (Austria). After the international work experience gained at the Institute for German Studies in Minsk (Belarus) and at the German Council on Foreign Relations in Berlin (Germany), he started to work as a researcher at the European Academy in Bolzano/Bozen (Italy) in September 2007. His main research interests include post-Soviet state engineering, ethnic conflicts in the post-Soviet space, Russian foreign policy in the 21st century and European engagement Eastern Europe. Recently, he focuses as well on the impact of Kosovo on other conflict-ridden regions, especially the Caucasus.*

Endnotes

1 See: Ethnic Composition of the Republic of Moldova, 2004; http://www.statistica.md/recensamint/Nationalitati_de_baza_ro.xls

2 See: CSCE Conflict Prevention Center, "The Transdniestrian Conflict in Moldova: Origins and Main Issues", Vienna, 10 June 1994

3 Thomas Benedikter, "The World's Working Regional Autonomies", Anthem Press New York – London – Delhi, 2007, p. 177

4 Stefan Proebst, "Die Autonomieregelung für Gagausien in der Republik Moldova – ein Vorbild zur Regelung ethnopolitischer Konflikte?", Berliner Osteuropa Info, 2001, see: http://www.oei.fu-berlin.de/media/publikationen/boi/boi_17/19_troebst.pdf

5 Bessarabia is a historical term which describes the territory surrounded by the rivers Dniestr in the east and Prut in the West. Trans-Dniestr has never been part of it.

6 Viktor Kirillov, "The Conflict in the Trans-Dniestr Region: History and Current Situation", in Hans-Georg Ehrhart, Anna Heinemeyer and Andrej Zagorski (Eds.), Crisis Management in the CIS: Whiter Russia?, Baden-Baden 1995, pp.55-65, at p. 60.

7 Cristian Urse, "Transnistria: Prospects for a Solution", George C. Marshall – European Center for Security Studies, Occasional Paper Series No.7, 2007, p. 5.

8 PMR is an abbreviation for Pridnestrovian Moldovan Republic

9 Stefan Wolff, "Ethnic Conflict – A Global Perspective", Oxford University Press 2006, p. 2.

10 Airat R. Aklaev, "Dynamics oft he Moldova-Trans Dniester ethnic conflict", in Kumar Rupesinghe and Valery A. Tishkov (Eds.), Ethnicity and Power in the Contemporary World, UN University Press, 1996, pp. 83-115, at p. 87.

11 See: Ethnic Composition of the Republic of Moldova, 2004; http://www.statistica.md/recensamint/Nationalitati_de_baza_ro.xls

12 Schreiber Hannes, Die OSZE im Transnistrienkonflikt, in Österreichische Militärische Zeitschrift, Mai-Juni 2002, pp. 312-317, at p. 315.

13 Büscher Klemens, Separatismus in Transnistrien – Die "PMR" zwischen Rußland und Moldova, in Osteuropa, 46. Jg., 9/1996, pp. 860-875, at p. 873.

South Tyrol's Provincial Assembly, endowed with autonomous legislation, in Bozen/Bolzano.
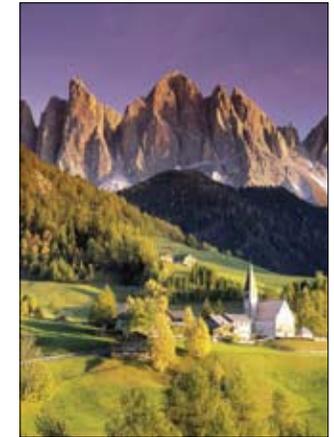
11. A European autonomy seen with South Asian eyes: South Tyrol

Farah Fahim

- What do outsiders see in the South Tyrol autonomy? A success
- Is the socio-economic status of the Province of Bozen really as good as claimed? Yes
- Is this because of the autonomy? Yes
- Do the various lingual groups live in harmony? Superficially Yes
- Are the locals happy with their standard of living? Not really
- Can this model of autonomy be applied to other minority conflict regions of the world? Maybe

Starting with the above questions and answers, this article summarizes years of experience, observation and opinion about South Tyrol. The content is a personal consideration and not an academic review.

The proud example of a successful autonomy, a strong level of self government, a cozy region in the mid of the Alps, with a rough population of 500.000, South Tyrol, formerly part of the Austro-Hungarian county of Tyrol, was annexed by Italy at the end of World War I and suffered years of humiliation, repression and systematic destruction of its culture and identity. After 20 years of fascist

attempts to assimilate the German minority, it finally obtained autonomy in 1948 after the Second World War.

The South Tyrolean People´s Party (SVP or Südtiroler Volkspartei) was founded in 1945 by prominent South Tyroleans to fight for self-determination. This decades long fight for self governance bestowed the SVP with absolute power over and overwhelming support from the German speaking community. Since the autonomy of South Tyrol, the SVP has been the undisputed political party of the region which in the past decades regularly earned 80% of German and 60% of Ladin votes. There have been 4 Presidents of the region South Tyrol since the first autonomy of 1948, and all 4 are from the SVP. The current President Luis Durnwalder has been in power - or correctly said rules the province - since 1989. This peculiar kind of exercizing political power in South Tyrol has results which are not normal to such concentration of power, as the province and its population have flourished.

Standard and cost of living in Bolzano-Bozen, the capital of South Tyrol, is high. The city of Bolzano- Bozen in 2008 ranks as no. 3 in Italy's yearly ranking for "quality of life" in Italian cities conducted by the newspaper Il Sole 24 Ore. This ranking considers quality of life, economy and employment, services and environment, public administration, population and free time as criteria to award points to the various cities in Italy. Within this list of roughly 100 cities, published by the "Il Sole - 24 Ore", Bolzano-Bozen has always been among the top 5 cities, reaching even the first position a few times. Yet, quality of life in Bolzano-Bozen goes beyond fulfilling primal and social needs of the society. It is not only determined by materialistic factors such as consumer goods' availability, banking services or quality housing, but also by its political stability and effective law enforcement, crime rate is low and highest priority is given to personal safety, South Tyrolean cities are amongst the safest cities of Italy. Abundant nature and low pollution make it a haven for those who look for a clean and healthy environment to live and raise their children. For those who want to enjoy their time exploring nature at its best and treat themselves with harmony, peace and tranquility. South Tyrol offers some of the best ski resorts in Europe. Tourism and gastronomy account for a high share of the Province´s income.

The salaries in the province are higher in comparison to the Italian average pay, but this means nothing as the expenses are also higher in comparison to the Italian average. Savings are low, but the standard of living is high. There are jobs for everyone in South Tyrol. Whether a PhD or a middle school dropout, there is work and a decent pay for all. A handful of educated foreigners (non EU) are in white collar jobs, the rest, educated and uneducated, work as cooks, kitchen help, cleaning persons, house help, porters, labourers, vendors and other petty jobs. Dignity of work and respect for others is applied in daily life by the local South Tyroleans. Many non EU citizens have small businesses like grocery stores, food stands, clothing and accessories telephone/internet facility, video/DVD rentals, money transfer, hair stylists and other small businesses which attract other non EU citizens.

There are a fixed number of public jobs available according to the percent of Italian, German and Ladin speaking declarations. By law people in the region must sign up with the local administration and declare what official linguistic group they belong to: German, Italian or Ladin. A person born in an Italian family can declare him/herself as German speaking and vice-versa. There is no objection to this kind of declaration, which is usually made in an attempt to gain the jobs reserved for the various lingual groups. All public offices function good and efficient, the people serving the public are in the office during office hours, do their jobs, and are friendly too. This includes the "Questura of Bolzano" - the Police Department - which is also the Foreigners Permit Office, where non Italians get their work and stay permits and Italians apply for passports. The locals may not agree with the same. But from an Asian point of view, where every public service has its "price" and despite that works in the most inefficient way, one can dare to say that the Government administration of the Province of South Tyrol is like living in a fairy tale, although not appreciated locally. Hundreds of millions of Euros are pumped in yearly by the local government as investment in infrastructure, health and sanitation, education, integration of immigrants, public transport system; repair and maintenance of roads, public spaces, buildings under monumental protection and the environment in general.

Excellent health care is provided for all (including illegal immigrants), for those resident in the Province these services are available at nominal or no cost as in the rest of Italy, but with a difference that health care in South Tyrol is efficient

Language groups in South Tyrol - Census 2001

German majority:
- 90- 100%
- 80- 90%
- 70- 80%
- 55- 70%

Ladin majority:
- 90- 100%
- 80- 90%

Italian majority:
- 70- 80%
- 55- 70%
* white: 50/50 Ger/It.

Source: Autonomous Province of South Tyrol, Rep. 8 - Provincial Statistics Institute, Census 2001

South Tyrol

Population (2009)	500.030
Land area	7,400 km²
Capital	Bozen/ Bolzano
Official languages	German, Italian, Ladin
Ethnic groups (2001)	Germans 69.15%, Italians 26.47%, Ladins: 4.37%
Autonomy since	1948

Apart from Sicily, Sardinia, the Aosta Valley and Friuli-Venezia Giulia, in 1948 a special autonomy statute was granted to the Region Trentino-South Tyrol, based on constitutional law, which accomplishes Italy's obligations under the Italian-Austrian Peace Treaty of 1946. South Tyrol, has been annexed by Italy in 1919 although at that time more than 93% of its population were German speaking Tyroleans. But South Tyrol's autonomy, accorded to the basic end to ensure protection to the two ethnic minorities, was connected with the neighbouring, fully Italian province of Trento, ensuring an Italian majority on the regional level.

When in 1972 South Tyrol's autonomy was reinforced shifting the bulk of powers to the two provinces, the Region transformed to a less important institution. Today, after further amendments in 2001, South Tyrol can exert self-government in a wide range of legislative and executive competences. The participation of all official ethnic groups in the autonomous government and decision making in public bodies was allowed by consociational arrangements. There is also a high degree of cultural autonomy for the 3 official groups, especially in educational issues. One basic rule for political representation and a key for the distribution of public service jobs and resources is the "proportionality rule" referred to numerical strength of the three official ethnic groups. The principle of equality of all residents regardless of their groups affiliation however is strongly uphold.

Due to this territorial autonomy the social and cultural position of South Tyrol's two autochthonous minorities, the Tyroleans and the Ladins, has been fully restored. According to the analysis of renowned scholars, the protection of the language rights has achieved a advanced level compared with most minority areas in Europe. The regional autonomy has built a framework where every citizen, irrespective which official ethnic group he belongs to, can consider his specific cultural identity respected.
See: J.Woelk/F.Palermo/J. Marko (ed.), *Tolerance through Law,* Nijhoff, Leiden/Boston 2008

and of good quality. The waiting time before receiving a first appointment in certain cases can be long, but for emergency situations the first aid departments offer 24 hours service. Even in cases where the person does not have the personal health ID card issued by the province health services, treatment is provided. Medicines can be bought at a subsidized price, when prescribed. Monetary help and assistance is provided to families with invalid persons. There are lots of programmes and initiatives to integrate and help people with handicap and other disorders. There are services for old people and homeless.

The Province of Bolzano provides citizens with low incomes and helps them in paying the rent. The locals can also avail apartments constructed by the Province for a reasonable price for rent or purchase. The Province undertakes massive construction works and has built in the last years thousands of quality apartments. The apartments, by provincial law, have to be of certain standards which consider, energy efficiency, building material and the prescribed minimum space requirements for families. A couple with one or two children must rent a flat with a minimum of two bedrooms. To receive a stay permit for families, foreigners in South Tyrol must respect the space requirements for e.g. an apartment of 70 square meters must be rented to officially maintain a family of 4 people. Hence a minimum standard of living is assured for by enforcing this regulation.

Education up to high school is mandatory and free of cost in Italy. In South Tyrol there are

three different school systems- German, Italian and Ladin. In families rigorously Italian or German, there is absolutely no doubt as to what school their children are enrolled in. It is obvious that they attend the schools with level of instruction in their mother tongue, learn the other language (Italian or German) for at least one hour a week as a "language". In mixed families, where one parent is German speaking and the other Italian, it is not certain how the decision is made. Ladin schools offer a mixed level of instruction where courses are conducted in all three languages. These schools are concentrated in two valleys of the Province, the Gardena and the Badia valley, which have the maximum Ladin population. Most of the immigrant children attend Italian schools as the Italian schools have lower entry requirements than the German schools and are more open and welcoming to foreigners in general.

South Tyrol has become a hot spot for non EU population, due to the various privileges provided to low income families, in addition to free schooling and health care. The Province this year alarmed with the number of resident foreigners, seeking such social benefits, has pulled the string on this trend. First priority for most privileges in terms of housing and support to families will now be given to locals, foreigners must pass certain guidelines to avail these privileges. Until last year things were done differently, which created unrest among the locals, who had to wait for years, before getting the requested service, and a non EU family which made the request after them was provided with the facilities as they were more in need, or more impoverished.

South Tyrol's autonomy is a perfect example of good self governance, political and economical stability. But what about social stability and feelings of the masses? Has the autonomy achieved that? There is no open violence or hostility among the linguistic groups in the province. But still there is a visible tension between them, even after 60 years of autonomy. A segregation is seen in all aspects of daily life and modes of living. The Province officially works in two languages, German and Italian. All official communication has to be made in both languages. The locals can use their mother tongue to communicate with the public offices, and the public officials are obliged to reply to them in their mother tongue. It is obligatory to pass a bilingual exam of different levels to be considered for public jobs of different levels. This obligatory bilingualism is to secure proper communication standards in both languages.

In general, different reactions can be seen from people depending on the language of communication. Still many German speaking South Tyroleans do not sufficiently master the second official language Italian, although it is mandatorily taught in school, and reverse, young Italians do not sufficiently master German. Each group understands the language of the other, but many refuse to speak in the second language and insist on communicating in their mother tongue. Young people of the same groups hang out together. This refusal to learn and speak the second provincial language is not a normal refusal to learn a language, but has deep roots of unforgotten conflict going back to the time of the World Wars.

There are different school systems starting from kindergarden, for Italian, German and Ladin speaking communities, parents according to their backgrounds and/or preferences choose what school their children attend. A separation of the lingual groups is fostered from early childhood and systematically nourished through the years by the families and social environment. The situation is strong in the mountain regions, with small populations, who are almost all German speaking, whereas the Italians are concentrated in the 4-5 major cities.

The two groups live in separated societies; there are pockets in every city of South Tyrol which are "Italian" or "German" areas. There is discontent about the other group, and disliking for each other's cultures and habits. Although the Italians living in the province have accustomed to and copied much of the German culture, even after all these years they are still seen as different, and are frustrated for not being accepted. The German group remains on the offensive, strongly protective about its culture, as though it is still today in great danger of being wiped out. They constantly remind themselves of the wrong that has happened in the past, actively keep the fire burning in the newer generations, and in every occasion remind the people of the struggle, humiliation and suffering they had to face at the hands of the Italians.

This is a rather political move than a purely emotional one, as often only a patriot attitude by South Tyroleans is considered a basis to defend the region's autonomy. If the German group gets softer, it is assumed, they might lose the autonomy and hence the privileges that come with it, which make South Tyrol a rich, prosperous

and well functioning region. So they keep the fight alive, although it is rather senseless under the current conditions. A cold accord has been reached between the groups, who although discontent with each other's presence, are aware that their prosperity lies in the autonomy status and hence it must be protected at all costs. And since the autonomy was granted in the first place to protect linguistic minorities of the region, the politicians make it a point to keep these minorities alive and separated. The cost is that a majority of the younger generations has grown up and even today grows up with subconscious or even conscious mistrust for the other group.

To conclude, although historically a rich province, South Tyrol´s current status would not have been the same under absolute Italian rule, despite the natural resources and massive industrial investments made in the region during Fascist time. The wealth that remained after the World Wars would have flowed to Rome, leaving empty valleys and naked mountains. South Tyrol is a self sufficient and prosperous province because of its autonomy, its serious hardworking and diligent population (both Italian and German speaking), the strong and effective local government who has used the autonomy status and the past to strengthen the future and well being of its separated societies. More than 100% of the tax revenues generated in the Province remains in the region.

There are many reasons for the existence and success of an autonomy, the will and determination of its people, its politicians, its supporters and its offenders. Can this model be applied to other similar regions? An in-depth study of the cultures and backgrounds of the people, their history, strengths and weaknesses, the local situation, perceptions of the mass, capacities and goodwill of its politicians, its supporters and its offenders and other unforeseen factors all play a powerful role. These aspects are very different in each part of the world. Hence, tailor made solutions, fulfilling demands of that population, must be achieved by the regions fighting for self-governance. Each region is particular with its problems, it is not realistic to compare situations. The South Tyrol autonomy can be studied to see how solutions were obtained for this region, but it is not feasible to apply the South Tyrolean model in other regions with linguistic minorities.

Farah Fahim-Tarsia
is a Bangalore born Italian citizen and Oversees Citizen of India, resident in the small South Tyrolean village Natz-Schabs near Brixen. She has studied Law in Bangalore and Business Administration in the USA. 2009 is her fourth year as a research support staff in the European Academy, Bolzano, the main provincial institute for scientific research.

12. Cultural autonomy in Estonia
Before and After the Soviet Interregnum

Karl Kössler and Karina Zabielska

Introduction

Both in reality and in this volume, granting territorial autonomy is the typical model of accommodating a national minority within a state. This follows from the fact that many national minorities have more or less concentrated areas of settlement. Some, however, are dispersed all over the territory of one or even more than one state. In these cases there is an urgent need for models of non-territorial autonomy.

When we are dealing with this issue we have to reach clarification on two fundamental terms that must be differentiated: personal autonomy and cultural autonomy.[1] Personal autonomy is the exact opposite of territorial autonomy, as it refers to the subject of self-government, which is a personal corporation in the first case and a territorial one in the latter. This personal corporation forms a legal person under public or – rather exceptionally – private law[2]. It is composed of individuals whose affiliation is a matter of free choice. The term cultural autonomy, on the other hand, focuses on the content of self-government. It means a particular type of personal autonomy that is limited to the self-government of cultural affairs in a wider sense, including language, education, religion, customs etc. As these are the tasks that can be easily fulfilled by a personal corporation, virtually every personal autonomy is, in fact, a cultural autonomy.

At this point we encounter a major disadvantage of such an arrangement compared to a territorial solution, namely its usually limited scope of power. It is certainly conceivable that this scope might be extended from merely cultural affairs to some social affairs in a broader sense, such as the protection of minors, sports and even some selected functions in health care and welfare matters.[3] Some responsibilities, however, that are closely related to territory, such as security and the bulk of powers concerning the sphere of economy, can only be transferred to a territorial autonomy.

Despite this relatively limited scope of self-government, personal autonomy has some undoubted comparative advantages if a minority does not aspire to territorial autonomy or if its dispersed settlement makes this type of autonomy unfeasible.[4] The non-territorial character prevents disputes over boundaries of the autonomous area and avoids both enclaves and exclaves. In this way no new minorities are created within an autonomous region, who might be confronted with coercive assimilation by the regional majority. Through the absence of exclaves no incentive is provided for further territorial claims. Moreover, personal autonomy guarantees maximum individual freedom because it only applies to people who opt to be members and who are allowed to leave the autonomous community at any time without having to leave their homes. A final advantage is simply pragmatic. Since some central governments consider territorial autonomy to be a stepping-stone towards secession, personal autonomy might encounter less resistance.

The arrangement of cultural autonomy most often cited as a shining example[5] is Estonia's Law on Cultural Autonomy of 1925. This seminal piece of law was adopted only seven years after gaining independence. As a result of the "division of power" between Hitler and Stalin in 1939, Estonia was subjected to the Soviet sphere of influence and consequently became a part of the Soviet Union. After 52 years without a sovereign state, Estonians regained independence in 1991. When organizing the new state the principle of continuity of the first republic was observed. One of the reasons to do so was to not grant Estonian citizenship automatically to all the Russian-speaking settlers from other Soviet Republics, whose "massive state sponsored-immigration"[6] during Soviet times had considerably changed the demographic proportions within the small country. As a consequence of following the continuity principle, after 1991 many legal acts were explicitly linked to laws of the inter-war period. One example is the Law on Cultural Autonomy for National Minorities of 1993, which was regarded by politicians and scholars as successor of the aforementioned law of 1925.[7] Therefore, its content ought to be inspired by the example from the inter-war period and be closely modeled on it.

Nevertheless, in contrast to its widely renowned predecessor, the new law was not at all perceived as a "best practice" for accommodating Estonia's national minorities, but was often criticized for not serving its purpose.[8] What is behind these contradictory perceptions of two pieces of law that ought to be similar? With this article we seek to compare these two arrangements of cultural autonomy in Estonia and to illustrate how slight differences in legal design and historical context can cause a cultural autonomy to prosper or to fail. In this regard five

factors appear to be critical and worthy of examination in Estonia and anywhere else. A solid legal entrenchment in the constitution and in ordinary laws serves as a durable guarantee of self-government for the beneficiaries, namely the national minorities. These groups form an institutional framework, which represents them and is in charge of exercising a set of autonomous powers. Finally, sufficient financial resources are of paramount importance to the ability to really make use of these autonomous powers.

Tallinn, Estland's capital

Legal Entrenchment

The constitutional basis of the law of 1925 was Art. 21 of the Estonian Constitution of 1920. According to this clause, national minorities were entitled to create their own autonomous institutions to serve their welfare and cultural interests within the limits of the state interests. The details of the cultural autonomy were then regulated in the above-mentioned Law on Cultural Autonomy of 1925, as well as in corresponding executive orders of the Estonian Government.[9]

Soon after regaining independence in 1991, cultural autonomy was once again entrenched in the legal order. According to Art. 49 of the Estonian Constitution of 1992 "everyone has the right to preserve his or her national identity" while Art. 50 states that "national minorities have the right, in the interest of national culture, to establish self-governing agencies under condition of and pursuant to procedures provided by the National Minorities Cultural Autonomy Act". The constitutionally announced act was adopted one year later, in 1993. Obviously, the legal entrenchment of Estonia's two arrangements of cultural autonomy is quite similar. It is also consistent with the usual practice in other countries where the constitution only contains general wording that must be given substance through more detailed ordinary laws.[10]

Beneficiaries

The beneficiaries of the law of 1925 were Estonian citizens belonging to a national minority, i.e. "the Germans, Russians, Swedes and other nationalities who live within the boundaries of Estonia and whose number is not less than three thousand persons" (§8). However, in areas with a non-Estonian majority Estonians could also benefit from the law and achieve cultural autonomy. According to the census of 1922, 92.5 % of the population was Estonian. The largest national minorities were Russians (3.7%), Germans (1.7%) and Swedes (0.8%).[11] Following the adoption of the law the dispersed German and Jewish minorities created institutions of self-government while the Swedes and Russians showed little aspiration. Obviously, these minorities with comparatively concentrated areas of settlement were content with the – in terms of cultural affairs limited – possibilities of local self-government in their municipalities.[12]

The law of 1993, with the exception of mentioning the Jewish minority explicitly, circumscribes the same circle of beneficiaries as the law of 1925.[13] According to Art. 2, Germans, Russians, Swedes and Jews, as well as national minorities with more than 3000 persons, may achieve cultural autonomy. While the German, Jewish and Swedish minorities today would fail to meet this numerical criterion if it were applicable to them, the Russians constitute a very significant national minority (25.6%), which the Estonian majority (68.8%) is confronted with.

Currently only the Ukrainians, Belarusians and Ingrian Finns fulfill the requirement of comprising more than 3000 persons. While the regulations on the beneficiaries of cultural autonomy remained more or less unchanged, the historical context of the situation today tremendously differs from the situation during the inter-war period. While both laws only made citizens beneficiaries, the proportion of citizens and non-citizens among members of national minorities has changed. After the first republic was established in 1918, all its inhabitants were given the right to obtain Estonian citizenship. In 1992, on the contrary, the citizenship law of 1938 was re-enacted so that only citizens of the inter-war period were granted Estonian citizenship in the re-established republic. Persons who immigrated after 1938 were only entitled to obtain citizenship on the basis of naturalization.

Passing a language exam was made a precondition for naturalization, and has proved to be a major obstacle for many Russian-speaking immigrants of Soviet times. As a consequence, many national minority members in today's Estonia, most of them being Russian speakers of Slavic origin, do not have citizenship and are thus legally recognized as national minority members. According to Art. 6 of the law of 1993, non-citizens with residence in Estonia may participate in the activities of cultural and educational institutions and religious congregations of national minorities, but they may not vote or be elected or appointed to the leadership of the institutions of cultural autonomy. So far, only the quite small Ingrian Finnish minority and the even smaller Swedish minority have gained cultural autonomy, in 2004 and 2007 respectively.

Institutional Framework

During the inter-war period, the basis of all institutions was the Nationality Register. As soon as at least one half of the persons belonging to a nationality according to the last census made the revocable decision to enroll, elections for the Cultural Council could be held. This institution acted as the supreme decision-making body with a number of important functions such as issuing binding regulations, adopting the budget and imposing taxes. It also elected the Cultural Government, which served as the executive organ. This body was in charge of representing the autonomy, managing its assets and operating schools as well as cultural activities. If the Cultural Council deemed it fit and proper, it could also institute Cultural Curatoria to deal with nationality issues at the local level. Both the Cultural Government and the Cultural Curatoria were supervised by the Cultural Council and guided by its general instructions.[15]

To a large extent the law of 1993 imitated the institutional framework that had been established by its predecessor (Art. 11). Again, the Cultural Council is intended to have the central role in decision-making, which is justified by its character as the only directly elected institution. With respect to the executive bodies, the situation is now somewhat more complicated. During the inter-war period, a quite clear and effective structure was provided, relying on the Cultural Government and the Cultural Curatoria where necessary. Today, their tasks are assumed by Cultural Boards and special councils in cities or counties, or by local representatives. The law of 1993's more detailed design for the institutional framework is sometimes interpreted negatively as reducing the scope of influence of the institution that ought to be central, namely the democratically elected Cultural Council.[16]

Autonomous Powers

According to the law of 1925, the main fields of autonomous powers were the organization, administration and supervision of public and private schools in the minority language and the furtherance of all other cultural aims through institutions and activities. This empowerment was extensively utilized during the inter-war period, as educational institutions were established ranging from primary school to the university level. Likewise, the promotion of minority culture was considered to encompass various dimensions. Under this umbrella, theatres, museums, libraries, sports clubs and youth organizations were established.[17]

The law of 1993 again names the organization of education in the minority language, followed by a reference to the creation of cultural institutions and their activities. Moreover, the establishment and bestowal of funds, scholarships and

awards for the promotion of minority culture and education is mentioned explicitly (Art. 5). Some of the individual rights under Art. 4 such as cooperation agreements among minority institutions can only be exercised together with other minority members and may therefore indicate the scope of the autonomous powers. In conclusion, the range of autonomous powers does not differ substantially from the situation during the inter-war period.

Financial Resources

According to the law of 1925, the financial resources needed to make use of the above-mentioned powers, included a combination of subsidies, taxes and donations. Remarkably, all expenditures for compulsory elementary education were fully financed by the state and the local self-governments. This comprehensive funding was based on the awareness that these schooling activities were tasks which otherwise would have to be provided by the state. These subsidies, which to a lesser extent also applied to secondary education, were supplemented by occasional donations and taxes that the Cultural Council was entitled to impose on the registered members.[18]

With slight differences, the current cultural autonomy relies on the same combination of financial resources (Art. 27). Instead of taxing individuals' own source of income, funding is obtained through the collection of membership fees determined by the Cultural Council. Donations are again regarded as supplementary income. In this respect, an explicit reference obviously directed at emigrants or kin-states is made to foreign organizations as potential donors. While during the inter-war period complete funding of elementary education in the minority language had been guaranteed through stable subsidies, current funding is more project-based and thus dependent on accidental decisions as a result of explicit requests. This lack of stable financing is sometimes accused of preventing sustainable long-term planning.[19]

Conclusion

It may be stated in general that Estonia's current Law on Cultural Autonomy for National Minorities follows the outline of the law of 1925 quite closely. From a comparative perspective, the law of 1993 is more detailed, while the less comprehensive regulations of its predecessor were given more substance by means of extensive interpretation. The main difference, however, does not follow from the law itself, but from a change in Estonia's demographic reality in connection with a restrictive citizenship policy. Against this background granting cultural autonomy only to citizens results in excluding large parts of the most numerous national minority, namely the Russian-speaking minority. The Advisory Committee on the Council of Europe Framework Convention for the Protection of National Minorities also criticized this limited scope of application and held it responsible for the fact that the law of 1993 obviously does not serve its purpose.[20] So far, only the Ingrian Finns and the tiny Swedish minority have achieved cultural autonomy. Thus, the case of Estonia's Law on Cultural Autonomy for National Minorities clearly illustrates that it is not sufficient to imitate a highly praised previous law. Rather, it is necessary to adapt legal measures to changed historical circumstances and consequently to find tailor-made individual solutions that meet contemporary requirements.

Karl Kössler and Karina Zabielska work as researchers at the EURAC (European Academy Bolzano), Department for Minorities and Autonomies.

Endnotes

1 Hans-Joachim Heintze, "On the Legal Understanding of Autonomy", in: Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague: Kluwer Law International, 1998), 20-23.
2 If some selected state functions are transferred to a minority corporation under private law, the term "functional autonomy" is sometimes used. One example of such an arrangement is the status of the Danish minority in Germany (H.-J Heintze, On the Legal Understanding of Autonomy, p. 23-24.).
3 Ruth Lapidoth, Autonomy: Flexible Solutions to Ethnic Conflicts (Washington D.C.: United States Institute of Peace Press, 1996), 40.
4 Rainer Bauböck, Territorial or cultural autonomy for national minorities, in: Alain Dieckhoff (ed.), The Politics of Belonging: Nationalism, Liberalism, and Pluralism (New York: Lexington Books, 2004), 221; Hans-Joachim Heintze, "On the Legal Understanding of Autonomy", in: Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague: Kluwer Law International, 1998), 22.

5 Hans-Joachim Heintze, "On the Legal Understanding of Autonomy", in: Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague: Kluwer Law International, 1998), 21; Mart Rannut, "Language Policy in Estonia" (Noves SL. Revista de Sociolinguistica, Spring-Summer 2004), 8, available at http://www.gencat.cat/llengue/noves.

6 David Smith, "Cultural Autonomy in Estonia: A Relevant Paradigm for the Post-Soviet Era?", ECMI Working Paper, 19/01, 9.

7 Mart Rannut, "Language Policy in Estonia" (Noves SL. Revista de Sociolinguistica, Spring-Summer 2004), 3, available at http://www.gencat.cat/llengue/noves.

8 Second Opinion of the Advisory Committee on the Council of Europe Framework Convention for the Protection of National Minorities on Estonia adopted on 24 February 2005, ACFC/INF/OP/II(2005)001, p. 68, available at www.coe.int/minorities; Aleksei Semjonov, "A Combined Approach to Autonomy: Estonian Experience", in: Zelim A. Skurbaty (ed.), Beyond a One-Dimensional State: An Emerging Right to Autonomy? (Leiden: Martinus Nijhoff Publishers, 2005), 422.

9 Carmen Schmidt, "Minderheitenschutz im östlichen Europa: Estland", Universität Köln Working Paper 01/2004, 7-8. Available at www.uni-koeln.de/jur-fak/ostrecht/minderheitenschutz.

10 Asbjörn Eide, "Cultural Autonomy: Concept, Content, History and Role in the World Order", in: Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague: Kluwer Law International, 1998), 256.

11 Carmen Schmidt, "Minderheitenschutz im östlichen Europa: Estland", Universität Köln Working Paper 01/2004. Available at www.uni-koeln.de/jur-fak/ostrecht/minderheitenschutz.

12 ibidem

13 A practically quite irrelevant difference concerns the numerical requirement. The wording of the law of 1925 not less than 3000 persons while the law of 1993 requires more than 3000, therefore in fact, 3001 persons.

14 Aleksei Semjonov, "A Combined Approach to Autonomy: Estonian Experience", in: Zelim A. Skurbaty (ed.), Beyond a One-Dimensional State: An Emerging Right to Autonomy? (Leiden: Martinus Nijhoff Publishers, 2005), 422.

15 Asbjörn Eide, "Cultural Autonomy: Concept, Content, History and Role in the World Order", in: Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague: Kluwer Law International, 1998), 254.

16 Aleksei Semjonov, "A Combined Approach", as note 14), p. 423.

17 Asbjörn Eide, "Cultural Autonomy", see note 15), p. 254.

18 David Smith, "Cultural Autonomy in Estonia: A Relevant Paradigm for the Post-Soviet Era?", ECMI Working Paper, 19/01, 12; Asbjörn Eide, "Cultural Autonomy: Concept, Content, History and Role in the World Order", in: Markku Suksi (ed.), Autonomy: Applications and Implications (The Hague: Kluwer Law International, 1998), 254.

19 Aleksei Semjonov, "A Combined Approach", see note 14), p.424.

20 Second Opinion of the Advisory Committee on the Council of Europe Framework Convention for the Protection of National Minorities on Estonia adopted on 24 February 2005, ACFC/INF/OP/II(2005)001, p. 68, available at www.coe.int/minorities.

13. Cultural autonomy in Hungary

Thomas Benedikter

The situation of the ethnolinguistic minorities living in Hungary differs from that of some Hungarian minorities in neighbouring countries (Romania, Serbia, Slovakia), as most of them are not settling compactly in a precise regional area, but scattered over many hundreds of municipalities. Furthermore, the biggest minority community, the Roma, as all over Europe shows clearly different features compared to other ethnic groups. Therefore, Hungary for accommodating the rights of its minorities, instead of territorial autonomy chose the way of non-territorial cultural autonomy, embodied by minority self-government. The 1993 "Law on the rights of national and ethnic minorities" and the amendments to this Minority Act, approved by Hungary's parliament in 2005 (in force since November 2005), compose the backbone of the Hungarian model of minority protection, ensuring an effective legal instrument for all ethnic minorities to preserve their cultural identities. Hungary's open approach to minority protection was also influenced by the worsening situation of Hungarian minorities in neighbouring countries. The new system should also serve as a model and frame of reference in bilateral and multilateral negotiations, and as Budapest's contribution to the improvement of international standards.

The base of Hungary's cultural autonomy is the freedom to choose an identity and the inalienable right to belong to a minority group. But the minorities themselves refused to create a formal registration of individuals. Instead the legal subjects of cultural autonomy are defined by three elements: they have to be citizens, belong to a community with presence in the country for at least one hundred years and speak one of the 14 languages officially recognized as minority language. Yet,

due to the lack of a formal registration process (remember India's ST and SC-status) it has been impossible to determine exactly to whom the rights of the Minority Law are applied.

The minority self-government system has proven to be the most important issue of the law. Three kinds of minority bodies of public law have been integrated into the local government system:

1) A "Minority settlement self-government" is established when the majority of elected representatives of local governments were members of minorities. This arrangement is adopted wherever the minority population forms the local majority.

2) If at least one third of the local representatives were elected as minority candidates, they could then form an indirect minority self-government within the framework of the overarching local government structures.

3) The directly initiated and elected variant: for this purpose parallel elections are held alongside municipal and mayor elections, for distinct bodies.

Eventually, in those settlements where the minority was not able to establish a local minority self-government, the law allows for a representation by a „minority speaker". Referring to the rights and powers of such minority self-governments, the Minority Law first envisaged mainly a strong participation to decision making in the areas of culture and education. These rights were complemented by the right to run institutions such as schools, museums, libraries, theatres and media outlets. An important part are the mechanisms of financing of such institutions.

In the first period (1993-2005) experts and minority representatives agreed in stating that these organizations were self-governments in name only and not in reality.[1] Thus, the minorities in 2005 achieved the amendment of the Minority Act, which fundamentally changes the regulations of self-governments as well as the structure of minority interest representation. It also attempted to reinforce the conditions of cultural autonomy. The most important innovation of the 2005 Amendment Act of the Minority Law was the introduction of an electoral register. Now minority members have previously to register on a special electoral list if they want to vote and stand for election for the self-government institutions. The electoral lists can be established in every settlement and by each recognized minority, but no ethnic affiliation has to be registered neither by voters nor by candidates. Minority self-governments can be established only by direct

---

[1] Balazs Dobos, *The Development and Functioning of Cultural Autonomy in Hungary*, in: ETHNO-POLITICS, vol.6, No.3, Sept. 2007 , p.464

vote, and only minority organizations can nominate candidates. The revised Minority Act includes the provision for new indirectly elected institutions of regional minority self-government, which came into being in March 2007. The amendment consolidated the powers of the self-government bodies, making also the operations and financing more transparent. The new law has created the conditions for minorities to form, take over and maintain their own educational and cultural institutions.

As the table below demonstrates, however, "the local minority elections of October 2006 showed that minority fears of a sharp decrease in the numbers of self-government were somewhat exaggerated: almost 200.000 individuals were registered, while the number of elected local organs has grown significantly (a development that was accompanied by further alarming claims of dubious practices). With regard to the territorial level, 11 minorities (all except the Slovenes and Ukrainians) were able to establish 57 territorial organs and all were able to find national organs in March 2007)". (Dobos, *ibidem*, p.458)

Retrieved from: Balazs Dobos, *The Development and Functioning of Cultural Autonomy in Hungary*, in: ETHNO-POLITICS, vol.6, No.3

Main data of the 2006 elections of local minority self-governments

Minority	Registered voters	Electoral lists	Elections taken	Candidates	Successful elections in 2006	Minority selfgovern-ments of 2002
Bulgarian	2.110	70	38	207	38	30
Roma	106.333	1.421	1.121	10.289	1.118	998
Greek	2.451	52	34	216	34	30
Croat	11.090	170	115	724	115	107
Polish	3.061	93	47	272	47	50
German	45.983	553	378	2.440	378	340
Armenian	2.361	67	31	190	31	30
Romanian	4.404	90	46	373	46	44
Serb	2.143	64	40	223	40	43
Slovak	15.049	188	117	710	116	114
Slovene	991	29	11	67	11	13
Ruthens	2.729	91	52	340	52	31
Ukrainian	1.084	45	19	102	19	12
Total	199.789	2.911	2.049	16.151	2.045	1.842

Source: Dobos, The Development and Functioning of Cultural Autonomy in Hungary , p. 465

14. The Greenlanders voted for more autonomy

Thomas Benedikter

Greenland's ice cover is shrinking, but its autonomy is expanding.

Population (2005)	56,375
Land area	2,166,086 km²
Capital	Nuuk
Official languages	Inuktitut, Danish
Autonomy since	1979

http://en.wikipedia.org/

In November 2008, Greenland, the world's biggest island and under Danish sovereignty since 1775, decided to opt for more autonomy. 76% of Greenland's 39,000 voters approved the extension of the existing territorial autonomy, which had been established through a popular referendum on 1 May 1979 (70.1% votes in favor). The island's inhabitants are overwhelmingly ethnically Inuit.

Independence in a medium-term perspective?

Greenland's existing autonomy already encompasses many powers, such as local taxation, fisheries, economic planning, cultural policy and religious issues, environmental protection, the education system and the labour market. As of June 2009, its legislative powers will also cover the judiciary, the police and coast guard and other policy sectors.

The Danish State since 1979 is represented in Greenland by a High Commissioner. The new autonomy, once approved by the regional assembly and the Danish Parliament, shall enter into force on 21 June 2009, Greenland's national festival day, exactly 30 years after the first statute.

In the November 2008 referendum, all parties in Greenland, save the "Democrats", have given their "aap" (yes) to the new autonomy. The whole package of reform for the autonomy has taken 4 years of negotiations between Denmark and Greenland, and has tackled the particularly tricky issue of the island's future financial system. The Greenlanders count on increasing revenues from pumping oil from the icy ground of the island and its offshore waters in order to reduce financial dependency on Copenhagen. The scheme for sharing oil revenues gives Greenland the first 75 million Kronen (about 10 million Euro), whereas the rest is to be divided by a 50:50-key between Greenland and Denmark. On the other hand, the Danish government's current annual subsidies of not less than 375 million Euro, or not less than 2/3 of the island's current GDP, will fade out progressively.

Over the medium term, all three major Inuit parties strive for independence, which, according to the chief minister Hans Enoksen, should be obtained by 2021. Greenland's second major party, "Inuit Ataqatigiit" (Inuit Brotherhood) stands most strongly for this goal and also advocates renegotiating leasing treaties with the USA for military bases. The major party, "Siumut" ("ahead"), pledges a progressive extension of autonomy, but in the long term all Inuit parties favour full-fledged independence.

Walking on the edge between oil production, climate protection and self-reliance

Offshore oil drilling Greenland has not revealed any major reserves, but the appetite for more is roused, which could bring about considerable risks for the island's environment. An independence primarily based on this ressource could imply the temptation to overstretch the pumping of oil. On the other hand, there are several micro-states around the globe that depend economically on very narrow range of resources, and whose right to self-governance and self-determination cannot just depend on the mineral ressources they may or may not happen to possess. Those who are now warning against the overexploitation of oil ressources in Greenland should not forget that for many decades the USA, Canada and Russia have been pumping millions of gallons of oil out of the frozen earth north of the Arctic Circle without taking much interest in the

ecosystem. This happens in almost all areas in which the indigenous inhabitants do not have a voice, with exception of Canada's autonomous region of Nunavut. In an independent Greenland at least its native inhabitants would decide whether and how much fossil fuel ressources are to be produced. Today, the Inuit are well aware of the effects of the climate change undermining the ice-shield of their island, which is melting with increasing speed. Thus, with the new autonomy they will face new difficult decisions, but they can take them by their own.

A second issue of strategic importance is the NATO-states, and particularly the USA's, use of Greenland for military purposes. After the establishment of the first autonomy in 1979, Greenland's politicians were urged to revise these military activities, motivated by the general anti-militarist tradition of the Inuit people as well as by fears of the environmental pollution caused by military bases. In particular, the US-base of Thule repeatedly caused a threat of nuclear contamination, when US-air force planes crashed near the coast. In 1983, Greenland's assembly approved a resolution in Nuuk to declare the island a nuclear-free zone. Ever since the political institutions have been bringing legal contentions against the Danish defense ministry and Danish military interests in order to control and reduce all risks to the security and health of Greenland's population.

References:
http://dk,nanoq.gl : Greenland's official website
http://www.gh.gl : The Home Rule Government of Greenland
http://www.statgreen.gl : Official statistics about Greenland
http://www.ulapland.fi/home/hkunta/swalter/essays/autonomy_greenland.htm

The Faroe Islands

http://en.wikipedia.org/

Population (2007)	44,228
Land area	1399 km²
Capital	Torshavn
Official languages	Faroese, Danish
Autonomy since	1948

The Faroe Islands are a group of 18 islands, 16 of which inhabited, located between Scotland and Iceland. Whereas Iceland, once a part of Denmark as well, became independent in 1944, the Faroe Islands remained with Denmark following a referendum in 1946. As a compromise solution Denmark granted full internal self through the Faroe Home Rule Act of 1948. The official language on the islands is Faroese, the smallest Germanic language. Under the Self Rule Act the Faroe legislative assembly (*Lagting*, 32 elected members) can freely regulate most sectors of public policies, respecting the Danish constitution. All Danish legislation must be submitted to the government of the Faroe Islands (*Landsstyri*) before coming into force on the islands. Denmark retains control over defence, foreign affairs, the judiciary and monetary system. Nevertheless, the Faroe Islands' government can conduct negotiations with foreign countries on trade and fishery agreements, and there is a special advisor for Faroese affairs attached to the Danish foreign ministry. Any disputes involving the powers of the autonomous institutions and national authorities are referred to a joint committee. The Faroe Islands maintain several local courts for hearing minor civil and criminal cases. More consequential cases of the first instance and appeals from the local courts may be made to the High Court in Torshavn. The court of final appeal is the Danish Superior Court in Copenhagen. The legal definition of an inhabitant of the Faroe Islands contains no mention of ethnic or linguistical criteria. The recognition of the specific nationality of the Faroese is reflected by the Faroese passport. Faroese is also recognised as the principal language spoken on the islands, but Danish can be used for all public purposes. Under the Home Rule Act, responsibility for all cultural matters is transferred to the autonomous institutions.

15. Regional territorial autonomy in South Asia – An overview

Thomas Benedikter

Before giving an overview on autonomy in South Asia, it is useful to recall the general definition of political autonomy as used in the present "Short Guide." Autonomy is....

> ".... a device to allow ethnic or other groups that claim a distinct identity to exercise direct control over affairs of special concern to them while allowing the larger entity to exercise those powers that cover common interest"(1) and
>
> "In international law autonomy means that a part or territorial unit of a state is authorised to govern itself in certain matters by enacting laws and statutes, but without constituting a State of their own."(2)

As a general rule, autonomous territories possess no international character, and are not treated as states for the purposes of international law. Thus, autonomy can be defined as a means of internal power-sharing aimed at preserving cultural and ethnic variety, while respecting the unity of a state. Autonomy thus consists of permanently transferring a certain degree of power suitable for particular purposes to a certain territory, giving its population the possibility of self-government, and leaving only residual responsibilities to the central state.(3) Autonomy is a special device designed to accommodate a particular part of a state if its population differs from the majority population of that state. Ethnic-linguistic minorities (or national minorities) are the classic population to demand autonomy, especially when settling homogeneously in their original homeland.(4)

This definition focuses on the fundamental purposes of autonomy of both territorial power sharing, mostly established to protect minority groups, and the protection of ethnically or linguistically distinct groups living dispersedly among the majority population. The definition refrains from referring to broader dimensions of individual and collective autonomy in the sense of self-ruling communities, which are the subject of theoretical reflections in various branches of political theory and philosophy, such as e.g. the political autonomy of the working class, the autonomy of youth movements, women's autonomy. The issue of autonomy as addressed in the following articles refers to a legally defined scheme of territorial power-sharing and self-rule in which legislative and executive – and sometimes jurisdictional - powers are attributed to a territorial community (region, province, district).(5) A clear distinction has to be drawn with regard to other concepts and forms of power-sharing and self-rule such as reservations, asymmetrical federalism and associated statehood (see chapter 1 of this text). Moreover, the criteria by which a regional autonomy can be considered to be a "genuine autonomy" must be clarified from the very outset, as they clearly distinguish this particular democratic and non-exclusive form of self-government, under the full sovereignty of a central state, from some hybrid or non-perfect arrangements that can also be found at this level.

Under this approach both non-democratic autonomous areas or autonomies operating in a non-democratic state cannot be regarded as "genuine working autonomies" (e.g. the F.A.T.A. and the Northern Areas of Pakistan, Tajikistan's or China's autonomous entities). Furthermore sub-state entities that normally do not have legislative and executive powers cannot be branded as autonomies (e.g. the Union Territories in India). A minimum standard of legislative and executive powers is required in order to be qualified as a genuine autonomy. To put it bluntly, there is a minimum standard of powers and qualities, without which talking about "autonomy" becomes meaningless. This is exactly what the populations demanding self-rule mean if they reject government proposals labeled "autonomy" or "self-government-regulations" that do not legitimize such a designation.

1. Regional autonomy in South Asia

In South Asia, regional autonomy so defined is not a widely applied form of territorial power sharing. Only India's "Autonomous District Councils" can claim to be fully eligible for such a definition, whereas in other states, autonomous entities are formally established but do not fulfill one or more of the minimum requirements mentioned above and in Chapter 1. Pakistan's F.A.T.A., for example, does not have an internal democratic form of representation or government and Bangladesh's Chittagong Hill Tracts districts are vested with too few powers to

deserve the brand "autonomous". In the constitutional order of Bhutan, Nepal, the Maldives and Sri Lanka, no such institution can be found. These states, at least so far, are to be considered unitary states, with at best some limited degree of administrative decentralization. In Nepal the ongoing constitutional reform will certainly embrace some forms of territorial power-sharing including powers to be vested in sub-state units, which will probably cover the whole state in a symmetrical form. In Sri Lanka, the 13th Amendment to the Constitution, carried out in 1987, sought to respond to Tamil demands by granting devolution of power to newly constituted provincial councils. This devolution, however, was but essentially done within a unitary framework; it handed over very few legislative powers, and has not been accepted by the population of all parts of the island. More than the weak provisions on decentralization, it was the prejudicial implementation by various governments that made a mockery of the whole process.

In Bangladesh the British had declared the Chittagong Hill Tracts a special administration district under indirect rule. Inner line regulations, dispensation of justice, application of customary law in land regulations and local chieftainship were also practiced by the colonial power in some further areas of the Northeast, which in those times were mostly part of Assam. Later, in 1964, when Bangladesh was part of Pakistan, the special administrative status of the hill tracts was abolished by an amendment to the constitution of Pakistan. The Constitution does not provide any measure of cultural or territorial political autonomy either for indigenous peoples in other areas or for religious minorities dispersed over the state's territory. The Islamic religion and Bengali language are the two basic features of the state, which only exceptionally recognizes rights and identities of other groups.

After the partition of Pakistan and Bangladesh in 1971, no recognition of ethnic minorities was enshrined in Bangladesh's constitution, which declares Bangladesh a unitary state. Although Article 23 entrusts the state to preserve the cultural traditions and heritage of minorities, again the purpose is to enrich the "national culture." The concept of territorial autonomy remained alien to the legal order of Bangladesh until a solution had to be found to accommodate the tribal peoples of the Chittagong Hill Tracts (CHT). As explained later, after many years of immigration of Bengali settlers, displacements, deforestation, dispossession of land, forced migration the tribal peoples launched an armed resistance. This came to an end in 1997 after major bloodshed, when the CHT peace accord, granting a limited form of autonomy, was signed between the State of Bangladesh and the majority forces of the indigenous peoples. But the power of self-rule and the real protection of the rights of the indigenous population of the area
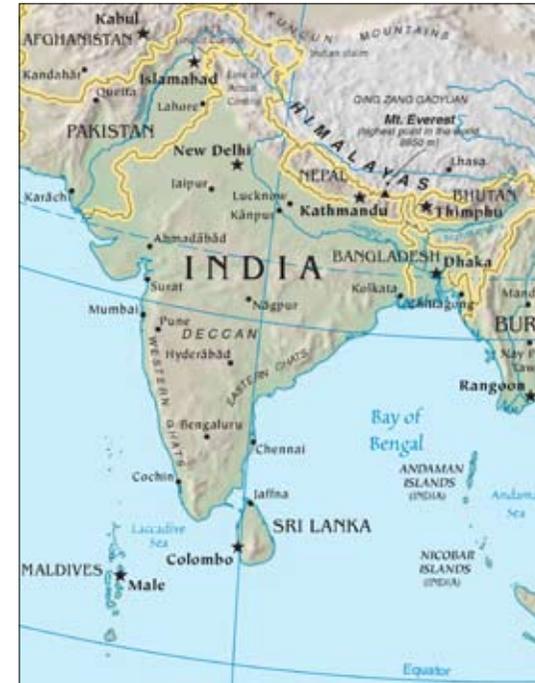
A Hindu festival in Guwahati, Assam

in the framework of a territorial autonomy enshrined in the Constitution never came into being.

Since the beginning of Nepal's existence as an independent state, any arrangement of autonomy for the regions, ethnic groups (janajati) or nationalities was absent of the Constitution, which was in force until 2006. Nepal shows considerable ethnic diversity, as there are 92 distinct ethnic groups or smaller peoples, and Nepali is the first language (in terms of resident population speaking it as a mother tongue) in only 54 of its 75 districts. The Maoist "People's War," which lasted from 1996 to 2006 and claimed some 13,200 lives, was driven not only by a social revolt of discriminated and downtrodden peasant groups, but also by the deep frustration of many janajati-groups who were excluded from the privileges of the upper castes of the Hindu-dominated Nepali society. Under the previous constitutions these smaller peoples or ethnic minorities only enjoyed limited cultural and educational rights and suffered under the State's strategy to impose Nepali as the State's only official language and Hinduism as prevailing State religion. Whether the framers of Nepal's new constitution will adopt territorial autonomy in a regional symmetrical form or full-fledged federalism remains to be seen.

2. Regional autonomy in Pakistan

Pakistan is ethnically and linguistically not a homogeneous state, although there is one dominant group, the Punjabi, which accounts for about 68% of the total population. Formally, Pakistan is a federal state, composed of four provinces. These units do not exactly mirror the ethnolinguistic division of Pakistan. This federal structure could neither avoid the secession of Bangladesh in 1971, nor accommodate the claims for autonomy of smaller groups as the Balochs, the Sindhis and the Pashtuns. In the 1960s, the Central State suppressed the movement for the self-determination of Baluchistan by military means; it later also bloodily crushed autonomy and democracy claims in Sindh and in the Northern Areas. Pakistan's Constitution of 1973 failed to address the autonomy claims of minority peoples such as the Pashtuns of the North Western Frontier Province (NWFP) and Baluchistan. Even as the provinces inhabited by smaller peoples claimed more financial autonomy and a major scope of territorial powers, the

Central State, dominated by Punjabis, did not respond or deliver. Apart from the asymmetric distribution of powers and influence between Pakistan's provinces, the centralization of power was achieved through the repeated assumption of all power by the armed forces. The limited provincial autonomy under Pakistan's federal constitution was further weakened. Moreover, the Islamic Republic of Pakistan's constitution does not recognize any non-religious minorities. "No wonder that so many Balochs, Pashtuns and Sindhis argued that con-federalism instead of federalism should be the form of political organization in which the republic would control defence, foreign affairs, communication and currency, and the confederated states would control the remaining areas. Additionally, the confederative states would have their own militias and the constitutional rights to withdraw from the confederal union if the federal republic or its armed forces violated the principle of the confederative structure."(6)

At present, this perspective of constitutional reform appears rather distant, but the political reality on the ground appears to confirm the necessity of establishing territorial autonomy in various parts of the state. As will be explained in a special chapter, the F.A.T.A. have become a back-stage and training and recruiting area of Taliban guerrilla forces fighting the government and ISAF forces in Afghanistan. Since 2001, Pakistan's armed forces have been increasingly challenged to keep firm military control over these areas, which are autonomous only in name. Whether the legal construction of such "tribal homelands," and the internal system of government, can correspond to a modern concept of democratically ruled autonomy will be explained in a special article below. In 2009 in the contiguous area of the Swat Valley, administratively a part of the NWFP, full Sharia law and order were established to allow a peace agreement between the Central State, the provincial government and the Taliban-oriented local militias and clans dominating the valley. Again such events raise the issue of such sub-provincial units' need for more autonomy, which the current constitutional-power sharing mechanism does not provide. Of course, if this autonomy exists without democracy, simply as a means to vest local armed tribal elites with quasi-dictatorial powers, it does not correspond to the rationale of genuine autonomy. As in China, autonomy without fundamental political rights and freedoms does not satisfy legitimate minimum standards.

Similarly, since the creation of Pakistan in 1947, the population of so-called

Northern Areas of Pakistan, historically known as Gilgit-Baltistan or sometimes as "Balawaristan", is living in a state of limbo, having no self-rule nor being formally a part of Pakistan. Instead, these areas, with the size of Austria and Switzerland combined, are ruled by Islamabad as trusteeship areas or dependent territories. Until 1947, Gilgit-Baltistan was a part of the princely state of Jammu and Kashmir, but substantively not a part of Kashmir. Under international law, Gilgit-Baltistan cannot enjoy autonomy or be fully integrated into Pakistan as a distinct province because of Pakistan's position linked to the pending conflict over Jammu and Kashmir, India's formal claim over the territory. Thus, it is also deprived of most democratic rights, such as the right to be represented at the national level and the right to self-government. The latter are exercised in a quite limited extent in Azad Kashmir, a so-called "free state." Constitutionally it is part of Pakistan, but it cannot be qualified as an autonomy given the absence of fundamental political rights and freedoms and free and fair elections. In fact, every political force that does not accept the accession of Kashmir to Pakistan is excluded from the political process. Finally, although the international media is silent on the issue, various tribes and political forces in Baluchistan are still fighting the state for more autonomy or independence. Thus, in Pakistan's framework of imperfect federalism, a questionable parliamentary democracy and recurrent political instability there is also persistent pressure for self-determination based on ethnic grounds, which is far from being met through a democratic constitutional process.

Gilgiti men in Gilgit, the capital of the „Northern Areas" of Pakistan (Gilgit-Baltistan)

3. Sri Lanka: solving ethnic conflict denying self-government?

Sri Lanka is one more example of a South Asian state in which political claims and struggles for self-determination – in the absence of any lasting provisions for territorial power-sharing in the framework of the Constitution – clashed with the prevailing doctrine of a unitary state. Initially the political forces of the Tamil minority overwhelmingly converged on the aim of democratically transforming Sri Lanka into a federal State, giving the Tamils both a degree of self-government in the North and East and an equal standing and lasting influence at the national level. Neither Sri Lanka's Soulbery Constitution of 1948, nor its 1972 Republican Constitution really met the fundamental challenge of providing a state structure to cope with the island's multinational character. The 1972 Constitution not only declared Sinhalese the only official language, but also granted Buddhism the role of "state religion" and abolished remaining mechanisms for the protection of minorities. In 1978, the Sinhala political elite tried to dampen this nationalist course giving Tamil the status of a national language, allowing its use in public administration, and abolishing the distinction between citizens by descent, which allowed Indian Tamils to

obtain citizenship. But these concessions were too little and too late. After the anti-Tamil-pogroms of 1983, militant fringes of the Tamil population took up arms. The subsequent full-scale military conflict lasted until 2009, when the LTTE was defeated. Even the 13th Amendment to the Constitution passed in 1987, entailing provincial councils and a limited devolution of powers, was later removed. Sri Lanka stuck to a centralist concept of the state that was far from establishing genuine forms of territorial self-rule or autonomy with legislative and executive powers. "The deliberate and non-deliberate migration of the Sinhalese in the North and East, the language policy, statelessness of a huge number of people, racial discrimination and anti-Tamil riots completely destroyed the faith of the Tamils in the successive constitutions."(7)

During the peace talks from 2002 to 2005 between the Government and the LTTE, brokered by Norway and Japan, a federal solution was envisaged and a power sharing mechanism was established after the Tsunami catastrophe at the end of 2004. But the subsequent government of Mahindra Rajapakse fully relied on using a military solution to defeat the LTTE, abandoning every real constitutional reform. As will be explained later, Sri Lanka's democracy, led by its majority's political elite, was perceived as exacerbating existing grievances and deepening ethnic cleavages. Ethnicity was neglected as a basic and threatened feature of Sri Lankan politics, but it gained momentum with every step taken towards further discriminating against the minority groups. Finally the Tamil minority, finding all other ways barred, strived for secession. Some devolution of power, as will be illustrated later in a special essay, could not redress the deep distrust that had been created, and genuine autonomy – perhaps with India as a guarantee power and kin-state (Tamil Nadu) – was never given a chance.

4. Territorial (sub-State) autonomy in India

India remains the only South Asian state that has enshrined some forms of regional territorial autonomy in its Constitution, which provides special status for certain states such as Jammu and Kashmir, Nagaland, Sikkim, Assam, Manipur, Arunachal Pradesh in Art. 370 to 371. Some of these provisions of speciality are no longer applied, as it is the case with article 370 with respect to Jammu and Kashmir; others are an expression of Indian "asymmetrical federalism". This concept, beyond the Union and the centre, provides for some additional rights to single states, based on their special character and interests. This federal structure recalls the "asymmetric federalism" of the Russian Federation, with six different subjects of the federation and China, which has five different forms of autonomous territorial entities. In India, apart from the federated states with special features, there are also Union territories and autonomous districts on a sub-state-level known as "entities with a limited autonomy". Moreover, the 73rd and 74th Amendments to the Constitution ensured the devolution of powers at the village and town level.

India's Constitution, which embodies the principle of self-determination in Articles 14, 15, 16, 19 and 29 and the freedom to manage religious affairs in Art. 26, provides the legal basis for special forms of autonomy. Art. 30 ensures the right of minorities to establish and administer their own educational institutions. Under the special protection clause in Art. 371, tribal customary laws, procedures, and land rights are protected. Part XVI of the Constitution ensures special provisions for scheduled castes, scheduled tribes and other under-developed classes, which are usually not linked to territories, but to specific social groups. Some of them can be compared to concepts of "cultural autonomy" applied in Europe, while some are established on a territorial basis.(8)

Part XVI of the Indian Constitution ensures special provisions for scheduled castes, scheduled tribes and other economically underdeveloped castes. Some of these acts refer to a form of "personal" and "cultural autonomy", which should not be confused with territorial autonomy as defined in chapter 1. Despite these measures, the scheduled castes and tribes complain that their deprivation, poverty and disempowerment have only grown.(9) The legal-administrative bodies for protection of such rights, such as the Minorities Commission, Human Rights Commission, Women's Commission, are severely limited in their powers. Similarly, the commissions in the states for the protection of minority languages and cultures and the interests of scheduled castes and tribes are weak and inadequate.(10)

Territorial autonomy as existing in 11 European states has been established in India since the 1950s by the 6th schedule (an annex) of her Constitution. The 6th schedule contains detailed provisions for "Autonomous District Councils" (ADC)

in districts dominated by so-called tribal peoples. The main purposes of these provisions, which will be illustrated in a specific section of this text, is to preserve the distinct cultures of tribal peoples, to prevent economic exploitation by non-tribal peoples, and to allow them to develop and administer themselves. This scheme departed from a mere concept of "ethnic reservation" as listed in the 5th schedule; rather it establishes autonomous territories with mixed populations and requires full democratic institutions. Although limited in its scope, the ADC's, which are based on very elaborate legislation and safeguarded by the Union government, were tasked with granting sufficient autonomy to prevent radical secessionist claims and movements and thus the further splitting up of the States, especially in the Northwest and the Northeast of the country. 10 out of 13 ADC's have been established in the four Northeastern States of Meghalaya, Assam, Mizoram and Tripura, one in West-Bengal (established under State law, not under the 6th schedule) and two in Jammu and Kashmir (Leh and Kargil). (11) In the rest of the country, however, no territorially district autonomies have been created, although India has 330 districts, many of which host ethno-linguistic or tribal minorities, and about 50 have an ethno-linguistic majority different from the majority population of their respective State.

Such a limited form of autonomy could not quell the quest for self-determination of the Naga peoples, who in 1963 achieved "statehood" in India without giving up military resistance for full independence. Nor could autonomy granted in the form of ADC meet the widespread demand of smaller peoples to have their own federated state, especially in the Northeast; it was eventually accorded to Meghalaya, Mizoram, Arunachal Pradesh and Tripura. The Constitution even attributes a special status to such states under article 371H. Later, with the creation of Darjeeling Gorkhaland Hill Council in 1988, and the Bodoland Territorial Council in 2003, a range of further clauses were added to the 6th schedule, extending the scope of their autonomy, but their claim for full statehood in India could not be accommodated.

Nevertheless the pattern of combining ethnicity – regarding small peoples or national minorities - with exceptional autonomies remains quite contradictory in India. The Indian Constitution emphasises republican values and fundamental human and civil rights standards throughout the whole territory, and in principle does not allow "ethnic autonomy". In practise, in order to solve local and regional conflicts, forms of limited territorial autonomy had to be created, admitting implicitly that on a state level the majority rule of a liberal democracy generates a permanent threat to every minority representation and participation in politics and power. On the other hand, new indigenous elites dominating autonomous districts can be tempted to transform such autonomous region sin "ethnic spaces", as an Indian scholar asserts in this

A Dooars (Adivasi) woman in Kalimpong (Darjeeling Gorkha Hill District)

volume. Regional democracy, however, must not mirror the structural ethnic dominance of a group on national level, if necessary precautions are taken.

5. Jammu and Kashmir's lost autonomy

Another issue of autonomy, Jammu and Kashmir, met a different fate. The instrument of accession of Jammu and Kashmir's last Maharaja and India's government of 1947 agreed to grant this Muslim dominated State special, far reaching autonomy. This occurred apart from the territory's quest to obtain a self-determination referendum under the aegis of the UN, which was ultimately never held. This form of autonomy, enshrined in Article 370 of the Constitution, left the Centre with only powers of defence, foreign affairs and communication on the territory of Jammu and Kashmir. But beginning in 1953 these provisions were eroded step by step. Finally Jammu and Kashmir was transformed in a normal member state of the Indian federal state without abolishing Article 370, which was de facto outdated. Curtailing Kashmir's special autonomy and interfering heavily and constantly in its internal affairs later brought about an escalation of the political crisis, popular unrest and protest, and the President's rule. Eventually full-fledged civil war and armed militancy broke out in 1990. To date Jammu and Kashmir has not found a stable solution and a peace that does justice to the claims of the Muslim population. The issue of self-government lies unresolved, and after the traumatic experiences of repression by India's security forces over the last 18 years, a majority of the valley no longer favours Kashmir's membership in the Union at all. Abolishing the special autonomy, originally granted to Kashmir by Delhi, as in similar cases elsewhere, caused long lasting political contention, military conflict and alienated the Muslim population from the rest of India.(12)

The present short guide will not engage in the discourse of political or legal autonomy granted to other social groups in South Asian states, particularly those based on caste or religion. If indeed certain groups different from ethno-linguistic communities, tribal or other smaller peoples have achieved legal recognition and various forms of special rights (e.g. the separate family law for Muslims), this is not an issue that refers to territorial autonomy as developed in Europe. The category of religious or socially defined group autonomy is not an issue in European minority rights discourse. Moreover, the focus of this short guide is on autonomy as a means of solving ethnic conflict, protecting minority identities, and granting self-government on territorial basis for regional communities under the prerequisite of democracy and the rule of law. On the other hand whether autonomy in this sense has already exhausted its potential in India and the other South Asian States as well as in Europe still remains to be seen.

References:
Ranabir Samaddar, Minority Rights and Forms of Autonomy in South Asia, in: Zelim A. Skurbaty (ed.), Beyond a one-dimensional state: an emerging right to autonomy?, Leiden/Boston, 2005, p. 541-564
Ranabir Samaddar, Autonomy, Self-Determination and the Requirements of Minimal Justice in South Asia, in: Heikki Patomaki (ed.), Politics of Civil Society, Nottingham/Helsinki 2000.
Ranabir Samaddar (ed.), The Politics of Autonomy – Indian Experiences, Sage, New Delhi/London 2005.
Chaudhury/Das/Ranabir Samaddar (eds.), Indian Autonomies – Keywords and Keytextes, Kolkata 2005.
Sanjay Barbora, Experiences of Autonomy in the East and North East – A report on Third Civil Society Dialogue on Human Rights and Peace, CRG, Kolkata 2003
Sumantra Bose, Kashmir – Roots of Conflict, Paths to Peace, New Delhi 2003
S. Bosu Mullick, The Jharkhand movement – Indigenous peoples' struggle for autonomy in India, IWGIA document, Copenhagen 2003.
A.G. Nourani, Constitutional Questions in India, Oxford, Clarendon Press 2000
Rita Manchanda (ed.), The No-nonsense guide to minority rights in South Asia, SAFHR, New Delhi 2006.

Endnotes

1   Yash Ghai, Autonomy and ethnicity: negotiating competing claims in multiethnic states, Hongkong 2000, p.484

2   H.J. Heintze, On the legal understanding of autonomy in: Markku Suksi (ed), 1998, p.7

3   Ruth Lapidoth, Autonomy: flexible solutions to ethnic conflicts, Washington 1997; for the general concept see the comprehensive approach of Markku Suksi, Autonomy: Applications and implications, The Hague 1998.

4   Further definitions are listed in Thomas Benedikter, The World's Working Regional Autonomies, ANTHEM Press, London/New Delhi 2007, p. 16-20.

5   One article explains the concept of cultural or personal autonomy, when such powers are attributed to a legally recognized community living dispersedly in a state or sub-state unit.

6   Ranabir Samaddar, Minority Rights and Forms of Autonomy in South Asia, in: Zelim A. Skurbaty (ed.), Beyond a one-dimensional state: an emerging right to autonomy?, Leiden/Boston, 2005, p. 551.

7   Ranabir Samaddar, Minority Rights and Forms of Autonomy in South Asia, in: Zelim A. Skurbaty (ed.), Beyond a one-dimensional state: an emerging right to autonomy?, Leiden/Boston, 2005, p. 554.

8   On a local level some arrangements have been adopted for zonal councils.

9   The denial of substantial autonomy to India's Adivasi peoples is described by Bosu Mullick, The Jharkhand movement – Indigenous peoples' struggle for autonomy in India, IWGIA document, Copenhagen 2003.

10 "The result is an Indian paradox: There is at the one hand a publicly equal system with broad state powers to regulate practices to separate identity so that they do not go against equality; on the other hand we have also differential provisions to help the disadvantaged, and then besides this we have a public system accessible to a group determined to impose its values in a large or total measure thereby almost equalising the public and group interest. In such situation power ensures that autonomy of group identity and interest may become the national identity and national interest. In this way, autonomy combined with power can become completely its other." Ranabir Samaddar in: Autonomy: Keywords and Keytexts, Kolkata 2005, p.39.

11 Currently 13 ADCs are established under the 6th schedule: Darjeeling Gorkha Hill Council (West Bengal; not under the 6th schedule, but State Act): Leh Autonomous Hill Council (Jammu and Kashmir); Kargil Autonomous Hill Council (Jammu and Kashmir); Bodoland Territorial Council (Assam); North Cachar Hills Autonomous District Council (Assam); Karbi-Anglong Autonomous District Council (Assam); Khasi Hills ADC (Meghalaya); Garo Hills ADC (Meghalaya); Jaintia Hills ADC (Meghalaya); Chakma Autonomous District Councils (Mizoram); Mara Autonomous District Councils (Mizoram); Lai Autonomous District Councils (Mizoram); Tripura Tribal Areas Autonomous District Council (Tripura).

12 Similar cases have been South Sudan, Eritrea, Kosovo, Iraqi-Kurdistan and recently Abkhasia and South Ossetia in Georgia. In all these cases cutting back or destroying autonomy regimes caused secessionist wars.

Kashmir politician Shabbir Shah, during a demonstration in Srinagar.

"Martyr's Day" in Anantnag (Kashmir Valley, Indian J&K)
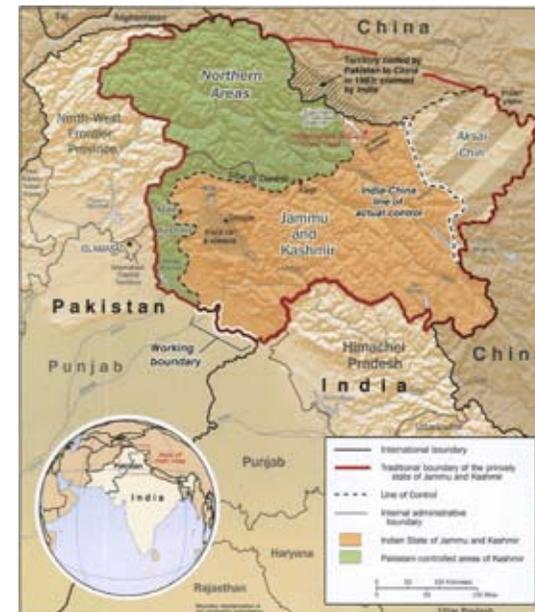
16. Autonomy and Federalism in Nepal's Current Constitutional Debate

Som Prasad Niroula

1. Introduction

The direct armed conflict between the government and the Nepal Communist Party of Maoists (CPN-M) formally ended after the signing of the twelve-point understanding in April 2006. The agreement was reached between the "Seven Party Alliance" (SPA) and CPN-M. This paper gives an overview of the discussion on autonomy and federalism in Nepal.

The historic people's movement (Jana Andolan III in 2006) played a very significant role in bringing together the Maoists and other political parties to launch a mass movement and to overthrow the 238 year old monarchy. The SPA and CPN-M reached a consensus and on November 25, 2005 entered into an agreement to launch peaceful demonstrations against the direct rule imposed by the King in February 2005. Tens of thousands of people came to the streets to support the peaceful demonstration. The King was forced to re-install the dissolved Parliament and hand over the power to the representatives of the people in April 2006. The powers vested in the King were stripped by a resolution passed by the re-installed Parliament, which declared Nepal to be a secular state. The re-installed Parliament also designated the Prime Minister as the head of state.

A decade-long armed conflict between the government and Maoist forces took the lives of about 13,190 people.(1) The fatality figure includes civilians, security forces and Maoists cadres. It is estimated that there are about 200,000 to 400,000 people that have been internally displaced due to threat and intimidation by the conflicting parties. In addition, a great deal of infrastructure was destroyed during the conflict, including the buildings of village development committees, telephone towers, roads and bridges, schools and health posts, and postal services. Vital information such as birth certificates was kept in the Village Development Committee (VDC), which was burnt down along with the physical dwellings of the VDCs. The Maoist revolution was started in the remote district of Rolpa and Rukum in the Western Development Region of Nepal. The region is behind in terms of basic facilities of daily living such as the heath care system, educational institutions and transportation. There are various presumptions regarding why Maoists revolutions have been started in such remote districts. Some scholars assume that the major cause of the armed revolution was the widespread poverty. These scholars thought that poverty could have contributed to the violence. A second theory was that the state was weak, unable to maintain 'law and order' and bound to become a 'failed state'. The minimal presence of the state favoured the Maoists revolution. Thirdly, it is assumed that the deep social inequality, the structural and regional disparity and the discrimination of large parts of Nepali society are the major factors that fuelled the Maoist armed revolution (Gautam et.al. 2004, Thapa, 2003, Mistra 2004 and Tapah and Sijapati 2003).(2) These three assumptions are equally important and valid to understand the uprising of the Maoists. The conflict accelerated in a geometric ratio all over Nepal within a short period of time.

There were peaceful demonstrations from different indigenous communities for participation in various segments of the government immediately after the initiation of democracy in 1990. The multiparty democracy failed to recognize and accommodate the minorities. The Maoists raised the issues strongly in their 40 point charter for participation in governance and autonomy for various ethnic groups. Most people considered the 1990 agreement to establish democracy between the political party and king incomplete, as it did not address the core issues of discrimination against different segments of society. The state policy further promoted certain castes, such as the Hill Brahmins and the male population generally. The state failed to guarantee the rights of the different ethnic and caste communities. Thus, the major thrust of the Jana Andolan II was to establish a secular Federal Republic of Nepal to protect and guarantee the rights of the different communities. Article 167 of the Interim Constitution (IC) of 2007 repealed the 1990 Constitution of Nepal. Article 138 of the IC clearly mentioned that the Constituent Assembly (CA) should eliminate the centralized and unitary state system to avoid discrimination on the basis class, caste, language, gender, culture, and region. Nepal will be an inclusive democratic nation. In addition (Article 138, sub-article 2) stated that a high level commission will be established to make recommendations on the restructuring of the state. Subsequently the CA will have to approve the new struc-

ture of the states based on the recommendations of this special commission. Thus, a debate among the political parties has begun concerning how to form the federal structure, the level of autonomy and the accommodation of minorities within autonomous regions or provinces.

2. Social context and reality

Nepal is a multi-cultural, multi religious, multi-lingual and diverse state inhabited by 23 million people. Both the Constitution of 1990 and the Interim Constitution of 2007 have recognized Nepal as a diverse country in terms of ethnicity, language, religion and caste.

a) Demography
The population census of 2001 noted that there are 102 different caste and ethnic groups. The largest population are Brahmin and Chhetri (28.54% of the total population). This is followed by the Magar population (7.14%), while the Tharu indigenous community with 6.75% is the largest group in Terai region in terms of demographic representation.(3) Demographic representation is also diverse. The Brahmin, Chhetri, and Dalits populations are scattered all over the Nepal. There are few districts where the ethnic minorities have large populations. It is a challenge to restructure the state and accommodate the diverse population in terms of protecting their rights.

b) Language
The 1990 Constitution of Nepal, Article 6(1) declares Nepali as the official language and 'other languages' as native languages. The Constitution refers to the minor languages as 'national languages'. The representation of the diverse population also represents the diversity of language and religion. A large percentage of the population is Nepali speakers. As the language spoken by the majority of Nepal's population, Nepali was imposed as the official working language. The population census of 2001 recorded 92 languages spoken. The Nepali language speakers constitute 48.61 % of the population; the second largest group are the Maithili speakers with 12.30 %. The language of the indigenous populations varies. The languages of indigenous and other communities' account for 5.39%. Eighty languages are spoken by less that one percent of Nepal's total population. The table below represents the population by mother tongue.

As noted above, a total of 48.61 percent of the population uses Nepali as its mother tongue. Nevertheless, it was adopted as the language of official use and the medium of instruction in schools and university. Approximately 51% of the population speaks different nativ languages, although they mostly use Nepali as lingua franca. The different communities experienced difficulty in using Nepali as the official language and medium of instruction in school. There were demands from

Nepali Maoist rally in Rukum (Nepal). The Maoist rebels used to resort to popular theatre and dances to convey their political program.

Table 1: Population by Mother Tongue

Mother Tongue	Percentage
Nepali	48.61
Maithili	12.30
Bhojpuri	7.53
Tharu (Dagura/ Rana)	5.86
Tamang	5.19
Newar	3.63
Magar	3.39
Awadhi	2.47
Bantawa	1.63
Gurung	1.49
Limbu	1.47
Bajjika	1.05
Others	5.39
Total	100.00

Source: Population Census, CBS, 2001

communities to introduce local languages as the means of instruction in school and local offices. However, the Supreme Court nullified the declaration of local languages as additional official languages by three local jurisdictions. Article 18(2) of the Constitution does not sanction native language instruction in schools beyond the primary level, and the state does not support native language instruction even at the primary level.(4) It is clear that there are practices of unequal treatment directed at the native languages. The new Constitution and state structure should recognize the diversity of language and treat them in an equal manner.

c) Religion:

The table 2 represents the population by religion. There was discrimination of the different religious groups. The indigenous people follow animism and embrace a large range of different beliefs, which are mostly undermined or unrecognized. There was silent resistance from different religious groups, such as Christians, Buddhists and Muslims, due to discrimination. As a result of the resistance, the Interim Constitution of Nepal 2063 (B.S) declared Nepal to be secular state. It clearly mentioned that there will be equal treatment of the different religious groups and there would not be any discrimination on the basis of religious belief.

d) Socio-geographic differences

Nepal has been divided into three distinct regions by landscape: Mountains, Hills and Terai. The mountain region is attractive for tourism. The hill regions are mostly used for the subsistence agriculture. The Terai (plain land) has productive land for the production of agriculture products. Terai has well connected roads and other facilities compared to the mountain and Hill regions. The distribution of goods and services vary according to the regions. The mountain and Terai regions are economically prosperous. The Hill regions have difficult terrain for transportation and are less economically prosperous. This socio-geographic basis plays a vital role in re-structuring the state and creating federal states or autonomous regions.

e) Social context

The governance systems – political parties and the administration – were dominated by the high caste Brahmin and Chhetri. The participation of the minorities remained negligible even after the restoration of democracy in 1990. The minority communities consist of various groups such as in-

Table 2 – Nepal's population by religion

Religions	Total Numbers	Percentage
Hinduism	18,330,121	80.60
Buddhism	2,442,520	10.74
Islam	954,023	4.20
Kirat	818,106	3.60
Jain	4,108	0.02
Christianity	101,976	0.45
Sikha	5,890	0.03
Garaute	1,480	0.01
Tapjura	2,817	0.01
Bahai	1,211	0.01
Others	78,979	0.35
Total	22,741,231	100.00

Source: Population Census, 2001

digenous people, Dalits, women and people in Terai and other regions. In 2006, there was a mass movement from the Terai demanding equal participation in all organs of the government including the security forces.

Social hierarchy in terms of caste, occupation, and untouchability are some of the distinct features of Hindu society. Especially in the rural areas, people are still more rigidly bound to the caste hierarchy. The constitution of Nepal states that caste-based discrimination should be considered a negative social or individual. Discriminating against Dalits in employment and in other public places was no longer legally permissible. The constitution and laws declared caste-based discrimination illegal and punishable by law. Nevertheless, this social and cultural practice persists in society. The practice is deeply rooted in Hindu society, religion and culture. Greater efforts at consensus and educational awareness and reform are needed to tackle it. The Dalit population, scattered all over Nepal, also require special forms of protection under the future regions, autonomous regions or federal entities.

Nepal's current sub-division in districts.

3. Debates on federalism and autonomy

Marginalization and discrimination on the basis of caste, class, language and ethnicity remain the major issues in re-structuring the state at the present moment. The major political parties began discussing federalism after the Jana Andolan II. The IC mentioned that Nepal would be a federal republic. The major political parties also raised the issues of federalism and the abolition of the monarchy during the election period. However, there is no consensus about how minority groups will be accommodated in the framework of a federal state. The demand for the creation of a federal state varies according to ethnicity, language, region etc. The Maoists started the demand for autonomy and federal states. The state-restructuring debate does not remain confined to the political arena, but is discussed within academic circles, in professional organizations, and within political parties and their sister organizations.

Proposals of restructuring Nepal*

Name or organization (s)	Proposed structure	Criteria of restructuring
Govinda Neupane	11 pradeshs (provinces): Kirat, Bijayapur, Mithila, Lumbini, Kapilbasthu, Tamba Saling, Nepal, Tamu Magarat, Purba Khasan, Madhya Khasan, and Pachhim Khasan,	**Ethnicity**
Narahari Acharya	Five provinces: Mechi to Koshi; Koshi to Bagmati; Bagmati to Narayani; Narayani to Rapti and Rapti to Karnali river.	**Geography and river landmarks**
Nepal Sadbhawabana Party (NSP)	Five autonomous states: Eastern Mountain and Hill, Western Mountain and Hill, Eastern Terai, Western Terai	**Regions**
Nepal Rashtriya Jana Party (NRJP)	12 provinces: Khasan, Jadan, Magarat, Tamuan, Tamba Saling, Nepal, Khambuwan, Limbuwan, Kochila, Maithali, Bhojpuri, and Abadhi	**Ethnicity**
Nepali Congress (NC)	Inclusive division considering the multi-cultural society based on religion, language, culture, economy, ethnic diversity, population, national integrity, natural resources etc.	**Combined criteria**
Nepal Communist Party of Marxist and Leninist (CPN-UML)	The federal state will be based on geographical structure, population, ethnicity, mother tongue, culture, administrative suitability, economic and social relationships, natural resources etc. The name of the region will be based on recognition of groups or regions.	**Combined criteria**
Nepal Communist Party of Maoists (CPN-M)	Nine autonomous provinces: Kirant, Madhes, Tamang, Newa, Tamuwan, Magrat, Tharuwan, Bheri and Karnali	**Ethnicity and geography**
Pitambar Sharma	6 provinces: Eastern region, Middle region, Capital, Western region, Karnali and Far Western region and 19 district	**Ethnicity, language, economic prosperity, possibility economic relationships**
Harka Gurung	25 Development district. It is suggested that the present 75 districts should be reduced to 25 districts.	
Nepal Federation of Nationalities	Federal autonomy with a right to self determination	
K. B. Gurung	11 autonomous regions: Tamu, Magrat, Tharuhat, Limbuwan, Khambuwan, Tamsaling, Newar, Far Western, Western Khasan	**Language, ethnicity and geography**
Nanada Goapal Ranjitkar	8 provinces[9]—Arun Tamor Province, Koshi Province, Bagmati Province, Trisuli-Narayani Province, Phewa Province, Lmbini Province, Rara Province and Lower Karnali Province	**River diversions**

*Note: this table does not represent all opinions expressed towards the creation of a democratic federal Nepal.

Thus, various discourses and opinions exist concerning restructuring the state based on rich its diversity – language, culture, geography and ethnicity. The table below gives the opinions of individual and organizations on creating a federal structure.

Neupane (2004) suggests considering four variables in restructuring the state into federal entities (historical background, geography, language, and caste/ethnic settlement patterns) while creating federal structures. Four provinces should be established in the Terai (plain region) and seven in the Hills. Out of the seven suggested Hill provinces, three are for caste groups and the remaining four for ethnic groups. At the organizational level, Nepal Janajati Mahasang (Nepal Federation of Nationalities NEFEN) – an umbrella organization of 48 ethnic groups – pleaded for federal autonomy and the preservation of cultural identity, but it has not yet explained the nature of this federal structure. An agreement made between the NEFEN and the "Indigenous Nationalities Joint Struggle Committee" on 8 August 2007 emphasized that the federal structure should be based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness while maintaining the national unity, integrity and sovereignty of Nepal at the forefront. Bhattachan (2008) indicated that for indigenous people federalism should be based on ethnicity, while language and region would be the basis for others.(5) He further mentioned that Nepal's indigenous peoples demand the right to self-determination in accordance with Article 1 of the ICCPR; Article 1 of ICSCER; and Articles 3, 4 and 46 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Indigenous peoples' right to self-determination in deciding between autonomy or self-rule must be ensured by the Constituent Assembly.

The Nepal Communist Party of Maoists (CPN-M) proposed ethnically based territorial autonomy. Nevertheless, according to Harka Gurung, the viability of ethnic autonomy lowest as only 12 districts have an absolute majority of a particular caste/ethnic group (Chhetri in 7, Gurung in 2, and each of Tamang, Tharu and Newar in 1 district) within the total population of the respective districts (Gurung 1998, 58). Hridayesh Tripathi, the leader of Terai Madhes Democratic Party (TMDP) has said that the first basis to be considered when determining the federal structure of the country should be the geography; cultural and ethnic factors should also be considered after the geographical area for a federal unit is fixed. Moreover, he said that there should be a consensus on the geographic division of the single Madhes province first, after which a political division of different provinces could be considered. However, he reiterated his party's intention that they wanted a single Madhes both geographically and politically "...dividing a Madhes into different provinces will ultimately contribute to establish a reign of people of hilly region again. However, the CPN-M leader Dev Gurung mentioned that the demand for single Madhes province is irrelevant in the present context, because it infringes upon the rights of indigenous groups in Terai, and will give rise to monopoly of some groups." 6

Nepal Workers' and Peasants Party's (NWPP) leader Sunil Prajapati argued that ethnicity and language-based federalism could lead the country into disintegration. Contrary to the demands for a single Madhes, the Tharus are demanding different provinces within Madhes. The leader of the Tharus, Raj Kumar Lekhi, observed that Madhes does not exist anywhere in Nepal. Declaring Madhes as a single state would be against the sentiments of indigenous people of Terai. If this government declares Madhes to be a single state, they will launch a decisive struggle against it. Moreover, he revealed that by using the name "One Madhes, One Pradesh", someone wants to build another centralized state in Terai.(7) Rastriya Janashakti Party (RJP) commented that serious political discussion is needed on the federal structure. Moreover, it reiterated that major parties cannot decide the federal structure without discussing it with other parties represented in the Constituent Assembly (CA) and other concerned groups. Federal structure determined without studying the relevant geographical, economic and cultural aspects could even lead to the disintegration of the country.(8)

The Chairman of the National People's Front (NPF) mentioned that a federal system would move the country towards 'separation'. He further said that creating the states on the basis of ethnic communities would give rise to regional as well as communal conflicts and seriously threaten national unity.(9) The Interim Constitution of 2007 has clearly spelled out that Nepal will be a federal state. As a result of different political parties and people's acceptance of creating federal structure on the basis of division, a system of governance must be decided. The task ahead is very challenging due to the diverse population, culture, language, religion, and regions. The whole federal state must be composed of multi-lingual, multi-ethnic, multi-religious provinces/state to accommodate the minorities. The federal division might be suitable based

on ethnic, linguistic and regional. Economic viability and cooperation must be taken under consideration while developing the governance system. The debates regarding the creation of a federal structure are mostly rooted in ethnic grounds, and in geography and language. There is no debate and policy to provide 'space' for the Dalit communities living in different parts of Nepal. The Dalit population constitutes 19 percent of the total population. The marginalized communities remain in each region or proposed federal units. Their representation and participation and the guarantee of their rights has not been debated in the mainstream discourse on creating federal state.

5. Conclusion

The mandate of the Jana Andolan II was to establish a federal republic in Nepal. As a result of negotiation between the political parties and the Maoists, there are numerous agreements on a ceasefire, and comprehensive peace agreement between the government and the CPN-M. The negotiation provided a fearless environment and established a democratic Nepal.

The dialogue on creating federal states is limited to the intellectual, top rank of the party leadership. The people at the grass-roots level are not aware of the types of divisions and policies to accommodate minorities within in the federal structure and remain silent. The mainstream political parties dominate the discourse, while the small parties or individuals who feel ignored blame these 'conventional forces' and support the old regime. The discussion of the pros and cons of the federal state does become hostile. There are a number of issues that must be discussed, including marginalized groups within the federal structure, such as Dalits and women. The human rights of the different groups should not be curtailed during the creation of the federal structure. Economic and political rights must be protected to ensure the participation of all segments of the government at the national and state level. Moreover, the federal states must be multi-lingual, multi-ethnic, and multi-religious provinces/ states to accommodate the minorities within the states.

Som Prasad Niroula
is a human rights activist and peace educator. He is Masters in Peace Education from the United Nations Mandated University for Peace. He is currently working with the Nepal Institute of Peace (NIP) as a Program Officer. His areas of interest are research on peace education, human rights, forced migration, internal displacement and refugee issues.
niroulasom@yahoo.com

References:
CPN (UML), Election Manifestos, 2008 (Kathmandu: Communist Party of Nepal (United Marxist- Leninist).
Gurung, Harka. 1998. Nepal: social Demography and Expressions, Kathmandu: New Era.
Nepal Sadbhawana Party, Election Manifestos, 2008 (Kathmandu: Nepal Sadbhawana Party).
Nepali Congress, Election Manifestos, 2008 (Kathmandu: Nepali Congress).
Neupane, Govinda. 2000. Nepalko Jatiya Prasana (Question of Caste/Ethnicity in Nepal). Kathmandu: Centre for Development Studies.
Rastriya Prajatantra Party, Election Manifestos, 2008 (Kathmandu: Rastriya Prajatantra Party).
United People's Front, Election Manifestos, 2008 (Kathmandu: United People's Front).
Interim Constitution of Nepal (2007), Kathmandu

Endnotes
1 Neupane, Govinda. 2000. Nepalko Jatiya Prasana (Question of Caste/Ethnicity in Nepal). Kathmandu: Centre for Development Studies.
2 Acharya, Narahari (2060) Ayasto Hunuparcha Abako Naya Samrachana (Mulyankan monthly magazine (Chaitra – 12-15/44/45, 2060).
3 Nepal Sadbhawana Party, Election Manifestos, 2008 (Kathmandu: Nepal Sadbhawana Party).
4 Nepali Congress, Election Manifestos, 2008 (Kathmandu: Nepali Congress).
5 CPN (UML), Election Manifestos, 2008 (Kathmandu: Communist Party of Nepal (United Marxist- Leninist).
6 Election Manifest of CPN-M (2008), Kathmandu, Nepal.
7 Gurung, Harka (2002) Fraigle Districts: Futile Decentralization, Himal Khabar Patrika 27 Februray -13 March 2002.
8 Grurung, K. B. (2062 B. S) Adibasi Janjati Adhikar Ra Rajya ko Punsamrachana published in Nepal ko Sandarbhama Rajya ko Punsamrachana ed. Sitaram Tamang pp. 85-108, Samana Prakashan, Kathmandu.
9 Shreastha, Nanda Gopal Ranjitkar (2009) Nepali Times 1-7 May 2009.

17. India's "Autonomous District Councils"

Thomas Benedikter

Territorial autonomy as existing in 11 European states has been established in India since 1951 by the 6th schedule of her Constitution. The 6th schedule contains detailed provisions for "Autonomous District Councils" in districts dominated by so-called tribal peoples. As a faculty of the Union under the 6th schedule of the Constitution, over more than 50 years India has established the ADC's listed below. The legislative powers of these autonomous districts include:

- land transfer
- forest (other than reserved forest)
- water bodies (for the purpose of agriculture)
- regulation of shifting cultivation
- village or town committees and administration
- appointment or succession of chiefs or headmen
- inheritance or property
- marriage and divorce
- social customs

Apart from these, the District Council can also regulate the money lending as well as trading activities of non-residents or non-tribal people living in the area. It is also empowered to legislate on primary education, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways. The District Council is allowed to levy and collect taxes on land and buildings as well as tolls on persons. Moreover it can collect taxes on professions, trades, callings and employment, animals, vehicles, boats, entry of goods into the local markets, goods carried on ferries, the maintenance of schools, dispensaries and roads. The ADCs are also entitled to get a share of royalties accruing to the State annually on account of extraction of minerals. The management of these revenues is guided by rules and regulation set by the Governor.

All the matters on which district council is empowered to legislate are also enumerated in the State List. In order to ensure the autonomy of the district council, the 6th Schedule provides that no act of the State legislature shall apply to any autonomous district unless the district council adopts and approves the same.

Regarding the judiciary the 6th schedule provides for a two-tier-system at the district and village level. At the village level, the village council is empowered to trial suits and cases between the parties belonging to scheduled tribes. At the district level the district courts are empowered to act as a court of appeal in respect of all suits and cases triable by a village court. This differentiation in the judiciary mirrors the original "tribal character" of the 6th schedule autonomy. It has created a legal framework specifically for tribal communities, allowing self-administration on social and economic fields deemed most relevant for tribal communities, as agriculture, forests, fishery, local markets. But it is highly questionable whether this form of autonomy really covers all relevant powers required by such peoples for the preservation of their ethnic and cultural identity and for acting as comprehensive agency for the economic and social development of their homeland.

For their financial funding the ADCs are mostly depending from grants-in-aid, coming from the central government in New Delhi, but mainly routed through the State government. This mechanism, provides a leverage which is being often used to bring the ADC in line with State policies. This financial dependence and the use of dependency remain a major bone of contention in the relation between the district council and the state governments.

The role of the Governor, appointed by the Union's president for each federated State of India, is considerable also vis-è-vis the 6th-schedule-autonomies. Apart from the matters on which the district council has legislative powers, the Governor has the discretionary power in deciding whether the laws, made by the State legislature on other matters not covered by autonomous legislation of the district, will be directly applicable to the autonomous district or not. The applicability of the laws made by the parliament in these areas is also put under the discretion of the Governor, in case of Assam, and the President, in case of other Northeastern States. The Governor is also entitled to nominate a certain number of the members of the Autonomous Councils and to suspend the legislation if he deems them no longer effective. Thus, the district councils have been provided with a certain legal shield against encroachment by the respective State, but they are fully exposed to the discretionary power of the Governor.

As far as decentralization and territorial (regional) autonomy are concerned, the 6th schedule is India's present standard. On the other hand, the regional councils constituted by the Northeastern States by State Act do not enjoy all the powers

available under the 6th schedule. Even within this schedule, certain autonomous councils, like Bodoland, Karbi Anglong and North Cachar managed to obtain greater powers granted by specific constitutional amendments made to this schedule.

India's Autonomous Districts and Autonomous Hill Districts

Autonomous District	area (in km²)	population (2001)	capital	ethnic composition*	year of constitution
1. Bodoland	8.970	2.631.289	Kokrajhar	ST: 1.354.627 SC 137.594	07.12.2003
2. Karbi Anglong	10.434	813.311	Diphu	ST: 452.963 SC: 29.200	17.11.1951 14.10.1976
3. North Cachar	4.890	186.189	Haflong	Dimasa, Kuki, Hmar, Zemei, Hrangkhawls	17.11.1951 2.2.1970
4. Garo Hills	8.167	865.045	Tura	Garo, smaller groups	22.02.1972 (in 1979 bifurcation)
5. Jaintia Hills	3.819	295.692	Jowai	Pnar and Jaintia, Khasi	22.02.1972
6. Khasi Hills	7.995	1.060.923	Shillong	Khasi, smaller groups	22.02.1972
7. Tripura Tribal Area	7.132	679.720**	Khumwng	ST: 679.720**	8.1.1982
8. Chakma ADC	n.a.	n.a.	Chawngte	Chakma	1987
9. Lai ADC	n.a.	n.a.	Lawngtlai	Lai	1987
10. Mara ADC	n.a.	55.000	Siaha	Mara	1987
11. Darjeeling Gorkha Hill Council	3.144	1.609.172	Darjeeling	ST: 179.153 SC: 209.856	22.08.1988
12. Aut. Hill Devel. Council Leh	45.110	117.232	Leh	ST: 92.200 (Ladakhi)	28.08.1995
13. Aut. Hill Devel. Council Kargil	14.086	119.307	Kargil	ST: 105.377 (Purigba, Balti, Brokpa)	01.07.2003

Source: official websites of the Autonomous District Councils (see annex, bibliography)
* SC= scheduled caste; ST= scheduled tribes
** The tribal population of the district only, which accounts for at least 90% of the total population. Ethnic groups in TTAADC (Tripura): Bhil, Bhutia, Chainel, Chakma, Garo, Holan, Kuki, Lepcha, Lushai, Mog, Munda, Moatia, Orang, Riang, Santal, Tripura, Uchai.

The Assembly Hall of the Autonomous District Council of Karbi Anglong, Diphu (Assam)

18. Autonomy in India's Northeast: the frontiers of centralized politics

Sanjay Barbora

Movements for ethnic autonomy have marked the political discourse in Assam for the last decades. While some have resolutely expressed the need for more autonomy within the present administrative set-up, other movements have evolved more militant and secessionist ideas of political and geographical demarcation of territory. The autonomous districts in Assam, formed under the auspices of the 6th Schedule of the Indian Constitution, are a showpiece for the state's capacity to address indigenous ethnic aspirations in the northeast. On the face of it, these autonomous district councils are meant to devolve judicial, legislative and executive powers to those entities. The genesis of the 6th Schedule is itself a question that needs special attention. The choices of the field areas are not coincidental. Both Karbi Anglong and the Bodoland Territorial Council created in 2003 offer a longitudinal contrast in the application of the 6th Schedule to specific territories and people. At the same time, the administrative logic that decreed the creation of these "autonomous" entities, shows an almost naïve faith in resolving complex (and contentious) issues centered on identity.(1)

In the 1980s, Bodo agitators painted the words "Autonomy or death" on their bodies. This dramatic position has been the product of years of systematic mobilization of political resources of the community to interpret its marginalization as a failure of institutions of representation and participation. In 2001, the government of Assam signed a cease-fire agreement with the Bodoland Liberation Tiger Force (BLTF), one of the factions of the armed groups. Subsequently, the cease-fire agreement culminated in signing of the "Memorandum of Settlement of the Bodo Territorial Council" in 2003. The treaty was meant to have been a centerpiece in the conflict resolution techniques of the Indian state. Unfortunately, it has only added to ethnic polarization in the region rather than reduce violence.(2)

The Bodo (or Boro) are classified as a "plains tribe" who are now demanding territories in western Assam as their separate homeland. The territory in question is also home to various other ethnic groups, each with its own claim of being "indi-

genous" to the area. In addition, there are others who trace their place of origin to central India; the sub-Himalayan foothills of Nepal and Bhutan, the Gangetic plains, and neighbouring parts of Bengal (including Bangla Desh). Given such a complex ethnic composition, the demand for autonomy for the Bodo community is bound to initiate debate on the construction of adversaries of a movement that speaks for a significant ethnic minority, which participates in the political processes of a larger nation state.

Karbi Anglong was created as a district in 1951. A year later it was granted the status of an Autonomous District Council. Its hilly terrain kept the region partially excluded from direct administrative control of the British government in the 19th and 20th centuries. Rather than paving the way for a successful experience of institutional autonomy for the indigenous people of the hills, this arrangements was gradually challenged by the merging educated classes. The challenge resulted in a sporadic outbursts of anger against the arrogance of the valley-based caste Hindu power brokers. In the 1980s, the Karbi, who constitute a shaky majority among indigenous peoples in the territory of the present district, the Dimasa (an indigenous group that is dominant in neighbouring North Cachar Hills) and other scheduled tribes began agitating for greater autonomy. The agitation, once peaceful and led by a faction of the Communist Party of India (Marxist-Leninist) soon gave way to an armed struggle, which underwent "splits" in the late 1980s. Political issues aside, these splits, though couched in the political language of factionalism, have resulted in numerous incidents of ethnic clashed between the Karbi and those perceived to be "encroachers" into their territory. The armed militia as well as the more pristine homeland that not only challenges the limits of the autonomy arrangement currently in place, but also seeks to find radical solution beyond the purview of constitutional means.

It is interesting to telescope the two cases and compare their effect on the politics of the region. This would centrally entail looking at the autonomy arrangements themselves and see if they address the issue of rights that are central to the political constellations that demand autonomy. It is of great interest to reiterate that the dominant tendency in Karbi Anglong points towards the "lack of autonomy" under the 6th Schedule, whereas most of the political actors in the Bodo movement are today favouring the current solution on the basis of the

Bodo Accord. What is about the institutions that are supposed to guarantee autonomy that makes them obsolete and ineffective in one context and allows them to assume mythical conflict resolution properties in another?

Karbi Anglong: an unfinished autonomy

The Karbi comprise 63.36 per cent of the total hill scheduled tribe population in Assam. The territory of the autonomous district of Karbi Anglong has been redefined over time. In the elections to the Executive Council in 1989, the "Autonomous State Demand Committee" (ASDC) won as many as 22 of the 26 seats. In its election manifesto, its leader Jayanta Rongpi stated that the objective of his party and the movement it had established was to „achieve more decentralization of....power and restore them...to the people of the region through the formation of an Autonomous State" (ASDC, 1989). He further went on to assure other ethnic groups in Karbi Anglong that the movement was not hostile to non-Karbi and promised to check the violence among the different ethnic groups living in the territory. In June 2000, members of the United Peoples Democratic Front – an ethnic militia comprising militant Karbi youth – attacked Hindi-speaking agriculturalists in Hamren subdivision of Karbi Anglong. The settlers, armed and aided by the Central Reserve Police Force (CRPF), attacked Karbi villages, looting and killing many Karbi farmers in retaliation. Such violence continued through 2001 and 2002. In 2003, a fresh series of ethnic conflicts erupted mainly due to the divisions between the Kuki (3) and Karbi communities around the area of Singhason Hills. In March 2004, again new violence between Kuki farmers and Karbi militias broke out.

These events read like an indictment of the autonomy arrangement. Under the aegis of the 6th Schedule, a district council comprising 30 members has to be elected in any area notified as an autonomous region by the governor of the State who has to select four of the members. It also should be noticed that it is the governor who has the final say in the creation and dissolution of the council. The district council can hardly be seen as financially autonomous either. Apart from a meager sum from business and commercial enterprises and land revenues, it has to finance itself with help from the district and regional funds which are endowed and managed by the governor. The powers of the autonomous council are varied, but it is in their capacity to regulate land transfer that they exercise their most interesting discretionary powers. The 6th Schedule follows the colonial policy of allowing land in the hills to be under "community ownership" and hence fall outside the revenue scheme. However, by 1979, the overwhelming

Khasi in Sohra, Khasi Autonomous District (Meghalaya)

Local autonomy under the 5th Schedule

The 5th Schedule of the Constitution is meant to protect the interests of smaller tribal groups who are placed within larger units of a state. It provides a limited platform by way of formation of "Tribes Advisory Councils", which can articulate the aspirations of their communities. Neither the Council has any executive power nor does it enjoy any legislative or judicial powers in administering the justice within the scheduled areas. The legislative power is vested with the Governor and the Council has the duty to advice him on his desire. The governor is empowered to apply his discretion regarding the applicability of any law passed by the parliament or the State legislature in the scheduled areas.

In consultation with the "Advisory Council" he can make laws for the scheduled areas

- prohibiting or restricting transfer of land
- regulating the allotment of land
- regulating money lending business.

The Union President should assent to all these regulations. Thus, the 5th schedule, although envisaging to protect tribal interests, does not assign any concrete right of autonomy to the tribal peoples and cannot be considered as „territorial autonomy".

logic of doing away with community property was noticed in a notification wherein private property was not only acknowledged, but also encouraged (District Council Notification, 1979). In that sense, the councils and village chiefs have become the most likely figures of authority to be able and renew leases and land titles. This leaves open the space for political manipulation, wherein it has been known that village chiefs, who belong to one or other political party, try and push the leases (or titles) of their party members if a friendly party dominates the executive council.

This discrepancy between formal rules of the game and informal occurrences, and the tension between valorizing "tribal tradition and community" and undermining community by extending the logic of private property, all contribute to violent and aggrieved reactions. In 2003, a publication of the United Peoples Democratic Solidarity stated their demands couched in the progressive discourse of indigenous rights and well within the juridical limits of the Constitution.(4) The demands, however, have an underlying logic of excluding people from an imaginary pristine homeland (Hemprek), that might have existed at the moment preceding contact with the colonizers. Today, after many rounds of ethnic clashes and military operations affecting a great number of people, the demand for an autonomous state seems to have lost steam largely due to recurring splits within the movement and the obfuscation of issues under electoral politics.

Bodoland: achieving an "ethnic space"

In Bodoland 1999, leaders of the Bodo Liberation Tigers (BLT) after many years of guerrilla fighting declared a unilateral cease-fire and openness to negotiation with the government. In response, the government agreed to create a territorial council under the 6th Schedule for an area demarcated in consultation with representatives of the Bodos groups and the government of Assam. Almost immediately, non-Bodo groups launched a massive agitation claiming that such a move would not only encourage more ethnic clashes, but also lead to evictions and population transfers from the proposed area.
The story of these internal rifts, however predates the 1999 cease-fire announcement. In 1988, the Bodo Peoples Action Committee (BPAC) was formed to incor-

porate all the different tendencies within the Bodo movement. However, this could not stop the rupture within the ranks of the Bodo movement. The central government intervened and initiated a tripartite talk among the ABSU-BPAC combine, the government of Assam, and the central government itself in 1989. In the manner of throwing a bone to the Assam government, the Centre said that further division of Assam would not be carried out, but pressed upon the Assam government to accept some of the secondary issues around which the movement had managed to gain ground. The government of Assam accepted the suggestion of the Centre. It was the use of the classic divisionary tactic that sought to provide the same benefits to other plains tribes in Assam.(5)

After years of military conflict in 1993, the central government brought together the Bodo leaders and the government of Assam to sign on what came to be known as the "Bodo Accord". The Accord created the "Bodoland Autonomous Council" (BAC) that was to comprise an area covering 2,000 villages and 25 estates stretching from the Sakosh River to Mazbat Pasnoi on the north bank of the river Brahmaputra, via a government of Assam notification (Bodoland Autonomous Council Act, 1993). The area also included reserved forest. The subsequent difficulties in the demarcation of the boundary continued to be the relentless opposition of the non scheduled tribal population living in the area. A considerable number of people residing in the said area, especially the time-expired indentured laborers who left the tea plantations, were classified as "scheduled tribes" outside Assam.

On the other hand, there was also an internal split of the political discourse within the Bodo community, with an armed section declaring the Accord to be a "sell-out" of the original goal of an ethnic homeland for the Bodo community. A more militant armed opposition group, called the Bodo Security Force (6)   denounced the Accord and vowed to continue what it perceived as the resistance to colonialism. Importantly, the armed oppositional activities began to articulate the idea of self-determination for the Bodo-speaking people including complete and total secession from India.

Following the transfer of power, civic mobilization within the plains tribes of Assam, concentrated on civil disobedience to state explicitly the cultural basis of economic deprivation. The Bodo groups were perhaps more organized than their

other tribal counterparts. They were already capable of using the constitutional machinery at various points of the agitation. However, abstentions from armed opposition defined the future scope of action. Both armed factions soundly repudiated the formation of the BAC, though their positions were considerably different. The NDFB had an ideological problem with the idea of a "deal" that diluted the movement for self-determination. Since the year 1996, the BLTF and NDFB had been engaged in a series of internecine wars where they targeted each other's cadre and sympathizers.

It was obvious that a section of Bodo political opinion, especially the students and the literary bodies, favored a settlement brokered by the central government where they would gain more resources and control the ethnic competition with other groups. Indeed, one of the most disturbing aspects of the armed struggle for any variety of autonomy in the Bodo inhabited areas is the fact that successive episodes of violence make it look like a campaign for ethnic cleansing of the area. The debate on what constitutes the historically demarcated Bodo areas and the contemporary demographic realities continues unabated. This adds a potentially intractable angle to the question of who „belongs" to a particular version of the „national space".

Echoing a concern along these lines, Biswas and Bhattacharjee state that „ethnic movements in the Northeast can be understood in terms of a contest over greater social, political and cultural spaces, the spaces in which the ethnic communities were not hitherto represented. This non-representation is further explained within the contexts of rights, power and authority, which cause ethnocentric concerns to find their expression in many possible ways."(7) Here the contestation of the other assumes the form of characterizing it in terms of an indifferentiated constitutional concept of citizenship where the Constitution does not recognize the claims of an identity in separation from others as represented within the nation and the state that apparently negotiate the variegated representations between communities in spaces within the concept of the nation. The ethnic polarization in the Bodo areas can be located in the lack of a mediating measure that can accommodate the different positions. Splits within the movement are a prime example of the ad hoc policies of the state. The persistence of colonial tones in the political structures in the regions accounts for one aspect of the ends towards which the government strives, that of political and territorial unity. In the process, the Indian state's propensity to carve out states to satisfy the political elite might suggest that it is more „tolerant" of ethnic aspirations. However, the fact that it has a definite „ethnic agenda" of its own, one that is shaped by policy machines that are not „ethnically neutral", is a condition that negates the provisional safeguards in its Constitution.(8)

Karbi in Diphu, the capital of the Autonomous District of Karbi Anglong

Bilingual (Karbi-English) public information board in Diphu (Karbi Anglong, Assam)

It is also interesting to note that the persistence of ethnic identity, as a part of the growth of modern institutions such as literary bodies and students associations, is not peculiar to the Northeast. In the case of the Bodo and Karbi struggle, an important tendency accompanying the cultural revivalist and economic deprivation tendencies was the use of physical force.(9) As some theorists argue, rather than decrease ethnic heterogeneity, modernization tends to increase it in many ways. However, in the northeast, this process follows a set pattern where groups consolidate around issues of cultural unity, engage with the state for some concessions, and the outcome is often intractability and violence.(10) This is woven in with the hard realities of fighting territories such as „frontiers".

Autonomy and "ethnic spaces"

There, thus, appears a pattern to ethno-nationalist demands for autonomy in the Northeast, and a lack of institutional ability to handle these demands. Most political demands for self-determination are centrally linked to the idea of a distinct identity of an ethnic group. The manner in which this identity consciousness is articulated has been the subject of discussion. Against this backdrop, much of what appear to be guarantees of autonomy compatible with the aspirations of given groups of people within the framework of the Constitution, or even within international law, can actually be seen as a condensed body of intricate political negotiation. In essence, these negotiations are supposed to appear as process that lead to further democratization of society and politics. In the Indian context, this idea was supposed to form the core of the federal ethos of the republican tradition. Hence, provisions like the 6th Schedule, Article 371A and even the recent "Panchayati Raj Bill" are seen as efforts to ensure the devolution of powers of administration and governance to the grassroots. Yet, in the manner in which power filters down, it leaves more questions than answers in its wake. One senses in all this, the overwhelming concerns of the centralized state in losing its locus as the sovereign fount of law and administrative processes. Indian democracy is defined by its Constitution inasmuch as by a particular notion of the rule of the „majority". On the one hand, a „statist" view asserted that it was the individual citizen, rather than amorphous collectives, who was the backbone of the State. This view that the individual's loyalties as a citizen supersede her or his loyalty to other identities is constantly being challenged by a second discourse that is articulated against the backdrop of inadequate representation in matter of governance and administration. It would be tempting to see the persistence of primordial identities in the shaping of demands for autonomy in such a situation. However, it would help to see some political leverage at work here. The definition of an indigenous collective self is meant to challenge a „settler" nation state. In both cases, indigenous cultures within post-colonial societies find themselves excluded from the decision-making processes that are central to the state. Their subsequent declaration of separation from a „mother body" based in a implicit declaration of people-hood based on genealogy and descent ties functions „not only as other sub-national units do in, say, the assertion of ethnicity, but point to the history of the pre-contact and raise questions about legal and moral legitimacy of the present national formation."(11) In this significant development one sees that ethnicity and notions of ethnic contiguities begin to change almost as soon as the community sees itself as the purveyor of a smaller national space. In just a matter of two or three decades, the organic solidarity of the groups classified as plains tribes as opposed to caste Assamese society changed to one of mutual distrust and competition between groups who are placed on the same social and economic plane.

Central to both discourses are certain principles that govern the quest for autonomy. Autonomy and autonomous institutions have not delivered justice. Hence, it is rare to find an instance where autonomy has sought to work on the principle of restitution, by acknowledging that an injustice has been committed, or that some form of reconciliation is called for. Moreover, autonomy, as framed within the statist discourse, does not address the issue of control for resources, finances, and costs of running autonomous territories in a comprehensive manner. When it does, as in the 6th Schedule, it seems ineffectual and laden with contradictions that make the principle of custodianship appear more like a managerial policy. As long as autonomy arrangements are seen as a tool to manage the political demands of people in the region, there will always be problems with their implementation. For every instance where an ethnic group is promised autonomy, there will remain others who will claim to be aggrieved by that arrangement. As one has seen in the case of Karbi Anglong, where an autonomous council already exists, it is hardly a guarantee that such models

can be upgraded to include other ethnic groups and/or economic and political developments. If anything, it is seen as an impediment and a „Trojan Horse" that leads to further loss of lands for the indigenous people. For example, in a bid to solve an immediate crisis arising out of ethnic conflicts, political and public opinion waste no time in calling for armed intervention by the army and the police. This is self-defeating, to say the least. Where these autonomy arrangements are bestowed the ethnic and political relations between Bodos and others who share the same space. Academic concern have to take these factors into consideration if any intervention or mitigation strategies are to be thought of.

Sanjay Barbora,
senior researcher (Political Science) with PANOS South Asia, Guwahati

„No autonomous state - No rest" -
Political graffiti for a state of Karbi Anglong separate from Assam (Diphu, Karbi Anglong, Assam)

The current map of the Autonomous District of Karbi Anglong

Endnotes

1 In his original article on the issue, published in "The Politics of Autonomy" the author focuses on a) the construction of frontiers, b) the negotiation for political space within these frontiers, and c) the ability to redefine sovereignty, citizens and subjects, in an "autonomous" space like Karbi Anglong and, to a certain extent, the Bodoland Territorial Council. See Sanjay Barbora, Autonomy in the Northeast: The Frontiers of Centralized Politics, in Ranabir Samaddar (ed), The Politics of Autonomy – Indian Experiences, Sage New Delhi 2005, p.196-215

2 On this issue see also Thomas Benedikter's response, following this essay, with a markedly different view.

3 Some political commentators say that the Kuki were actually "invited" to settle in Karbi Anglong by politicians following ethnic conflict between Naga and Kuki peoples in Manipur in 1992. The idea was to use the Kuki as a "vote bank" during Council elections.

4 To quote: „…(therefore) our substantive demands are: 1) Full restoration of land rights to the tribal traditional authority - namely the sarthe. 2) Full political security to the indigenous tribes and complete disfranchisement of non-tribal infiltrators who have settled within the territory after 1951, 3) Complete control over law, order and jutsice. 4) Complete control over natural and human resources of the territory and 5) Complete authority over all financial and developmental matters (and) direct access to the financial and economic authorities of India". Excerpt taken from: UPDS, 2003

5 One cannot expect this to be a magnanimous and enlightened gesture on the part of Assam government, given the fact that it was probably aware that the discursive politics of ethnic homelands in the region had already become exclusionary.

6 This organization was later renamed the National Democratic Front of Bodoland and continues its armed activities against the state.

7 Biswas Prasenjit and Sukalpa Bhattacharjee, The Outsider, the State and Nations from below: Northeast India as a Subject of Exclusion": in Ali Ashraf (ed.), Ethnic Identity and National Integration Concept Publishing, New Delhi 1994, p. 232-245

8 This view is often reinforced by the support that settlers receive in areas where the potential and realities of ethnic conflict are common occurrences. For many indigenous rights activists in the Northeast, the 6th Schedule seems like a "Trojan Horse" for greater centralization that would allow the state1 to fill up the lands (belonging to indigenous persons) with ethnically acceptable groups (MASS, ASMS, NPMHR 2002).

9 Conflict managers often say that there is a political nexus between student associations, armed opposition groups, and cultural and political organizations. This divisionary rhetoric does not take into consideration the absurdity of a group of small, albeit militant, youth posing a national security threat, when all such display of militancy seems to be aimed at protecting a small community against domination.

10 Barbora, Sanjay, Ethnic Politics and Land Use: Genesis of Conflicts in India's Northeast, Economic and Political Weekly, 30 March 2002 Barbora, 2002, 1287

11 Murray, 1997, p.1

19. Regional autonomous democracies: new "ethnic spaces"?

A response to Sanjay Barbora

Thomas Benedikter

Territorial autonomy in India has gone far beyond its original purpose of simply protecting smaller peoples or tribes in their original homeland. The extension of the 6th Schedule (with special amendments) to Bodoland and to the Tripura Tribal Areas is significant, as this constitutional provision was not designed for tribal areas with large non-tribal populations or for full exposure to a comprehensive national space of free labour, capital and commodity markets that India is striving to achieve. The case of Gorkhaland, which rejects the concept of 6th Schedule-autonomy, underscores the fact that the Constitution's provisions on sub-state autonomy are overdue for reform. In principle, the Indian state, apart from some regulations of the 6th Schedule and regional councils established in the Northeast, does not allow for reservations or "ethnic autonomy". On the contrary, it points to the formation of territorial units that provide for equal rights for all legally resident inhabitants. From this logic India derives the institution of new federated states (Nagaland, Arunachal Pradesh, Mizoram, Meghalaya, and Jharkhand, with a large Adivasi population) and territorial autonomies such as Bodoland. All of these units have one or more dominant ethnic groups or people, but are basically multi-ethnic democratic polities. Under the Indian Constitution they share a form of majoritarian decision-making, but as they are mostly multi-ethnic (Gorkhaland, Meghalaya, Arunachal, Bodoland, Tripura), they require that particular attention be paid to consociational arrangements. Nevertheless, autonomy is demanded and sometimes conceded in order to grant the ethnic groups protection and self-rule. The permanent challenge for them is how to reconcile ethnic affirmation, non-discrimination and the inclusion of internal minorities. This challenge is shared with "common nation states".

Exclusive regulations and the rationale of autonomy

Some scholars warn of the risk that the concept of autonomy might lead to new ethnically biased states and sub-state entities by vesting their indigenous peoples with special privileges but leaving out other "denizens", in other words, recent immigrants not members of the titular ethnic groups or not members of "scheduled tribes". Sanjay Barbora has made such observations in this volume with regards to Karbi Anglong (see the previous section 13) as has Sanjib Baruah regarding Meghalaya and Nagaland.(1) They warn against the creation of autonomies with two or three classes of citizens:

- Citizens members of the titular ethnic group
- Indian general citizens
- Foreign immigrants

Similar scenarios are sometimes envisaged in some European autonomous regions, leading to legal action by EU-citizens against alleged violations of the principle of equality and discrimination on the grounds of residency and language. In India's Northeast, a large share of the population is registered under ST-status, and autonomy appears to be exclusive to non-STs and non-legally resident people. New social injustices are brought about that carry the potential

Northeast Indian States: reserved seats for scheduled tribes (ST) in State Legislative Assemblies and Autonomous District Councils

States	*ST as % of population*	*Legislative Assembly total members*	*Legislat. Assembly seats for STs*	*Legislat. Assembly unreserved seats*
Arunachal	63.7	60	59	1
Assam	12.8	126	16	102*
Manipur	34.4	60	20	40
Meghalaya	86.6	60	55	5
Mizoram	94.8	40	39	1
Nagaland	87.7	60	59	1
Tripura	31.0	60	20	33**
Bodoland	51.5	46	30	5 for non-ST 5 open for all 6 nominated
Karbi Anglong	55.7	26		
North Cachar	53.7	26		
TTAADC Tripura	ca. 90%	28	25	3

* 8 seats reserved for scheduled castes   ** 7 seats reserved for scheduled castes

Source: Sanjib Baruah, Durable Disorder, Oxford University Press, 2005, p. 192

for social and ethnic conflict. At this point, the very rationale of territorial autonomy has to be recalled: autonomy is a modern democratic sense cannot allow for new discrimination (reverse, e.g. against the members of the national majority population living in the area), privileging just one group at the expense of smaller groups. Modern autonomies are incompatible with the idea of indigenous reservations as existing in the Americas.(2)

Autonomy exists to give ethno-linguistic communities the chance to preserve their identity in their traditional homeland, but within a democratic setting inclusive of all legally resident people, with and without citizenship. In a region where these communities are compactly settled, it exists to redress the structural disadvantages of ethnic minorities in states with a different titular majority. In India this also refers to federated states' linguistic majorities. The national majority's implicit power in all domains of life, from culture to media, from economy to politics, from public jobs to military careers, remains largely unquestioned.

Territorial autonomy should not create a similar "ethnic space" that allows reverse discrimination, but a legal space wherein substantial equality of opportunity is ensured for all groups sharing the same region. If conceived as a common democratic space with consociational power sharing, territorial autonomy is not exclusive, but inclusive by nature, as long as the necessary institutional safeguards are provided. This is a normative statement against which working autonomies must be measured. Neither in Europe nor on other continents do autonomies always coherently act in accordance with such principles. Several autonomous regions have been brought before the European Court of Justice for violating fundamental rights enshrined in EU-treaties. Why should it be different in India? Thus, the challenge lies in making arrangements to ensure that full civil rights are granted to all legally resident citizens irrespective of ethnic affiliation as well as arrangements for protecting internal minorities.(3)

Thus, the concept of 6th Schedule autonomy is too narrow today, even for developing of a region and enhancing the position of tribal peoples from their own perspective. The titular majority itself is called upon to strike a balance between the interests of indigenous peoples and non-tribal resident citizens who contribute to regional welfare. Minority protection has to be reconciled with democracy. If the 6th Schedule no longer offers such a scheme of regional autonomy, and, in the absence of other constitutional options (e.g. Union territory with legislation), it is little wonder that some regional communities seek full statehood (in India: Telengana and Gorkhaland).(4)

Bengali miners, immigrated to Meghalaya (Rymbai, Autonomous District Council of Jaintia Hills, Meghalaya)

Third from Left Sri Hagrama Mohilary C&C of B by the Bodoland Liberation Tigers Laying An AK-47 Rifle with his colleagues during arms laying ceremony in front of the Government of India and government of Assam on 6 December 2003 at Kokrajhar (Bodoland, Assam).

Autonomy and immigration

Smaller regional communities and areas that are home to indigenous peoples are vulnerable to demographic change. Several examples around the world show drastically how state-sponsored migration or even systematic population transfer (transmigrasi in Indonesia) has undermined the ethnic-social equilibrium of a region and threatened the very existence of minority peoples.(5) Such smaller regional communities need some control over migration flows if they are to avoid being outnumbered by non-indigenous or non-autochthonous populations. Political stability in the region, social equilibrium between groups, the control of regional resources, and ultimately peace and cultural identity cannot be achieved if demographic development is completely left to external dynamics.

This issue must again be sharply distinguished from alleged "internal discrimination", which excludes resident citizens who are not members of regional majorities (or scheduled tribes in India) from certain rights and resources. In Bodoland it makes a difference whether one is speaking about a non-scheduled Santal immigrant from West Bengal arrived yesterday. The phenomenon of uncontrolled migration is perceived as a threat not only by ethnic minorities in the Northeast (the Bodos in the BTC, the Karbi in Karbi Anglong, the Kokborok in Tripura etc.), but also by State majority peoples (Assam, Manipur, Meghalaya). Uncontrolled migration, by reversing ethnic majorities, undermines the social position of resident peoples, the general cultural framework, and in the long run, the very legitimacy of an autonomy. Incidentally, no sovereign state tolerates free migration under similar arguments: why should autonomous communities not refer to the same arguments?

Hence, devices must be established to enable autonomous regions to control migration to a certain extent, setting provisions consistent with general rules on citizenship and fundamental freedoms of their country. Regions in Europe and South Asia are adopting various means for the same purpose. The Aland Islands have established an "Island citizenship", preventing non-Swedish speaking Finnish citizens to run a business on Aland. South Tyrol has a strict regime of bilingualism requiring each public servant to be fluent in both official languages; furthermore some social benefits and political rights are granted only to persons with legal residency in the region.

Karbi Anglong and Bodoland have a regime of seat reservations in the political bodies for STs, and generally ADCs apply restrictions on land property and land transfer to non-tribal and non-resident people. This has also been a traditional right of the State of Jammu and Kashmir. The TTAADC (Tripura) as well as Arunachal Pradesh move a step further: the "inner line permit" regulation is a kind of internal border to prevent the free influx of settlers into indigenous areas. The means may vary, but the request of autonomous communities is a common one: although a territorial unit of a major state, covered by its legal constitutional order, they do not accept being fully exposed to arbitrary migration movements.

Autonomy in a normative perspective must empower regional communities, not create local fiefdoms with indigenous leadership just replacing foreign dominance. Moreover, autonomy must be meaningful in its scope and material basis. If the number and kind of powers devolved to autonomous bodies is scarce and the powers of control and interference of both superior levels (State and Governor) is too large, real autonomy cannot unfold. If the financial means are too scarce and come too late, and no sources of revenue are assigned to the autonomous governments, they cannot really act as major agents of local development. The division of powers has to be as clear as possible and neutral institution – the Supreme or Constitutional Court – must be the place of negotiation and settlement for any kind of dispute under the rule of law. Finally, a consociational government is necessary in ethnically mixed regions. Though this is not applied in all European autonomies by far, it is a normative must if stability, the inclusion of all major groups, and interethnic peace is to be achieved. This is the real key to longterm sustainability of regional autonomy established mainly to accommodate an ethnic minority or a smaller tribal people: if the titular ethnic group of an autonomy is not able to include both people of the state's majority and smaller indigenous minority groups in a common project of regional welfare and development, the whole construction is at risk. New violence will trigger counterviolence by victimised groups. Arbitrary discrimination of weaker groups by autonomous legislation and administration will provoke a backlash by the Centre and the groups concerned; violence will eventually bring about new constraints on real autonomy.

Hence, autonomy does not exist to create new discrimination and ethnic cleavages, but to redress the structural imbalance present in nation states or in federated states with a single dominant culture and ethnicity. It is there to create a legal-political space for efficient minority protection, for substantial equality of opportunity, and for consociational self-government of a common home. Ultimately, it is an issue of justice and of quality of democracy, bringing the political power closer to the people.

Endnotes

1 See Sanjib Baruah, Durable Disorder – Understanding the Politics of Northeast India, Oxford India, 2005, Section V on "Citizens and Denizens", p.183-210

2 For the distinction of ethnic reservation to territorial autonomies se Thomas Benedikter, The World's Working Autonomies, excursus I on "America's reservations for indigenous peoples", p. 243-258

3 Substantial equality means not only the absence of individual discrimination, but equal opportunities: a regime of full public bilingualism, official recognition of minority languages and religions, provision of equal means for cultural services and institutions for all groups, an education system in mother tongue, no discrimination on ethnic grounds in recruitment for public jobs, same opportunities in achieving political charges, affirmative action for historically discriminated groups.

4 Discrimination on ethnic grounds is detrimental to autonomous communities in an additional sense. If persons living in such regions, belonging to the majority population in the rest of the country are victimised by autonomous institutions or just perceived and presented as victims by national media to the general electorate, this will prevent central states from both enlarging the existing autonomy and establishing new autonomies.

5 Bangladesh and the Chittagong Hill Tracts, Indonesia and Borneo, Philippines and Mindanao, China and Xinjiang, Nicaragua and its Atlantic Coast Autonomous Region, Sri Lanka and the East Coast etc.

"We demand a Union Territory with legislative power"

Interview with Mr Kumzang, chief secretary of the Ladakh Buddhist Association (LBA), the largest non partisan political organisation of Ladakh, which claims to represent the entire Buddhist population living inside of the State of Jammu and Kashmir.

How many inhabitants of Ladakh speak Ladakhi as their mother tongue?

Kumzang: Almost all in the district of Leh, whereas in the district of Kargil there are about 25-30,000 people speaking Ladakhi. The Muslims of Ladakh speak different versions of Ladakhi, called Balti. In Ladakh 100 percent of the Ladakhi speakers use the Tibetan script. In Kargil Balti is spoken by 80% of the population, while the script is Persian, the same used also for Urdu. However, we understand each other.

The Ladakhi population within the State of Jammu and Kashmir is very small. Which rights do you have at State level?

Kumzang: We have no rights. The State language is Urdu. All official communication is done in Urdu language. Police ordenances, official documents, daily administration is all written in Urdu. Ladakhi or Bothi is only used as school language, but has no official recognition within the Constitution of India. Recently the demand has been raised for the recognition of Ladakhi in the 8th schedule of the Constitution. Likewise there is a demand for recognition of all Bhoti languages. Bhoti is the overarching family of Tibetan languages in the Himalaya. There is a forum consisting of all Buddhist associations of Ladakh, Uttaranchal, Himachal Pradesh and Sikkim, and a combined effort to include those languages within the minority languages.

Which institutions have been established to protect the minority languages?

Kumzang: There is a minority commission in India, which represents all the religious minorities. The representative of Ladakh within the National Minority Commission, Lama Zopa Rinpoche, is from Ladakh. On State level we do not have any other institution. But there is a Central Institute for Buddhist Cultures.

Can the Autonomous Hill Council decide freely within the autonomous powers?

Kumzang: No, we still have to pass our decisions through the Cabinet Ministers of Jammu and Kashmir respecting many formalities. The Council was not given powers for so many years and thus the autonomy is far form being complete. Jammu and Kashmir has not yet enabled the Ladakh Autonomous Hill Council (LAHC) to fully act as an autonomous region. Whatever we do, we have to ask the State government. Funds come from them and the control remains in their hands. We have no autonomous source of income.

Is Ladakhi the official language of the Autonomous Hill Council of Leh?

Kumzang: No. Our State language is Urdu. The LAHC is for the protection of our culture, but Bothi is not a language of the Autonomous Hill Council. Most of its 30 members are Ladakhi, and they are allowed to give their speeches in Ladakhi, but writing is not in Ladakhi, but in Urdu and English. Ordinance should be written in English, because we have to communicate with the State.

Can the single citizen use Ladakhi in public administration?

Kumzang: If the public official is a Ladakhi, he can interact in Ladakhi with him. If the person beyond the desk is from outside Ladakh, we have to speak in the clerk's language. In Ladakh's public service only few officials are Ladakhis and there is no obligation for them to learn Ladakhi.

Which rights do you have in the education system?

Kumzang: Bhoti is a compulsory language in private and public schools as a subject. In all government schools up to the 10th level, on the whole primary level. Ladakhi can also be used as a medium of instruction, especially in the villages. But if the teacher comes from outside, he will use another language, Hindi, Urdu or English. Suppose that in a common public school there are also students from other districts. Then, the teacher cannot use Ladakhi language as medium, because the students have the right to have instruction in State language.

How much time is devoted to Ladakhi in Ladakh's public radio and TV station?

Kumzang: In the radio 90% of programs are spoken in Ladakhi, only news from other parts of India in other languages. The State TV broadcasts one hour per day in Ladakhi. This is a good program for the preservation of the Ladakhi culture. There is also one bimonthly print magazin in Ladakhi.

The LBA claims the institution of a Union Territory (UT) for Ladakh. Which improvement of language rights would this bring about?

Kumzang: This claim has been raised long time ago. We demand a status as Union Territory under central responsibility. We don't want to depend anymore from the State of Jammu and Kashmir. This is no new issue, but existing since 1947: we want to be a part of India directly. Now there is also a full fledged political party demanding for UT status. If we get that status, we get our own constitution. Now this Council has no right to do any amendment to the current statute of Ladakh. If we achieve this amendment, we demand a UT with legislation, not a UT like Chandigarh. This would also include matters of language and would bring about real autonomy. The Chief Minister would be a Ladakhi, the government likewise.

Why is it so important for you to leave the Jammu and Kashmir State?

Kumzang: We have been a part of Jammu and Kashmir for 60 years, but there

Ladakhi women in Hemis (Autonomous Hill District of Leh, Ladakh, Jammu and Kashmir)

is always a discrimination against Buddhism as the rulers of this State are Muslims. After the establishment of the LAHC nothing has changed substantially . The main powers still lie with the State government. But we want to get out of this State in order to preserve our Ladakhi identity. We need this UT with legislation. In last 40 years a great danger for our culture has mounted. The next generation will have major difficulties. We need more autonomous powers and more funds to rule our region.

Interview: Thomas Benedikter (Leh, August 2008)

Location of Telangana in Andhra Pradesh

The Rajbongshi – A new autonomy conflict in West Bengal?

In August 2008 more than 20.000 people of the Rajbongshi tribe in Northern West Bengal took to the streets of Koch Bihar to demand a separate tribal homeland. The police previously had killed two people when they fired at protesters. Then the Rajbongshi went on rampage killing two officers and blocked roads in violent protest. The State government sent a huge number of troops to quell the unrest. For several years the Rajbongshi of Northern Bengal have been demanding the creation of a separate state to be called Kamtapur. Both political groups and underground armed groups are pressing for this demand.

Autonomy demands in Jharkhand

On the line of the demand for Gorkhaland a 14-party combine of tribal groups, headed by the *Jharkhand Party (Aditya)* has come forward to contest in the *Lok Sabha* polls. The JKP (Aditya) has fielded candidates in two seats – Bankura and Jhargram in Midnapore of West Bengal. The 14 party combine has demanded tribal autonomy on the line of Gorkhaland (Source: *The Statesman – Siliguri*, 7-4-2009).

Autonomy won't be enough for Telangana

The region of Telangana covers the northern part of the Indian state of Andhra Pradesh. More or less it corresponds to that portion of the state which previously was part of the state of Hyderabad. With India's independence Hyderabad was amalgamated by force in the Union. Later, in 1953, Andhra State was the first Indian state to be formed on a purely linguistic basis and later was merged with the Telugu speaking parts of the Hyderabad state (Telangana), to create Andhra Pradesh in 1956, although the State Reorganisation Commission as against this merger. In 1969 the first movements for a separate Telangana state took off, leading to widespread violence and claiming hundreds of lives, mostly students. Since 1990 the movement gained momentum, when the *Bharatya Janata Party* (BJP) backed the claims of Telangana activists. Recently a new party was formed – *Telangana Rashtra Samiti* – with the single point agenda of creating a separate state with Hyderabad as capital. These forces feel that all plans and assurances at State and Union level of the last 50 years have not honoured and Telangana was forced to be neglected, exploited and backward. While there is no constitutional space for sub-state regional autonomy – apart from the 6th schedule – a separate state appears to be the solution with the largest popular support.
Retrieved from: http://en.wikipedia.org/telangana

20. The Federally Administered Tribal and Northern Areas: Fundamental Rights, Effective Representation and Political Autonomy

Murtaza H. Shaikh

Introduction

The Constitution of the Islamic Republic of Pakistan emphasises provincial autonomy, understandably so, given the context of the Bangladeshi secession, in which it was framed. In addition to the four provinces of Sindh, Punjab, Baluchistan and North West Frontier Province (NWFP), the remainder of the territory is divided into ad-hoc administrative units comprising Azad Jammu and Kashmir (AJK), the Northern Areas and the Tribal Areas. Pakistan is a rich mosaic of peoples; each province home to its own predominant distinct ethno-linguistic group. AJK has close ethnic and cultural links with Punjab, whereas the Northern Areas stand out as the only region home to an ethnically distinct and Shiite minority.

AJK and the Northern Areas are omitted from the Constitution. While AJK enjoys some modicum of autonomy with its own constitution, legislature and judiciary; the Northern Areas are governed directly from Islamabad. The Tribal Areas, on the other hand, are accorded "semi-autonomous" status, but ultimate authority is retained by the President. They are divided into two administrative categories, those that are federally administered (FATA) and those that are provincially administered (PATA).

The PATA administered by NWFP are Amb, Chitral, Dir, Swat, Malakand, Kohistan and Mansehra. In addition Zhob, Loralai, Chagai and Sibi are administered by Baluchistan. In contrast to the FATA, over time, the PATA have been integrated into their respective provincial systems through representation in their assemblies as well being allowed access to the provincial and national courts.

This short paper will focus on the constitutional status and administrative arrangements of the FATA and Northern Areas. In both regions, control is administered directly from the centre with security and strategic concerns providing the most oft cited justifications. As a result, they suffer from a severe lack of effective representation and interrelated denial of fundamental rights. Meaningful political autonomy is essential, yet its denial is most acute in these regions.

The Federally Administered Tribal Areas

The FATA cover about 27,220 km^2 of mountainous territory and are home to a 6 million near homogeneous Pakhtun population. With the exception of Orakzai, all agencies are coterminous with Afghanistan. The other agencies are Khyber, Kurram, Mohmand, Bajaur, North Waziristan and South Waziristan. They also include the tribal areas adjoining Peshawar, Kohat, Bannu, and Derra Ismail Khan. In many agencies, especially Mohmand and the Waziristans, those belonging to the same tribe are divided by the border (Durand Line), which is mostly undemarcated. The Pakhtun people are split between Afghanistan and Pakistan and estimated at 41 million. The people of FATA have closer affinity with the Afghan tribal Pakthun then the urbanised Pakhtun of NWFP.

Administratively, the FATA falls under the Ministry of States and Frontier Regions (SAFRON) but in reality the President exercises direct executive control by virtue of Article 247 of the Constitution. Under this provision he may "make regulations" for "peace and good governance". He can decide at any time that a tribal area may cease to be such without any consideration except that he ascertains the views of the tribal people. It also gives him discretionary executive authority unfettered by even by Parliament or the judiciary.

The FATA is explicitly acknowledged as one of Pakistan's "territories" (Article 1). The implication is thus that fundamental rights must extend to its inhabitants by virtue of their citizenship. However this formalistic reading is countered by the fact that they have no recourse to the higher courts for enforcement of their constitutionally guaranteed rights. Consequently the Frontier Crimes Regulation 1901 (FCR), a colonial remnant designed to "suppress crime" at any cost, has survived. It remains in place only in the FATA. Under the FCR, anyone suspected of a crime, may be subjected to expulsion, have their families detained, or even incur punishment on their whole tribe as well as have their dwelling torched. The

Supreme Court, in the Manzoor Elahi case (1989), implicitly endorsed such flagrant abuses of fundamental rights by describing the higher courts' exemption as the "price for autonomy".

The President's executive authority is exercised through the Political Agent, who is responsible for overall administration in his designated agency. Executive, judicial and legislative powers are delegated to him. The Agent has minimal contact with the inhabitants and governs indirectly through the maliks (local rulers), who receive state funds from the Agent in return for their compliance. The Agent is said to have unauditable accounts, by which he can implement the President's policies. The maliks may also turn to the Agent to consolidate their own influence through his private security force (levies).

Civil and criminal disputes between inhabitants are settled through the indigenous judicial institution of the Jirga (Council of Elders), who decide matters in accordance with uncodified customary law. Thus the constitutional exemption of the higher courts' is seen as achieving this end. For the administration of justice, the FATA are divided into two categories. In "protected" areas, political officers vested with judicial powers work on cases before referring them to a Jirga. These decisions are open to appeal but only to the Home and Law Secretaries. In "non-protected" areas the Jirga is constituted at the agency level and most significantly the tribes, themselves, are responsible for the execution of judgements. Decisions may only be appealed by way reconvening a separate Jirga. However it is the Political Agent who issues the legally binding decree with recourse to the punitive armoury of the FCR. He is also responsible for the selection of the Jirgas. Despite his far-reaching executive authority, he seldom goes against its decisions. It goes without saying that the traditional institution has been distorted by the colonial influence and sustained by successive Pakistani administrations. The aspirations of the people are no longer met, when the Agent retains final authority and the independence of the maliks and Jirga is compromised by an entrenched and corrupt system of hand outs.

In 1996 the full adult franchise was extended to the region, before which only the maliks had the right to vote. General Musharraf also undertook to increase the number of seats for FATA in Parliament. Unfortunately these seemingly progressive steps have resulted in no tangible improvement in the establishment of representative institutions. The FATA representatives play a limited role at the federal level and have no say in the running of FATA itself. This is due to their numerical inferiority in that they only occupy 8 seats in the Senate as opposed to 22 for each of the provinces and in the National Assembly they have 12 seats out of 342. Ironically even if they are able to influence legislation, Article 247 precludes the application of any such act in the FATA unless so directed by the President. In contrast, the provincial federal units of

Army forces deployed against Mujahedeen in the Kashmir Valley (Jammu and Kashmir, India)

Pakistan have their own devolved provincial assemblies and legislatures.

The Local Government Ordinances (LGOs) in 2001 initiated a process of devolution that was not extended to the FATA. Instead a Notice was issued in December 2004 for the establishment of Provisional Agency Councils, with a term of 3 years to be directly elected. 70% of seats were to be elected by Jirga and 30% reserved for women, minorities, *ulema* and technocrats. The subsequent 2005 elections for the Councils were a sham and dogged by horse-trading and corruption. In any case the Councils were charged with a vague mandate and lacked any meaningful authority with the Agent's extensive executive discretion still firmly intact. Such token measures were designed only to diffuse the demands of the people in the immediate term, but failed to achieve any lasting change.

Political parties are still not permitted to campaign in the area, rendering the extension of democratic rights to the region, somewhat illusory. Minority Rights Group, an NGO recently asked: "if there is no dissemination of information and campaigning by parties, how will the inhabitants make an informed choice as to their representative?" There have also been calls by the Awami National Party leader calling for the integration of the FATA into the Provincial Assembly of NWFP. The FATA Grand Alliance, a civil society organisation comprising of FATA professionals and intellectuals in 2007 demanded an elected and independent legislative FATA Council to solve the problems of tribal people.

The Northern Areas

The area covers 72,971 km^2 and has an estimated population in excess of 1,5 million (census 2006: 1,126,542). This area is part of the larger disputed territory between India, Pakistan and China. The territories included are Gilgit, Baltistan and Hunza and Nagar. It is bordered by Chinese Xinjiang, Indian Jammu and Kashmir as well as Afghanistan and Pakistan through the Wakhan corridor. The region once constituted the northern part of the former Princely State of Jammu and Kashmir. The predominant indigenous ethnicity is Balti belonging to Ismaili, Noor Bakshi and other Shiite sects. Recently this majority has been gradually eroded by state endorsed settlement by Sunni Punjabis and Pakhtun. The indigenous inhabitants are usually referred to as "Balawar" and nationalist

movements often allude to the struggle for an independent "Balwaristan".

Originally AJK and the Northern Areas also fell under the control of SAFRON. Following the cessation of hostilities between India and Pakistan, the Karachi Agreement put the Northern Areas under direct federal control. This prompted the renaming in 1950 of the Ministry of Kashmir Affairs to the Ministry of Kashmir Affairs and Northern Areas (KANA). However the Northern Areas' omission from the Constitution (Article 1) has led some to infer an intentional denial of citizenship and thus fundamental rights. Unlike FATA, the region is denied representation in Parliament. In the absence of a clear Constitutional status, it continues to be governed by the West Pakistan Act of 1955, which classified it as a "special area" directly under the administrative control of KANA vesting in the Governor General extensive executive powers, similar to those in relation to the FATA.

The Supreme Court, in the Al-Jehad case (1999), asserted that such Constitutional indeterminacy was inexcusable and Pakistan was responsible for guaranteeing fundamental rights, which should be enforceable through an independent judiciary. The Northern Areas Chief Court would not suffice as it lacked constitutional jurisdiction and its decisions were not open to appeal. The inhabitants should be granted the right to participate in the affairs of the federation and they should be granted provincial status. It went on to say that the people had the right to be governed by their elected representatives. The Northern Areas Legislative Council (NALC) could not be compared to a provincial government. The Supreme Court desisted from prescribing specific measures and only directed the Government to take the "proper administrative and legislative steps" to implement the ruling in a period of 6 months from 28 May 1999. It did however specifically ask for the establishment of a Court of Appeal. Despite the decision, the territory continues to be governed by KANA with its federal minister, the unelected Chief Executive of the Northern Areas. A Court of Appeal was finally established six years after the decision.

In 1974, under Zulfiqar Ali Bhutto, the FCR, agency system and hereditary princes were abolished. He also established the Northern Areas Council (NAC), which for the first time allowed representatives to be elected through direct elections. Nonetheless, federal control and a separate judiciary were kept in place. The

Northern Areas Council Legal Framework Order (LFO) 1994 and the Northern Areas Rules of Business (NARoB) serve as the basic law of the land. Their drafting and implementation was absent of any consultation with the people on who it is now imposed. The LFO also stipulated the creation of the Northern Areas Legislative Council (NALC), which only has an advisory capacity and executive authority continues to be centrally exercised by appointed bureaucrats. The LFO is merely an Order and can be amended by the Chief Executive at any time. In 2003 the NALC passed its own Interim Constitution with a majority. It is yet to be implemented. Conversely AJK's Constitution allows for the prime minister to be selected from the elected members of the AJK Assembly. However even such a basic right of representation is denied the people of the Northern Areas, whose Chief Executive is the minister for KANA.

The Karachi Agreement came under judicial scrutiny in 1972, when the AJK Assembly declared it temporary in nature and resolved that the Northern Areas should be returned to the control of the AJK. In 1993 the AJK high court reiterated that reasoning and called for the reinstatement of the Northern Areas to AJK, holding that a situation, whereby the Northern Areas were neither part of AJK or Pakistan was unacceptable. The AJK Supreme Court, however, overturned that decision stating that the Northern Areas had indeed constituted part of the former Princely State of Jammu and Kashmir but did not form part of present day AJK. It left the question of whether it constituted part of Pakistan unaddressed.

The region is trapped in a constitutional limbo; neither allowed to participate in the affairs of the state nor to partake in any meaningful autonomy of its own. General Zia ul-Haq extended martial law to the Northern Areas but not AJK in 1977, compounding its indeterminate status. The fear of weakening its claim over the whole of the former Princely State of Jammu and Kashmir deters Pakistan from formalising its de facto control into formal acceptance. Its explicit inclusion in the Constitution, is feared may lead to a strengthening of the Indian claim. Through this deliberate omission, Pakistan continues to implicitly consider the Northern Areas as part of the disputed territory.

The policy towards the Northern Areas continues to be untenable. If Pakistan considers the Northern Areas as tied in with AJK, it must accord the long neglected region the choice of either amalgamating with AJK or having equivalent devolved competencies. If on the other hand, Pakistan chooses to consider it an explicit part of its territory, it must accord it provincial status as set out by the Supreme Court. "Provisional" provincial status has also been offered as a compromise solution. It could ensure political autonomy while circumventing fears of foregoing any claim on the disputed territory. However there are indications, given 62 years of

District map of Pakistan's NWFP & FATA
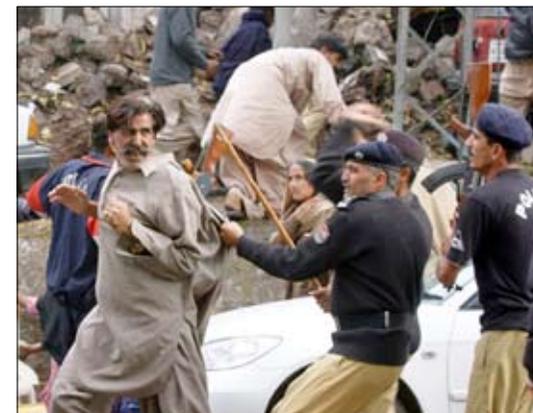
Popular riots in the North Western Frontier Province of Pakistan

neglect that even provincial status will not suffice to diffuse the hardening of the nationalist sentiment.

Conclusion

Paradoxically the policy of highly centralised control of the two regions owing to security concerns has had precisely the opposite of the desired effect. The Northern Areas has seen nationalist elements gaining momentum while the FATA, burgeoning militancy. The phenomenon of pan-Pakhtun nationalism also poses a threat to the territorial integrity of Pakistan and is fast gaining strength catalysed by the mass internal displacement resultant from the ensuing internal conflict.

Elections in themselves mean little for effective representation, if the link between the exercise of that democratic right and those appointed to govern is severed. It is a universal phenomenon that those at geographical and ethnic cross-roads engender suspicion in the majority population: an attribute amplified by the regions' geo-political importance. Both are home to narrow mountain tracts, whose command will always be essential to thwart invasion.

Both territories enjoy little capacity to govern themselves. Ironically the FATA representatives can legislate at the federal level, but are unable to determine matters of importance to their constituents. The Northern Areas, on the other hand, has the NALC but lacks representation at the federal level. Both entities are however administered by federal government through representatives of the President and are excluded from the provincial system. The elected officials are relegated to merely advisory roles in matters of local governance.

The problem is accentuated by the fact that authority is concentrated in the hands of an individual. Even Parliament may not interfere in the exercise of the President's unfettered power. Legislation at the national or provincial levels is excluded from both regions and the President's special powers falls outside the purview of the courts. The lack of effective representation and absolute deference to the President combine to make a highly unrepresentative and oppressive system. The spectre of autonomy is only alluded to, with superficial measures designed to quell immediate dissent. The reality remains that the President is the chief arbiter and autocrat of both regions.

In a system where structures of governance reflect the peoples' will and their best interests, the observance of their fundamental rights will be inherent. When those systems are unable to effectively represent the people, autonomy is seen as a device for increasing the proximity between their will and the policies to which they are subject. The secession of Bangladesh epitomised this very rupture between the people's will and their governance. The emphasis on autonomy in the Constitution was an acknowledgement of this fact. As such, in an ethnically, linguistically and religiously diverse and vast country, powers must be devolved where necessary, to meet the aspirations of the people. Political autonomy thus acts as the most suitable arrangement to ensure the most effective and representative form of government: for the people, by the people. All Pakistan needs to do is to fulfil its own constitutional promise of autonomy and fundamental rights throughout its territory without any distinction whatsoever.

Murtaza Shaik
was a participant in the first EURASIA-Net Transregional Summer School, Bolzano 2008. He has an LLM from Essex University, where his thesis dealt with the legality of the "special arrangements" in FATA. He is also a PhD candidate at the School of Oriental and African Studies researching the protection of religious minorities in international and Islamic law. Until recently he was interning at Minority Rights Group International and is currently a trainee at the European Court of Human Rights.

21. Azad Jammu and Kashmir:
An autonomous region?

Thomas Benedikter

Population (2007)	4,567,982
Land area	13.297 km²
Capital	Muzaffarabad
Official status	"Free State" since 1947

http://en.wikipedia.org/

Azad Jammu and Kashmir (AJK, literally, "free Jammu and Kashmir") is the southernmost political entity within the Pakistani-controlled part of the former princely state of Jammu and Kashmir. After the Partition of India in 1947, the princely states were given the option of joining either India or Pakistan. However, Hari Singh, the maharaja of Jammu and Kashmir, wanted Jammu and Kashmir to remain independent. Pakistani militants from North-West Frontier Province and the Tribal Areas feared that Hari Singh may join Indian Union. In October 1947, supported by Pakistani Army, they attacked Kashmir and tried to take over control of Kashmir. Hari Singh then requested Indian Union to help. India responded that it could not help unless Kashmir joins India. So on 26 October 1947 Kashmir accession papers were signed and Indian troops were airlifted to Srinagar. Fighting ensued between Indian Army and the Pakistani Army with control stabilizing more or less around what is now the "Line of Control", formally agreed to after the Indo-Pakistani war of 1971, separating the Indian and Pakistani forces and the Indian- and Pakistani-controlled parts of the former princely state.

The Line of Control has remained unchanged since the 1972 Simla pact, which bound the two countries "to settle their differences by peaceful means through bilateral negotiations". Some political experts claim that, in view of that pact, the only solution to the issue is mutual negotiation between the two countries without involving a third party, such as the United Nations. Following the 1949 cease-fire agreement, the government of Pakistan divided the northern and western parts of Kashmir which it held into the following two separately-controlled political entities:

1. Azad Jammu and Kashmir (AJK) - the narrow southern part (13.297 km²).

2. Federally Administered Northern Areas (FANA) - the much larger area to the north of AJK (72,496 km²), directly administered by Pakistan as a de facto dependent territory, i.e., a non-self-governing territory.

According to Pakistan's constitution, Azad Kashmir is not part of Pakistan, and its inhabitants have never had any representation in Pakistan's parliament. As far as the United Nations is concerned, the entire area of the former princely state of Kashmir, including Azad Kashmir, remains a disputed territory still awaiting resolution of the long-standing dispute between India and Pakistan. While India made its part of Jammu and Kashmir an integral part of the state, Pakistan continues to this day to regard the entire area of the former state as "territory in dispute" to be resolved by a plebiscite to be held at some future date, in order to determine the entire area's accession to either India or Pakistan. While continuing to call for that plebiscite, however, the government of Pakistan has, so far, been unwilling to entertain the idea of a third option for the plebiscite, i.e., a choice of independence for the entire former state. Today, Azad Kashmir and FANA are together referred to by India as "Pakistan-occupied Kashmir" (POK) and, conversely, the present Indian-administered state of Jammu and Kashmir is referred to by Pakistan as "Indian-occupied Kashmir".

AJK has a separate Constitution, Legislative Assembly, Government and Supreme Court. The first legislative assembly of AJK, composed by 49 members, out of which 41 are elected directly and the remaining nominated members, was established in 1971 under the "Azad Jammu and Kashmir Act". In 1974 the "Interim Constitution Act" granted AJK a parliamentary system, in 2006 the 8th Legislative Assembly was elected, among heavy criticism of election frauds.

The election process has highlighted that the pro-independence political groups in the region are not free to contest the elections to the Legislative Assembly. The nominations of 30 Jammu and Kashmir Liberation Front candidates (JKLF) and 72 All Party National Alliance (APNA) candidates were rejected. This is because their leaders who have refused to sign the 'demand for the accession' of AJK to Pakistan. This is in accordance to section 4 (7) and (2) of the 1974 Interim Constitution,

which reads as: "No person or political party in Azad Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan." This has become a customary rule in every election. It is important to note that this is in complete violation of the principles of Article 21 (3) of the Universal Declaration of Human Rights and a violation of the principles in regard to elections embodied in the report of UN-Secretary General A/46/609. As expected the 2006 elections in AJK confirmed the All Jammu and Kashmir Muslim Conference on power in Muzaffarabad with Sardar Attiq Ahmed Khan as the new prime minister.

The question arises whether this kind of election can be considered free and fair, and – if not – AJK can be considered a "genuine autonomous region" under the criteria of a democratic state with rule of law. Neither is the election of the members of the Legislative Assembly meeting the requirements of a free procedure, nor are the AJK organs by constitution independent from the Pakistan government. The supreme body ruling AJK is rather the "Azad Jammu and Kashmir Council", consisting of 11 members, six from the government of Azad Jammu and Kashmir and five from the government of Pakistan. Its chairman/chief executive is the president of Pakistan. Other members of the council are the president and the prime minister of Azad Kashmir and a few other AJK ministers.

Simply holding polls at regular intervals, from which undesired political forces are a priori excluded, cannot suffice to accord the brand of being democratic to a region. As a matter of fact AJK remains strongly dependent from Pakistan's central government in both political and institutional terms. The pending issue of a definitive solution of the international (bilateral) dispute in Jammu and Kashmir is used as a pretext to preclude an entire regional community from fundamental political freedoms and constitutional rights.

References:
Human Rights Commission of Pakistan, State of Human Rights in Azad Jammu and Kashmir, Lahore, October 2004
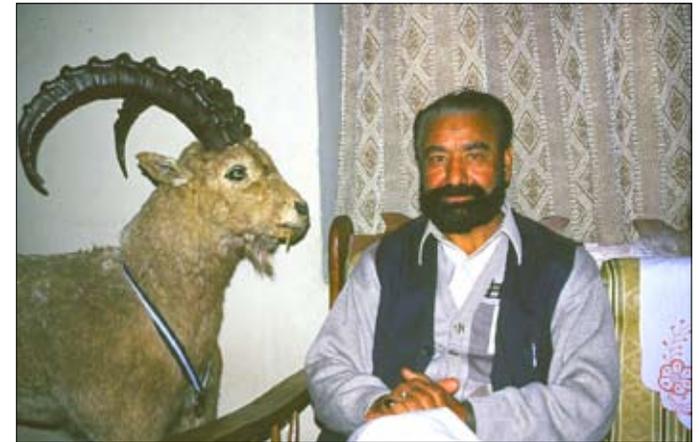
"We demand democracy and autonomy for Gilgit-Baltistan"

Interview with Maj Hussain Shah, former officer of the Pakistan Army, leading politician of the regionalist party alliance of Gilgit-Baltistan, president of the party MKOP.

Why does Pakistan reject Gilgit's and Baltistan's demand to be a part of Pakistan?
Maj Hussain: Pakistan wants to maintain the right of the population of the entire former princely state of Jammu and Kashmir to hold a plebiscite on the accession to one or the other state. This also has been enshrined in the UN-resolution of the 5 January 1949. Due to this reason we are living with a permanent provisional status. Neither we are the 5th province of Pakistan, nor an independent territory nor a part of Jammu and Kashmir. Until 1999 we just had a representative council without any power, composed by some tribal leaders, nominated by Islamabad. Since 1999 we are allowed to elect this Northern Areas Legislative Council, but it cannot exercise its proper functions. Essentially Gilgit and Baltistan are still governed directly from Islamabad.
Why does Pakistan insist on a referendum in the entire historical

princely state of Jammu and Kashmir?

Maj Hussain: In 1947 Pakistan committed a very serious mistake, intervening with military force in Jammu and Kashmir and by that giving the Maharaja the pretext to call in India for military rescue. During the war of 1947-48 human rights were violated and political rights of the local population dismissed. Later Pakistan insisted to hold a plebiscite on the entire territory, as they were afraid of the power of Sheikh Abdullah in the Valley of Kashmir, who did not favour accession to Pakistan.

You have founded a regionalist party. Is your party allowed to operate freely?

Maj Hussain: I am working with this party since 1984, but I am still calumniated as a traitor of Pakistani interests. However, we can operate in full legality. Among local politicians there is a growing conviction that we ourselves have to demand and struggle for autonomy and self-government, otherwise we will never go ahead. Once I have been a political outsider, but today all local politicians agree with our positions. Our party first has been elected to the NALC in 2004. My alliance is independent from Pakistani mainstream parties and embraces all ethnicities of of our region.

What does your political alliance strive for?

Maj Hussain: We demand democracy and autonomy for Gilgit and Baltistan immediately, without being bound to a comprehensive referendum, which probably can never be hold on the entire former territory of Jammu and Kashmir. The majority of the population favours a special autonomy within Pakistan, rejecting the idea to be integrated in a hypothetical united state of Jammu and Kashmir. As an immediate goal we claim the same level of autonomy as Azad Jammu and Kashmir. Only foreign affairs, defense, monetary policy and communication should rest with the central government.

But Pakistan does not accept such a demand.

Maj Hussain: Pakistan has no right to keep Gilgit-Baltistan in the present conditions. We have appealed to the Pakistani Constitutional Court denouncing the discrimination of our fundamental political rights with regard to Azad Kashmir. The case is still pending. Pakistan historically has exploited the lack of strong political elite in Gilgit-Baltistan. Hence, it keeps our region as a dependent territory under its direct control. Under democratic criteria such a situation is completely inacceptable.

How can the Kashmir conflict be solved?

Maj Hussain: The Hurriyat Conference in Indian occupied Jammu and Kashmir is struggling for azadi, freedom and self-determination. There is no unity among those political forces of the former princely state, which are advocating self-determination. They only agree on the necessity of a referendum in all parts of Jammu and Kashmir. There is a strong minority claiming the right not only to decide whether to join India or Pakistan, but to be allowed also to opt for an independent Kashmir. Different majorities in the different parts of Jammu and Kashmir are very likely, and thus differentiated referendums have to be held in the single regions composing the former princely state.

Interview: Thomas Benedikter

22. Autonomy for Indigenous People of CHT: Aftermath of the 1997 Peace Accord

Muhammad Mahbubur Rahman

1. Background

Chittagong Hill Tracts (CHT), lying in the southeastern corner of Bangladesh bordering India and Myanmar, covers almost 10% of the country's surface area and is unique, compared against the rest of Bangladesh, both in physical characteristics and population. Over the centuries, the region has been the home of thirteen indigenous ethnic groups - Chakma, Marma, Tripura, Tanchangya, Mro, Murung, Lushai, Khumi, Chak, Khyang, Bawm, Pankhua, and Reang. These indigenous people differ from the majority Bengali population in ethnicity, religion and language.

The history of the indigenous people of CHT during the last century is a history of gradual erosion of autonomy leading to ethnic armed conflict. During the British rule of the Indian sub-continent, the Chittagong Hill Tracts Regulation 1900 (1) accorded CHT the special status of an autonomously administered district. Earlier the Chittagong Hill Tracts Frontiers Police Regulation 1881 (2) allowed Hill Tracts people to form their own independent police force. Although the Regulation of 1900 gave final authority to a British-appointed Deputy Commissioner (DC), it allowed the indigenous people to oversee their own district and thus enjoy limited self-governance. The Government of India Act, 1919 (3) and the Government of India Act, 1935 (4) also designated CHT as an 'excluded area'.(5) According to the Regulation of 1900, entry of non-indigenous people to the region was conditioned upon obtaining a permit.(6) However, this condition was relaxed in 1930 allowing limited settlement, subject to certain conditions, of non-tribal people in the region. According to Rule 51 of the 1900 Regulation, the DC had the power to expel any non-tribal person from CHT if he or she was found to be undesirable.

After the partition of British India, the 1956 Constitution of Pakistan retained the special administrative status of the CHT as an 'excluded area'.(7) However, this status was later changed to a 'tribal area' by the 1962 Constitution of Pakistan.(8)

Finally, in 1964, even this status was stripped off. Absence of the constitutional recognition of CHT consequently led the Court to strike down Rule 51 of the Regulation of 1900 as unconstitutional.(9)

After the emergence of Bangladesh as an independent state, in the wake of formulation of a Constitution for Bangladesh, a delegation from the indigenous people of CHT led by Manobendra Narayan Larma, the only elected member to the then national parliament from CHT, met the President Sheikh Mujibur Rahman and demanded: (a) autonomy for CHT with its own legislature, (b) constitutional protection of the 1900 Regulation, (c) continuation of the tribal chiefs' offices, and (d) imposition of a ban on the influx of non-tribal people into CHT. These demands were, however, summarily rejected.(10)

Moreover, the indigenous people were advised to forget about their separate identity, admonished to embrace Bengali nationalism and threatened to be turned into minorities through sending of Bengalis into CHT.(11) To the utmost disappointment of the indigenous people of CHT, the Constitution declared Bangladesh as a unitary state.(12) This ruled out the possibility of having a complete autonomy for CHT. Consequently, Larma formed PCJSS (13) and started an agitation movement for autonomy that was later to culminate into a full-fledged armed struggle along Maoist lines.(14)

In response to this armed struggle for autonomy, the government of Bangladesh not only resorted to military action to overpower the indigenous community but also adopted an aggressive settlement policy to outnumber them. The successive governments actively resettled non-indigenous Bengalis from plain lands to CHT in exchange for land, cash and other incentives.(15) Accordingly, the demographical composition of the area drastically changed – the Bengali settlers became almost 50% of the total population in 1991 from less than 10% in 1947.(16) This triggered an ethnic character to the conflict.

To pacify this conflict, the successive governments initiated numerous efforts which ultimately succeeded in 1997 when the government of Bangladesh signed a peace accord - Chittagong Hill Tracts Peace Accord (CHT Peace Accord) - with the representative of the indigenous people. However, an audit on the extent to which various aspects of autonomy for indigenous people of CHT as was promised

in the accord has been fulfilled to date presents a frustrating picture. More importantly, the prospect of the accord in ensuring autonomy in the days to come is also challenged by various complicated issues and factors.

2. Self-governance and local administration

Prior to the peace accord, there were three Hill District Local Government Councils in CHT. These local government bodies had limited powers of local governance while the DC was the real executive and administrator of the region. In order to strengthen local governance and ensure autonomy for CHT, the peace accord designed a three-tier framework of administration wherein Chittagong Hill Tracts Regional Council would have the central role. In particular, this regional body was empowered by the accord to supervise and coordinate the activities of District Councils, the matters of general administration, law and order and development. The accord also made provisions for strengthening the District Councils with more subjects and functions and establishing a Ministry on CHT.(17) However, the following factors are impeding the accomplishment of the purpose of the whole administrative arrangement designed by the accord:

(a) After the peace accord, the government enacted the Chittagong Hill Tracts Regional Council Act, 1998 (18) and amended the relevant laws on Hill District Councils.(19) However, these legislations betrayed many provisions contained in the peace accord and thus curtailed many aspects of autonomy as promised by the government;(20)

(b) Regarding empowerment of the District Councils, it was agreed that 33 subjects would be devolved upon the Councils. Of them, only 19 subjects so far have been transferred and 5 others are in progress. The remaining 9 subjects include vital ones like land management, maintenance of law & order, administration of local police etc. without which local governance cannot be effective and meaningful;

(c) Formation of three District Councils by elected representatives as was agreed in the peace accord is also yet to be materialized.(21) Alternatively the successive governments are appointing the chairmen and members of these councils according to their political choice. Accordingly, these councils, being almost like an extension of the government administration operating in other parts of the country, inherently lack the potentials to exercise autonomy on behalf of the tribal people;

(d) The role of the DC in the light of the peace accord remains a grey area. No legislative or

A woman of the Chakma people in the Chittagong Hill Tracts (Bangla Desh)
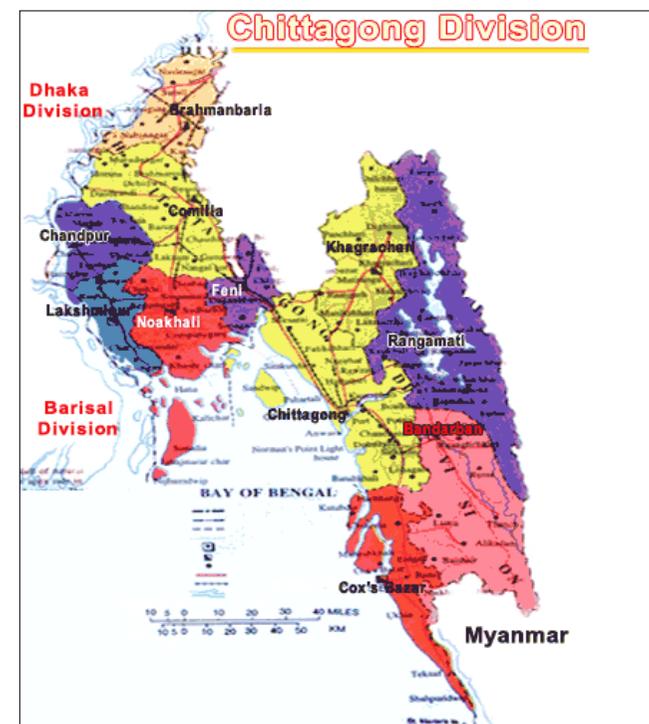
executive measures have been taken to ensure that the DC is accountable to the Regional Council. Moreover, the indigenous people allege that the office of the DC is exercising many powers falling within the ambit the District Councils and Regional Council; and

(e) The Rules and Regulations necessary for the smooth functioning of the District Councils and Regional Council are yet to be made.

3. Settlement of Land Disputes

The peace accord stipulated the formation of a Land Commission for settling land disputes. Consequently, the Chittagong Hill Tracts Land Dispute Resolution Commission Act was passed in 2001. According to this Act, the chairman of the five members' Land Commission would be a retired Justice of the Supreme Court. Although indigenous people have substantial representation in this Commission, what is most worrying is that the law has vested almost unfettered powers to the chairman to overrule opinions of the other members if there is no consensus.(23) This provision is likely to affect the purpose of the Commission. At present, this commission is not activated enough to claim any visible progress in addressing the land-related problems of CHT.

4. Legal and Political Challenges

The peace accord is purely executive in nature and not protected by constitutional safeguards. Consequently, it is open to revocation by the government at any time. For the same reason, constitutional validity of the accord and many laws enacted in response to the accord are open to challenge before the Court.(24) Apart from this legal challenge, there are political challenges to the implementation of the peace accord. The process preceding the signing of the accord did not receive organized and wider discourse, debate and deliberation in appropriate forums that could foster nationwide support. Consequently, it failed to build trust among political parties at the national level as well as among factional groups in CHT region.(25) A section of indigenous people led by UPDF (26) rejected this peace accord as a compromise. They still now demand full autonomy meaning all the matters except taxation, currency, foreign policy, defence and heavy industries would remain with the CHT administration. Bangla-speaking settlers in the region have added another dimension to the problem by launching a movement named Sama Odhikar Andolon (Equal Rights Movement) against the accord alleging that the accord has made them second class citizens.

5. Conclusion

There is no denying the fact that the 1997 peace accord has ensured a pause on long-standing self-determination armed conflict. However, unless the question of autonomy of CHT, which was the root cause of conflict, is resolved by implementing the peace accord and addressing the issues and challenges concerned with such implementation, it would be unrealistic to expect sustainable peace in CHT. The sooner the provisions of the accord are implemented, the quicker will be the mitigation of many of the existing problems and the elimination of the causes of potential conflict. Although there was no time frame in the accord for its implementation, it is time to develop a time-bound action plan so that stagnation in implementation of the various provisions of the peace accord does not create any doubt about a lasting peace. In addition, measure should be taken to ensure constitutional recognition of CHT so that the peace accord can be immune from constitutional litigation. Care should also be taken to reach a political consensus in support of the accord at national as well as regional level before the fragility of the ongoing peace is exposed. In particular, harmony between indigenous and non-indigenous people, who are almost equal in number and almost likewise victims of government policy, is a prime condition for the congenial atmosphere that might accelerate the pace of implementation of the accord.

Muhammad Mahbubur Rahman
is an Assistant Professor in the Department of Law, University of Dhaka, Bangladesh. After doing LL.B. (Honours) and LL.M. from the University of Dhaka, he joined, in 2004, the Northern University Bangladesh as a Lecturer in Law and thereafter, in 2006, the Department of Law, University of Dhaka, Bangladesh as a Lecturer. Currently he is acting as the Moderator of Dhaka University Moot Court Society (DUMCS). His areas of interest include human rights, constitutional law and criminal law.
mahbublaw2002@yahoo.com

Endnotes

1 Regulation No. 1 of 1900. For text of the Regulation see, East Pakistan Code, vol. I, pp. 299-312.
2 Regulation 3 of 1881. For text of the Regulation see, East Pakistan Code, vol. I, pp. 293-297.
3 9 & 10 Geo.5, C.101.
4 26 Geo.5, Ch.2.
5 The term 'excluded area' was meant to refer to an area where no Act of the Federal Legislature or of the Provincial Legislature applied unless otherwise directed by the Governor. See, section 52A (2) of the Government of India Act, 1919 and section 92 of the Government of India Act, 1935.
6   Rule 34.
7 See, Article 103 of the Constitution of the Islamic Republic of Pakistan 1956.
8 See Art. 223 of the Constitution of the Islamic Republic of Pakistan 1956.
9 Mustafa Ansari vs. Deputy Commissioner, Chittagong Hill Tracts and another, Dhaka Law Reports (DLR), vol. 17, 1965, p.553.
10 See for details, Selina Haq and Ehsanul Haque, Disintegration Process in Action: The Case of South Asia, Dhaka, 1990, BILIA, pp.44-46.
11 See Amena Mohsin, The Politics of Nationalism: The Case of the Chittagong Hill Tracts Bangladesh, Dhaka, 2002, The University Press Limited, p.58.
12 See, Article 1 of the Constitution of the People's Republic of Bangladesh.
13 PCJSS: *Parbattya Chattagram Jana Samhati Samiti* (Chittagong Hill Tracts People's Solidarity Association).
14 See for details, Asish Nandy, The Intimate Enemy: Loss and Recovery of Self Under Colonialism, Delhi, 1983, Oxford University Press, p.xv.
15 R.D. Roy, "The Discordant Accord: Challenges towards the Implementation of the Chittagong Hill Tracts Accord of 1997", Journal of Social Studies, 2003, April–June, p.6.
16 According to the 1991 census, the total population of the CHT is 974,465. Of them 501,145 (i.e. 51%) are Jumma people and the rest 473,300 (i.e. 49%) are Bangladeshi people.
17 The accord, however, did not elaborate the powers and functions of the Ministry.
18 Act No. 12 of 1998.
19 Rangamati Hill District Local Government Council Act, 1989 (Act No 19 of 1989) [now renamed as Rangamati Hill District Council Act, 1989], Khagrachari Hill District Local Government Council Act, 1989 (Act No 20 of 1989) [now renamed as Khagrachari Hill District Council Act, 1989], and Bandarbans Hill District Local Government Council Act, 1989 (Act No 20 of 1989) [now renamed as Bandarbans Hill District Council Act, 1989]. The Acts were amended by Rangamati Hill District Local Government Council (Amendment) Act, 1998 (Act No 9 of 1998), Khagrachari Hill District Local Government Council (Amendment) Act, 1998 (Act No 13 of 1998), and Bandarbans Hill District Local Government Council (Amendment) Act, 1998 (Act No 11 of 1998) respectively.
20 For a detailed discussion on the discrepancies between laws enacted and the accord signed, visit: <www.angelfire.com/ab/jumma/treaty/bill.html> (last visited on May 3, 2009).
21 Since the first elections of the District Councils in 1989, no further elections have been held. However, on 6 May 2009, the High Court Division issued a Rule Nisi calling upon the government and the Election Commission to show cause as to why non-holding of elections to the Chittagong Hill Tracts Regional Council and Rangamati, Khagrachhari and Bandarban District Councils should not be declared illegal and without lawful authority.
22 Act No. 53 of 2001.
23 Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001 (Act No. 53 of 200 1), section 7(5).
24 In 2007 the High Court issued a Rule Nisi calling upon the government to explain why the CHT peace accord should not be declared 'unconstitutional' after a writ petition was filed alleging that the accord compromised the integrity and sovereignty of the state as enshrined in the Constitution. Similarly, the government was also asked in 1998 to explain the constitutional validity of laws on Regional Council and District Councils. If the final decision in these cases which are now pending for hearing goes against the government, the accord itself would be null and void.
25 See, Ishtiaq Jamil and Pranab Kumar Panday, "The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People", Commonwealth & Comparative Politics, 2008, vol.48, no.4, pp.481-482.
26 United Peoples Democratic Front.

23. Gorkhaland: autonomy is no longer the issue

Thomas Benedikter

The people of the Darjeeling Hills have a longstanding demand for a separate state within India. Since 1907, the mostly Nepali speaking, autochthonous population of the hilly areas of the district of Darjeeling has been voicing the desire to become a separate entity, first within the British colonial administration, and later within India, but distinct from the State of West Bengal. Darjeeling's political movements addressed no fewer than 27 of such official demands to India's major institutions, the last one made by the current majority party of the hills, the *Gorkha Janmukti Morcha* (GJMM, Gorkha People's Freedom Movement) under the leadership of Bimal Gurung.(1) This request appears to have the overwhelming support of the population of the hills of Darjeeling, but it is opposed by a major part of the Bengali population of the plains around Siliguri, which is also part of the same district. Nevertheless, although this major town area culturally does not have a Nepali majority, it forms a part of the projected separate State of Gorkhaland. While the GJMM is building up ever stronger momentum for its main goal, displaying tight unity with rallies, strikes and elections, Bengali nationalists are violently protesting against the Gorkhaland-claims in the streets of Siliguri. The army has been deployed to avoid ethnic clashes, and the Dooars, the majority community of the Eastern part of the projected State of Gorkhaland, are also still divided whether to back the GJMM demands or choose some other forms of tribal autonomy. Has genuine autonomy ever been given a chance in Gorkhaland? Has the existing autonomy of the Darjeeling Hills sub-district definitely failed?

1. 60 years of struggle for "Gorkhaland"

Historical developments since the mid of the 19th century encouraged the emergence of a distinct identity among the people of the hills of Darjeeling. Nepali language and culture dictated the overarching features of the population, which originally came from Nepal's historical core areas, but was composed of many different ethnic groups. Around 1900 the Nepali element, termed "Gorkhali" in order to assert its distinctiveness vis-á-vis Nepal's mainland, dominated the Darjeeling hills, while the Sikkimese indigenous groups came in as minorities. Both, however, united in rejecting the artificial integration of Darjeeling into Bengal.(2) The demands for a separate political entity grew stronger after Indian independence in 1947. Autonomy was demanded in a public meeting in Darjeeling in August 1947, but to no avail. Even the District Committee of the Communist Party of India (CPI) in a 1947 memorandum requested the constitution of "Gorkhastan" out of Southern Sikkim, Darjeeling and Nepal. On the basis of adult suffrage a plebiscite on this issue should have been held in all these areas. Yet, the leaders of West Bengal's CPI vehemently opposed this demand, and so far nothing substantially has changed in the position of the parties ruling in Kolkata.

Later the issue of autonomy was repeatedly debated in the West Bengal Assembly. While West Bengal raised the issue of Bengali settlers in Eastern Bihar during India's "linguistic re-organization", Darjeeling's autonomy demands were always left aside. Not even the right to have the local language recognized as the second official language of the district, ensured by the Constitution wherever more than 70% of the population belongs to a linguistic group different from the majority, was accepted. Only in 1988 was Nepali recognized as the co-official language for the three hill subdivisions of Darjeeling.(3) After 1972 the creation of new States out of Assam emboldened the agitators in Darjeeling to make a fresh bid for autonomy, in the form of an "Autonomous District Council" as existed in some Northeastern States (Meghalaya, Assam, Tripura, Mizoram). But West Bengal's ruling parties were not yet ready to concede real autonomy according to the will of the local population and based on democratic forms already existing in other States.

The Gorkhaland movement emerged in 1979 when the Gorkha National Liberation Front (GNLF), under the leadership of Subhas Ghising, launched a tough struggle for self-determination. At that time the Gorkhali movement did not rule out full secession from India, when self-rule separate from the State of West Bengal was not conceded. In September 1980, in a memorandum to the Prime Minister, the Pranta Parishad and the GNLF first demanded a separate state, mentioning the creation of Sikkim as 22d State of India and claimed the recognition of the Nepali language under the 8th schedule of the Constitution. West Bengal's ruling Left

Front dismissed the demand as "separatist".

The struggle reached its peak in 1986-88 when approximately 1,200 people died in the political turmoil. The decade-long agitation finally yielded the constitution of the "Darjeeling Gorkha Hill Council" (DGHC) in 1988, which intended to ensure genuine territorial autonomy by giving the community of three subdivisions of the District of Darjeeling the chance to control its social, economic, cultural and educational development. Rather an embryonic form of autonomy, the DGHC, under Subhas Ghising's chairmanship, became more and more inefficient and turned into a hotbed of mismanagement and corruption.

2. How has Darjeeling's autonomy worked?

Has the DGHC as an institution met Darjeeling's aspirations for autonomy? What progress was achieved for the district under this new form of self-administration? The DGHC Act of 1988 provided a separate institutional framework for three subdivisions of the Darjeeling district, but the Council was not granted the legislative powers that other "Autonomous District Councils" under the 6th Schedule enjoy. Embracing quite limited powers to generate its own resources, the DGHC remained dependent on the Union's and the State's governments for funds. There is a continuous complaint about the lack of adequate resources, as the two most lucrative sources of revenue – tea and timber – remain outside the domain of the DGHC. One third of the Council's members were nominated, which was quite detrimental for a genuine regional democracy.

Frictions and disputes about the delimitation of powers continued to weigh on the relationship between Darjeeling and Kolkata. Conflicts arose relating to the issue of forests and the jurisdiction of the Panchayati Raj, the local administration. At the grassroots level, the DGHC could not really unfold as an agent of economic development as there was a permanent lack of co-ordination with the local administration. As the DGHC, under the command of Ghising followed a top-down-approach, participatory planning and administration were completely neglected, and the local communities became passive recipients of development aid, if at all. The chief executive of the DGHC Ghising ruled that Darjeeling lacked transparency and democratic accountability, "There is no published record of the development achieved available so far. Therefore it is difficult to quantify if autonomy has resulted in substantial transformation in the hills."(4) Although the Council and its chairman were seen as the governing agency of the area, their performance was poor.

Nevertheless, after 1988 the GNLF won three elections for the Autonomous Council of the

Population (2007)	1.609.172
Land area	3.144 km²
Capital	Darjeeling
Official languages	Nepali, Bengali
Autonomy since	1988

http://en.wikipedia.org/
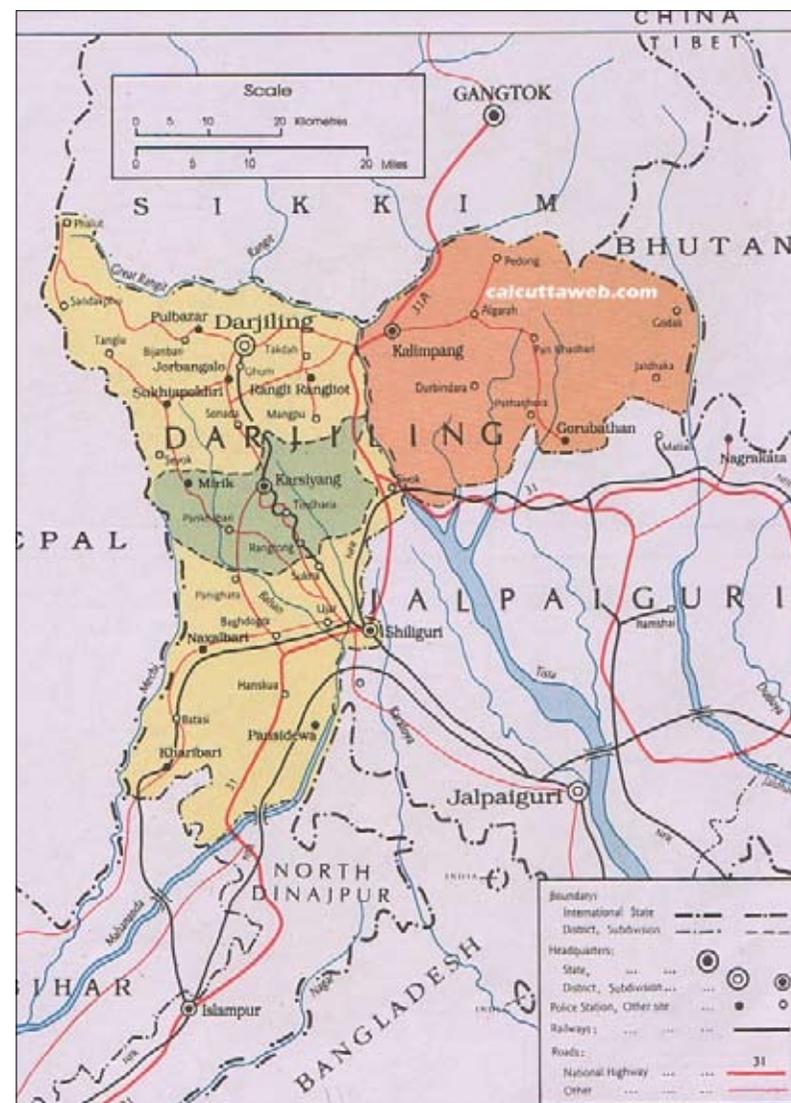
DGHC. "There has been a tendency to equate the DGHC with GNLF, without adequate follow-up measures to make autonomy meaningful. There is a certain lack of debate at a very level preventing the evolution of a consensus so necessary in a democracy, and also a lack of accountability."(5) The Council of the DGHC did not meet for years, and no budget was prepared or passed by the Council. Executive Councilors were accountable only to the Chairman, not to the Council, transforming the government in a feudal style arrangement. Fresh elections were continuously postponed. No economic long-term planning was elaborated by other DGHC, so basic civic amenities in Darjeeling deteriorated and the hill areas lost ground as even water resources were badly managed. Women continue to occupy very low positions and hold little influence over politics in DGHC. Even in cultural affairs the autonomy of Darjeeling remained unfinished, as the autonomous entity has no powers to appoint teachers and had no financial means to invest in higher educational structures.(6) Unemployment rose, and the infrastructure was further neglected. The major problems relating to drinking water, roads, hospitals, schools and colleges and unemployment have not only not been solved, they have become worse. "The DGHC became a den of corruption and nepotism and has indeed served the creamy layer in the hills. Under Subash Ghising an atmosphere spread as a mix of disappointment and fear." (7) Under his rule the DGHC, but not the region, became an end in itself, as it provided him and his entourage with sufficient resources. Finally, in 2007 Ghising was ousted and compelled to leave the district. Although the administration passed into the hands of the GJMM, autonomy is widely defined as a "total failure" in both the legislative and executive functions. As compared with the State of Sikkim, another region within India with Nepali majority, Darjeeling records of social and economic development are clearly lagging behind.

2. West Bengal and Darjeeling

In West Bengal's Assembly the issue of a separate State of Gorkhaland was no longer dealt with, and in the national Parliament the politicians elected from Darjeeling's constituency failed to raise the issue. Not even a constitutional guarantee for the DGHC autonomy could be provided. "There was an underlying assumption that these problems could be addressed only in a separate state. The Council as the core of the autonomy was obviously not able to cope with it. Maybe, the population did not realize or realized very late that this autonomy was a failure." (8) As routine administration continued, real developmental work and democratic participation was missing. From a theoretical perspective, autonomy has to bring democracy closer to the grassroots, not create spaces for local fiefdoms. A genuine autonomy needs to set a clear framework of democratic self-rule with a scope of powers appropriate for its goals and aspirations. The elected bodies, the autonomous council and the executive (government) must be fully responsible to the electorate. From the very beginning West Bengal did not take care to meet such requirements.

Generally, in West Bengal the issue of Gorkhaland is very sensitive due to the underlying conception in India that the Nepali speaking Gorkha people are populations that have immigrated from Nepal rather than peoples indigenous to those areas in India. After the Indian mutiny rebellion of 1857, the Gorkhas collaborated very strongly with the British and were often recruited as soldiers for internal and external purposes. In India that image was used and misused very often. To this day many Bengali still do not view this development critically. The Nepali speaking citizens are seen as peoples who came later, so "how can these people claim their own state? If we give them a separate State, maybe the next group to ask it will be the Bangladeshis, who came to India in 1971." The major political parties of West Bengal call Darjeeling's demand for its own State mere "separatism" and a "second partition, which will not be tolerated".(9) Furthermore, in some mainstream Indian literature the whole area of Darjeeling has always been portrayed in romantic colours as a part of Bengal. The Bengali population is very sentimental about this region. West Bengal's State's Tourism Department portrays the region as the only Indian State that has both the seaside and the Himalayas, a kind of mini-replica of India. The recent tourism advertisements echo this theme.

3. Hypothetical alternatives: a Union Territory or a "6th-schedule-autonomy"?

Should Darjeeling have been granted territorial autonomy under the 6th schedule of the Constitution as other regions of Northeast India? The autonomy scheme

of the 6th schedule today seems simply too little and too late. In Darjeeling, the GJMM and large sectors of the population are rejecting such proposals. The GNLF had already opposed autonomy under the 6th schedule as well as the State of West Bengal. West Bengal's indifference on this matter was matched by the Union's apathy and lack of concern for public grievances and people's aspirations. Both the stagnation of the movement towards genuine autonomy and the failure of the DGHC as a device of regional self-government under the regime of Ghising resulted in the emergence of the GJMM, whose program clearly states that it would settle for nothing short of a separate state of Gorkhaland within India. The movement rapidly garnered support from all segments of the district's population, as well as from non-Nepali speaking groups, striking an alliance with the Dooars, the Adivasi groups from the Eastern part of the district. The Gorkhaland-movement is continuously moulding itself as an identity movement: whereas first it was very exclusivist revolving around an image of Gorkhas as brave soldiers and a strong people with strict hierarchies, recently it put much more effort to be inclusive, including other tribes and minorities such as the Dooars. The political attitude of the Dooars, who were transplanted to the tea plantations of the Eastern part of the district in colonial times, is still unclear. But the request for "Gorkhaland" is opposed by a large part of the town of Siliguri, inhabited by a Bengali majority.

Could a Union Territory (10) be a "middle way", as an alternative solution to statehood? Darjeeling and the GJMM could also opt for a UT status, so they would have the benefits from the Centre and be kept out of the purview of the majority rule of West Bengal. Although this status could bring a major flow of funds and infrastructural development to the region, democratic self-rule within a UT is not safeguarded, as UTs usually do not have freely elected legislative bodies. Some regionalist forces aspiring to UT status argue that the terms of UTs could be changed, and point to the example of Pondicherry, which has a legislative body with elected representatives. Moreover, in India's history some UTs have risen to full statehood, as the example of Mizoram shows.

The chances of achieving a "State of Gorkhaland" (the 29th State of India) in the near future are not bad. Although the major West Bengal parties still pose a strict veto, the major national parties are actively backing or at least sympathetically considering it. This is stated most clearly in the electoral manifesto of the BJP for the elections of the Lok Sabha in April/May 2009: "We will sympathetically consider the longstanding demands of the Gorkhas, the Adivasi and the people of Darjeeling district and Dooars regions to form a separate State in India."
Within Gorkhaland, major opposition comes from the Bengali dominated political forces,

Tea pluckers in the surroundings of Darjeeling (DGHC) and Nepali Gorkha veterans during a political rally in Darjeeling (April 2009)

especially in Siliguri, but also from Ghising's GNLF, which in the 1980s was still fighting for the same goal, and from some of the Dooars in the East of the district. Are new conflicts to be expected due to the inclusion of the Dooars in the projected territory of Gorkhaland? Can the autonomy requests of the Dooars and other Adivasi peoples in Northern West Bengal be met by different arrangements, along with the rising claims for a homeland by the Rajbongshi of Cooch Beehar? There are two reasons for this move. Subash Ghising himself instigated the people of the Dooars. When the movement started in 1979-80, the Adivasi of the Eastern Hills were not included. Then Ghising settled for the DGHC accord leaving out the Dooars who were not covered by the autonomous area. Now the GJMM reaffirms: this time we won't let you down. On the other hand the CPI (M), West Bengal's ruling party, tries to drive a wedge between the Dooars and the Nepali of Darjeeling. If the Union government agrees on the constitution of Gorkhaland there will be some bargaining, and eventually Gorkhaland could renounce on including the Dooars and the Eastern hills. In this regard much depends on the ability of the leadership of GJMM to involve the non-Nepali segments in a common project for a separate State in India, involving the minorities in the future government through forms of consociational power sharing. Not a blunt majoritarianism, as is the norm in most of the Indian States, but precise provisions for the inclusion of minor political groups and safeguards for political representation of minorities could serve to ease the existing opposition and obstacles to the statehood of Gorkhaland. In turn, West Bengal, having ensured a better position for the Bengali minority in future Gorkhaland, would not loose face.

4. Gorkhaland – towards separate statehood?

The State of West Bengal and the Indian Union bear major responsibility for the long lasting crisis in the Darjeeling Hills, as the grievances of its population have constantly been dismissed and Gorkhali demands have been ignored. There are just 860,000 Nepali speakers in West Bengal (1.3% of the State's total population), which does not throw heavy weight politically. But Darjeeling is ethnolinguistically, geographically, historically a clearly distinct region from the Bengal mainland, today split between Indian West Bengal and Bangladesh.

It has been inherited by the West Bengal State in the framework of the federal organisation of the Indian Union in 1947, although its population has requested a different settlement allowing for self-rule of the region since 1907. Even when it came to re-organizing India along linguistic lines in the 1950s, Darjeeling's plight was ignored. Kolkata did not even accord them the limited form of autonomy provided by the 6th schedule. West Bengal never recognized that it was by historical accident that Darjeeling and Kalimpong, carved out from Sikkim by the Britisher, were incorporated into Bengal. The population never had a say on such decisive issues, as happened in the case of the other, smaller peoples of Assam and of the Northeast, and first of all of Kashmir in the Northwest, who were sold out to India by their Maharaja without the referendum promised and requested by the UN. Today, West Bengal's nationalism represents a major hindrance to the democratic self-determination of the hill people of Darjeeling. Tripartite discussions on the future of Darjeeling are being held by West Bengal's government, the Indian federal Government and the GJMM, but so far with no results. Under the Constitution, the Lok Sabha could create new States against the will of the states concerned, but given the importance of West Bengal to India it is said that only a tripartite agreement will bear a solution for this open issue.

In 2009, however, regional autonomy for Darjeeling no longer appears to be the issue. Even extended autonomy under the 6th schedule has been ruled out by Darjeeling's leading party, the Janmukti Morcha. According to its statute the GJMM has one central goal: a separate state of Gorkhaland in India.(11) In May 2009, the electorate of the Darjeeling elected the BJP candidate Jaswanth Singh for the Indian Union Parliament, the Lok Sabha, based on an alliance with the GJMM. The BJP is the only national party that promises to consider sympathetically the issue of Gorkhaland, the Dooars and Darjeeling Terai. It remains to be seen whether this significant support by the second major party of India will yield a breakthrough while the tripartite negotiations Delhi-Kolkata-Darjeeling remain at an impasse.

References:
D.S. Bomjan, Darjeeling-Dooars, People and Place under Bengal's Neo-Colonial Rule, Bikash Jana Sahitya Kendra, Darjeeling 2008.
Subash Chandra Chakrabarty, Silence under Freedom: the strange story of democracy in the Darjeeling Hills, in: R. Samaddar (ed.), The Politics of Autonomy,

New Delhi 2005, p.173-195.
Sonam B. Wangyal, Brief Notes on Gorkhaland, Darjeeling 2009.
www.darjeelingtimes.com, bimonthly magazin, various issues 2008 and 2009.
www.gorkhajanmuktimorcha.org: the ruling party of Darjeeling.
Sailen Debnath (ed.), Social and Political Tensions in North Bengal since 1947, N.L. Publishers. Siliguri 2007.
Aditi Chatterji, Contested Landscapes: the Story of Darjeeling, INTACH, Kolkata 2007.
Sanjay Biswas and Sameer Roka, Darjeeling: Truth and Beyond – History of Darjeeling, Darjeeling 2007.
R. Moktan (ed.), Sikkim and Darjeeling – Compendium of Documents, Gopal Press, Varanasi 2004.
Dyutis Chakrabarti, Gorkhaland – Evolution of Politics of Segregation, University of North Bengal, 1988.

Endnotes

1 All these 27 demands are listed by Sonam B. Wangyal in: Brief Notes on Gorkhaland, Darjeeling 2009; see also R. Moktan (ed.), Sikkim and Darjeeling – Compendium of Documents, Gopal Press, Varanasi 2004.
2 On the history of Darjeeling see D.S. Bomjan, Darjeeling-Dooars, People and Place under Bengal's Neo-Colonial Rule, Bikash Jana Sahitya Kendra, Darjeeling 2008; Sailen Debnath (ed.), Social and Political Tensions in North Bengal since 1947, N.L. Publishers. Siliguri 2007; Aditi Chatterji, Contested Landscapes: the Story of Darjeeling, INTACH, Kolkata 2007. See also the short history of Darjeeling in the parallel column on these pages.
3 The 1961 the West Bengal Official Language Act recognized "(a) in the three hill sub-divisions of the district of Darjeeling, namely, Darjeeling, Kalimpong and Kurseong, the Bengali language and the Nepali language, and (b) elsewhere, the Bengali language shall be the language or languages to be used for the official purposes of the State of West Bengal…". The Language Act of 1961 was amended in 1973 through the West Bengal Official Language (Amendment) Act, which inserted Section 3A stating that "the Nepali Language may, in addition to Bengali language, be used for
(a) rules, regulations and by-laws made by the State Government under the Constitution of India or under any law made by the Parliament or the Legislature and
(b) notifications or orders issued by the State Government under the Constitution of India or under any laws made by Parliament or the Legislature of West Bengal, as apply to the three hill sub-divisions of the district of Darjeeling, namely, Darjeeling, Kalimpong and Kurseong".
The implementation of these provisions arrived only after the establishment of the DGHC. See on the issue R. Moktan (ed.), Sikkim and Darjeeling – Compendium of Documents, Gopal, Varanasi 2004.
4 See Subash Chandra Chakrabarty, Silence under Freedom: the strange story of democracy in the Darjeeling Hills, in: R. Samaddar (ed.), The Politics of Autonomy, New Delhi 2005, p. 188.
5 ibidem, p. 188
6 Ibidem, p. 193
7 Ibidem, p. 192
8 Roshan Giri, interview in Darjeeling by the author, 7 April 2009.
9 The interrelationship between regional movements claiming segregation and state policies are highlighted by Dyutis Chakrabarti, Gorkhaland – Evolution of Politics of Segregation, University of North Bengal, 1988; also see Sanjay Biswas and Sameer Roka, Darjeeling: Truth and Beyond – History of Darjeeling, Darjeeling 2007.
10 Today India has 7 Union Territories" (UT), which are administered directly by the Union government.
11 See www.gorkhajanmuktimorcha.org

Bimal Gurung, the current president of the Gorkhaland Janmukti Morcha, Darjeeling April 2009

The prospected area of the Indian State of Gorkhaland

"Gorkhaland needs a separate state in India"

Interview with Roshan Giri, secretary general of the Gorkhaland Janmukti Morcha, Darjeeling

Why do you demand a separate state for Darjeeling?

Giri: Our people believes that statehood is the adequate response to the right to identity and self-rule of Indian Gorkhas. Only a State in India can provide us with the necessary legal framework for developing our ethnic and linguistic identity. This is in line with India's multi-ethnic, multi-cultural and multilingual character. The entire hills as well as the people of Dooars stand behind us in the demand for statehood.

Which is the historical basis for such a demand?

Giri: Darjeeling before India's independence has never been a part of West Bengal. The entire area was a part of Sikkim, which was annexed by Nepal. Subsequently in 1815 it was ceded back to Sikkim and in 1835 Sikkim was forced by the British to cede it for building a sanatorium. Kalimpong and Dooars were annexed by the British from Bhutan in 1865. West Bengal inherited these annexed territories from the colonial power after partition in 1947 without any

consultation with the concerned population.

Wouldn't such a new state undermine India's national integration?

Giri: There is a long history of reorganization of the Indian federation along linguistic lines. Many States have been newly created as Mizoram, Nagaland, Arunachal Pradesh, Goa, Meghalaya and recently Jharkhand, Uttarakhand and Chattisgarh without undermining national integration. This kind of development refutes the theory that the preservation of identities and celebration of difference is intrinsically bad as it breeds insularity and exclusion. On contrary, it gives meaning to the description of unity in diversity.

Why does Darjeeling need a separate State?

Giri: Being a part of West Bengal our people's needs and aspirations are not fulfilled. The people of our district have been deprived of social, educational and political empowerment for decades. Darjeeling, the Terai and the Dooars have always been neglected by West Bengal as it continues to treat most parts of Darjeeling and the Dooars as internal colony.

Why do you include the Dooars in your project of a separate State?

Giri: The Dooars are mainly workers in the tea-plantations of the plains in the eastern part of our district. They share our social and political history of annexation and exploitation. They could only gain with a separate State of Gorkhaland, but actually the ruling CPI (M) is trying to divide them. But historically they are in the same way victims as the Gorkhali people are.

West Bengal mainstream parties warn against a "new partition" and new small states.

Giri: The country will benefit from smaller states. The creation of smaller states in India offers an institutional solution that can respect the social divergence among States and enhance economic efficiency. Even with 10 more states India, with a much higher total number of population, will have less states than Europe. The population of Darjeeling, the Terai and Dooars have different priorities as the Bengalis of West Bengal. The creation of such new states as Gorkhaland allows groups to choose governments whose policy choices are more in line with the preferences of the local electorate.

What's about the existing autonomy of the DGHC?

Giri: The DGHC was set up in 1988 following an agreement between the Centre under Rajiv Gandhi, the West Bengal government and the GNLF, headed by

Gorkhaland

Subash Ghising. This kind of autonomy failed to fulfil the aspirations of our people. The DGHC was run by Ghising like his personal fiefdom, and this led to his ousting. However, DGHC in 1988 has been a bad compromise and Gorkha politicians are claiming a separate entity or state for Darjeeling since more than 100 years. Eventually we do not accept that the DGHC left out Siliguri and the Dooars.

Would a new autonomy arrangement under the 6th schedule provide you an acceptable and lasting scheme of autonomy?

Giri: This is what the GNLF leadership and the West Bengal government was planning for Darjeeling, but it is rather a concept for the tribal peoples of the North East. Moreover it would have increased just the personal power of Ghising. This kind of autonomy could have been applied right from the beginning in 1947, but now it is too late. Neither bothered to venture into what would be the consequences of such a step. The move to extent 6th-schedule-autonomy to Darjeeling is rejected not only by the people of Darjeeling, but also by the Parliament itself.

Wouldn't the creation of States like Gorkhaland lead to a Balkanisation of the country?

Giri: Instead of thinking this could be the start of a process of disintegration of larger states, we should rather conceive it as the natural completion of the process of creating hill States stretching from Kashmir to Mizoram. Self-government by hill people with hill people perspectives is an end to itself. It is fully consistent with India's federalist idea that the hill states should be treated as a class by themselves, with special arrangements and resources to preserve their identity and sustain development in an area that has no parallel in the world.

Wouldn't Gorkhaland be too small a state?

Giri: This argument is wrong. The proposed Gorkhaland would cover 6,500 km^2 making it as large as Sikkim and larger than Goa, Pondicherry and Delhi, with a population of around 2,7 million. In terms of population the proposed state would be larger than Mizoram, Manipur, Sikkim, Arunachal Pradesh, Meghalaya and Goa.

Would Gorkhaland be economically viable as a small state?

Giri: Absolutely. With the major tea gardens falling within its area and given the huge hydroelectric potential, attractive tourist destinations, important

A political rally with a show of the „Gorkhaland Police GLP" in Darjeeling

educational institutions and four international borders Gorkhaland will be one of the most developed states in the country. Darjeeling as a brand name is well known over the world. If rightly positioned, it would attract a large number of multinational companies and both domestic and foreign investment.

Constitutionally, how can statehood be achieved?

Giri: There are no hurdles in the creation of the State of Gorkhaland. Article 3 of the Indian Constitution enables boundaries of States to be altered. Parliament can by law form a new State by separation of territory from any existing State or by uniting two or more States or parts of States. It is also not a prerequisite that the concerned State gives its consent.

Could the agitation in Darjeeling hills turn violent again?

Giri: This is an absolutely false propaganda by the West Bengal government. The protest this time has been non-violent. The GJMM has been taking recourse to hunger strikes, mass-rally, bandhs and other agitational programmes to push our demand for statehood. As of now the West Bengal government and the Centre have agreed to hold tripartite talks with us on the issue of statehood. We had two rounds of discussions and a third one will follow after the Lok Sabha election this spring.

Interview: Thomas Benedikter (Darjeeling, April 2009)

24. Bodoland: India's youngest regional autonomy

Thomas Benedikter

Kokrajhar, the capital of the "Bodoland Territorial Council Area of Assam" (BTC), does not give off the impression of a capital city. Nothing in the 50,000 person town indicates to the visitor that he has entered one of the few genuine regional autonomies of India. Only some signboards at the railway station are bilingual English-Bodo and Assamese-Bodo, reflecting the associated official language of this area. Bodos are officially a "tribal people", but unlike many other scheduled tribes their language has a script and an old literary tradition, and is even recognised under the Indian Constitution. Though the foreigner can barely recognize it, the population of Kokrajhar along with that of many towns of the autonomous Bodoland is not just Bodo, but a mix of Bodo, other tribal groups and Bengali, Assamese, and Nepali migrants of more recent times. When walking towards the BTC-compound some official one-storey buildings mark the BTC as the official local authority. The local police station is also here, but is not under the autonomous jurisdiction. Some dusty roads more and one comes across the "Autonomous District Legislative Hall". In the middle of a green space lies the headquarters of Bodoland's autonomous government, called "Executive Committee". It is a bulk of flat, old, tin-covered houses, with a permanent crowd coming and going. It could be a municipal administration of a 50,000 person city, certainly not the heart of an autonomous region with a population of almost 2.7 million people. But Bodoland's autonomy is India's youngest, established through a peace accord in 2003 after heavy guerrilla fighting. It takes time to achieve a good autonomy, and even more to build up new a regional administration.

The Bodos' struggle for autonomy

The Bodos, with around two million members, constitute the largest "plains tribe" in Assam. In the 2001 Census, 1,305,000 Indian citizens indicated Bodo as their mother tongue, but many more speak Bodo variants as their native language. Agriculture is by far the most important source of livelihood for the Bodos. Thus, the issue of land property and legal or illegal transfer of land to non-Bodos, from tribal members to non-tribal people in Bodoland is traditionally a very disputed issue. Once a culture covering large parts of present Assam (the ancient Kingdom of Bodo), the Bodos were assimilated in other parts of the Brahmapurta valley and since India's independence also came under pressure in their core area in Western Assam. The Bodos submitted a memorandum for self-administration in 1929. The British plans to reorganize the Indian administration on the basis of provincial autonomy and self-government raised hopes among the Bodos, organized in the so-called Tribal League. In 1967, the Plains Tribal Council of Assam formally demanded autonomy for the plains tribes of Assam. In 1969, the "All Bodo Student's Union" (ABSU) was founded, spearheading a new movement for autonomy and self-rule. ABSU agitated against the loss of the Bodo language in public domains of life and the continuing immigration of "foreigners" to Bodoland.

From 1986 on, the movement turned violent. A first Memorandum of Settlement was reached in February 1993, establishing a 40-member Bodoland Autonomous Council. But even after this first step, the demarcation of the boundaries of the autonomous Bodoland remained unresolved. The election of the new Council did not take place and the Council was unable to exercise its very limited administrative autonomy, as the State of Assam did not provide the necessary funds. This led to a feeling among the Bodos that only a separate state of Bodoland would serve their purpose.

The revival of the demand for statehood in India led the to the emergence of a new brand of militancy in the region. On 18 June 1996 the "Bodoland Liberation Tigers" (BLT) was formed and the Bodo region bordering Bhutan was plunged into a new round of violence. The BLT took advantage of the dense forests along the border with Bhutan and used Bhutan's southern jungles as base camps for its guerrilla units. After Bhutan, under pressure from India, mobilised its entire army to fight against the Bodo Tigers, on 2 October 2001 the BLT abandoned its demand for a separate state and settled for a Bodo Territorial Council. This Council was established on 10 February 2003. The Council was created as an autonomous self-governing body within the state of Assam and under the provisions of the 6th schedule of the Constitution to "...fulfil the economic, educational and linguistic

aspirations, socio-cultural and ethnic identity of the Bodos, and to speed up the infrastructure development in the BTC area." Subsequently, during a touching popular ceremony at Kokrajhar on 7 December 2003, the arms were publicly laid down and a 12-member interim Council was convened under the leadership of former BLT-leader Hagrama Mohilary.

Bodoland's autonomy

Politically, Bodoland's autonomy is based on the "Memorandum of Settlement", signed on 10 February 2003 by the Bodoland Liberation Tigers, the Union government and the State of Assam. The parties agreed to create a "Bodoland Territorial Council" (BTC), entrenched in the 6th Schedule of the Constitution. The complete list of villages and the exact delimitation of the BTC, covering four contiguous districts of the Northern Bank of the Brahmaputra River in western Assam, was agreed upon only recently. The basic criterion for the inclusion of villages in the BTC areas was that the tribal population should not constitute less than 50 percent of the population. As almost half of BTC's total population is non-tribal, some specific safeguards for the non-tribal persons had to be applied in the amendments to the 6th Schedule. Out of a total of 46 seats in the BTC legislative assembly, 30 are reserved for the STs, 5 for constituencies of non-tribal communities, 5 open for all communities. All of these positions are elected for a term of five years from 40 constituencies by adult suffrage. Six members are nominated by the Governor, but have the same rights as the 40 elected members of the BTC Assembly.

Land rights are a crucial issue facing Bodoland's autonomy. BTC laws cannot extinguish property rights of Indian citizens in Bodoland, nor can they bar Indian citizens from inheriting or purchasing land "if such citizens are eligible for such bonafide acquisition of land within the BTC area".

The Council can legislate in a quite broad range of subjects, listed in Annex III (see the parallel column). To enter into force, each law approved by the Council must be submitted to the Governor, who may also pass it on to the President. The latter may reject it and send it back to the Council for amendments. The Bodoland Executive Committee has administrative and financial power over all subjects falling under the autonomous legislation. One of the major reasons for the Bodo movement (political and military) was to safeguard belt and blocks from non-tribal peoples who were considered a threat to the plain's identity. The provisions of the 6th schedule prohibit the sale/transfer of tribal land, but these illegal practices continue to benefit non-tribal peoples in several areas included in the Bodoland Territorial Council. To stop this kind of land transfer the BTC aims to bring all "revenue circles" under the total control of the BTC.

The Bodoland Territorial Council

Population (2007)	2,631,289
Land area	8.970 km²
Capital	Kokrajhar
Official languages	Bodo, Assami, English
Scheduled tribes	1,354,627
Scheduled castes	1,139,118
Villages	3,082
Autonomy since	2003

http://en.wikipedia.org/

Oath Taking Ceremony at Kokrajhar on 7 Dec, 2008 (from Left:) Sjt. SK Sinha, Governor, Assam, Sri Chandan Brahma, Vice-Chairman, BLT, Sri Hagrama Mohilary, Chairman BLT, Sjt. LK Advani, Deputy Prime Minister Government of India and Sri Tarun Gogoi, Chief Minister of Assam.

At present there are 25 revenue circles under the BTC, but only 9 are under the BTC revenue department.

The Executive Committee of the BTC – the government of the autonomous Bodoland – comprises 12 members, and must have an adequate representation of non-tribal people as members of the Council. The BTC's competences cover any recruitment and appointment of public employees in the administration under its control. The rules for recruitment are regulated by the BTC, which must ensure adequate representation for all communities living in the Council area. However "no posts shall be created by the BTC without concurrence of the Government of Assam".

Development functions and bodies within the competence of the BTC are transferred to the BTC, but the police maintains outside control of autonomous Bodoland. "The State Government would provide an amount, to be decided every year based on population, as grants-in-aid in two equal installments to the BTC for executing development works. The proportionate share for the BTC shall be calculated on the basis of the plan funds available after setting aside the funds required for earmarked sectors and the salary. This amount may be reduced proportionately if the state plan allocation is reduced or there is a plan cut due to a resource problem. In addition, the Council will be paid a suitable amount of plan funds and non-plan funds to cover the office expenses and the salaries of the staff working under their control. The BTC shall disburse the salaries of the staff under their control and would ensure strict economy in the matter." (Memorandum of settlement, point 5.8)

With regard to the role of the BTC in economic development, the Bodo political elite has learnt from other examples of Autonomous District Councils in India's Northeast: "The Council shall have full direction in selecting the activities and choosing the amount for the investment under the same in any year covering all groups of people in a fair and equitable manner." (Bodoland Accord). The yearly development plan of Bodoland will be an integral part of the Assam state plan. Once approved by the State Planning Commission, the BTC can begin implementation of the projects. The State may not divert funds allocated to the BTC to other projects, but must release them timely in a timely manner.

Bodoland's autonomous status includes the recognition of the Bodo language as Official Language of the BTC, while Assamese and English continue to be used for official purposes. Some articles provide for "additional development packages" for the BTC involving financial assistance from the Indian government (1 billion Rupees per annum 2004-2009) to develop the socio-economic infrastructure of the BTC area. "Suitable mechanisms will be built in the system to ensure that the funds are transferred to BTC in time and at regular intervals." Furthermore, a new BTC headquarter complex will be built at Kokrajhar with the Union government's assistance and a centrally funded "Central Institute of Technology" (CIT) will be set up in Bodoland.

In signing the accord, the BLT assumes the obligation to join "… the national mainstream and shun the path of violence in the interest of peace and development. After the formation of the interim council of BTC, BLT will dissolve itself as an organisation and surrender with arms within a week of the swearing-in of the interim council. The State Government would provide full support to relief and rehabilitation of the members of BLT who would surrender with arms in this process in accordance with the existing policy of the State. Financial support in such cases, however shall be limited to be provisions of the scheme prepared and funded by the Government of India. Withdrawal of cases against such persons and those related to overground Bodo movement since 1987 shall be considered according to the existing policy of the State of Assam."(point 12.1 Memorandum of settlement).

The autonomy – also a cultural challenge

The Bodo people have led a deep-rooted and popularly backed struggle for their language rights. How is the autonomous Bodoland using the new language rights today? ABSU's general secretary at the Bodofa-House, ABSU's headquarter in Kokrajhar, is rather disappointed. The autonomous government is taking care to consolidate its power, he states, instead of focusing all energy and means on the education sector. Education in Bodo is a key issue for the autonomy, according to ABSU, and the economic development of Bodoland depends primarily on it as a major part of its population is still illiterate. Thus, ABSU is pressing for the institution of a full-fledged university in Kokrajhar. These are the goals that

animated the younger Bodo generation to take up long-term political agitation. Termed "mission quality education", this movement aimed to raise awareness among the Bodo society of the importance of quality education in the Bodo language. The ABSU sees its role as a watchdog, controlling the compliance of the new Bodo leadership with the ideals that inspired the struggle for autonomy. For some the problem is the impatience of youth; for others it is the arrogance of the new rulers. Education in Bodoland is indeed lagging behind. The literacy rate of 33% among the Bodo population is lower than the State's average. Most schools remain under the control of the Assam government, whereas the "provincialised schools" under autonomous responsibility have many vacant posts. Now many "venture schools" are being set up with volunteer teachers who work without salaries. But ABSU is blaming the current government for not insisting on the full implementation of the Bodoland accord regarding the development of education.

What is most needed, states the ABSU general secretary, is a department of teacher training in Kokrajhar. ABSU, however, demands a full university that spans all departments. Bodo is well developed as a medium language, but it takes more time to develop all the textbooks. Bodo has only been used as a medium of instruction for 15 years. From the viewpoint of Bodo school officials, English can be taught just as a subject up to class X. Bodo is currently not used enough in administration due to a lack of commitment by the BTC government. There have been some demonstrations against the BTC government for not appointing enough teachers in Bodo medium schools, not investing sufficiently in schools, and not providing free textbooks for the students. The education system lacks funds, structures, textbooks, well-trained teachers. Having given Bodo the role as medium language of instruction for all interested families, it is now up to school officials to make it work. Bodoland needs funds, thousands of qualified workers to supply manpower and the political will to meet such demands. As the BPF, the ruling party in Bodoland, is also a junior partner of Assam's State government the political context seems favourable. Cultural emancipation, one of the main purposes of the Bodo people's struggle, has obtained a legal framework.

Autonomy: an opportunity for peace and development

ABSU, however, bitterly complains about the ongoing internecine violence among former Bodo militants and calls upon all political groups to stop the killing. Indeed, in Bodoland's highly politicized society, the former militants of the diverging groups of Tigers, now transformed in BPF, and NDFP are taking brutal revenge. In 2008 alone, 76 people, mostly members of opposition forces, have been murdered. The police and judiciary have not inquired into a

Who are the Bodos?

The Bodos are among the oldest inhabitants of Assam, belonging to the Tibeto-Burmese ethnic family. 'Bodo' as a generic term includes the Bodo-Kacharis, the Mech-Kacharis, Sonowal Kacharis, living in other parts of Assam, with distinctive culture and language. The word 'Bod' means 'homeland'. The Bodos in other parts of Assam are also known as 'Dimasa'. Bodos ran powerful kingdoms in the region of Assam until the 13th century AD.

The Bodo language is a major language of the Bodo group under the Assam-Burmese group of languages. It has had a written form since the second half of the 19th century. Since 1975 the Devanagari script has been used for Bodo. Bodo was first introduced as a medium of instruction in primary schools in 1963 in Bodo dominated areas of Assam. Now Bodo is used as a medium of instruction up to class X. Today, according to the Assam Official Language Act of 1985, Bodo is recognized as "Associate official language of the State of Assam". In addition to a department of Bodo at the Guwahati University, a post-graduate course on language and literature in Bodo was opened in 1996. Bodo has been recognised as a modern Indian language at the Guwahati University, the NEHU University Shillong and the University of Dibrugarh. Bodo programmes are regularly broadcast through All India Radio, Radio Guwahati and Radio Kokrajhar. Assam State TV also broadcasts TV programmes in Bodo. There is a growing range of Bodo literary book production. On 22 December 2003 Bodo was included in the 8th Schedule of the Indian Constitution opening further opportunities to the Bodo language.

Source: Amar Krishna Paul/Bidyasagar Narzary (ed.), *Let the world know about Bodoland*, Kolkata, G.B.D. 2009

The Bodoland Territorial Council headquarter in Kokrajhar
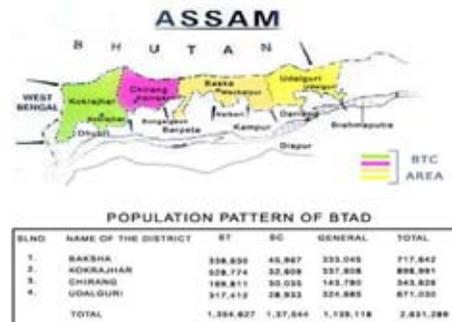
single case. The aftermath of a battle for autonomy? The labor pains of a real consociational democracy in Bodoland? The Bodoland Accord in India has been considered a bold experiment with territorial autonomy, as for the first time an area not predominantly inhabited by tribal peoples was granted autonomy. In addition, the Bodos, unlike other ADCs, are a plains tribe and part of "mainland Assam" rather than a hill tribe previously under colonial rule. The 6th schedule of the Constitution was amended to foster Bodoland's autonomy, while reducing the power of the Assam state to a minimum. Now inside Bodoland a balance has to be found between tribal and non-tribal people, and between opposing Bodo political forces. Indigenous peoples' interests and identity claims have to be reconciled with democracy and the fundamental rights of Indian citizens that apply to the whole national territory. A new autonomy needs unity, coordination and patient commitment to catch new opportunities. But Bodoland's population must also be critical, as other examples of such autonomies in India have shown that too many original purposes get lost along the way.

References

Pulloppillil, Thomas, The Bodos: An Introduction, in: Pulloppillil, T. and Jacob Aluckal (eds.), The Bodos: children of Bhullumbutter, Spectrum Publishers Guwahati 1997

Sarmah, Bhupen, The Question for Autonomy for the Plain Tribes of Assam, in: Social Change and Development, October 2002

Verghese, B.G., India's Northeast resurgent: Ethnicity, Insurgency, Governance, Development, Konark, New Delhi 1997

Roy, Ajay, The Boro Imbroglio, Spectrum Publication, Guwahati 1995

Baruah, Sanjib, Durable Disorder: Understanding the Politics of Northeast India, Oxford Press, New Delhi 2005

The powers of the Bodoland Territorial Council (under the Bodoland Accord of 2003)

1. Small, Cottage and Rural Industry
2. Animal Husbandry & Veterinary
3. Forests
4. Agriculture
5. PWD
6. Sericulture
7. Education: (a) Primary Education, (b) Higher Secondary incl. vocational training, (c) Adult Education, (d) College Education (General)
8. Cultural Affairs
9. Soil Conservation
10. Co-operation
11. Fisheries
12. Panchayat and Rural Development
13. Handloom and Textile
14. Health & Family Welfare
15. Public Health Engineering
16. Irrigation
17. Social Welfare
18. Flood Control
19. Sports & Youth Welfare
20. Weights and Measures
21. Library Services
22. Museum & Archaeology
23. Urban Development - Town and Country Planning
24. Tribal Research Institute
25. Land & Revenue
26. Publicity/Public Relations
27. Printing and Stationery
28. Tourism
29. Transport
30. Planning and Development
31. Municipal Corp., Improvement Trust, District Boards, other local authorities
32. Welfare of Plains Tribes and Backward Classes
33. Markets and Fairs
34. Lotteries, Theatres, Dramatic performance and Cinemas
35. Statistics
36. Food and Civil supply
37. Intoxicating liquors, opium and derivatives etc
38. Labour and Employment
39. Relief and Rehabilitation
40. Registration of Births and Deaths

Source: http://www.bodolandcouncil.org/annexure3.htm

"Let's catch the opportunities provided by this autonomy"

Interview with P.K. Hazoari, Secretary General of the BTC Administration, Kokrajhar (Bodoland, Assam)

The District of Bodoland's territorial autonomy under the 6th schedule has now been operating for 5 years. What are the most salient results?
Hazoari: The Bodoland Territorial Council has been functioning since 7 December 2003. Under the Constitution of the BTC, the citizens of Bodoland have been able to decide developmental activities according to realities on the ground and the local needs of the area. There have been remarkable improvements with respect to surface communication, education, health care facilities, drinking water schemes, agriculture and other areas.

The Bodos are the titular people settling in the area of BTC. What are the other tribal or ethnolinguistic groups with whom you share the BTC region? Which of them are Scheduled Tribes like the Bodos?
Hazoari: The other tribes residing in the BTC area are the Ravas, Garos, Hajongs, Modahi Kocharis. Except the Hajongs all the other communities are recognized as ST. The other ethnic communities that are not STs are Rajbongshis, Nath Yogis, and members of scheduled castes who are scattered in lower numbers all over the BTC area.

What importance does the status of STs have for the institutional order of the BTC and for the social and economic rights of the respective peoples? Is there any quota system applied by the BTC according to the ST status of the applicants?
Hazoari: Except Bodos, other ST communities do not have the necessary numerical strength to be represented in the elected council of the Bodoland Legislative Assembly. Therefore, the amendment to the 6th Schedule of the Constitution has provided for the nomination of six members of the BTC Council by the Government of Assam. There is no institutional order for the scheduling of tribes regarding representation in the BTC Legistative Assembly, rather there is a simple seat reservation system. 30 seats out of 46 are reserved for STs, 5 are elected in constituencies open for all and 5 seats are reserved for non-ST constituencies. However, all these representatives are to be elected directly by adult suffrage. The remaining 6 are nominated from other minority communities.

Is recruitment for jobs offered by the BTC linked to membership in an ST settled in the area of the BTC or is it only linked to residency in this area for a certain minimum period?
Hazoari: No. The recruitment of employees is supposed to be made as per existing rules adopted by the Government of Assam.

Bodo has been recognized as the second offical language of Assam for the area of Bodoland. Is Bodo now on an equal footing with Assamese within the BTC?
Hazoari: Yes. The Bodo language is an offical language in BTC area.

The Assembly Hall of the Legislative Council of the autonomous Bodoland in Kokrajhar.

What kind of recognition do other, smaller languages, spoken in the area of the BTC have? Can they be imparted in the public education system?

Hazoari: In the BTC area, Bodo, Assamese, Hindi and Bengali are media of instruction in the schools. In addition, Santhali, Garo, Arabic, Urdu, Persian and other languages are taught in Government schools. The Rajbongshi (Goalparia) is used in the parts of Chirang and the Kokrajhar district of BTC. There is no Constitutional or legal bar to imparting education to the students in any language in the public education system of India.

Is there any proportionality rule for the attribution of seats in the BTC Executive Committee according to the share of Bodos in the total population of the BTC?

Hazoari: No. There is no established rule or guideline in the amendment of the 6th Schedule of the Indian Constitution to allocate community-wise seats of Executive Committee of the BTC on the basis of population share present in the BTC area.

What happens in case of conflicts between BTC laws, issued in the fields of its 40 powers, and laws of the State of Assam? Do the laws of the BTC, once accepted by the Governor, prevail?

Hazoari: To date no contradictory situation or repugnancy has arisen in the field of lawmaking between the state of Assam and the BTC. There are specific provisions guiding the preparation and enactment of law in the Constitution. The law enacted by the State Legislature or Government cannot override the law enacted by the Government of India and the laws of the BTC legislature.

The scope of an autonomy is generally specified to ensure autonomous self-government and protection for indigenous ethnic groups, especially in the field of culture, education and language policy. Is the BTC endowed with sufficient powers for that purpose?

Hazoari: The reply to the question cannot be given in a flat yes or no. It cannot be generalized in an easy way. To date under this legal framework, powers in education and language policy have been found to be enough. But the lack of powers relating to the flow of funds and to financing the programmes is a big hindrance to the BTC.

Does the BTC have enough powers and financial means to act as an agent of development for Bodoland?

Hazoari: The BTC is not self-sufficient with respect to developing financial means to act as an agent of development. The funds received from the Government of India and the State of Assam are the only means of financing the development of the BTC area. They can be invested in the departments and transferred to the BTC for agriculture and forestry, transport and health care. The BTC has no power to impose taxes except on forest and land revenues. Therefore, the implementation of part of policies in education and language requires further means of funding.

Normally the ADCs are financed by the Union, whose funds are channeled through the respective State. Does this system also work in Bodoland and does it provide a stable and sufficient financial base?

Hazoari: The system of channeling our funds through the State Government can be considered satisfactory. However, channeling funds to the BTC through the State requires the positive participation of the Union, the State and the BTC. The flow of funds from the Union to the BTC makes a tedious journey as it takes at least 6 to 8 months if not more to reach the Council. It is noted that neither the Union, the State or the Council can be made solely responsible for

the irregular flow of funds in a given process. Autonomy and its interpretation varies from area to area, community to community, country to country, and state to state. Therefore, no clear-cut opinion of this autonomy issue can be given. It is observable that whenever someone is given autonomy, this beneficiary never feels it is enough.

Education in one's mother tongue: who is in charge managing primary and secondary public schools, and can the BTC decide the medium of instruction to be used at every stage of the school system in Bodoland?

Hazoari: The BTC is the sole authority managing Higher Secondary and Primary Schools. With respect to the introduction of the medium of instruction at every stage of school system, in Bodoland this issue is decided by the Council itself.

How should the current 6th schedule for district autonomy be improved in order to meet the demand for a higher degree of self-governance?

Hazoari: It will be more practicable if the devolution of powers continues according to the experience gathered and the capacity entrusted to the Council of absorbing power and finance. The devolution of power from the Union to the State and from the State to the Council should be a natural process. With the passing of time as more experience is gathered, the scope of powers devolved from the Union to the States and from the States to the ADCs requires periodic review.

Does the BTC have any power over local police forces?

Hazoari: No

What representation have the Bodos been accorded in the State assembly of Assam?

Hazoari: There is no specific legal provision in the Indian Constitution according the Bodo people special representation in the State Assembly. There are reserved Constituencies for the scheduled tribes (ST) in the Assam Assembly from which representatives of our population are elected to the Assam Assembly. At present there are 12 members of the Legislative Assembly of Assam and 3 Ministers in the Assam Cabinet from the Bodo community.

What are the major problems Bodoland is facing today?

(at the right hand) Jashamanik Brahma, secretary general of the All Bodo Students' Union at the Bodofa House in Kokrajhar (Bodoland, under the memorial of the founder of ABSU).

Hazoari: Yes, both a subjective and an objective assessment can be made condcerning the problems Bodoland is facing. The view seen through the eyes of a politician may be different from that seen from the eyes of a bureaucrat or a layman. At present, based on my personal assessment, internal peace is more important than other specific problems faced by the BTC.

The ABSU is not satisfied with the present stuation. Is this just due to the impatience of youth?

Hazoari: My point is that we have to start from the acceptance of the Bodoland Accord in 2003. Until 2005 there has been unity among the Bodo political forces, but later they split. Furthermore, part of the ABSU went with the BPPF which today is in the opposition. Still there is some unrest among former fighters of different fractions, some internecine violence among Bodos. But all in all today we are in a much better position than Karbi Angong and North Cachar. At the moment we have no other duty than to catch the new opportunities provided by this autonomy.

Interview: Thomas Benedikter (Kokrajhar, 26 March 2009)

25. From 'Post-war' to 'post-conflict' - The continuining relevance of power-sharing and territorial autonomy in Sri Lanka

Asanga Welikala

As this paper is written, the three decades old armed conflict in Sri Lanka is seemingly coming to an end, at least in the conventional form it has taken during the last fifteen years or so. During the latter half of this period, the State has been engaged in military conflict, or at sporadic intervals in peace negotiations, with an armed opposition group, the Liberation Tigers of Tamil Eelam (LTTE), which has had the military capacity to engage the State on equal terms and controlled substantial parts of the territory (along with aspects of an alternative administration) which formed the basis of its claim to self-determination and secession from Sri Lanka. Now, however, its conventional military power and attendant control of territory is facing an unprecedented and comprehensive defeat at the hands of the current Sri Lankan government, which has pursued a self-described 'war on terrorism' that has proved costly both in economic terms and in human suffering, as well as a substantial erosion in the respect for human rights and the rule of law, and the institutionalisation of a political culture of government best described as a form of nationalist authoritarianism. In the view of the State according to those who control it at the present moment, the military victory over the LTTE represents the end of conflict. To the extent the political root causes of mismanaged diversity that led to militant Tamil nationalism are recognised as legitimate, in this view, they can be dealt with through a form of limited devolution that is already part of the Constitution, or with a measure of further devolution that is consistent with the unitary state.

This, however, is an oversimplification of the fundamental political anomalies of the existing constitutional order, including at first instance, the constitutionally-entrenched, highly centralised, majoritarian unitary state that led to the political and socio-economic exclusion and acts of discrimination that constitute the grievances at the heart of Tamil nationalism in Sri Lanka. If the defeat of the LTTE is to represent a fresh opportunity to address these anomalies, and to ensure that diversity and pluralism do not become a source of conflict again in the future, then the State needs to recognise and constitutionally accommodate the claims to power-sharing and territorial autonomy that flow from the condition of societal diversity. Taken together, these constitute the political challenges and choices involved in taking Sri Lanka from a situation of 'post-war' to one of 'post-conflict' in the future.

Making this point in criticism, however, necessitates the articulation in outline of the conceptual framework of what is meant by 'power-sharing'. What then are the analytical perspectives in (a) conceptualising the socio-political, linguistic-cultural, and historical (and historiographical) nature of the polity; (b) the theoretical frameworks to be engaged in rationalising those conditions, and in devising both political values and institutional structures that must inform and underpin the constitutional form of the post-conflict Sri Lankan State?

The socio-political and historical nature of the Sri Lankan polity is one characterised by rich diversity and cross-cutting cleavages. The multiple facets of pluralism in Sri Lanka include those based on ethnicity, language, religion, caste, culture, geographical region, socio-economic class and historiography (or, some would say, hagiography). While these categories are neither exhaustive nor mutually exclusive (in isolation or in selective combination), their acknowledgement in the analytical understanding of the nature of a society is politically salient, because that acknowledgement informs conceptions of political self-interest as well as normative perspectives and ideological choices. It must moreover be added that diversity and pluralism should be regarded as a source of social vitality and strength, indeed something to be celebrated, and not as a condition that necessarily generates division and conflict.

In this respect, an important qualification is that the present conflict-ridden condition of the Sri Lankan polity is what in the theoretical discourses of many disciplines is known as a 'deeply divided society'. This is an analytical category by now well-known to both political and constitutional theory, in which the existence of diversity has been mismanaged to such an extent that identity-based claims form the (often exclusive) basis of routine public policy debates, political mobilisation, the articulation of self-interest central to the conduct of politics, and critically, in the processes and substance of constitution-making. Thus identity-based group claims rooted in such factors as ethnicity become synonymous with political identity, and in the absence of appropriate institutional

channelling or accommodative normative framework, can easily degenerate into violent conflict. Quite clearly, Sri Lanka presently falls into this category, where the pouvoir constitué in the form of the constitutional order of the State is grossly incongruent with the pluralistic pouvoir constituant in a way that has generated ethnic antagonism and violent conflict.

It is in these senses that the liberal conception of the nature of the Sri Lankan polity leads to the adoption of certain normative values and theoretical frameworks in thinking and talking about ideal-type constitutional forms for the peaceful and orderly organisation of that polity. We must be mindful of the scholarly debate – and in the Sri Lankan context the fundamental question of politics – between 'accommodationists' and 'assimilationists' in which the former believe the recognition of difference and the accommodation of diversity are essential for the public goods of peace, order and good government, whereas the latter argue that the institutionalisation of difference leads precisely to the opposite results of conflict and division. However, as comparative constitutional practice demonstrates, dichotomising 'accommodation' and 'assimilation' for purposes of theoretical purity is of limited practical value, and the exigencies of constitution-making in Sri Lanka are no different from other comparable experiences in which a just and peaceful constitutional order derives sustenance from the judicious amalgamation of both sets of values in ways ensuring that 'accommodation' does not yield polarisation and 'assimilation' hegemony.

It is for this reason that accommodation of socio-political diversity in constitutional form means the fair sharing of power. This means both the division and distribution of political power (including sovereignty) so as to ensure autonomy where autonomy is desired, as well as sharing such power where collaborative decision-making is necessary. The overriding concern is to lay a coherent normative foundation upon which principled choices can be made between various policy and design options in constitutional reform.

Understood this way, power-sharing is a normative value as well as a principle of constitutional organisation (and for some, may also represent an ideological disposition or philosophical statement). The point, however, that the empirical fact of diversity is not represented in an appropriate constitutional form of power-sharing and desired territorial autonomy in Sri Lanka is both the rationale, and entry point into the debate, for the liberal discourse.

The conceptual framework of 'power-sharing' outlined here is thus a broad one that encompasses a multitude of options in the choice of institutional form(s). Perhaps the analogy of a 'corridor' within which are found more than one track or path illustrates the approach best. The choice of options available in this conceptual corridor of power-sharing – including forms of devolution,
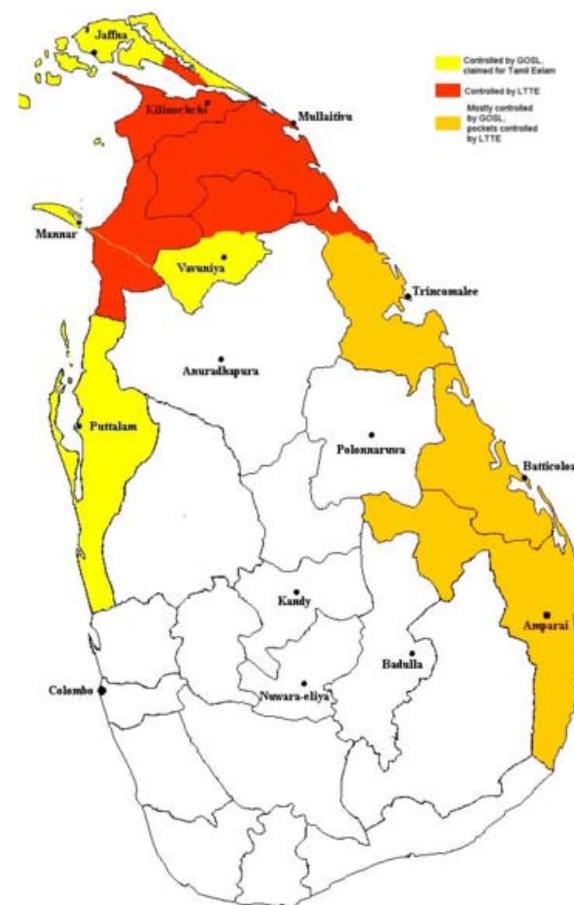
The largest areas of settlement of Tamil population in Sri Lanka.

Jaffna, Sri Lankan army forces patrolling the city.

federalism and confederation as well as consociational mechanisms – are very broad; and must include, should power-sharing predicated upon unity fail, the option of peaceful secession subject to the 'principled negotiations' that the Canadian Supreme Court had in contemplation in its celebrated advisory opinion on the constitutionality and legality of a putative secession of Quebec.

Within the conceptual parameters of power-sharing delineated above, it is possible to point to certain critical constitutional issues that would have to be addressed inevitably if a peace in Sri Lanka with democratic legitimacy is to be built, underpinned by a new constitutional order along power-sharing lines and liberal values. Power-sharing in this context involves two fundamental elements: (a) power-sharing through the intra-statal territorial and functional diffusion of power; and (b) modalities of sharing power over those functions and decisions that involve the citizenry of the State as a whole.

The intra-statal diffusion of power is aimed at various ends according to the needs of particular societies, and may involve considerations of greater democratisation such as enhancing citizen participation through localising decision-making; improved transparency and accountability; greater efficiency and economy. In addition to these general democratic and administrative rationales, are the needs of those societies in which (usually) territorially concentrated groups exist which demand governmental autonomy for purposes of the preservation or the expression of ethno-cultural or religio-cultural aspirations. While both sets of considerations apply for sub-statal power-sharing in Sri Lanka, without doubt the overriding concern is that of the accommodation of Tamil claims to autonomy in the North and East in a way that addresses those aspirations without necessarily endangering the unity of the country from the outset. Indeed, liberals would strenuously argue that without addressing Tamil ethno-territorial aspirations to autonomy through meaningful power-sharing, the legitimacy gap that characterises the Sri Lankan State and makes us a deeply and violently divided society cannot be bridged. Adding a further element of complexity to this issue are the identity-based claims to territorial autonomy increasingly being made by Muslims of the East, and more recently by Tamils of Indian Origin.

However, the strategy of some Tamil nationalists of negotiating a confederal-type power-sharing settlement as the first step towards a pre-determined goal of secession is unhelpful for the meaningful sharing of power, and in any case would be a self-fulfilling prophecy through the inflammation of Sinhala nationalist sentiment in the South. At the level of constitutional design, the sub-statal dimension of power-sharing calls attention to such matters as the division and sharing of governmental functions and competences between multiple (shared/national, regional, local) orders of government; the allocation of revenue raising and public expenditure responsibilities; allocation of natural resources; mechanisms for centre-regional and inter-regional co-operation and dispute resolution; and for institutional arrangements for dealing with exceptional circumstances of natural or man-made emergencies in which central and regional interests and spheres of autonomy are balanced and respected.

In the liberal vision of power-sharing, however, the constitutional accommodation of sub-statal claims to territorial autonomy must be countervailed by institutional arrangements that administer those governmental functions involving the shared concerns of persons and communities that constitute the citizenry of Sri Lanka as a whole. While this arises from a conception of citizenship that respects diversity as well as unity, it is central to the identificatory role of the Sri Lankan State that even those ethno-territorial groups desiring a high degree of autonomy be represented, involved and encouraged in decision-making about shared concerns. Typically, this kind of power-sharing is achieved through a second chamber of regional representation in the central legislative process; through consociational arrangements for regional or group representation in the central political executive, the civil service, police services and the armed forces; representative composition of the judicial body charged with the responsibility of interpreting the constitution; and arrangements for fiscal equalisation and the equitable distribution of national wealth and resources.

In addition, liberals would emphasise that the requirements of constitutional democracy such as the limitation of governmental authority, as well as in terms of special protection for individuals within communities in a constitutional context that accommodates ethno-cultural and/or religio-cultural specificity, a comprehensive constitutional bill of rights susceptible to robust judicial enforcement is essential. This may or may not contain certain types of group rights (especially for those communities that are not entitled to or do not demand

territorial autonomy), but its principal role is as a mechanism for the protection of individual rights so that government is limited and the liberty and security of the individual and private property are guaranteed.

This vision of power-sharing is underpinned by two final elements: (a) the element of a co-operative and values-based culture of government; and (b) the covenant or social contract – in other words, the constitution – that enshrines and guarantees the precise power-sharing arrangements agreed between multiple orders of government. The culture of government that is premised on this notion of power-sharing is one of negotiation, consensus and co-operation, but which is disciplined by the rule of law and an independent judiciary, general democratic values of universal application and respect for human rights, as well as by the specific principles of power-sharing as are enshrined in the power-sharing and autonomy covenant that is the constitution. The constitutional instrument itself therefore assumes pivotal significance in the liberal conception of a power-sharing constitutional order. The letter and spirit of the constitution must be supreme, all institutions and persons subject to its dictates, and all law, decisions, acts, conduct, policy, practices and omissions inconsistent with it must be void, where necessary through judicial enforcement.

A new constitutional order that can deliver the promises of democracy for all the people of Sri Lanka such as freedom, justice, peace and prosperity, can only be realised through the conceptual framework of power-sharing outlined here. In our experiences of majoritarian constitution-making and resulting minoritarian resistance, we have embraced the passions of nationalism and rejected the deeply moral rationality of liberal constitutionalism, and as we continue to see, with the most distressing of consequences. It is time for a new constitutional conversation, the agenda for which must involve the rigorous and sustained exploration of liberal power-sharing and territorial autonomy. The massive costs of the war, and the removal of the LTTE from the political arena, may be regarded as useful only if these ideas are employed in ensuring that the constitutional form of the Sri Lankan State can in the future accommodate and celebrate its rich heritage of diversity and pluralism.

Asanga Welikala,
LL.B, LL.M, is Senior Researcher at the Legal &
Constitutional Unit of the Centre for Policy
Alternatives (CPA), Colombo, Sri Lanka.

LTTE fighters graveyards at Kopai, Jaffna peninsula (Sri Lanka)

Trincomalee on Sri Lanka's East Coast for some time has been under control of the LTTE

26. Conclusion: give regional autonomy a chance

Thomas Benedikter

1. Autonomy in South Asia and Europe – A comparison of incomparable issues?

This "Short Guide to Regional Autonomy" is meant to provide an overview of current experiences of territorial and cultural autonomy in South Asia and Europe and to trace a perspective on future applications of this form of territorial power sharing. Recent developments within single states with some of the most significant autonomous regions have been highlighted, as autonomy, once established by a statute and/or a constitutional act, is no static affair. Like constitutions, autonomy statutes are usually sets of legal regulations that are continuously developed as works in progress. Autonomy statutes compose a legal framework filled with life by the legislative and political activity of the elected autonomous bodies. Regional self-government unfolds through innumerable acts and decisions taken by the legitimized political actors, who are responsible to the regional electorate, not to a central authority. Autonomy brings the state's power closer to the people. If a minimum standard of autonomy is ensured, this system allows for the division of state power between national bodies and the region's population, who can freely choose who truly represents them. Irrespective of ethnic affiliation, the people can judge freely who acts in accordance with their preferences in all matters relevant for local and regional development and for the protection of the cultural identity of the distinct groups living in the region. Regional autonomies, based on political agreements, established under the rule of law and entrenched in national constitutions, are still the exception to territorial power sharing in modern democracies. They are mostly applied whenever a challenging, often violent ethnic conflict was or is to be resolved. Five conditions have to be met if territorial autonomy is to work properly:

1. A precise territory, with boundaries accepted by all concerned groups;
2. Sufficient scope of powers to confer the regional community substantial capacity for determining cultural and socio-economic evolution in the region;
3. Legislative and executive powers to be transferred permanently and unambiguously to freely elected territorial bodies without any interference from the central state;
4. The entrenchment of such regulations in law, possibly in the constitution, with well-defined mechanisms of amendment and dispute resolution;
5. Equal rights and no discrimination against the citizens living within the autonomous region, though some devices to control immigration into the region are required to grant stability and peace.

Consociational democracy within the autonomous region is an optional, but very relevant and helpful category, if peace and stability are to be preserved. Like federations and federated units, regional autonomies by either statute or special agreements can be consociational, but must not be. Wherever such conditions and minimum standards of autonomy are met, a lasting solution of ethnic conflicts is more likely, without claiming to be the "end of history". The latter two conditions require a brief comment.

First, generally affairs regarding citizenship and fundamental rights such as the freedom to choose a workplace and residency, the free flow of capital, goods and labour are regulated on national if not on supranational levels, and even autonomous regions cannot interfere. In an environment of globalizing markets and political integration – in Europe the EU, in South Asia only in embryonic forms – with increasing flows of internal and international migration, the ambition of autonomous regions to keep the reins controlling their internal development in their own hands is under stress. As experiences in various continents prove, autonomous regions need some regulations, compatible with fundamental rights enshrined in the national constitution, to control their demographic evolution, or sooner or later they will passively have to face social grievances and ethnic turmoil.

Second, the legal entrenchment of an autonomy is an issue of utmost importance for both parties – the region and the central state. It provides the autonomous community with the awareness that their autonomy is not at stake when political majorities are changing on national level, and it provides the central state with some security that the titular ethnic communities at the regional level will not arbitrarily demand a completely different solution. Ultimately, international

entrenchment of autonomy regulations has to be envisaged, wherever an ethnic conflict has a cross-border dimension and involves kin-states or "kin communities" beyond national borders. Legal entrenchment of autonomy solutions in international law could also be ensured by regional or international organizations. Although little experience has been collected so far in this regard, and few autonomous regions enjoy such a form of entrenchment, the international community is required to consider it, along with some forms of recognition of the right to self-government in international conventions.(1)

After having given this overview on recent developments of regional autonomy starting from some theoretical preliminaries in Europe and South Asia, it comes time draw some conclusion as to whether this form of territorial power sharing has met the expectations. This comprehensive look at about 15 cases in Europe and South Asia not only covered working regional autonomies – out of 36 European and 13 Indian autonomous regions – but also touched regions or ethnic communities striving for real autonomy and states in search of a new pattern of territorial power sharing. Differences and commonalities emerged in the reality of autonomy between the two areas. In Europe, the majority of autonomous regions are fully accepted by their populations, while some are striving for an enlargement of the autonomy's scope, if not even for an eventual secession (Greenland, the Basque Country).

On the other hand, autonomy arrangements can also fail and thus give rise to new conflicts and demands for a more comprehensive and secure legal framework of "internal self-determination" such as in the Chittagong Hill Tracts or in Gorkhaland. In South Asia only India, the world's most populous working democracy and federal state, established regional autonomies in the 1950s that are enshrined in the 5th and 6th schedule of the Constitution. The remaining South Asian states are reluctant to resort to this form of power sharing, and are still considering autonomy a threat to the unity of the nation and a step towards secession. Hence, if an intermediate conclusion is to be drawn, we could state that autonomy has not yet been given the chance to really unfold its potential for the settlement of minority and ethnic conflicts and confer a major degree of regional democratic self-government wherever a huge majority of a region's population demands it. Wherever two or more ethno-linguistic or ethno-religious groups are sharing a territory – this is the rule rather then the exception - the enlarged scope of powers devolved to the regional level must be tempered with consociational decision mechanisms in order to avoid new forms of discrimination and exclusion. Autonomy has to be brought in line with democracy. On the one hand, ethnic minorities do not accept democratic majoritarianism at a purely central level, and if an internal form of self-rule is not granted, its "external" form –

Europe in 2009 is divided in 47 sovereign states and some break away-regions (Northern Cyprus, Trans-Dniestr, Abkhazia, South Ossetia). The language areas do not correspond with the states' borders. No larger European state is without ethnic minorities (source:www.eurominority.org)

secession - comes back on the political agenda. On the other hand, if democratic majoritarianism sidelines social or ethnic groups within an autonomous region, internal peace and stability are at risk.

Thus, regional autonomy responds to a general requirement of modern democracies: subsidiarity, or in other terms, democratization through devolution of powers to government levels closer to the citizens and local and regional communities. The challenge lies in empowering, and in many states even establishing the third tier of democratic decision-making, in addition to the national (state) and the local (municipality, township or Panchayat in India and Nepal). Autonomy in this overview has been scrutinized as a device of settling ethnic conflict from Catalonia to Trans-Dniestr, from Darjeeling to Gilgit-Baltistan, but this is not its only "raison d'etre". In India, out of 330 districts almost 50 have a linguistic majority population different from the majority of the State they belong to. Even beyond such cases, a generally higher degree and quality of democracy in the regional frame is on the agenda. Regional autonomy, like federalism, corrects the distance between elected rulers and the ruled in large nation-states.

Finally, can Europe and South Asia's experiences with regional autonomies be compared at all? A comparison tends to carve out commonalities and designate differences in order to assess the results of the system of power sharing and provide the chance to learn from each other. As often quoted, the issue is neither to suggest existing models of autonomy for specific cases of conflict, nor to export whole "packages" by rubber stamp-method, cut off from all historic context. Rather it is worth the effort to determine and compare single central elements of vertical power sharing, as applied in various states, in order to find out under what conditions they may yield the best results and performance. The question is therefore: "Which form and which elements of autonomy for what kind of conflict between central state and regional community in what legal-constitutional and political framework?" While answers to such questions are up to assessment and analysis in a larger framework, these pages are just meant to provide a few conclusive remarks.

2. Europe: when autonomy is unfinished - Autonomy as a process

Autonomy in Europe is a creation of the second half of the 20th century, but the majority of European states are still neither federal nor vested with a regional level of legislation and government. Rather they are unitary states with, at best, some forms of administrative decentralization. Including Spain's 17 "Autonomous Communities", regional autonomy is currently established in 37 cases in 11 states. Several regional communities, ethnic minorities or smaller "non-titular" peoples in a number of states are pressing for autonomy solutions. Similarly, the working regional autonomies are undergoing a continuous evolution, striving to keep pace with general developments in society and in the respective state's organization. In some states, such as Italy, Finland, Denmark, Portugal and the United Kingdom, autonomy has found a stable place in the state's architecture. Spain has even entrenched autonomy as a basic principle of territorial power sharing. While generally Europe is moving towards strengthening its second government level, the regional democracy, there are also States very reluctant to accord any form of recognition of ethnic minorities, let alone forms of regional autonomy.

Like national constitutions – and supranational constitutional treaties like the EU-treaties - autonomy statutes, the legal foundations of most working autonomies, are a work in progress. They set a legal, constitutionally – sometimes even internationally – entrenched framework for autonomous politics. As constitutions are amended from time to time, adopting new provisions in response to newly arising issues, an autonomy statute adopted in a particular historical moment cannot harness all possible developments of a regional society for very protracted periods. This is the case in Scotland as well as in Bodoland. It is vital to remember, reminds Rami Ousta in this volume, that devolution is not and should not be a static context, but rather a dynamic process which, in turn, should be stimulated by pro-active rather than reactive responsibilities to the needs of the stakeholders concerned. The statutory basis of an autonomy has to keep pace with the general evolution of the State architecture and adapt the relationship between the central state and the autonomous region to new requirements. For this reason, several European autonomies are periodically revised. The oldest one, the Aland Island, established in 1921, was revised in 1951 and 1991. Greenland's

new autonomy entered in force on 21 June 2009. Catalonia's autonomy statute was completely readjusted in 2006. South Tyrol's autonomy, along with other Italian autonomous regions, was profoundly amended in 2001. Other European autonomous regions are striving for reform driven by popular will to extend and improve the scope of their autonomy. If such political pressure is coupled with claims for self-determination, as in the Basque Country and Scotland, the state's core interest of preserving unity and sovereignty is at stake. "The Scottish devolution, with its limitation, reflects a success story", underscores Rami Ousta, "ten years on, this story is still unfolding and progressing within a vibrant perspective and focused opportunities. However, the question of this journey turning into a full independence setting is still around provoking contradicting views and stimulating convoluted perspectives." On the other hand, the present global economic crisis offers some examples of the advantages being integrated in a national and supranational structure. Autonomy and international integration is to be brought into a dynamic balance.

The amendment process of the Basque autonomy in Spain, now brusquely detained, recalls another experience to be learnt from Europe's history of regional autonomies. "Even in the case of a successful resolution of the violence carried out by ETA and related groups, the deep controversy about the legal and political framework for the Basque Country will remain alive in the near future", states Eduardo Ruiz in his analysis. "... It is likely that central and regional governments can reach important agreements in this new period to develop some aspects of the Statute. However, the main controversies about the linguistic policy, international representation, symbolic expressions, and, above all, the right to decide, will continue to be hallmarks of division between Basque and Spanish oriented parties." In other words: wherever ethno-linguistically heterogeneous regional communities come together in a common project for regional autonomy and request the extension of a given autonomy, and are backed by all major ethnic groups and political forces of a region, the Centre will be rather malleable to further concessions. Conversely, where regions are riddled by ethnic cleavages with a strong risk of discrimination against minorities within the autonomous regions, central states are reluctant to move forward in upgrading autonomy. This dynamic is very likely to happen in South Asia as well, as pointed out by Mahbubur Rahman with regard to the CHT: "Care should also be taken to reach a political consensus in support of the accord at national as well as regional level before the fragility of the ongoing peace is exposed. In particular, harmony between indigenous and non-indigenous people, who are almost equal in number and almost likewise victims of government policy, is a prime condition for the congenial atmosphere that might accelerate the pace of implementation of the accord."

A Khasi and a Pnar below the monument of the national Khasi hero of resistance against the British colonizer, U Kiang, in Jowai (Autonomous District of Jaintia Hills, Meghalaya).

Young monks in Ladakh.

As such amendments are a normal process in democracies with territorial power sharing, questions arise concerning the procedure to achieve a compromise and to settle disputes between the centre and the regions, which bilateral organs are entitled to work out amendments to autonomy statutes, and eventually who is entitled to give its final approval to the revised statute. Should this power be given to both regional and central governments, both national and regional parliaments or even the concerned population of an autonomous Region through a referendum? From a democratic perspective, the latter option seems optimal, as illustrated for the case of Catalonia whose autonomy statute is indeed a "regional constitution" similar to the constitutions of federal units in federal states.

Eventually, a broader trend in European politics comes to bolster autonomy solutions. Not only is the necessity of decentralization of central government powers under the banner of subsidiarity shared by most European states, but so is the conviction that this sub-state level has to be upgraded as the third tier of democracy along with the municipal and the central levels. Pan-European organisations and institutions such as the Council of Europe and the Assembly of European Regions are insisting on deepening regional democracy and vesting elected regional bodies with substantial legislative and administrative powers. (2) Within this trend to empower the regional level, the question of territorial autonomy remains a special settlement, but it gains legitimacy. Not only could some open ethnic conflicts in Europe be solved though autonomy devices, but most states, if seriously interested in strengthening regional democracy, could learn from working regional autonomies.

3. South Asia: unfinished federalism and the missing third tier of government and legislation

Although the South Asian states share the same colonial background, their constitutional architecture is markedly different, as the smaller states took the form of unitary states (Sri Lanka, Nepal, later Bangladesh). Only two adopted the form of a federation after independence to manage their diverse ethnic composition and to maintain political unity in a large territory with high ethnic, religious, economic and social complexity. But by far not every ethno-linguistic

minority could obtain its own federated unit, nor are the federated states or provinces of India and Pakistan allowed to freely choose self-determination and secession. Despite federalism and some forms of regional autonomy, apart from religious and communal conflict, ethnic conflict and self-determination struggles recurred over the last 60 years in South Asia's, and today autonomy claims by smaller peoples are heard in all these States, including Sri Lanka and Nepal.

All federations presuppose the existence of federal units. Is regional autonomy in India and Pakistan a claim raised due to a still imperfect division in federal units, as some authors assert?(3) At this point it should be recalled that regional autonomy is not just a another version of federalism, or of an "asymmetric federal system", but is a distinct form of power sharing between the central state and one or some regions with particular features, usually established to solve an ethnic conflict. Autonomy, like federalism, is a compound of institutions and procedures of ethnic conflict regulation and territorial government, but autonomy is not just a sub-form of federalism. It is an institution of territorial power sharing in its own right. As examples from various states illustrate, regional autonomy can also be established in federal states, along federal units, or on the sub-state level. Unlike federated units, autonomous regions do not have an institutionalized right to participate in legislation and decision making at the centre.

This volume observed that not only unitary states are contested, but the two federal states – India and Pakistan – could not accommodate all demands for self-government by federalist devices and had to cope with secessionist movements. New federal units (provinces of Pakistan, states in India) were created, but in both countries, as in the neighbouring unitary states of Sri Lanka, Bangladesh and Nepal, the third tier of government, the level of regional democracy, is still incomplete. Generally all South Asian states do not have a form of democratic institution with legislative powers on the regional level. India, Pakistan and Nepal's district administrations are not elected; Sri Lanka's provincial assemblies lack real powers; Bangladesh is strictly unitary. Sri Lanka was reluctant to engage in serious negotiations regarding the federal transformation of its state structure, while Nepal is currently debating a new constitution that will definitely tackle the need for decentralization and territorial power sharing. As quoted above, the lack of "regional democracy" concerns some major European states too: France,

Poland, Romania, the United Kingdom and Ukraine have no such regional institutions vested with legislative powers.

With reference to the two South Asian federations, two questions arise at this point: do current ethnic conflicts stem from an incomplete or inappropriate division in federal units? Do regional communities and smaller peoples claim a new federated state or independence as there are no other viable forms of power sharing? Indeed, as could be learnt from the cases highlighted in this volume, both are occurring: federalism, at least in Pakistan, has not only been applied in a faulty and contradictory manner, but also for decades by a national government without democratic legitimacy. India's federal system was repeatedly reshaped: it was first reorganized along linguistic lines, and later further states were carved out from existing ones. Both states, Pakistan and India, adopted forms of sub-state autonomy or special autonomy, in which smaller ethnic groups were to be accommodated or "minor conflicts" to be settled, but without a coherent scheme. As Murtaza Shaik points out in this volume, typically this emerges from Pakistan's approach to tribal autonomy in the form of F.A.T.A. and P.A.T.A., of Azad Kashmir and Gilgit-Baltistan. Whereas Azad Kashmir became a self-governing unit as of Pakistan, Gilgit-Baltistan remained in limbo as a "trusteeship area"; whereas the Pashtun majority region of the NWFP got its federated province, the ethnic Pashtuns of the F.A.T.A. did not. In India the same pattern emerged: whereas all major linguistic groups during the linguistic reorganisation of the Indian Union in the 1950s and 1960s were granted their own state, the smaller peoples in the Northeast were not, or at least, only much later (Manipur, Meghalaya, Arunachal Pradesh) or only after protected military violence (Mizoram, Nagaland); while the 6th schedule autonomy was applied to some areas in the Northeast, in order to avoid the further division of Assam, other States in central India including West Bengal refrained from granting such autonomy even to numerically very sizeable regional or tribal communities (Gorkhaland, Santals, Bhili, Gondi, Ho, Kurukh/Oraon and others).

Thus both basic constitutional principles of territorial power sharing in the federal states of India and Pakistan appear far from being coherently applied: on the one hand there is federalism for equal or symmetric power sharing between the centre and all federated units, and on the other regional autonomy to meet requirements for territorial power sharing at the sub-state level. India's federalism is marked by strong centralism: the federal government is vested with unusual powers for a federation, while at State level most powers are concentrated in the hands of the State administration. Local democracy is provided only by the institution of the panchayats – the democratic councils in villages and municipalities. Keeping in mind that European federations

The headquarter of the Autonomous District Council of the Jaintia Hills in Jowai (Meghalaya). with the C.E.M.'s official car.

Hambertus Nongdtu, the Chief of the Executive Committee of ADC Jaintia Hills

and regional states are not bigger than West Bengal (Germany, the most populous European state after Russia, has 82 million citizens), but are articulated in federal units or autonomous communities the size of Indian districts. Therefore there is still a great need and potential for further decentralization to the lower units that make up a state. This can occur in a symmetric form, including all sub-state entities, or in an asymmetric form, reserved for some districts with special needs and interests, such as those inhabited by ethnic minorities and tribal peoples. Regional autonomies can be established even outside the federal units, as proposed by some persons interviewed in this volume (Ladakh and Gorkhaland). But if regional autonomy on a sub-state level does not match the people's expectations, demands for a full-fledged federated state reappear on the agenda. Forms of territorial autonomy will play an important role in South Asia and Europe in achieving both more regional democracy and a minority friendly division of powers for the protection of minorities.

4. India: transcending the "6th Schedule-autonomy"

India is the only South Asian country with working regional autonomies, but her working regional autonomies reveal major shortcomings. The institution of the "Autonomous District Councils", based on the 6th Schedule of the Constitution, was originally conceived as a solution for tribal peoples and ethnic conflicts in the Northeast during the initial period of nation building. Established by the fathers of the Constitution to avoid splitting up the multiethnic Northeast, which was faced with a variety of self-determination claims by tribal peoples, the ADCs in their current form cannot meet the political requirements on the ground. It worked as a temporary painkiller, but the pain was to remain. Assam was split up, and four resulting states (Assam, Meghalaya, Manipur and Tripura) adopted the 6th Schedule autonomy to accommodate sub-state self-government demands by smaller ethnic communities and peoples. The very ethnically homogeneous Northeast remained conflict ridden. After many uprisings, violent rebellions, and years of low intensity warfare and military resistance by guerrilla groups and "national liberation fronts", some ethnic groups and peoples managed to obtain their own federated states, including Mizoram, Nagaland and Meghalaya. Other states, such as West Bengal, Jammu and Kashmir, and Assam, had to accord

territorial district autonomy to their own minorities (Leh and Kargil, Karbi Anglong and North Cachar Bodoland). The smaller Northeastern States, such as Tripura and Mizoram, had to come to terms with their internal ethnic heterogeneity. Nevertheless, the existing legal setting and scope as given by the 6th Schedule does not offer sufficient political space for a fully autonomous cultural and language policy or for the comprehensive range of powers needed to allow the ADC to be the most important agent for social and economic development in the area. The State government and the Union governor of the respective State exert major hierarchical control, while neither has a sufficient or autonomously controlled financial base.

In addition to the limited scope of the 6th Schedule-autonomy, there is a need to focus on the quality of democracy and governance allowed by these autonomies. The population of some ADCs in the Northeast sees autonomy as just an institutional process, and do not feel involved. The participation of people and civil society remained very low. This is due to both the weak institutional design and the particular form of the elite-determined political setting at the sub-state level in India.

The mere decentralization of power to local elites – as was the case in Darjeeling - is not enough. There must be provisions to ensure good governance, accountability of the politicians, minority protection and consociational mechanisms of power sharing. Some other features of the 6th Schedule autonomy, however, no longer appear appropriate for genuine autonomous legislation and decision making: relying on the Governor's strong role in surveillance rather than giving the judiciary the main responsibility for dissolving disputes, financial dependency on the respective state, the ADCs' lack of power to create their own revenues, gaps in the application of official language policies, the need for fair regulations for recruitment on territorial basis, and the need of forms of immigration control to the autonomous area that are compatible with fundamental rights of all citizens.

The 6th Schedule has implicit limitations, as unrest in several autonomies such as Karbi Anglong, North Cachar and Mizoram's ADCs demonstrates. Some features of this autonomy were extended in 2003, when the 6th Schedule was amended to accord greater autonomy to Bodoland. But the Gorkhaland issue can no longer

be met with the means of limited self-governance offered by the 6th Schedule. Ladakh and Telengana, and some other political movements of ethnic minorities and tribal peoples in Central India and in the Northeast are demanding different solutions of self-government. As a multiethnic and multi-religious state, India rightfully emphasizes the need for national integration and fears secessionist tendencies. Nevertheless, as in Europe, special forms of regional autonomy could probably accommodate most of the pending conflicts, while a general pattern of regionalization could decentralize the administration and bring power closer to the people. This differs from the situation in Bangladesh and Sri Lanka, in which only one single area demands and needs special regulation. It is still different from Nepal, where various regions struggle for autonomy, not merely decentralization, such as the Madhesi in the Terai and the Magar in the west, the Limbu and Rai in the East. It is first of all a democratic challenge. The democratic will of the regional community, or at least of an overwhelming majority, must be respected and be legally and constitutionally entrenched in order to preserve their rights without breaking up national boundaries. Then autonomy, with its largely positive experiences around the world, shows itself to be a viable path.

5. Fundamental rights or just power needed to achieve "power sharing"?

From a historical perspective one can see that in nearly every case territorial autonomy came as the result of a struggle, as central states do not voluntarily indulge in power sharing. Smaller peoples – national minorities in Europe, tribal communities in South Asia – had to wage long political struggles for their rights, which sometimes escalated into violent clashes and military confrontation. Such conflicts are far from being resolved in some of the European regions under consideration here, such as Corsica, the Basque Country, Trans-Dniestr and the Szeklerland. Such conflicts also afflict various South Asian states, in a much more violent form. Examples include: Bangladesh, where the small peoples of the CHT strive for genuine autonomy, Pakistan in the troublesome Northwest, the F.A.T.A. and Gilgit-Baltistan, Sri Lanka with the Tamils of the Northeast, and India, which faces several claims of autonomy, statehood, or even secession (the Kashmir Valley). The political evolution of India's Northeast clearly shows that continuous

pressure from the ground, political organization and popular pressure led first to serious negotiations between the regional communities and the Centre, then to the establishment of autonomies, and eventually to an increase in territorial autonomy. The complex power sharing settlement in the Northeastern states has not yet come to an end, nor has the Kashmir issue been resolved. The majority of tribal peoples still live in States like Madhya Pradesh, Orissa and Jharkhand, while several peoples, such as the Santhali, Gonda, Munda, and Ho are mostly scattered across several states, but often form a majority on the district level. Lacking political organization and influence they could generate movements for territorial or cultural autonomy, although it is high time they do so, if they want more attention and a real commitment for the protection of their minority rights. Reservations and tribal councils under the 5th Schedule alone are not enough. But in such complex multi-religious and multilingual societies as India, territorial autonomy must also always rely on fine tuned systems of internal balance and consociational power sharing. This can be integrated with suitable forms of cultural autonomy linked to recognized public bodies for the enhancement of all kind of cultural rights and services.

The case of Bangladesh's Chittagong Hill Tracts reveals a specific factor recurrent in achieving autonomy and in solving self-determination struggles generally: the role of power. "There is no denying the fact that the 1997 peace accord has ensured a pause in the long-standing self-determination armed conflict. However, unless the question of autonomy of CHT, which was the root cause of conflict, is resolved by implementing the peace accord and addressing the issues and challenges concerned with such implementation, it would be unrealistic to expect sustainable peace in CHT," writes Mahbubur Rahman in his analysis of the CHT case, "The sooner the provisions of the accord are implemented, the quicker will be the mitigation of many of the existing problems and the elimination of the causes of potential conflict." Today the CHT have a majority of Bangla settlers; the indigenous peoples are divided and weakened, and fringes of frustrated indigenous youth are becoming radicalized. Will the lack of constitutional and human rights once again trigger new ethnic violence?

There is historical evidence that most autonomies have only been accorded some autonomy or a federated sub-state entity after protracted political and

military conflict. The kind of political organization, and the capacity for mass mobilization and military resistance are major weapons the ethnic minorities can bring to bear in conflicts with central States. Wherever minorities are too small or too weak to organize opposition to centralist rule, State governments are likely to impose their strategies for marginalizing and assimilating such minor groups. Although the indigenous peoples of the CHT had no less legitimacy than the tribal peoples of India's Northeast, first in Pakistan and later in Bangladesh, they were unable to organize a politically united movement, and later could not and were not willing to pay the price of a protracted guerrilla war to obtain self-government, protection and autonomy. Bangladesh could carry on its neo-colonial project, crushing resistance, forcing immigration, and politically dividing the CHT-peoples under a false autonomy. As indigenous peoples typically have no kin-states on the international level, they hold a weak position.

Likewise, in Gilgit-Baltistan, where the population is ethnically heterogeneous and kept in a legal limbo without real democracy or autonomy, apart from some sporadic revolts and demonstrations no unitary front was created, and no real political power could be mobilized to underscore the people's will for autonomy. This was again the case with India's Adivasi. Whereas the tribal peoples of the Northeast developed a stronger sense of ethnic identity and carried out long struggles for secession or forms of internal self-determination, most Adivasi of the Central Indian tribal belt are scattered across multiple States, and are economically vulnerable and culturally threatened. The combination of these factors resulted in much less political weight and mobilization capacity.

If the goal is not to provoke violent resistance born of desperation, the alternative would be to create a constitutional "right to autonomy and self-government" for ethnolinguistic communities, and even forms of international entrenchment of autonomy in bilateral or international agreements, sustained by international or regional organizations.(4) Then both parties could obtain more security: the central state by having an accord respected by all, and the smaller people or ethnic communities by preserving this form of "internal self-determination".

The short conclusion of this "Short Guide" is that territorial autonomy could offer a political and legal device to find a stable solution for many open conflicts by combining minority protection with internal self-determination without changing state boundaries. In most of the working regional autonomy systems in at least 20 states of the world, such an arrangement of power sharing is meeting acceptance by both the regional community and the central states. Regional autonomy's potential as a means of conflict solution and minority protection is far from being exhausted. Secession can hardly be legitimised if a smaller people or national minority enjoys not only the full range of minority rights, but even a large degree of territorial autonomy. Elaborating, discussing and adopting an "international covenant on the right to autonomy," which could define precisely under which circumstances the right to internal and external self-determination should be recognized and autonomy accorded, could definitely be helpful in bringing about a positive solution to many ongoing ethnic conflicts.

Endnotes
1 Examples can be found in the recently (September 2007) approved UN-Declaration on the Rights of Indigenous Peoples: http://www.iwgia.org/graphics/Synkron-library/Documents/InternationalProcesses/DraftDeclaration/07-09-13ResolutiontextDeclaration.pdf

2 http://www.a-e-r.org: The Assembly of European Regions; and: http://www.coe.int/T/E/human_rights/minorities: The Council of Europe, minority rights.

3 See Adeney, Katharine, Federalism and Ethnic Conflict Regulation in India and Pakistan, Palgrave McMillan, New York 2002.

4 In 1994 a European umbrella organisation of ethnic or national minorities, the "Federal Union of European National Minorities" (FUEN) launched a courageous draft proposal for a special convention on the right to autonomy titled "Autonomy Rights of Ethnic Groups in Europe".
For the full text see Pan/Pfeil, Handbook for National Minorities in Europe, Vienna 2003, p. 278-286.

Annex 1: Power sharing between central state and region in advanced territorial autonomies

One of the core issues of establishing regional autonomies is the scheme of division of legislative and executive powers between the two government levels. Catalonia can be considered as one of the most advanced systems of vertical power sharing central state/autonomous region. Its new autonomy statute (see the full text at: http://www.gencat.cat/generalitat/eng/estatut/index), in force since 2006, describes the types of powers of the autonomous region (*Generalitat de Catalunya*) in the Articles 110-115: exclusive powers, shared powers, executive powers, powers of the *Generalitat* and European Union rules, promotional activity, territorial scope and effects of powers) in a utmost precise manner and therefore can be considered a kind of "Idealtypus" of power sharing schemes for autonomies worldwide (the new statute in English is available at: http://www.gencat.cat/generalitat/eng/estatut/index.htm).

Powers of the central state	*Shared powers*	*Powers of the autonomous entity (Generalitat in the case of Catalonia)*	
- Fundamental rights - Citizenship, immigration and emigration, asylum law and foreign nationals - Foreign affairs - Defence and armed forces - Judiciary and administration of the judiciary - Civil and labour law commercial law - Penal law and penitentiary system - Civil and penal litigation - Author's rights and copyrights - Framework acts and coordination of the general economic policy - State budget and public debt - Framework law on social security and welfare, health, public administration, environmental protection, media and print law, mining and energy - Water resources management, if the rivers cross more than one autonomous community - Railways and highways whenever crossing more than one autonomous community - Public building of national public interest - Public security, irrespective of the institution of regional or local police forces - Acquisition and recognition of academic and professional titles - Authorization of popular referenda	- Civil law - Immigration - Transport and communications infrastructures - Stock exchanges and contracting centres - Public works - Promotion and defence of competition - Work and labour relations - Public law on corporations and certified professions - Stock exchanges and contracting centres - Public security - Social security - Healthcare, public health, pharmaceutical regulation and pharmaceutical products	- Agriculture, livestock farming and forestry - Water and hydraulic works - Associations and foundations - Hunting, fishing, maritime activities and organisation of the fishing sector - Savings banks - Trade and trade fairs - Popular consultation - Consumer affairs - Cooperatives and the social economy - Public law on corporations and certified professions - Credit, banks, insurance and mutual benefit societies not included in the social security system - Culture - Geographical and quality denominations and indications - Civil law - Prosecution law - Education - Emergencies and civil protection - Energy and mines - Sport and leisure - Statistics - Public employment and staff in the employ of the Catalan public administration bodies - Housing - Immigration - Industry, craftsmanship, meteorological control and evaluation of metals - Transport and communications infrastructures - Gaming and shows - Youth - Catalonia's own language	- The environment, natural areas and meteorology - Stock exchanges and contracting centre - Media and audiovisual content services - Notarial affairs and public registries - Public works - Territorial, landscape, coastline and urban development planning - Organisation of the administration of Generalitat - Territorial organisation - Planning, organisation and promotion of economic activity - Gender policies - Promotion and defence of competition - Intellectual and industrial property - Protection of personal data - Advertising - Research, development and technological innovation - Legal system, legal procedure, public contracts, expropriation and responsibility in the Catalan public administration bodies - Local government system - Relations with religious entities - Healthcare, public health, pharmaceutical regulation and pharmaceutical products - Private security - Public security - Social security - Social services, volunteers, minors and promotion of families - The symbols of Catalonia - The prison system - Transport - Work and labour relations - Tourism - Universities - Video and sound surveillance and recordings

Newly emerging powers : transregional or crossborder co-operation, international affairs, regional citizenship, control of immigration into the autonomous region, representation in international organizations, innerline permits, linguistic rights in international bodies (EU. Council of Europe etc.)

Annex 2: The world's regions with territorial autonomy

(in 2009, according to selection criteria explained under chapter 1 - Introduction)

state	Autonomous regions/entities	capital	population
Italy	Sicily	Palermo	5.031.081
	Sardinia	Cagliari	1.650.052
	Friuli-Venezia Giulia	Udine	1.204.718
	Trentino-Alto Adige	Trento	974.613
	Val d'Aosta	Aosta	122.868
Spain (Spain has also two autonomous cities, Ceuta and Melilla)	Andalusia	Sevilla	7.849.799
	Catalonia	Barcelona	6.995.206
	Madrid	Madrid	5.964.143
	Valencia	Valencia	4.692.449
	Galicia	Santiago de Compostela	2.762.198
	Castile-Leon	Valladolid	2.510.849
	Basque Country	Vitoria/Gasteiz	2.125.000
	Canary Islands	Las Palmas de Gran C.	1.968.280
	Castile-La Mancha	Toledo	1.894.667
	Murcia	Murcia	1.335.792
	Aragon	Zaragoza	1.269.027
	Extremadura	Mérida	1.083897
	Asturias	Oviedo	1.076.635
	Balearic Islands	Palma de Mallorca	983.131
	Navarre	Pamplona	593.472
	Cantabria	Santander	562.309
	La Rioja	Logrono	301.084
United Kingdom	Scotland	Edinburgh	5.094.800
	Wales	Cardiff	2.958.600
	Northern Ireland	Belfast	1.710.300
Finland	Åland Islands	Mariehamn	26.711
Denmark	Greenland	Nuuk	56.375
	Faroe	Torshavn	44.228
Belgium	German Community	Eupen	72.000
France	New Caledonia	Nouméa	230.789
	French Polynesia	Papeete	259.596
Moldova	Gagauzia	Comrat	171.500
Ukraine	Crimea	Sinferopol	2.000.192
The Netherlands	Netherlands Antilles	Willemstad	220.000
	Aruba	Oranjestad	102.000
Portugal	Azores	Ponta Delgada	253.000
	Madeira	Funchal	265.000
Canada	Nunavut	Iqaluit	25.000
Nicaragua	Atlantic Region North	Puerto Cabezas	249.700
	Atlantic Region South	Bluefields	382.100
Panama	Comarca Kuna Yala	San Blas	47.000
Sudan	South Sudan	Juba	8.500.000
Tanzania	Zanzibar	Zanzibar	982.000
Philippines	Aut. Region Muslim Mindanao	Cotabato City	2.412.159
Papua New Guinea	Bougainville	Arawa	175.100
Indonesia	Aceh	Banda Aceh	4.031.589
India (13 autonomous district councils)	Darjeeling Gorkha Hill District, Bodoland Territorial Council, Leh and Kargil Hill Districts, North Cachar Hills, Karbi-Anglong, Garo, Khasi, Jaintia Hill Districts (Meghalaya), Tripura Tribal Areas, Chakma, Mara and Lai districts (Mizoram)		minimum 8,569,000
Total number of regions	**61**		

Note: the most significant criteria for defining a "wokring autonomy" is the presence of legislative and executive powers and a democratic framework with free and fair elections. Hence, such autonomies as Karakalpakstan (Uzbekistan), Nakhitchevan (Azerbaijan), Azad Jammu and Kashmir (Pakistan) and the F.A.T.A. (Pakistan), Irian Jaya (Indonesia) and China's autonomous areas are not included in this list.

Annex 3: Bibliography

1. Links to general information on minorities and minority rights

http://www.eurac.edu/miris: The Minority Rights System of the European Academy of Bozen

http://www.eurac.edu/Org/Minorities/Publications/EDAP/Index.htm: Online revue on minority issues

http://www.osce.org/publications/factsheets/osce_e.pdf : General fact sheet of the High Commissioner on National Minorities of the OSCE

http://www.eblul.org : The European Bureau for Lesser Used Languages

http://www.coe.int/T/E/human_rights/minorities : the Council of Europe, minority rights

http://conventions.coe.int/Treaty/EN/Treaties/Html/157 : The Framework Convention for the Protection of National Minorities FCNM

http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm : The European Charter for Regional or Minority Languages

http://www.ciemen.org/mercator : MERCATOR minority language centre of the CIEMEN, links to legislation on minority languages

http://www.nationalia.cat : Online magazine on ethnic minority issues and nations without state

http://www.ecmi.org : The "European Centre for Minority Issues" in Flensburg (Germany)

http://www.centrefortheneweurope.org : Information about the right to secession

http://allstates-flag.com/fotw/flags/es(html) : maps on all countries of the world

http://www.forumfed.org : The Forum of Federations, the world organisation of federal states

http://www.icg.org : The International Crisis Group, London

http://www.minorityrights.org : The Minority Rights Group, MRG, London

http://www.idea.int : The International Institute for Democracy and Electoral Assistance, Stockholm

http://www.eurominority.org/ : General data on European minorities and minority languages

http://www.eurolang.net : Minority network in Europe

http://nhmccd.cc.tx.us/contracts/lrc/kc/constitutions-subject.html : the Constitutions of the World

http://www.mercator-education.org : More information on minority language and education policies of minorities in Europe

http://www.unpo.org : The "Unrepresented Peoples Organization" also http://www.unpo.org/news

http://www.odci.gov/cia/publications/factbook/nt.html : The CIA World factbook

http://www.gksoft.com/govt/en/world.html : The world's governments

http://www.alertnet.org : Humanitarian crisis overview world-wide

http://bertelsmann-transformation-index.de : Reports on many countries in transition to democracy

http://www.freedomhouse.org : Reports on the development of democracy in all countries

http://www.iwgia.org : The International Working Group for Indigenous Affairs, Copenhagen

http://www.gfbv.org : The International Association for Threatened Peoples (GfbV, Göttingen, Germany)

http://www.tpprc.org : Tibetan Parliamentary and Research Centre (containing the overview on "Options for Tibet's future political status: Self-governance through an autonomous arrangement")

http://www.amnestyinternational.org : Amnesty International, London, General secretary

http://www.tpprc.org/scripts/conceptofautonomy.aspx The Tibet Justice Center's "List of autonomous subjects and terms"

http://www.hrw.org : Human Rights Watch

http://www.peacereporter.net : Peace Reporter coverage of ongoing wars

http://www.a-e-r.org : The Assembly of European Regions

2. References to autonomy

2.1 General

Marc Weller/Stefan Wolff (ed.), Autonomy, self-governance and conflict resolution, Routledge, 2005

Stefan Wolff, Ethnic Conflict – A Global Perspective, Oxford University Press 2006
Marc Weller/Barbara Metzger, Settling self-determination disputes – Complex power sharing in theory and practice, Nijhoff, Amsterdam 2008

Gnanapala Welhengama, Minority claims: from autonomy to secession, Aldershot (Ashgate), 2000

Ruth Lapidoth, Autonomy - Flexible solutions for ethnic conflicts, Washington, 1997

Markku Suksi, Autonomy - Applications and implications, The Hague 1998

Yash Ghai (ed.), Autonomy and ethnicity: negotiating competing claims in multiethnic states, Hong Kong 2000

Svante E. Cornell, Autonomy and conflict, Uppsala 2001

Anna Gamper, Die Regionen mit Gesetzgebungshoheit: eine rechtsvergleichende Untersuchung zu Föderalismus und Regionalismus in Europa, Frankfurt 2004

Hurst Hannum, Autonomy, Sovereignty and Self-determination - The Accommodation of Conflicting Rights, Philadelphia 1996

Hurst Hannum (ed.), Documents on Autonomy and Minority Rights, M. Nijhoff, The Hague/London/Boston, 1993

Hurst Hannum, Territorial Autonomy: Permanent Solution or Step toward Secession?, at: http://www.zef.de/download/ethnicconflict/hannum.pdf

Peter Harry/Ben Reilly (eds.), Democracy and Deep-Rooted Conflict. Options for Negotiators. International Institute for Democracy and Electoral Assistance IDEA, Stockholm 2004

Tim Potier, Autonomy in the 21st century through theoretical binoculars, UN Commission on Human Rights, Sub-commission on Minorities, New York, May 2001

Ulrich Schneckener, Schritte zur Autonomie – Ein Leitfaden für externe Vermittlung, CAP Munich, 2002

Stefan Simon, Autonomie im Völkerrecht – Ein Versuch zum Selbstbestimmungs-recht der Völker, Nomos, Baden-Baden, 1995

Javaid Rehman, The Concept of Autonomy and Minority Rights in Europe, in F. Cumper and S. Wheatley (eds.), Minority Rights in the 'New Europe', Kluwer Law International 1999, p.217-231

Steven Roach, Cultural Autonomy, Minority Rights and Globalization, Ashgate, 2003

Steven Roach, Minority Rights and an Emergent International Right to Autonomy: A Historical and Normative Assessment, in: International Journal on Minority and Group Rights 11, p.411-432, 2004

William Safran/Ramon Maiz, Identity and territorial autonomy in plural societies, London, 2000

Zelim A. Skurbaty (ed.), Beyond a one-dimensional state: an emerging right to autonomy?, Leiden 2005

G. Alan Tarr/Robert Williams/Joseph Marko, Federalism, Subnational Constitutions and Minority Rights, Praeger, Westport 2004

Tibetan Parliamentary and Policy Research Centre, Autonomy and the Tibetan Perspective, New Delhi 2005

Hans-Joachim Heintze, Implementation of Minority Rights through the Devolution of Powers – The Concept of Autonomy Reconsidered, in: International Journal on Minority and Group Rights, n.9, p. 325-343, Kluwer Law International 2002

Thomas Benedikter, The World's Working Regional Autonomies – An Introduction and Comparative Analysis, ANTHEM Press, Delhi/London 2007

ETHNOPOLITICS, vol.6, No.3, September 2007, National Cultural Autonomy, various essays.

Andreas Wimmer/Donlad L. Horowitz, Facing Ethnic Conflicts: toward a new realism, Rowman & Littlefield, 2004

Francesco Palermo/Carolin Zwilling/Karl Kössler, Asymmetries in Constitutional Law – Recent Developments and Regional Systems, EURAC Research, Bozen/Bolzano 2009

Francesco Palermo/Hrbek/Zwilling/Alber, Auf dem Weg zum asymmetrischen Föderalismus?, NOMOS, Baden-Baden, 2007

2.2 Europe

Stefan Wolff, Complex autonomy arrangements in Western Europe, in: Weller/Wolff (ed.), Autonomy, self-governance and conflict resolution, Routledge 2005

Joseph Marko/Francesco Palermo/Jens Woelk, Tolerance established by Law – The Autonomy of South Tyrol: Self-Governance and Minority Rights, European Academy Bozen, BRILL, 2007

Eduardo Ruiz/Markko Kallonen, Territorial autonomy and European national minorities: South Tyrol, the Basque Country and the Åland Islands, Working Papers EURAC, 2003

Thomas Benedikter (ed.), Europe's Ethnic Mosaic – A Short Guide to Minority Rights in Europe, EURAC, Bozen/Bolzano 2008, available at: http://www.eurac.edu/NR/rdonlyres/51B280EF-2EA8-4DFA-AC78-85AA5705244F/0/

EuropesEthnicMosaic_FINAL_for_website.pdf

Thomas Benedikter, Territorial autonomy as a means of minority protection and conflict solution in the European experience - An overview and schematic comparison, at: http://www.gfbv.it/3dossier/eu-min/autonomy.html

Thomas Benedikter, Territorial Autonomy – A solution for open ethnic conflict, http://www.gfbv.it/3dossier/eu-min/autonomy-w.html

Thomas Benedikter, Europe's Working Regional Autonomies – A Comparative Analysis, at: http://www.gfbv.it/3dossier/eu-min/work-autonomy.html

COR study, Decentralisation of European decision making, at: http://www.cor.eu.int/docu/docu_etu02.html

Council of Europe, Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe (rapporteur: Andi Gross), DOC 9824, 3 June 2003, http://www.coe.int/

Pär Olausson, Autonomy and the European Island Regions, Mid Sweden University&Abo Academy University, Östersund 2002

Claire Palley, Minorities and Autonomy in Western Europe, Minority Rights Group, London 1991

Christoph Pan/Beate S. Pfeil, National Minorities in Europe – Handbook (vol. 1 and vol 2), Braumüller ETHNOS, Vienna 2003

AER (Assembly of European Regions, The European Charter for Regional Democracy, at: http://www.aer.eu/main-issues/regional-democracy/european-charter-for-regional-democracy.html

2.3 South Asia

Ranabir Samaddar (ed.), The Politics of Autonomy – Indian Experiences, Kolkata 2005

Chaudhury/Das/Ranabir Samaddar (eds.), Indian Autonomies – Keywords and Keytextes, Kolkata 2005

Thomas Benedikter, Il groviglio del Kashmir, Fratelli Frilli, Genoa 2005

Thomas Benedikter, Krieg im Himalaya - Der Maoistenaufstand in Nepal, LIT Berlin/Münster 2003

Thomas Benedikter, Language Policy and Linguistic Minorities in India, LIT Berlin/Münster 2009

Mawdsley, Emma, Redrawing the Body Politics: Federalism, Regionalism and the Creation of new States in India, in: Andrew Wyatt and John Zavos (eds.), Decentring the Indian Nation, Frank Cass London 2003

Misra,Tilottama, and Udayon Misra, Movements for Autonomy in India's Northeast, in T.V. Sathyamurthy (ed.), Region, Religion, Caste, Gender and Culture in Contemporary India, New Delhi, Oxford University Press 2000

Pulloppillil, Thomas, The Bodos: An Introduction, in: Pulloppillil, T. and Jacob Aluckal (eds.), The Bodos: children of Bhullumbutter, Spectrum Publishers Guwahati 1997

Sarmah, Bhupen, The Question for Autonomy for the Plain Tribes of Assam, in: Social Change and Development, October 2002

Verghese, B.G., India's Northeast resurgent: Ethnicity, Insurgency, Governance, Development, Konark, New Delhi 1997

Adeney, Katharine, Federalism and Ethnic Conflict Regulation in India and Pakistan, Palgrave McMillan, New York 2002

Munda, RD, and Sanjay Bosu Mullick, The Jharkhand Movement – Indigenous People's Struggle for Autonomy in India, IWGIA/BIRSA, Delhi 2003

K.S. Singh, Tribal Autonomy Movements in Chotanagpur, in: Munda, RD, and Sanjay Bosu Mullick, The Jharkhand Movement – Indigenous Poeple's Struggle for Autonomy in India, IWGIA/BIRSA, Delhi 2003, p. 88-109

Erni, Christian (ed.), The Concept of Indigenous Peoples in Asia – A Resource Book, IWGIA, Copenhagen, Chiang Mai, 2008

Ahmed Ishtiaq, State, Nation and Ethnicity in Contemporary South Asia, Pinter, London/N.Y. 1996

Castellino, Joshua/Elvira Dominguez Redondo, Minority Rights in Asia, Oxford Univ. Press 2006

Rajat Ganguly/Ian Macduff, Ethnic Conflict and Secessionism in South and Southeast Asia, London, Sage Publications, 2003

Urmila Phadnis/Rajat Ganguly, Ethnicity and Nation-building in South Asia, Sage, New Delhi 2004

Rita Manchanda (ed.), The No Non-sense Guide to Minority Rights in South Asia, South Asian Forum for Human Rights (SAFHR) and others, New Delhi, September 2006

Baruah, Sanjib, Durable Disorder: Understanding the Politics of Northeast India, Oxford Press, New Delhi 2005

Baruah, Sanjib, India against itself: Assam and the Politics of Nationality, Oxford Press,New Delhi 1999,

Barbora, Sanjay, Ethnic Politics and Land Use: Genesis of Conflicts in India's Northeast, Economic and Political Weekly, 30 March 2002

Bhanmik, S., Insurgent Crossfire: Northeast India, Lancers, Delhi 1996

Bose, Sumantra, Kashmir - Roots of Conflict, Paths to Peace, Harvard University Press, 2003

Ranabir Samaddar and Helmut Reifeld (eds.), Peace as a Process: reconciliation and Conflict resolution in South Asia, Manohar Publishers, New Delhi 2001

Das, Samir Kumar, Ethnicity, State and Nation: Essays on Northeastern India, South Asian, New Delhi 2003

Dutta P.S., Autonomy Movements in Assam, Omson, New Delhi 1993

Roy, Ajay, The Boro Imbroglio, Spectrum Publication, Guwahati 1995

Ashraf Ali (ed.), Ethnic identity and National Integration, Concept Publishing, New Delhi 1994

Lama, Mahindra, Gorkhaland Movement: Quest for an Identity, Darjeeling 1996
L.S. Gassah (ed.), Autonomous District Council, Omson Publication, New Delhi 1997
L.S. Gassah, The Autonomous District Councils in Khasi Hills: A Critical Analysis, NEHU Shillong, 2006

Wangyal, Sonam B., Brief Notes on Gorkhaland, Gorkha Janamukti Aadivasi M., Darjeeling 2009

Chakrabarti, Dyutis, Gorkhaland: Evolution of Politics of Segregation, University of North Bengal, Siliguri 1988

R.N. Prasad, Autonomy Movements in Mizoram, VIHAS, New Delhi 1994

Raman D. Anita, Of Rivers and Human Rights: The Northern Areas, Pakistan's Forgotten Colony in J&K, in: International Journal on Minority and Group Rights, Vol 11, Nos.1-2 2004, p. 187-228

3. Autonomy statutes on the web:

1. South Tyrol: **http://www.provinz.bz.it/lpa/autonomy/autonomy_stat-ute_eng.pdf**

2. The Basque Country: **http://www.euskadi.net www.nuevoestatutodeeuskadi.net/docs/state_of_autonomy.pdf**

3. Catalonia: **http://www.gencat.cat/generalitat/eng/estatut/index.htm**

4. Great Britain's devolution: Scotland, Wales and Northern Ireland **http://www.devolution.ac.uk**

5. The Åland Islands (Finland): **http://www.finlex.fi/pdf/saadkaan/E9911144.PDF** or at: **http://www.lagtinget.aland.fi/eng/act.html**

6. Greenland (Denmark): **http://dk.nanoq.gl/**
Official website of the Faroe Islands (Denmark): **http://www.logting.fo**

7. The German Community in Belgium: **http://www.dglive.be/**

8. Moldova's autonomous region Gagauzia: **http://ecmi.de/cps/documents_gum_case_case.html**

9. Official website of Crimea (Ukraine): **http://www.kmu.gov.ua/en/publish**

10. The Netherlands Antilles: **http://gov.an**

11. Azores and Madeira (Portugal): **http://www.azores.gov.pt** and **http://www.gov-madeira.pt**

12. Nunavut (Canada): **http://www.gov.nu.ca**

13. The Atlantic Coast of Nicaragua: **http://www.calpi.nativeweb.org/doc_3_english_english.html**

14. The "provisional autonomy" of South Sudan: **http://www.iss.co.za/AF/profiles/Sudan/darfur/compax**

15. Zanzibar and Tanzania: **http://www.zanzibargovernment.org**

16. Muslim Mindanao (ARMM, Philippines): **http://www.armm.gov.ph**

17. Bougainville (Papua-New Guinea) **http://www.unpo.org/Downloads/BougainvillePeaceAgreement29August01.pdf**

18. Aceh (Indonesia): **http://www.NAD.go.id**
and **http://ue.eu.int/uedocs/cmsUpload/MoU_Aceh.pdf**

19. New Caledonia and French Polynesia (France): **http://www.outre-mer.gouv.fr/outremer**

20. India's regulations for territorial autonomy (6th schedule of the Constitution): **http://www.oefre.unibe.ch/law/icl/in01000.html**
and all websites under 4)

4. Websites on India's Autonomous District Councils

Tripura Tribal Areas: **http://tripura.nic.in/ttaadc**

Darjeeling Gorkha Hill Council: **http://darjeeling.gov.in**

Jaintia Hills Autonomous District Council: **http://jaintia.nic.in**

Khasi Hills Autonomous District Council: **http://khadc.nic.in**

West Garo Hills Autonomous District Council: **http://westgarohills.nic.in**

Ladakh (Leh) Autonomous Hill Development Council: **http://leh.nic.in**

Ladakh (Kargil) Autonomous Hill Development Council: **http://kargil.nic.in**

North Cachar Autonomous District Council: **http://nchills.nic.in**

Karbi Anglong Aut. District Council Ex. Comm.: **http://karbianglong.gov.in**

Karbi Anglong Autonomous District Council: **http://karbianglong.nic.in**

Mara Autonomous District Council (Mizoram): **http://www.maraland.net**

Maraland (Mizoram): **http://samaw.com/maraland**

Bodoland Territorial Council: **http://www.bodolandcouncil.org**

Bodoland general: **http://www.bodoland.org**

Darjeeling's most important weekly magazin: **http://darjeelingtimes.com**

Gorkha major political party: **http://www.gorkhajanmuktimorcha.org**

Kokborok of Tripura: **http://www.boroksite.co**

Northeastern Council: **http://necouncil.nic.in/**

5. Human Rights NGOs dealing with minority issues and autonomy

- **http://www.minorityrights.org** : Minority Rights Group International, London
- **http://www.fuen.org** : Federalist Union of European National Minorites
- **http://www.eblul.org** : European Bureau for Lesser Used Languages (EBLUL)
- **http://www.forumfed.org** : Forum of Federations, the world organisation of federal states
- **http://www.icg.org** : International Crisis Group, London
- **http://www.osi.hu** : Open Society Institute (Soros Foundation)
- **http://www.idea.int** : Internat. Institute for Democracy and Electoral Assistance IDEA, Stockholm
- **http://www.centrefortheneweurope.org** : information about the right to secession
- **http://www.unpo.org/news** : Unrepresented Peoples Organization
- **http://www.eurominority.org** : Independent website for minority issues
- **http://www.alertnet.org** : Humanitarian crisis overview world-wide
- **http://www.ciemen.cat** : Centre Internacional Escarré for Ethnic Minorities, CIEMEN, Catalonia
- **http://www.freedomhouse.org** : Reports on the development of democracy in all countries
- **http://www.iwgia.org** : International Working Group for Indigenous Affairs, Copenhagen
- **http://www.gfbv.org** : International Association for Threatened Peoples (GfbV), Germany
- **http://www.amnestyinternational.org**: Amnesty International, London, General secretary
- **http://www.hrw.org** : Human Rights Watch, independent human rights organisation
- **http://www.peacereporter.net** : Association of journalists covering ongoing wars
- **http://www.hrdc.net/sahrdc/** : Asia-Pacific Human Rights Network
- **http://www.aitpn.org** : Asian Indigenous and Tribal Peoples Network
- **http://www.achrweb.org** : Asian Centre for Human Rights
- **http://www.safhr.org** : South Asian Forum for Human Rights
- **http://www.hrln.org** : Human Rights Legal Network
- **http://www.mcrg.ac.in** : Mahanirban Calcutta Research Group
- **http://www.jesaonline.org** : Indian Social Institute
- **http://www.hrcp-web.org** : Human Rights Commission of Pakistan (HRCP):
- **http://www.humanrightsinitiative.org** : Commonwealth Human Rights Initiative (CHRI)
- **http://www.hmiindia.com** : The Henry Martyn Institute:
- **http://www.icescolombo.org** : International Centre for Ethnic Studies (ICES)
- **http://www.cpalanka.org** : Centre for Policy Alternatives (CPA)
- Coordinating Council for Human Rights in Bangladesh: cchrb@bdmail.net
- The Hill Womens' Federation (CHT, Bangladesh): hwfcht@yahoo.com
- **http://www.inseconline.org** : INSEC (Informal Sector Service Centre)
- **http://www.sznt/eu/** : Szekler National Council

Photographs

p.17, Ben Nevis (Scotland): http://de.wikipedia.org/wiki/Wikimedia_commons

p.19, The Scottish Parliament: http://de.wikipedia.org/wiki/Wikimedia_commons

p.23, Wales National Assembly Hall: http://de.wikipedia.org/wiki/Wikimedia_commons

p.25, Barcelona by night: http://de.wikipedia.org/wiki/Wikimedia_commons

p.29, Targu Mures (Romania): http://de.wikipedia.org/wiki/Wikimedia_commons

p.35, Academie de la Corse: http://de.wikipedia.org/wiki/Wikimedia_commons

p.37, Village of Ota (Corsica); J.-P. Grandmont

p.39, French Polynesia High Commissariat: http://de.wikipedia.org/wiki/Wikimedia_commons

p.41, Donostia and Basque village: http://de.wikipedia.org/wiki/Wikimedia_commons

p.43, Basque Parliament: http://de.wikipedia.org/wiki/Wikimedia_commons

p.47, Tiraspol War Memorial: http://de.wikipedia.org/wiki/Wikimedia_commons

p.50, Tiraspol Lenin's Monument: http://de.wikipedia.org/wiki/Wikimedia_commons

p.51, South Tyrol Prov. Assembly Hall: Thomas Benedikter

p.57, Tallinn (Estland): http://de.wikipedia.org/wiki/Wikimedia_commons

p.62, Greenland from space: http://de.wikipedia.org/wiki/Wikimedia_commons

p.65, Hindu festival in Guwahati: Thomas Benedikter

p.67, Gilgiti in the Northern Areas: Thomas Benedikter

p.69, Dooars woman in Kalimpong: Thomas Benedikter

p.71, Shabbir Shah and Martyr's day in Anantnag: Anjul Gupta

p.73, Maoist theatre in Rukum (Nepal): Thomas Benedikter

p.79, Karbi Anglong Assembly Hall: Thomas Benedikter

p.81, Khasi in Sohra (Meghalaya): Thomas Benedikter

p.83, Karbi in Diphu and information board: Thomas Benedikter

p.87, Bengali immigrants in Meghalaya: Thomas Benedikter

p.87, Bodoland arms surrender 2003 in Kokrajhar: ABSU

p.89, Kumzang (Leh, Ladakh): Thomas Benedikter

p.90, Ladakhi women: Thomas Benedikter

p.93, Army Forces in Jammu and Kashmir (India): Thomas Benedikter

p.95, Popular riots in NWFP: http://de.wikipedia.org/wiki/Wikimedia_commons

p.98, Maj Hussain Shah in Gilgit: Thomas Benedikter

p.101, Chakma woman in CHT: Mahbubur Rahman

p.107, Darjeeling and Nepali men: Thomas Benedikter

p.109, Bimal Gurung and Gorkhaland signboard: Thomas Benedikter

p.110, Roshan Giri: Thomas Benedikter

p.111, Rally of the GJMM in Darjeeling: Thomas Benedikter

p.113, Bodoland ceremony December 2003: ABSU

p.115, Bodo woman in Kokrajhar: Thomas Benedikter

p.116, BTC Bodoland headquarter in Kokrajhar: Thomas Benedikter

p.117, P.K. Hazoari: Thomas Benedikter

p.118, BTC Legislative Hall in Kokrajhar: Thomas Benedikter

p.119, ABSU general secretary: Thomas Benedikter

p.121, Jaffna army patrols: Thomas Benedikter

p.123, LTTE graveyards in Kopai and Trincomalee: Thomas Benedikter

p.127, Khasi Monument and monks in Ladakh: Thomas Benedikter

p.129, ADC Jaintia Hills and C.E.M. Nongdtu: Thomas Benedikter