CONFLICT RESOLUTION THROUGH TERRITORIAL AUTONOMY – HAS IT WORKED?

Factors for the Success of Territorial Autonomy in Theory and Practice and Conclusions for the Case of the Sahara

Region of Morocco

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Chapter 1

Introduction

In April 2007 the Kingdom of Morocco presented to the United Nations (UN) Secretary General, Ban Ki-Moon, its proposal to grant substantial autonomy to its southern provinces – the Sahara Region (which had been a colony of Spain) – dubbed "Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region". While the regional dispute before the UN is still pending, Morocco is interested to come to a compromise, based on an extended territorial autonomy for the Sahara Region while preserving the sovereignty of Morocco and the unity of the State. Although, with its initiative, Morocco aims to meet high standards of regional self-government and minority protection, it would be useful to compare the design of the proposed autonomy, based on a draft autonomy statute, to assess its potential for solving the conflict between the autochthonous population and the Moroccan State in order to ensure peace, stability, self-rule and the preservation of individual and collective human rights in the concerned area.

Many questions have arisen as to the feasibility of territorial autonomy in the current political system of Morocco. While the Western Sahara independence movement POLISARIO is outright opposing the autonomy proposal, some Western powers such as the United States, France and other European Union (EU) member countries favour the plan to establish autonomy in the Sahara Region in order to achieve a permanent peaceful settlement of the 44-year-old conflict. Nevertheless, a number of scholars have expressed scepticism about both the feasibility and appropriateness of the autonomy proposal.[2] Other analysts insist that prior to granting territorial autonomy "*the rule of law and full respect for human rights, widely considered key to the smooth functioning of autonomous regions, would have to be instituted first*".[3]

From a fundamental viewpoint, it has to be kept in mind that genuine autonomy can successfully unfold only in a context of a democratic political system with rule of law, which includes first of all an independent judiciary and

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[2] Examples: Stephen Zunes and Jacob Mundy (2010), *Western Sahara: War, Nationalism and Conflict Irresolution*, New York, Syracuse University Press; International Crisis Group, "Western Sahara: out of the impasse", *Middle East/North Africa Report* no.66, June 2011.

[3] Anna Khakee, "The Western Saharan autonomy proposal and political reform in Morocco", in: *NOREF Report*, June 2011, p.1

horizontal division of powers. To make it short: true autonomy can only exist within a democracy in both the concerned autonomous region and in the state at large. Recent progress in the Kingdom of Morocco towards the international standards of pluralist parliamentary democracy and the rule of law at every level of government contribute to creating propitious perspectives for a successful establishment of territorial autonomy in its Sahara Region.

This paper picks up the key term of "success or failure" of a territorial autonomy as a system of vertical power sharing between the central state and one or some territories under its jurisdiction to settle a conflict between these actors. As territorial autonomy has been widely tested since almost 100 years, it is possible to carve out single criteria of success, based on empirical evidence drawn from about 60 cases in 20 countries around the world. While some autonomy systems have failed due to various reasons, the major part of autonomous regions ever established is still working, some sufficiently well, others less. Some autonomous regions are autonomous only by name; other previously autonomous communities have democratically decided to shift to another constitutional status as in some cases territorial autonomy in the long term did not fulfil the aspirations of the concerned people.

The purpose of this paper is to sum up such central criteria of success of an autonomy before coming to assess, on the background of such criteria, how Morocco's Initiative on Autonomy for the Sahara Region is likely to be successful. But first, we start with an overview on current developments in the "world of autonomous territories" and with some lessons derived from the application of territorial autonomy with regard to success or failure of autonomy systems.

Chapter 2

Conflict Resolution through Autonomy: an Overview

Territorial autonomy is supposed to be an appropriated device to solve conflicts between central states and ethnic communities different from the state's titular majority people, settling homogenously on their traditional home region. Such communities can also be ethnolinguistic minorities, smaller nations (people), indigenous peoples or communities defined just by their particular geographical position with regard to the mainland or their particular history different from the state at large. Autonomy is a mechanism of vertical power sharing to solve internal conflict, to decentralize state power and to accommodate a separate ethnic or regional identity. The basis for an autonomy system is mostly a homogenously settling ethnic group considering its territory as a separate entity but respecting the state's intent to avoid dividing its territory. Today, worldwide, some 58 regions or other sub-state entities can be qualified as modern systems of territorial autonomy according to criteria of definition based on democracy and rule of law.[4]

Ethnic conflict in history often has led into a vicious cycle: violent insurgency, state repression, violation of human rights and massive persecution, traumatized population, democracy jeopardized, freedoms and liberties restricted or abolished. As Ghai and Woodman wrote, "[c]*ountries bedevilled by ethnic conflicts rarely achieve their economic potential. Conflict drives away investors, domestic capital and local qualified youth willing to launch new enterprises, skilled and educated people emigrate, the general level of education declines, large parts of state revenue are wasted*

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[4] Thomas Benedikter (2010), *The World's Modern Autonomy Systems,* EURAC Bozen (download from Internet), and Thomas Benedikter (ed., 2009), *Solving Ethnic Conflict through Self-Government*, EURAC Bozen (download from Internet).

for security and arms."[5] Autonomy has served to settle such conflicts, carried out also by military means, as Bougainville (Papua New Guinea), Mindanao (Philippines), Aceh (Indonesia), the Basque Country (Spain), Kurdistan (Iraq), Atlantic Coast of Nicaragua, Northern Ireland, Bodoland (India), etc.

Europe still is home to the majority of working autonomies (38 single regions out of 58 worldwide), and in most cases autonomy has proved to serve as a device to settle ethnic and centre-region conflicts. In some countries, territorial autonomy was not mainly established due to ethnic conflicts, but just to strengthen vertical power sharing between the central state and the concerned region. As in federal systems, autonomy in this sense allows for more regional democratic self-government, but limited for one or some sub-state units. In the following paragraphs is a brief overview on the world's working autonomies.

— In **Italy**, the five regions with a special autonomy statute (Trentino-South Tyrol, Aosta Valley, Friuli Venezia Giulia, Sardinia, and Sicily), established in 1948, are entitled since 2001 to adopt a general reform of their autonomy statute also by participatory procedures, but those regions have not carried out such an operation yet. Actually priority is given to the enlargement of autonomous powers of three regions of Northern Italy with ordinary statute (Lombardy, Veneto, Emilia-Romagna), shifting Italy's system from a symmetrical regional state to a "system of differentiated autonomies". This process is not driven by ethnic conflict or claims of minority communities, but by the widespread interest of the economically richer Northern regions to exercise major control on public resources.

— In **Spain**, the only state fully composed by autonomous communities (and two autonomous enclaves on Moroccan territory), the most striking process of recent years has been the attempt of national self-determination of Catalonia culminated in the popular referendum of 3 October 2017. One of the main reasons of this process towards secession should be kept in mind: although in 2006 a new autonomy statute was adopted by the Catalan Parliament first and its electorate later, in 2010 essential parts of this new statute were cancelled by the Spanish Constitutional Court, driving major political forces in Catalonia on the road to secession. However, territorial autonomy as the basic principle of the Spanish state's internal

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[5] Yash Ghai and Sophia Woodman (2013), *Practising Self-Government, A Comparative Study of Autonomous Regions,* Cambridge University Press, p. 451.

organisation has not been questioned and keeps on to be the widely accepted basis for power sharing for the remaining 16 autonomous communities.


– In **Belgium** (German Community, part of Wallonia), **Finland** (Åland Islands), **Portugal** (Madeira and Azores) and **Denmark** (Faeroe Islands and Greenland), autonomy is working smoothly and no kind of tensions between the central state and the concerned autonomous entity are reported.
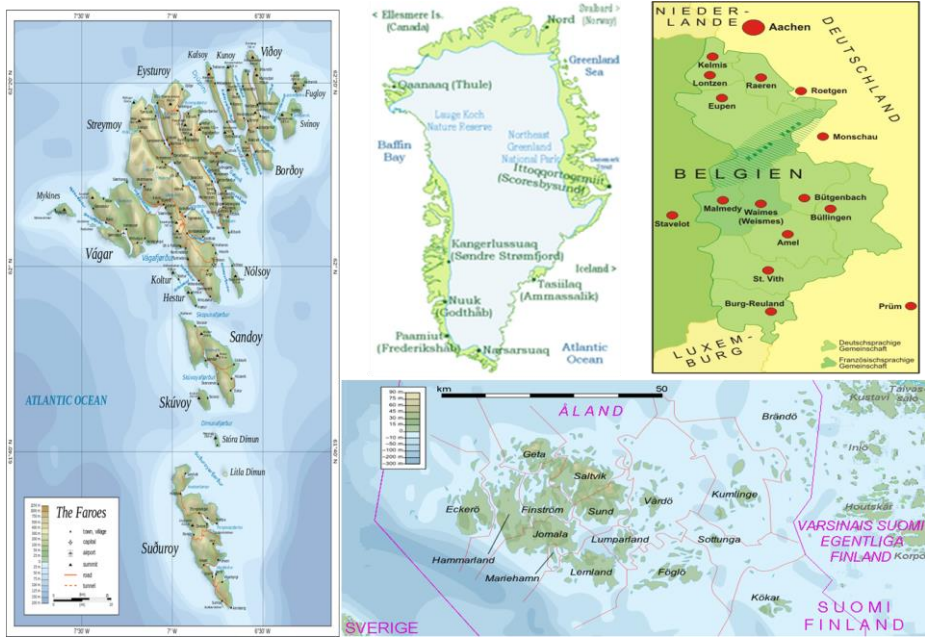
– The issue is different for the **United Kingdom**. In September 2014 the autonomous country of Scotland held a

popular referendum on whether to become an independent state or retain autonomy. As in Spain again, this cannot be deemed a failure of autonomy, but should be interpreted as a democratic expression of the deep-rooted aspiration of the Scottish people to regain statehood after more than 300 years of British rule. As the majority of the voters preferred autonomy, and as the result of the referendum led to a strong effort to enlarge its autonomy, finally genuine autonomy has prevailed. In Northern Ireland, self-governance is linked to a complex consociational arrangement between the two communities (Catholics and Protestants), a permanent challenge for the political parties involved. While the background of the EU for all autonomy solutions within the Union is helpful, the breakaway of the UK from the EU (Brexit) is causing serious troubles for Northern Ireland. This reminds us of the importance of a kin-state, of trans-border cooperation and international integration as well as of consociational arrangements among different ethnic groups within the autonomy systems: factors of success which will be stressed in chapter 3 and 4.
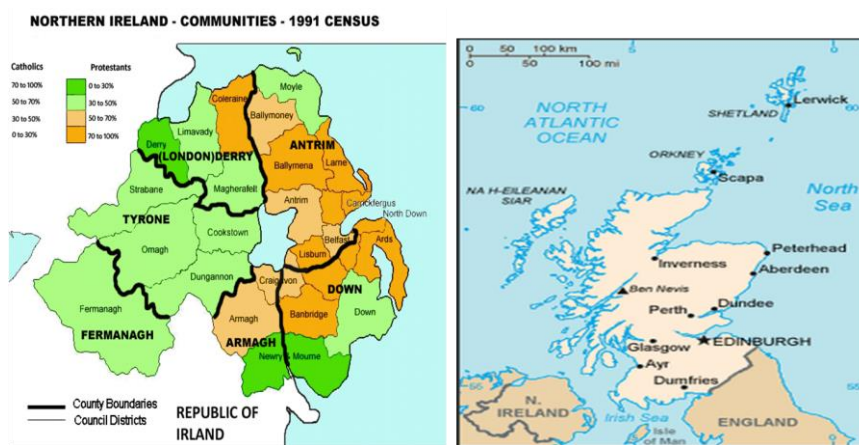
—   In **France**, recently territorial autonomy is gaining ground in two different regions with a different legal and political status: Corsica and New Caledonia. The latter held a popular referendum on independence in December 2018, which saw the option of secession clearly defeated. The majority of New Caledonians preferred to keep the status of an autonomous "Overseas Collectivity". In Corsica, since the victory at polls of the political front for self-government in 2015, new political negotiations have been launched to enlarge the autonomy of the island. Secession is not anymore an issue since its supporters are marginalised.

—   From **Serbia**'s Vojvodina no major tensions or cutbacks are reported, although this region suffers from

general problems regarding Serbia's economy and public finances.

— **Moldova**'s only autonomous region, Gagauzia (155,000 inhabitants), has been established in 1994 and entrenched in the national constitution. In 2014 also in Gagauzia claims were raised for independence. Without any consent by Moldova's central government a referendum was held on 2 February 2014. Some 98.4 percent voted for a closer relationship with Russia and the Commonwealth of Independent States (CIS) member countries. Gagauzia's autonomy statute provides for its right to self-determination whenever Moldova would cease to be an independent state. In the same referendum, 97.2 percent of the Gagauzian voters expressed a veto against a closer relation with the EU. Moldova in 2009 has accessed to the EU-program "Eastern Partnership". The referendum was declared illegal and in violation to the Constitution.

— On the other hand, in some other states of **Eastern Europe** and the **Caucasus** region, territorial autonomy is on the table in order to solve long lasting ethnic conflict, but did come to a breakthrough yet. In some cases territories seceded by violent means and declared themselves "independent republics" not recognized by hardly anyone else than Russia (Abkhazia and South Ossetia in **Georgia**, and Transnistria in **Moldova**). Although autonomy was offered by their former states, this solution has been rejected by the breakaway territories. **Romania** since almost 20 years rejects every request of its large ethnic Hungarian minority of Transylvania to achieve territorial autonomy for the so-called "Szeklerland". This currently is the most critical conflict on territorial autonomy within the EU.

— Autonomy is an issue also in **Latin America**, where it is not properly implemented in **Nicaragua**'s two autonomous regions, "Atlantic Coast North" and "Atlantic Coast South." Conversely in **Chile**, a large ethnic community of the indigenous people of the Mapuche demands territorial autonomy for their region, Wallmapu, located in the centre of the country, so far without success.


— In **Africa**, despite several serious crises triggered by ethnic diversity and conflict, a modern system of territorial autonomy is currently working only in Zanzibar (**Tanzania**), while it is envisaged for **Morocco**'s Sahara Region to bring about a stable and peaceful solution.

— The development of territorial autonomy in **Asia** appears more contradictory. On the one hand, in some cases territorial autonomy is not only well entrenched in the country's constitution and accepted by the concerned population (Aceh,

Indonesia), but the Bangsamoro Autonomous Region (**Philippines**) is currently even extended to a much larger area including all territories inhabited by a majority of Muslims (previous name "Autonomous Region of Muslim Mindanao, ARMM). On the other hand, no progress is reported for the attempt to solve the long-lasting armed conflict between the central government of **Thailand** and the Muslim majority of the Pattani region in the South by means of territorial autonomy. In the island of Bougainville, an autonomous region of **Papua New Guinea**, in 2020 a popular referendum on possible independence will be held according to the autonomy statute of 2002. Secession was also the issue in the Autonomous Region of Kurdistan in **Iraq**, where a referendum on independence was organized in October 2017. Although more of 90 percent of the voters were favouring that solution, the whole operation failed as neither the Iraqi state nor international actors recognised the process. Autonomy is an issue also in post-war **Syria**, as the Federation of Northern Syria-Rojava, a multi-ethnic, pluralist and multi-religious community mostly inhabited by Kurdish people, is striving for territorial democracy under a new democratic, federal and secular constitution.

Territorial autonomy in ASEAN countries: Bangsamoro (Philippines), Aceh and Papua (Indonesia), Pattani (Thailand, to be established). In Oceania: Bougainville (Papua-New Guinea).
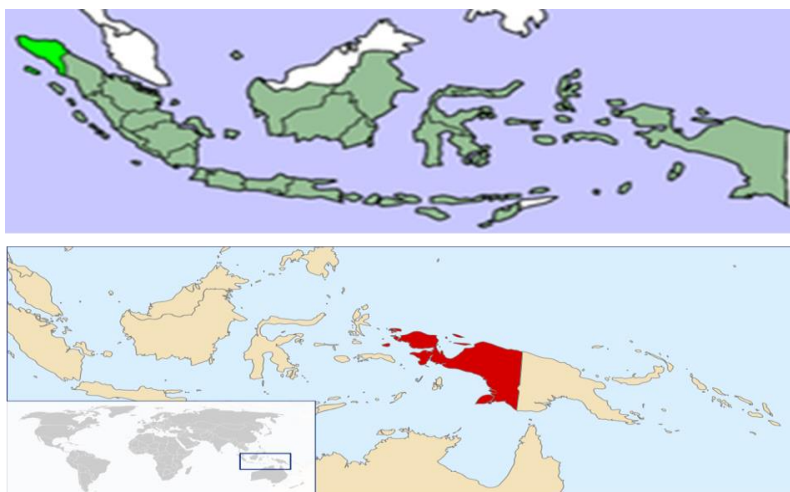
Considering some efforts for self-determination and secession in various autonomous regions, often the objection is raised that autonomy rather than a stable solution would be a step towards secession. For two reasons such developments towards democratic self-determination must not be regarded as traumatic events.

First, autonomy processes in history have often helped to shift the conflict from a violent armed struggle to a peaceful confrontation on political level. Even violent fringes of self-determination movements, like the ETA in the Basque Country, radical groups in Corsica, and the IRA in Northern Ireland, relinquished the strategy of violent confrontation when advanced forms of autonomy came to the negotiation table. Protracted violent insurgency in those cases has eventually evolved towards a compromise on the form of autonomy, sometimes backed by a kin-state. Apparently a growing number of states have acknowledged that autonomy can serve to integrate national minorities into the state and to stabilise the conflict in situations otherwise prone to get out of control. This happened also in Bougainville, Aceh, in Mindanao, Bodoland (India) and Nicaragua (Atlantic Coast).

Second, in most cases of the currently working modern systems of territorial autonomy, no serious secessionist movements are still operating. When autonomy is established and respected by the central state, endowed with sufficient resources, fully implemented as a legal framework for self-government and also governed with sufficient consociational respect and protection of minorities, usually no secessionist claims are gaining ground.

Chapter 3

Some Lessons from Europe's Territorial Autonomies

3.1. Practical Lessons Learned

Modern territorial autonomy today is working worldwide in at least 58 regions of 19 countries with a differing degree of self-government and differing scope and depth of autonomy vis-à-vis the central state. Some 38 of those regions are located in Europe. In combination with other forms of autonomy (e.g. cultural autonomy), territorial autonomy has revealed to yield a high capacity of conflict resolution and minority protection. Which lessons can be drawn from the European experiences with territorial autonomy? A comparative analysis of such experiences has to begin with the fundamental goals of every territorial autonomy system and the corresponding regulations. To measure the efficiency and quality of all these regulations would require a highly complex set of indicators, which hardly can be empirically assessed. What can be done is to gauge the success of an autonomy system according to its fundamental goals.[6]

Most autonomy statutes are tailor made for the respective political context of a region or community, sharing the fundamental purpose of regional self-government. More concretely: a regulation suitable for the German Community of Belgium may not necessarily be sufficient for Greenland or South Tyrol. A provision that has brought about positive results in Åland may not be appropriated for Italy's Aosta Valley, as the population could have different needs and preferences.

In reality, in most cases, territorial autonomy had to match two or three main objectives, namely granting self-governance in a limited area, protecting the national minorities living in that area and ensuring a lasting, peaceful and

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[6] Nevertheless, we can define on a theoretical level which "functional elements" compose the minimum standard of any territorial autonomy and which regulation of these functional elements could be the optimum in order to accommodate the interests of the conflict parties respectively.

cooperative relationship between a territory and the central state. Besides the conflict between the central state and the region enjoying or seeking autonomy, such autonomy often has to tackle a double challenge regarding democracy: to grant the protection of the national minority on its traditional homeland giving them more power of decision making but at the same time to include all the groups living in that area into the self-governance system. Territorial autonomy should benefit a whole regional community, not only one group of the population.

According to the specific premises and conditions of a region and national minorities, each autonomy system in Europe shows a particular "architecture" and particular mechanism to ensure participation, conflict solving, power sharing, minority protection, and stability.[7] These autonomies are "work in progress", involved in dynamic processes of reform, correction and transformation. By definition, they have to be dynamic, giving space to new answers for a developing society. On the other hand, there are some elements and conditions which have turned out to be key factors of success. New autonomy projects and negotiations have to take them into account, avoiding repeating the harmful mistakes made in some other cases and adopting devices more likely to bring about a successful solution.

Keeping in mind this basic information about working autonomy systems, some lessons can be drawn from the European experiences:

1. **Autonomies have not been a mere act of unilateral devolution of public powers**. Establishing, entrenching and amending the autonomy were mostly based on a genuine negotiation process and constitutional consensus. This implied negotiations between political representatives of the concerned regional population and the central government.

2. **Autonomy is an open, dynamic, but irreversible process, which has to involve at least three players**: the representatives of the national minorities, the central government, and the representatives of other groups living in the same autonomous territory. All their interests have to be brought in a balance, with a strong role of the civil society and the media in building up a culture of common shared responsibility for peaceful co-existence.

3. **There should be a possibly complete set of functions and powers to endow local institutions with true potential of self-governance**. Sufficient powers make autonomy meaningful and should encompass legislative, executive and judicial powers, which have to be transferred in an unambiguous way. Where autonomous powers are too weak, tensions with the central state keep alive.

4. **Autonomy could offer the necessary institutional framework for minority cultures and peoples and languages** insofar as the regional institutions are endowed with all culturally relevant powers and means, especially in the field of education, culture and media.

5. **Implementing autonomy takes time**. An implementation plan is to be incorporated in the conflict settlement process. This sometimes is a very technical, long-lasting undertaking.

6. **Autonomy has to be effectively entrenched, if not at an international level or bilateral level (kin-state), at least on a constitutional level**, preventing it from being exposed to the vulnerabilities of changing political majorities in a central parliament.

7. **There has to be a solid system of finance and sufficient provisions to allow the autonomous entity to control local economic resources**, in order to ensure a positive social and economic development of the region.

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[7] This is correct for Italy with its five "Regions with a special statute" and for the United Kingdom with its three autonomous "countries" Wales, Scotland and Northern Ireland. But it is also a matter of fact in Spain, where all 17 autonomy statutes show some specific issues and pertain to a different category of advanced or less advanced form of autonomy.

Otherwise autonomy remains an issue of paper.

8. **Within the autonomous region, particularly when there are two or more ethnic groups sharing the same region, consociational arrangements have to be established** to grant access and participation to power to all relevant groups living in same territory.

9. **Regional integration, trans-border-co-operation with kin-states or integration in regional supranational organisations have definitely been helpful in ensuring autonomy solutions**. Moreover, in Europe, there are even forms of participation of autonomous entities in international organisations, exerting influence when the territory is affected.

10. **In order to ensure the effective operating of autonomy and in the case of overlapping powers between the state and the autonomous entity there is a need of "neutral instances" of mediation and arbitration or an effective mechanism of conflict solving**. Such a role can be attributed to the Constitutional or Supreme Court of a state or various forms of joint commissions with an equal number of members of the central state and the autonomous region. This has happened in various European states.

One major lesson to be drawn is that genuine modern autonomy is a viable arrangement to prevent the escalation towards a secession conflict. But autonomy, as recurrently pointed out, cannot be considered as a *panacea* or a 'shelter for all seasons', which can solve immediately all problems of national or ethnic minorities. Territorial autonomy should rather be viewed as an instrument for the effective protection and emancipation of minorities, for securing their equality in politics and economy and for minimizing the risks of disadvantage, marginalization and exclusion.

From the major part of historical examples of territorial autonomy emerges that autonomy has not been disruptive to territorial integrity. The claim for secession and concrete movement towards secession came up mostly in cases where autonomy either was denied or curtailed (South Ossetia, Abkhazia, Eritrea, Kosovo, Kurdistan-Iraq, Tamil Eelam, South Sudan, the Donbass region in Ukraine). Secession movements are strong in such regions, where genuine autonomy is either not applied or promises of autonomy have not been kept by the state.

Indeed, in the light of worldwide experience, autonomy can be rather seen as a 'win-win' solution:

> *"An autonomy arrangement should not be viewed as a zero-sum game whereby the allocation of a competence to an autonomous unit diminishes the competence and power of the central government and thus diminishes the effectiveness of the state machinery. On the contrary, viewed in the context of overall effectiveness of the state machinery in terms of its impact on democracy, good governance and human rights as well as the maximisation of the welfare of the whole population of a state, autonomous arrangements present themselves as powerful tools to ensure these values."*[8]

3.2 Factors of Success from an Analytical Perspective

What are the crucial conditions for the lasting success of an autonomy status? Some experts[9] cite its durability, others propose a list of central criteria ranging from factors measuring political stability up to factors of social and economic

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[8] Zelim A Skurbaty (2005), *Beyond a One-dimensional state,* p. 566.

[9] Kjell-Ake Nordquist (1998), "Autonomy as a Conflict-Solving Mechanism: An Overview" in: Markku Suksi (ed.), *Autonomy: Applications and Implications*, pp. 59–77.

performance of the concerned region. Apart from such a comprehensive evaluation of the results of autonomy systems, usually an autonomy system has to match against criteria derived from the very purpose of that arrangement:[10]

- Has a significant degree of self-governance been ensured?
- Is the ethnic and cultural identity of a national minority protected?
- Has a violent conflict with the central state ended and has the unity of the state been preserved?
- Is peaceful coexistence of two or more ethnic groups in the concerned region facilitated?
- Are equal chances for all citizens ensured, regardless of their ethnic affiliation?

These general criteria need a careful transformation into empirical categories. Andi Gross,[11] in his report for the Council of Europe, identifies as basic factors of success:

- **The legal design**: history shows that it is easier for the granting of autonomy to be considered legitimate if the territory concerned is clearly delineated and its cultural dimension clearly defined.

- **Geopolitical and demographic aspects**: the autonomous region's distance from or proximity to the central government may determine the political relations between the two tiers of government. Key issues are the number and size of ethnic groups that make up the region's population, their relationship with one another and the central government and the relation between the minorities and the majority population of the state.

- **Political and institutional aspects**: the success of an autonomy system depends on certain political conditions, such as the quality of the relations between the entity, the state and neighbouring states and clear regulations governing the powers of the central authorities and these entities. If the region and the central state share the same aspirations, the central state will grant wider powers.

- **Social, financial and institutional aspects**: adequate material and financial resources are needed to enable the autonomous entities to effectively implement their autonomous powers.

- **Cultural aspects**: when the members of a minority in a particular entity represent a substantial proportion of the population that warrants specific protection, appropriate measures should be taken to preserve their identity.

- **Respect for human and minority rights**: this issue has an extremely important role to play in autonomy systems. The competent body and the standards to be applied must be clearly defined. When an autonomous entity has been established, the principles of equality and non-discrimination must be respected. The autonomy status must guarantee the rights of the ethnic groups that are different from the majority group in the region as well as the majority group in the state. Specific steps must be taken to protect the "minority within a minority", so that the members of a majority population or other minorities do not feel threatened.

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[10] "*Autonomy is considered a success over the long term if it has been established for a long time, and if democratic structures representing the interests of the autonomous entity have been put in place. Autonomy is positive over the short term when it has been established as a mechanism of peaceful settlement of political conflict*." See Andi Gross, DOC 9824, 3 June 2003, p.45, at http://www.coe.int.

[11] Council of Europe, "Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe" (Rapporteur: Andi Gross), DOC 9824, 3 June 2003, http://www.coe.int/. In his report, Andi Gross considers the Åland Islands and South Tyrol as the two "most successful historical cases of autonomy".

- **Consociational mechanism**: there is also a need of a consociational mechanism in order to settle the conflict among single social and tribal groups sharing the same autonomous territory.

- **Flexibility of the arrangement**: finally, one recurrent acknowledgement is that each autonomy model is tailored to solve specific problems. Autonomy allows conflict solving on a political level, stability and security. But autonomy systems are not in equilibrium forever: they develop like an ecological system being exposed to external influences and internal transformation. Hans-Joachim Heintze argues that autonomy should not be seen as a static phenomenon but as a phenomenon changing through time and space.[12] This leads to different autonomy arrangements occurring during various periods. Also, after the solution of a conflict between central states and national minorities or regional communities, they cannot be static but have to continuously develop and adapt.[13]

Summing it up, a form of territorial autonomy is successful not only if the conflict between the central state and the region or ethnic community claiming autonomy has calmed down. Territorial self-governance is aimed at achieving multiple goals. Thus success or failure has to be measured against all such criteria of success and expectations. When and under which circumstances can a working territorial autonomy be qualified as successful?

- **First** of all, the autonomy system should be effectively applied. This appears to be self-evident, yet in some cases, although being approved at the national level, autonomy has not been applied in all the required legal terms and even less on the ground in the political reality of the concerned region.

- **Second,** success can be registered if an open and violent conflict could be suspended or ceased for a minimum duration. In history, in many cases, the establishment of territorial autonomy has been preceded by violent or even military conflict between the central state forces and rebel or resistance groups of the concerned region, smaller nations, indigenous people or ethnic minorities. Even when such a conflict is calmed down and efforts are made to settle it by political means such as territorial autonomy, deeper causes of conflict do not immediately vanish, but just shift to a political level and can be tackled within democratic institutions and before the judiciary.

- **Third,** success of an autonomy system can furthermore be measured in the international recognition of an autonomy solution, both by the neighbouring states directly concerned and by international organisations. Basically, a working autonomy status does not require international recognition, but just an entrenchment in domestic ordinary or constitutional law is required. Whenever a self-determination conflict was linked to an international conflict, success entails also the appeasement of such international conflict upon that issue.

- **Fourth,** to assess success of an autonomy system, it has to be critically analysed to check whether its main goals could be implemented at least partially. If the starting point has been a conflict between the central state and a mostly peripheral territory of that state, a minimum of effectively achieved self-government can be qualified as success. In history, in many cases, territorial autonomy has been established due to the

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[12] Hans-Joachim Heintze (1998), "On the Legal Understanding of Autonomy", in Markku Suksi, *Autonomy - Applications and implications*, The Hague, p. 19-20.

[13] Yash Ghai emphasizes the way by which autonomy solution is achieved by conflicting partners, starting from the assumption that "*conflict is inherent to human groups and organization*". The heart of the matter is whether it is conducted by civil process, by equitable rules, through dialogue and bargaining, in a framework facilitating cooperation and reconciliation. See Yash Ghai (2000), *International Conflict Resolution after the Cold War*, National Academics Press, Hong Kong, p. 506.

necessity of respecting the right to self-determination of a people different from the dominant nation of that state or to the protection of ethnolinguistic minorities living quite homogenously in their ancestral territory. Thus, not only must general human rights under international conventions and the national constitution be safeguarded, but it should be ensured that the concerned minorities living in the autonomous region are not anymore risking assimilation or discrimination in social and political terms. Such a factor of success can only be assessed in a medium- or long-term period.

— **Fifth,** conflict resolution does not only embrace the regulation of conflict between the central state and the autonomous region, but also the conflict inside the concerned region. In history, quite often, violent clashes and conflicts occurred between different ethnic groups sharing the same home region. Furthermore, the members of the national titular people (national majority population) residing in the area feel threatened by the assignment of strong powers to the representatives of the national minority population, due to introducing autonomy with democratic bodies elected by democratic majority rule. In such a situation, success would mean that, by institutional legal arrangements, such conflicts could be definitely shifted to a peaceful democratic level, as in living societies conflicts among groups cannot even be solved definitely.

— **Sixth,** one major criterion of success is the degree of social and economic development of a region. Autonomy should not only provide the full protection of minority rights and self-government, but the survival of both the autonomy system and the minority groups supporting it is linked to the economic and financial working capacity of that system. In history, some cases have occurred when autonomous regions where starved out in financial terms.

Having a clear set of criteria of success in mind, we are able to assess all the currently working autonomy systems regarding their record of "success". It should be clear that a modern autonomy system under the present approach means a device of power sharing legally entrenched in a democratic political system of a state with rule of law. A minimum of legislative and administrative powers have to be permanently transferred to the autonomous region, while preserving the equality of citizens' rights of all citizens legally residing in the concerned region.

Chapter 4

Factors of Success and Failure of Autonomy Systems

Every demand and practice of autonomy takes place within a historical context of political, cultural, democratic and geopolitical dimensions. There is no model of historical experience which can be transferred mechanically into another context. However, the study of the autonomous entities in Europe and in other continents as well allows for drawing up a list of factors conducive to a lasting success of self-governing regions. If such factors are systematically ignored, insufficient performance or even failure will be more likely.

4.1   The International Context of the Autonomy and Kin-states

Third-party actors such as kin-states of the minority community claiming autonomy or the international community represented by their organisations are also crucial for the stability of an autonomy solution in the long term. Some working autonomy arrangements are rooted in bilateral treaties as there have been negotiations and agreements

between the kin- and the host-state (South Tyrol, the Åland Islands, Bougainville, Northern Ireland). International support and monitoring is also important to ensure the full implementation of the autonomy statute. This happened for instance in South Tyrol with the Gruber-Degasperi Agreement and the so-called "autonomy package". This autonomy came through a bilateral negotiation between Austria and Italy, while the main political party of the South Tyrolean people in 1969 had the opportunity to accept or reject the new autonomy statute. In South Tyrol after 1948, Austria had to press hard before the UN to force Italy to comply with its obligation under the Gruber-Degasperi Treaty. And only after 20 years of implementation in domestic law did Austria issue its official declaration of the end of conflict.

The existence of a kin-state of the autochthonous population of the autonomous territory is definitely useful for the stability of the autonomy as usually both states parties are interested in good neighbourhood.[14] However, engagement and monitoring by an international organisation or a kin-state must not end after the establishment of autonomy, but the latter should remain active as a watchdog.

The involvement of third parties can also ensure to provide for technical support and training to the authorities of the autonomous area. Referring to the Sahara Region, the UN also still has an important role to play. Moreover, international agreements embrace dispute resolution mechanisms too. Recourse can be claimed before the International Court of Justice. This has been established in the case of South Tyrol, but has never been used by Austria so far.

4.2 Democratic Legitimacy of the Autonomy Solution

The democratic legitimacy of an autonomy system depends on multiple factors:

- Has the autonomy been created through a negotiation between the concerned parties?
- Or has the autonomy been imposed by international or domestic actors?
- Has there been any popular participation to the negotiations for achieving autonomy?
- Finally, has the autonomy status been approved by a freely elected assembly of the concerned region including the indigenous people or autochthonous population's consent? Or even by a popular referendum?

The sub-state entity regularly emerges due to political mobilization of a part of the state's population interested in the self-perpetation of the ethnic, linguistic, religious, cultural, legal or regional characteristics which singles out the respective population segment, mostly the autochthonous people within its traditional territory. Thus one central condition of the very existence of territorial autonomy is that this territorial-administrative entity has to be legally recognised as a legal person under public law with a set of institutions and a clear legal standing and guaranteed funding. This recognition must be entrenched in domestic ordinary or constitutional law and possibly with international agreement. For Salat et al., "*[t]he success of any autonomy arrangement can be measured with the help of two major indicators: the impact on the stability of the overall arrangement and the contribution to the desired self-*

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[14] "*The involvement of other, mostly neighbouring states and international agencies clearly makes it more likely that the option of autonomy will be considered*" (Ghai/Woodman, 2013, 454). In the case of Åland in 1921 the League of Nations did not alter the boundaries of existing states. There is a general reluctance to intervene into internal affairs of a state or to change boundaries. In Bougainville a group of neighbouring states have brokered an agreement to resolve the conflict. In South Tyrol the bilateral international agreement between Austria and Italy of 1946 (Gruber-Degasperi) ensured international entrenchment of the autonomy. The treaty on the transitional autonomy of Hong Kong and Macau is enshrined in bilateral agreements between the United Kingdom (UK), Portugal and China.

perpetration of the target-group."[15] Democratic procedures for approval of the result of negotiations ensure both the democratic acceptance and peace, as also the defeated minority has to accept a democratic verdict.

4.3 Power Sharing between the Central State and the Autonomous Entity

The legal status and the legislative and executive powers of the autonomous entity form the core of a territorial autonomy system. National minorities and regional ethnic communities mostly push for more powers, and there will always be room for more competencies. States, on the other hand, are usually reluctant to relinquish competencies. According to Salat et al., "*[o]ne factor responsible for the limited success of the arrangement is clearly the insufficient level of competences the relevant institutions have been endowed with.*"[16] Sometimes a central government even grants just a mock autonomy instead of a real empowerment. With vague and ineffective competencies, an autonomy system is very likely to fail. Also the best institutional arrangement remains useless if it is not properly implemented.

An explicit division of powers facilitates the exercise of autonomy and minimizes the conflicts arising between autonomous entities and the central state. Such power sharing scheme from time to time must be revisited. New situations may arise. Especially when the division of powers has been too vague in the statute, conflicts may arise continuously. There are three possibilities to define the respective spheres of powers:

a) To define all areas where the autonomous entity possesses legislative power. The rest lies with the centre;

b) To define the powers of the central government. All the rest is an autonomous affair;

c) To define precisely both spheres of competencies.

For Ghai and Woodman, "*[c]lear division of powers has facilitated the exercise of autonomy in smaller non-federal units. Competencies should be explicitly specified in a definitive list including so-called 'shared powers'*"[17], while all residual powers would lie with the autonomous entity.

The legislation of the autonomous entity has to be in compliance with the general principles defined by the central government, first of all with the national constitution. In Europe the limits for autonomous legislation are usually the national constitution, the international conventions signed by the concerned state and the supra-national binding law (EU law). No other type of constraints is to be suggested as it has created huge and frequent conflict.

There can be a provision to phase in new powers as soon as the autonomous entity has proven its capacity to carry them out. Also independent membership of international organisation should be possible.

Also the mode of participation of the autonomous entity in state's decision is very relevant. The autonomous entities must be involved in the state's decisions on their powers and matters of key interest. The minority must be properly represented in the local, regional and national level. There should be no possibility of the state's government to suspend legislation of the autonomous entity unilaterally and at any time.

As Salat et al. write,

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[15] Salat L., Constantin S., Osipov A., Székely I.G. (2014), *Autonomy Arrangements around the World – A Collection of Well and Lesser Known Cases*, Cluj-Napoca: EURAC-ECMI-Romanian Institute for Research on National Minorities, p. 445.

[16] Ibid., p.461.

[17] Yash Ghai and Sophia Woodman (2013), "Comparative perspectives on institutional frameworks for autonomy", in: Yash Ghai and Sophia Woodman (2013), *Practising Self-Government, A Comparative Study of Autonomous Regions*, Cambridge University Press, p. 471.

"although free and fair elections which guarantee the equal right of participation to each community member (and only to community members) are the cornerstone of the legitimacy of autonomy arrangements based on the personal principle, it should be emphasized that if direct elections are not accompanied by a reasonable level of competencies and finances, they may lose their point. In theory, even a directly elected body devoid of meaningful competencies may serve as an arena for internal contestation and democracy, but if the powers of this institution remain insignificant in the long run, both minority elites and voters will lose their interest in the arrangement, which will also undermine legitimacy."[18]

4.4   The legal entrenchment of the autonomy

One central condition of the very existence of a territorial autonomy is that this territorial-administrative entity has to be legally recognised a legal person under public law with a set of institutions and a clear legal standing and guaranteed funding. This recognition must be entrenched in domestic ordinary or constitutional law and possibly also be based in an international agreement. Constitutional entrenchment as a key guarantee should be formalised.[19] The entrenchment of the autonomy in constitutional provisions should ensure that the autonomy regime cannot be altered without the consent of the institutions of the autonomous area. This is self-evident in federal systems, but not with autonomies.[20]

The legal framework should not allow any change in geographical boundaries that would alter the composition of the population to the detriment of the minority, and the national majority should renounce any policy of assimilation of the minority. The territory concerned should be clearly defined. It has to be determined whether the status applies to all political fields, whether it is permanent or provisional, and whether it is implemented in stages with powers transferred gradually within a certain fixed time frame.

–   When an autonomous entity adopts its own constitution, a constituent assembly must be set up and a mechanism of popular decision on the constitution must be established.

–   The competency to amend autonomy arrangements should be exercised jointly by the state and the concerned autonomous region, involving the kin-state.

–   It is necessary to establish a procedure for preventing any usurpation of legislative powers of the autonomous entities by the central state.

4.5   The Economic Resources

The best legal framework will not work if an autonomous region is deprived of the material and financial means to apply its autonomous powers in practice. A "real" autonomy has to provide both the legislative and administrative control of the economic resources of a given territory and a sufficient degree of fiscal autonomy or guaranteed

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[18] Salat et al. (2014), op. cit., p. 467.

[19] Yash Ghai and Sophia Woodman (2013), "Comparative perspectives on institutional frameworks for autonomy", in: Yash Ghai and Sophia Woodman (2013), *Practising Self-Government, A Comparative Study of Autonomous Regions*, Cambridge University Press, p. 472.

[20] Two examples for this requirement for success can be mentioned: in Catalonia, amendments require consultation between the state and the autonomous community. In the Åland Islands, constitutional entrenchment protects the autonomy in a two-fold manner: an agreement is needed between the national parliament and the autonomous legislative assembly for changes of constitutional order with a super-majority vote; before any change, a negotiation in the bilateral commission for dispute settlement has to be pursued.

revenues. The financial underpinning of territorial autonomy is of crucial importance for the success of an autonomy system. There are several options:

– An autonomous region has its own resources (taxes, levies);

– An autonomous region has a proportion of the tax revenue collected from the local population;[21]

– An autonomous region can be enabled to add a percentage on the taxes levied by the state;

– Other mixed forms of financial regulation of the revenues of the entity.

Predominance of an autonomous region over its own resources is a key factor for a working autonomy. The control of economic resources has to be enacted through legal provisions enshrined in long-lasting state acts in order to ensure financial stability. There is a need for provisions for certain funds to cover special needs and requirements of an autonomy system under the condition of multi-ethnicity and multilingualism.

4.6 Protecting Minority Rights: the Ethnic Factor

Quite often an autonomy system is established for the purpose of protecting an ethnic group identifying with a particular territory with language as the most prominent form of ethnic identification. Tensions over linguistic issues arise especially when the minority perceives itself under threat. Mostly such an ethno-linguistic group forms a majority on the regional and national level. In such cases the autonomous bodies must have the appropriate powers to promote the identity of their members (language, education, culture). The measures and powers to preserve the cultural identity are among the core reasons for establishing territorial autonomy. Specific powers must be granted in the areas of education and language. The regional or minority language must be used in public spheres and affairs (bilingualism). This language or these languages must be recognised as official or second official languages of the state with special enforcement measures.

Thus the autonomy system must address the region's cultural-ethnic diversity by enshrining participation and involvement in decision making in a complex arrangement of internal minority protection. Territorial (and cultural) autonomy is at the top of the minority rights hierarchy and confers a maximum legal status a minority may achieve within a state. For Salat et al., "*[t]he quality of the general minority rights regime of the state becomes a crucial feature for the success of the autonomy arrangements as the broader framework into which the latter is embedded*."[22] Ethnic identity not only is central in leading to territorial autonomy, but an autonomy system also shapes the identities and characteristics of territories where it is practised. A local or regional form of citizenship can serve to bolster the collective identity of autonomous regions.

4.7 Membership or "Citizenship" in the Autonomy Arrangement

In a modern autonomy system, all legal inhabitants of the concerned territory should be members of the autonomous community entitled with equal rights under the national constitution. If at all, membership of the autonomous community should be defined just by a minimum duration of residence: if it was defined by ethnicity it would be a

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[21] For example, in South Tyrol the autonomous province receives around 90 percent of the taxes levied on its territory, but has very limited powers in the field of tax legislation. It cannot legislate in nearly no field of fiscal policy, but just on some details of local taxation.
[22] Salat et al. (2014), op. cit., p. 473.

form of ethnic autonomy or reservation.[23] But in several cases of existing autonomies this does not occur. For instance, in the Atlantic Coast of Nicaragua, the right to stand for election is reserved for persons born in the region and persons with a parent born there provided they are resident for at least one year prior to the election.[24]

Local citizenship is exclusive and restrictive in Hong Kong, Macau, Kashmir, Zanzibar, and the Åland Islands, whereas Scotland, Catalonia, Quebec and South Tyrol maintain some restrictions linked to the duration of residence. Thus the formal residence turns to be a version of "*jus domicilii*". A local or regional citizenship, enshrined in the statute or formal provisions, can be legitimate, but must not prevent a common citizen of the state at large to become a citizen of the autonomous entity. In other terms, the regulation of residence in the autonomous area should not block the immigration and settlement of citizens of the rest of the state, but only prevent them from enjoying certain rights of local citizens unless they have reached a minimum period of legal residence in the region.

4.6 Democratic Participation and "Consociational Arrangements"

A modern system of territorial autonomy gives 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. Thus territorial autonomy should not create a kind of "ethnic space" that allows reverse discrimination, but a legal space wherein substantial equality of opportunity is ensured for all groups sharing the same region.[25] Autonomy in a modern democratic sense cannot allow for new discrimination nor a new kind of ethnic reservation: According to Salat et al., "*[t]he 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.*"[26]

Formal and substantial equality plays an extremely important role if new tensions are to be prevented. Within working systems of autonomy the principles of equality and non-discrimination have a prominent role to play. The rights of such "internal" minority groups in the autonomous region have to be clearly defined and safeguarded, so that members of the majority population in the state or other minorities are not threatened by measures of the regional majority governing the region.[27]

4.7   Bilateral Mediation and Consultation to Promote Dialogue and Resolve Disputes.

When everything else fails, judges and courts have to decide on the matter, but conflicts can be tackled by political means first. For Ghai and Woodman, "*[p]ermanent institutions for consultation are a feature of a number of well-established autonomies.*"[28] Two examples may be mentioned. In Catalonia, the so called State-*Generalitat* Bilateral

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[23] See Thomas Benedikter (2009), *The World's Modern Autonomy Systems*, chapter 4.3: "America's reservations for indigenous peoples". In native reservations in the US, only tribe members are eligible for election. The quality of being a legal member of a reservation depends on the ethnic origins.

[24] Being a member or not of the recognised ethnic community brings about different level of rights. Usually only one court or judiciary system is available, no religious or tribal courts should be allowed. Nevertheless, in Nicaragua, a local judiciary can reflect some cultural traditions, also in Greenland, but in conformity with the Danish Constitution.

[25] Thomas Benedikter (2009), *Solving Ethnic Conflict through Self-Government*, EURAC Bozen

[26] Salat et al. (2014), op. cit., p. 468.

[27] An example for such a provision is the "proportional admission to public jobs" and positive discrimination in South Tyrol. In order to assess the due proportion, admission to public service jobs is granted in proportion to the ethnic groups' quota. There are further group rights enshrined in South Tyrol's autonomy statute, e.g. the representation rights of the Italian and Ladin group in the government and the provincial assembly, as well as the so-called "budget-guarantee", a kind of veto right when it comes to approve the annual provincial budget.

[28] Ghai and Woodman (2013), op. cit.

Commission provides a forum for negotiation with the central state. In Finland, the Åland-Delegation has been established as a permanent body to arrange bilateral mediation. The Finnish system requires that Åland be consulted also on the acceptance of EU provisions that would affect the Åland legal order. Whenever legal disputes arise with regard to the exercise of the legislative and administrative powers, an independent dispute settlement mechanism is safeguarded by the competent courts.

4.10 Democracy in the Region and State at Large

This criterion refers to the state at large but also to the situation within the concerned region. Internal democracy in the region is a pre-condition for a modern autonomy system. Not only there must be a freely elected regional legislative assembly for the autonomous entity, vested with a minimum of legislative powers. Autonomy must also ensure the full and equal participation of the members and representatives of different ethnic or linguistic groups of the concerned territory in internal decision making. In other terms: majority democracy must be complemented with a mechanism of "consociational democracy", granting participation to each officially recognized group.[29]

The electoral system also plays a key role to ensure the political representation of the groups, both at national and autonomy level. This system must provide for equal opportunities for all ethno-linguistic groups and minorities. Established traditions of democracy and the rule of law: autonomies are successful, when operating in working democracies. Traditions and institutions of rule of law and democratic governance are important. The success of an autonomy system depends on the respect for human rights and democracy and on renunciation to force. The institution of an autonomy status must be adopted with the agreement of the population that will benefit from it, in other terms, the presence of democratic bodies and forces representing the interest of the autonomous entity. Changes in the autonomy status also have to undergo the consensus of the concerned people or their democratically elected representatives.

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[29] Two good examples could be mentioned in this regard: the Devolution Act for Northern Ireland, which provides for mandatory representation of both major groups in the Northern Ireland government. The Autonomy Statute of South Tyrol provides for a mandatory presence of both major ethnic groups in the regional government.

Chapter 5

The "Moroccan Initiative for the Sahara Region" and Basic Factors of Success of an Autonomy System

Morocco's "Initiative for Negotiating an Autonomy Statute for the Sahara Region" was presented in April 2007 to the UN to prepare the ground for establishing a modern system of territorial autonomy in its Sahara Region.[30] This proposal for autonomy for the Sahara Region aims at meeting high standards of regional self-government and minority protection.[31] Yet, after having outlined some of the basic criteria for success of such arrangements as derived from historical experience, we could carefully check to which extent this draft statute of autonomy is already matching international standards and such criteria or whether there is still space for improving both the procedure for creating the autonomy and the draft legal framework for regional self-government as such. In other terms: we should figure out how Morocco's Sahara Region's future autonomy could be established and designed in order to ensure the major possible success in the long term.

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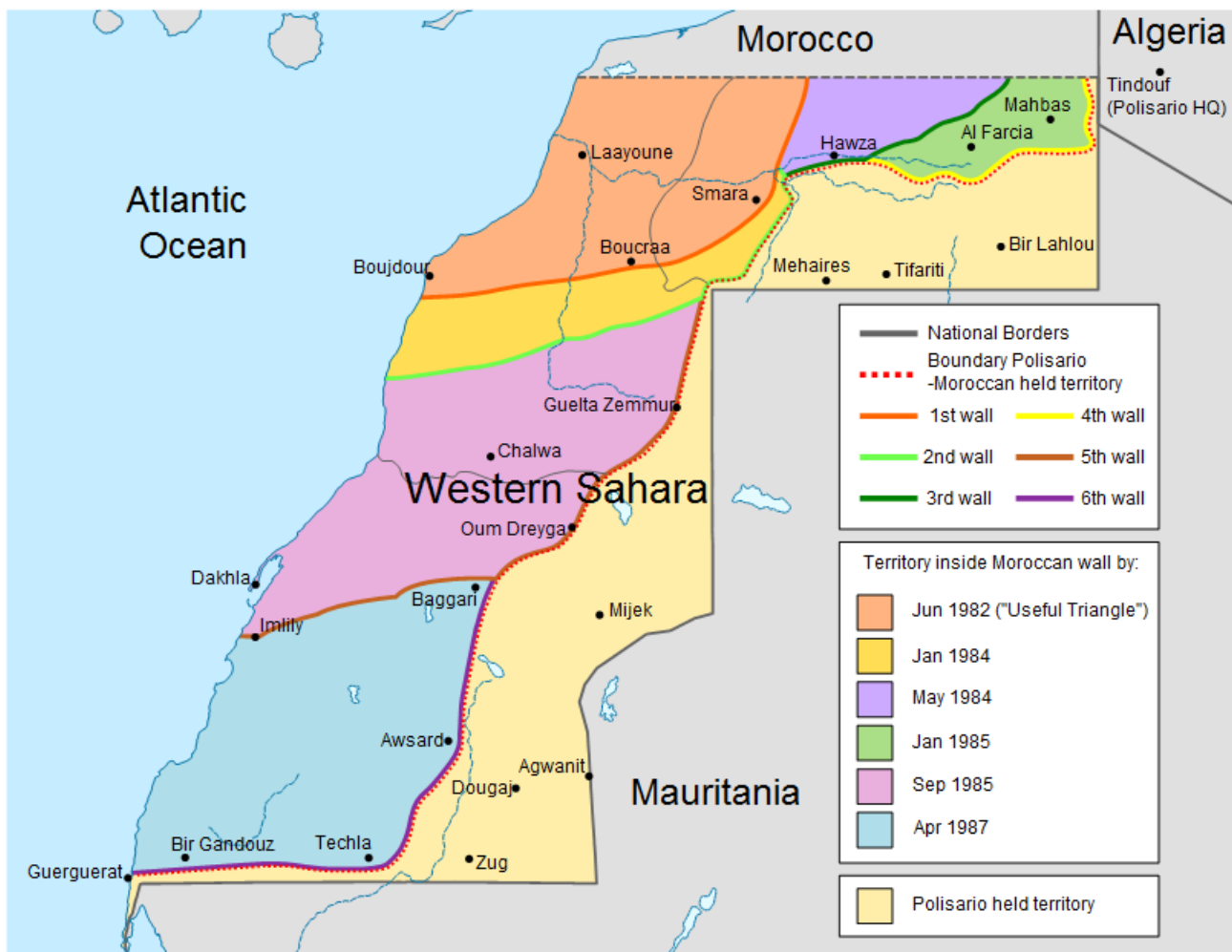
[30] The full text of the 'Moroccan Initiative For Negotiating An Autonomy Statute For The Sahara' is to be found at: http://moroccoembassy.vn/FileUpload/Documents/S_2007_206-EN.pdf.

[31] "*The Moroccan autonomy project draws inspiration from the relevant proposals of the UN, and from the constitutional provisions in force in countries that are geographically and culturally close to Morocco. It is based on internationally recognized norms and standards*" (Chapter II, para. 11 of the Moroccan Initiative). Probably the text is referring to the neighbouring Spain and Portugal, as in North Africa no state has established any autonomy system yet.

5.1 The Creation of the Autonomy and its Democratic Legitimacy

Chapter III "Approval and implementation procedure for the autonomy statute" of the Moroccan Initiative reads as follows:

> *"The Region's autonomy statute shall be the subject of negotiations and shall be submitted to the populations concerned in a free referendum. This referendum will constitute a free exercise by these populations of their right to self-determination, as per the provisions of international legality, the UN-Charter and the resolutions of the General Assembly and the Security Council."*

Democratic legitimacy for autonomy can be provided by both a parliamentary decision at the central and regional level or by a popular referendum. The main stumbling block for both of these votes will again be the scope of the eligible voters. Whereas the directly elected regional assembly of the Sahara Autonomous Region represents all entitled Moroccan citizens residing there for a minimum period, a popular vote could theoretically also restrict the eligibility to a smaller part of the population emphasizing the duration of residence.[32] Such a decisive step of the procedure could be defined more precisely, e.g. in a memorandum of understanding with the negotiation partners.

Democratic legitimacy is a tricky issue also regarding the functioning of the representative bodies of the future Sahara Autonomous Region, as the Moroccan Initiative states:

> *"Through this initiative the Kingdom of Morocco guarantees to all Sahrawis, inside as well as outside the territory, that they will hold a privileged position and play a leading role in the bodies and institutions of the region, without discrimination and exclusion."*

Some questions could be clarified: by which rules and regulations will Morocco apply this principle? In which form will the Sahrawi population obtain a privileged possession when it comes to political decision making? Will there be a quota for the autochthonous population of the region and how will this quota be determined? This crucial issue has to be tackled in the future autonomy statute.

5.2 The Powers of the Sahara Autonomous Region

The list of powers provided to the Sahara Autonomous Region by Paragraph 12 of the Moroccan Initiative is already significant:

— The Region's local administration, local police force and jurisdictions;

— In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;

— The Region's budget and taxation;

— Infrastructure: water, hydraulic facilities, electricity, public works and transportation;

— In the social sector: housing, education, health, employment, sports, social welfare and social security;

— Cultural affairs, including promotion of the Saharan Hassani cultural heritage;

— The environment.

However, in order to grant full-fledged autonomy, this list could be expanded to include some more powers such as:

— Hunting, fishing, maritime activities and organisations of the fishing sector;

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[32] In the referendum on the political status of New Caledonia (France) on 4 November 2018 the eligible voters were restricted to those French citizens legally residing on the island since 10 years.

– Popular consultation, direct political participation of the citizens and referendums on regional issues under the present autonomy statute;

– Emergencies and civil protection;

– Consumer protection;

– Energy and mineral mines;

– Public employment and staff in the administrative bodies of the Sahara Autonomous Region, organisation of the autonomous administration;

– Communication infrastructure;

– Cultural affairs should also include the establishment of a regional TV- and radio-broadcasting station under public law as a regional and independent authority.

– Public works.

Furthermore, while the current draft statute mentions the central state's exclusive jurisdiction over national security and external defence, it does not mention the local police (internal public security) among the Region's powers.

The symbols of the Sahara Autonomous Region (flag, anthem, motto, etc.) are not mentioned. As for the immigration a special provision (paragraph) could be added in order to vest the Autonomous Region with some rights to participate in the management of the influx of new settlers from the rest of Morocco.

With regard to the "share of proceeds collected by the State from the exploitation of natural resources located in the Region" the wording could be more precise. First of all, there could be a statement about the property rights of the natural resources of the Sahara Region and the legal rights to allocate concessions for mineral extracting companies. Then, there could be regulations on the process of participation of the Sahara Autonomous Region when it comes to stipulate agreements between state agencies and private stakeholders or companies.

5.3 Representation of the National Government in the Sahara Autonomous Region

The Moroccan Initiative under para. 16 reads: "*The powers of the State in the Sahara Autonomous Region as stipulated in paragraph 13 shall be exercised by a Representative of the Government.*" But no information or regulations defines more precisely the institution of the representation of the State and its powers.

Under B, paragraph 20, it is mentioned that "*the head of the Government shall be the Representative of the State in the Region.*" Thus the Autonomous Region's chief of government will have a hybrid or double character: elected chief of the Autonomous Region, democratically legitimized by the citizens of the Region, but also invested by the King as the Representative of the State in the region. Yet, in a genuine territorial autonomy the chief of the autonomous Regions' government should be independent from the State, politically answerable only to the Region's Parliament under the Statute and the Constitution. In almost all modern autonomy systems, the independence of the regional legislative assembly, directly elected by the citizens of the region, is the core institution of genuine autonomy. Whenever the chief of government of the autonomous region encroaches into the State's affairs or exceeds its powers, the State may intervene basically before the competent court. But regarding the democratic legitimacy and responsibility, the autonomous region and the State's bodies could be more clearly separated.

5.4   Powers of the Courts

Paragraph 23 of the Moroccan Initiatives determines that "…*as the highest jurisdiction of the Sahara Autonomous Region the High Regional Court shall have final decisions regarding the interpretation of the Region's legislation, without prejudice to the powers of the Kingdom's Supreme Court or Constitutional Council*." This construction of administrative and constitutional judiciary may appear inconsistent. Paragraph 22 establishes a "Regional Court" in charge of interpreting regional provisions. In the European legal tradition, this would be equivalent to an administrative court. Due to the demographic dimension of the Sahara Autonomous Region (roughly 570,000 inhabitants), one administrative court would be sufficient to cover the whole territory. On the other hand, a separate issue is given by judging the compatibility of regional law with the Constitution (as provided by paragraph 24 of the Autonomy Statute) and to central State law whether it encroaches upon regional powers. On such issues, only the national Supreme Court or the Constitutional Court can be called to judge. The different kind and purposes of courts could be more clearly determined in the framework of the Autonomy Statute.

5.5   State-Region Commission

In the Moroccan Initiative for the autonomy of the Sahara Region, no bilateral commission between the State and the Autonomous Region in charge of issues of implementation, mediation and amendments of the Statute is provided. As pointed out by several scholars (Ghai, Weller, Suksi, Salat), when it came to build up autonomous institutions and carry out their manifold powers and duties, regularly this critical issue arose. As the nature of the relationship between central states and autonomous regions is cooperative but antithetic, there is a permanent need of a "clearing body" for mediation, consultation, amendments in charge of solving conflicts in an early stage. In some autonomous regions such as South Tyrol, the Åland Islands, the Faroe and Greenland, bilateral Region-State-Commissions have been established to deal with this purpose. This kind of commission, its scope, duties and composition could be defined by the autonomy statute.

5.6   The Implementation Procedure

The implementation procedure of the autonomy system can be long and complex, as several historical experiences in other countries have proved. The procedure of elaborating and approving a huge number of enactment decrees in a joint effort and mutual agreement should be clearly determined in the Statute. It is important to state that "*to this end the parties pledge to work jointly and in good faith to foster this political solution and secure its approval by the Sahara populations*" (Paragraph 28), but may require some more detailed provisions. The implementation procedure could be monitored by an international body or a kin-state, whenever this is accepted by the parties. Furthermore, it could be reasonable to set a deadline for finalising all legal steps for practical implementation of the autonomy status in domestic law.

5.7   International Context and the Kin-state

This a very sensitive issue, but it could be the key to solve the long-lasting conflict between the Kingdom of Morocco and that part of the Sahrawi population which is still living abroad on Algerian territory in unfavourable conditions. As in some cases of autonomy (South Tyrol, Åland Islands, Bougainville, Northern Ireland), not only the negotiations to

achieve the autonomy status, but also the task of safeguarding the autonomy status can be fostered by involving a third party, called "kin-state". This role could be played by the neighbouring State(s) of Algeria and/or Mauritania, but also by an international organisation as well (African Union, UN). The presence of a kin-state in other cases of existing autonomy systems was definitely helpful in order to allow the representatives of the autochthonous population to enter in the final negotiation and to accept an agreement on autonomy. This does not result in an impingement upon Morocco's sovereignty on the Sahara Region, but recognises a third party which is granted a role of watchdog and protector under international law and ensuring good neighbourhood.

If such key factors for success, as explained in this paper, could be kept in mind when drawing and establishing the autonomy system, the perspectives for success would definitely improve. As Morocco's proposal for territorial autonomy in its Sahara Region is still under preparation and subject to detailed negotiations with the parties, the legal framework and the political procedure could be integrated and complemented in this direction. The negotiations on autonomy with the counterpart and international players could take account of some further clauses and additional regulations to the current draft of Morocco's "Initiative on Negotiating" allowing a "rapprochement". Such key factors could then be helpful to find consent among all negotiation partners on a shared solution.

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