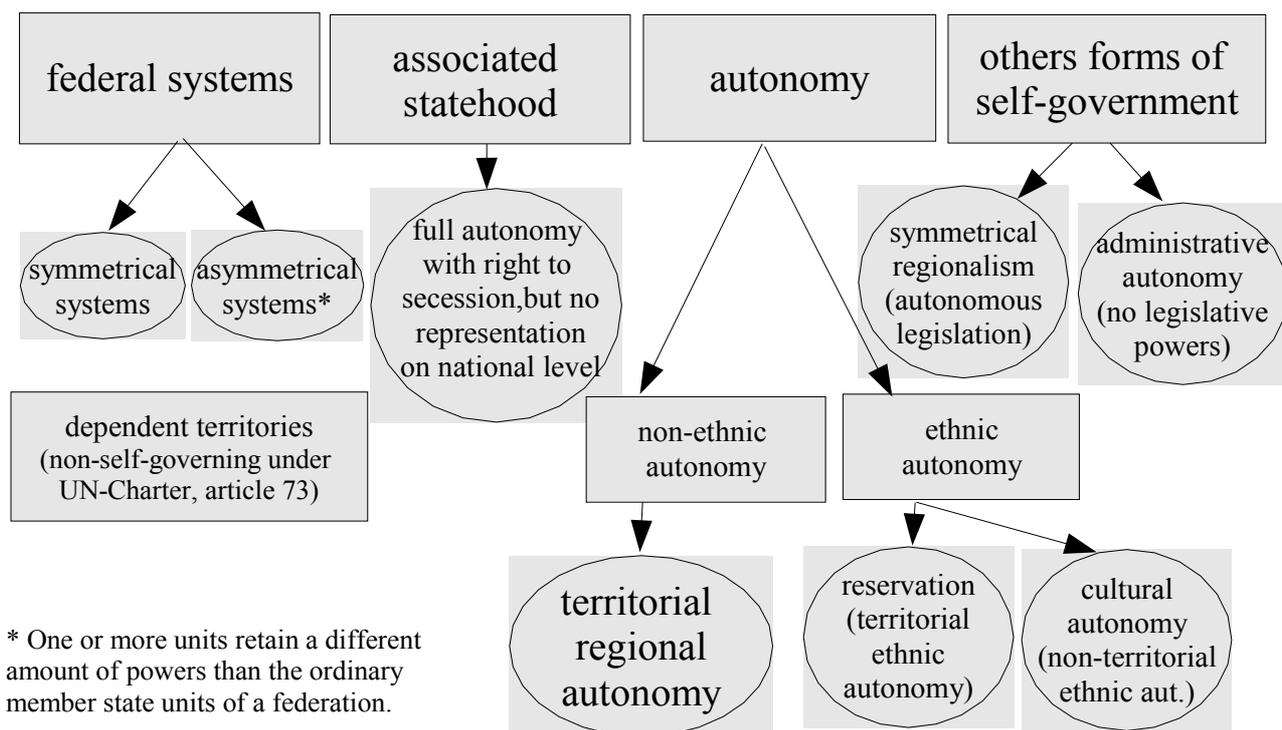


Thomas Benedikter

The concept of modern autonomy systems and a short look on territorial autonomies in South Asia and Europe

The modern concept of territorial autonomy is born out of the requirement of granting minority protection in some or one part of the territory of a given state and is driven by the request of collective self-determination based mostly on an ethno-linguistic, historically grown group identities. Territorial autonomy in a number of cases has been a viable compromise solution ensuring the territorial integrity of this state, a certain amount of internal self-determination of the minority group and an arrangement of consociational regional democracy, most important for ensuring peace and stability in the concerned area. Although in some cases territorial autonomy has been granted to regions without any distinctive ethno-linguistic or religious group identity (e.g. Spain and Portugal), the prevailing rationale of territorial autonomy all over the world is self-government for the sake of protecting minority peoples or ethnic minorities.

Forms of territorial power sharing in modern states



Why „modern forms or systems“ of autonomy?

In some cases of operating autonomies these autonomies had some historical record of rights of self-government even before the constitution of a democratic state with rule of law, which later granted autonomy by constitutional entrenchment (e.g. in Spain). In the European history there are some more forms of limited self-government under pre-democratic rule (e.g. Finland's autonomy from 1815 to 1917). But from a perspective of human and civil rights including the right to democracy, a concept of genuine autonomy in a

non-democratic environment does not make sense, and is theoretically not consistent. Per definition autonomy entails a collective subject (*autos*), which is allowed to govern and legislate on its territory (*nomos*). Thus the regional population enjoying autonomy must be entitled to govern itself either through freely elected representatives or direct means. If the term autonomy should be appropriate, there must be a freely elected regional assembly to be vested with legislative powers, otherwise no real self-government is occurring.

If the regional decision-making power is accorded to a very small elite in the framework of an authoritarian state, no democratic legitimacy is given and no genuine self-government can be observed. In units like Myanmar's minority people sub-states and the Autonomous Provinces of China powers still are transferred to lower government levels, yet the transfer of such powers is accorded to party cadres and army or government officials appointed centrally, not to freely elected politicians. Eventually we have just a decentralization of powers within a non-democratic system, or a sharing of powers between party bosses at the centre and in the periphery, but nothing which might be termed a genuine autonomy.

Besides the requirement of the definitive transfer of legislative powers to elected bodies, a certain minimum of legislative and executive power is essential for drawing a line between genuine autonomy and autonomy-like decentralization which falls short to hand over legislative powers. This has to happen in the framework of the rule of law, namely by entrenchment of the autonomy law and statute in public and constitutional law, with a working judiciary to be called upon whenever disputes and conflicts between the centre and the concerned autonomous region arise. Again, it makes no sense and no genuine autonomy can be assumed, if there is no clear horizontal division of powers and no truly independent judiciary from the ruling power.

Criteria to determine „modern autonomy“

To sum up, we have to adopt at least four criteria in order to determine a „modern autonomy system“, which are

- 1) a state with rule of law with an independent judiciary
- 2) the permanent devolution of legislative powers to freely elected regional assemblies of the autonomous entity
- 3) a working pluralist democratic system with free and fair elections
- 4) the equality of fundamental political and civil rights to all citizens legally residing on the territory of the autonomous entity.

All of these criteria have to be defined in details, e.g. what exactly does it mean for a system to be „democratic“? Is Pakistan fully democratic and Azerbaijan not? Which are the operational criteria to assume that all political rights and freedoms are ensured in a sufficient degree? The absence of free and fair elections prevents a formally autonomous region to be considered a „genuine autonomy“ and not respecting the minimum standard of political rights and democratic freedoms. Under such assumptions of democracy, also used by renowned human rights organizations, neither the Central Asian states are working democracies nor Pakistan on all government levels.

These criteria do also allow us a clear distinction of the form of vertical power sharing of autonomy from other forms of power sharing in modern states. On the one hand we have to distinguish regional territorial autonomy from all forms of federalism (symmetric and asymmetric), on the other hand we should keep modern autonomy distinct from „ethnic autonomy“ such as tribal areas and and reservations. Also asymmetrical federal states are distinct from the concept of autonomy: a federal state may encompass autonomous regions, but autonomy is something distinct. Belgium, e.g. is a federal state which has an autonomous unit: the German Community. Canada is an asymmetrical federalist system, but has also established a special territorial autonomy for Nunavut. The same applies to South Asia: India is a symmetrical federal system, although its Constitution contains some special provisions from some single federated states, but then, within these states, there have been established autonomous regions. Also Pakistan at least on paper is a federal state, but again comprises forms of autonomy which are highly questionable. But they do not transform the system in an asymmetrical federation. Thus, generally spoken, whenever we try to compare autonomy systems, we should or rather we must use a common definition. In other terms we have to consider regional autonomy as a form of internal power sharing between the State and one or more single units, mostly due to the aim to preserve the particular cultural and ethnic character of a region, ensuring democratic self-government, defined in clear legal terms and standards grounded in the theory of democracy.

Autonomy, thus, creates a constitutionally entrenched legal-political framework with a minimum of legislative powers transferred to freely elected regional assembly ensuring a minimum degree of self-government with a permanent commitment to the protection of minority peoples or minorities, the titular groups of the autonomy. Based on these definition and on these criteria we can draw a list of working autonomies in South Asia and in Europe, and for all the world. We can also form an additional list of power sharing arrangements, where some of the criteria are respected but not all of them, calling them „autonomy-like arrangements of decentralization“. However, we can filter out both: regions which are autonomous just by name, and regions which are definitely autonomous in legal terms, which not always carry the official term „autonomous“.

Modern autonomy in Europe and South Asia

As for Europe starting from this kind of definition and including the most recently reestablished autonomy of Serbia's Province of Vojvodina we can count 37 autonomous regions in 11 states, assuming that all 17 Autonomous Communities of Spain are indeed modern autonomy systems, not part of a de facto federal state. (please consider the overview with the list of all the currently working autonomies). Thus, Europe not only is the cradle of modern autonomy in a historical perspective, but still the area where this concept of power sharing is most widely applied.

On contrary, using the above mentioned criteria, regional autonomy in South Asia is not widely applied today. Only India by constitutional provision has established already in the 1950ies so called „Autonomous District Councils“ (ADCs) which fulfill the above listed criteria. I could assess this fact by my own eyes during my research in 6 out of 13 ADCs,

equivalent to regions in European dimensions. Other states as Pakistan and Bangladesh do have one or some autonomous entities, but these entities do not fully respect the minimum requirement. Bhutan, Nepal, the Maldives and Sri Lanka are unitary States so far and do not have any territories with autonomy. This may change this year, when Nepal is going to adopt a new constitution providing for some regional decentralization. But no modern autonomy systems is to be found so far in Nepal. Also Afghanistan, which is composed by provinces, does not attribute them legislative powers by constitutional means, although the local governors do in fact retain a large amount of power.

This is a very remarkable, even surprising fact for South Asia as the ethnic, cultural or ethno-linguistic variety of this area is even more compelling. There have been and still are several burning ethnic conflicts, there are dozens of ethno-linguistic minorities. Generally spoken, apart from India's 13 ADCs in the South Asian states neither territorial autonomy has been envisaged as a normal viable means of accommodation of minorities, nor has the sub-state level been vested with significant legislative powers.

Bangladesh is a unitary state with Islam and the Bengali language as the two fundamental features of the State. It even does not recognize any ethnic minority. But after the partition of the subcontinent in 1947 and the division of Pakistan in 1971 a significant part of its territory has a prevalingly indigenous tribal population, the Chittagong Hill Tracts. As Bangladesh went on denying any special rights to those peoples and went on colonizing their areas, a long lasting violent conflict resulted. Finally, when the conflict was provisionally settled in 1997 with the obligation to establish autonomy, this was continuously delayed and applied in a very restricted form. Thus the conflict is still open.

In Nepal Nepali is the mother tongue of just about 50% of the Nepali citizens, other 91 autochthonous languages are spoken and in terms of mother tongue of the population on district level, only 54 out of 75 districts Nepali is the mother tongue of the majority of the population. There have been many decades of tacit or open ethnic discrimination in Nepal, which along with social injustice and extreme poverty fuelled the so called Maoist war from 1996 to 2006. This civil war was also caused by the centralized structure of the Nepali state and the dominance of the upper caste Nepali Hindu. Nepal's politicians and political forces now have acknowledged the urgent need of decentralizing the power, but rather than special autonomy, almost all proposal on the table focus on symmetric power sharing or decentralization, either as full fledged federalism or as an advanced form of regionalism.

We may skip the two minor states of the Maldives and Bhutan, because in the former no minorities exist and in the latter, Bhutan is not considering any territorial power sharing at all. Sri Lanka, too, is a unitary state, a feature clashing with its binational character. In other terms: since the very first years of independence Sri Lanka had to come to terms with the presence of one major ethnic – in Europe we would say 'national' – minority, the Tamils for self-government and equal rights. But neither the first nor the second Constitution did take it into account and provided some territorial power sharing. Later, when the war with the LTTE was lasting for almost 20 years and some constitutional reforms were seriously discussed in order to find a compromise, just symmetric federalism or at lower level some decentralization to provinces was envisaged. But Sri Lanka is a classical case of a country

with two major ethnic identity groups sharing the state's territory, in some parts intermingled, in other living homogeneously. Thus a system of regional self-government appear to be compelling, but also constitutional safeguards to ensure equal rights and political participation of the minority on the state level. In Europe we have such cases in Macedonia and Cyprus. Cyprus was divided, mainly due to the incapacity of the ruling elites to power sharing in both the central state level and territorially, whereas Macedonia found another formula of autonomy on the municipality level and consociational democracy on the national level. From my perspective it is remarkable how the denial of self-government has caused the secessionist conflict in Sri Lanka. The rise and fall of the LTTE is a very bitter experience for the Tamil minority, no matter of sharing their methods and goals. But it is surprising that neither the LTTE nor the Sinhala mainstream politics never seriously considered and negotiated about autonomy. The absence of both equal rights on the central level and absence of territorial and cultural autonomy have been among the root causes of this tragedy.

As for Pakistan, the ethno-linguistic national structure of the state – a population of 160 million with several smaller and one major people – again would require efficient forms of territorial power sharing, in symmetrical and asymmetrical form to accommodate the basic issue of democratic government in the whole state's territory; another challenge to accommodate come particular situations given by historical and ethno-geographical facts as it is the unsolved Kashmir issue and the tribal peoples mostly Pashtuns living along the border with Afghanistan. None of these devices have been applied so far coherently and efficiently, neither by federalist nor by autonomy devices.

Finally India, the only country that has enshrined some forms of territorial autonomy in its constitution and which has established working regional autonomies fully comparable with autonomous regions in Europe like ours. Talking about autonomy in India we should also bear in mind the case of Jammu and Kashmir, which for just 6 years had the most advanced form of autonomy leaving just defence, foreign affairs and telecommunication issues to the central state. This autonomy has been curtailed and abolished in the 1950ies and is one of the root factors of the ongoing unrest and conflict in Jammu and Kashmir. Besides that, India has enshrined two forms of autonomy within the 5th and 6th schedule of the Constitutions. The first one to accomodate some smaller tribal peoples with limited self-administration. This resembles rather to cultural autonomy then territorial. The second one, the 6th schedule provides rights to self-government to some districts, mostly in the Northeastern states of Assam, Tripura, and West Bengal. In India 330 districts, about 50 have a majority language which is not equivalent to the State's official language. Nevertheless there are no autonomies in most of those cases.

Conclusions

As I stated at the outset, autonomy is a compound of institutions and procedures of territorial self-government and ethnic conflict regulation. It is not a sub-form of federalism, but it can be applied on sub-state level or along the federated units. In South Asia's big federal states this is precisely the issue: federalism is the key to manage ethnic diversity,

through power sharing on the whole territory, and both India and Pakistan are challenged to improve and reinforce their federal structure to meet these requirements. They have to establish new federated units in some cases and to strengthen the federal structure as such. On the other hand autonomy is there to tackle a different challenge:

- some ethno-linguistic and minority conflicts which do not require to establish a new federated state or province, but can be accommodated at the sub-state level.
- Some very specific historically complex issues, or issues which breed and provoke international conflict as Jammu and Kashmir. Autonomy should be the minimum what peoples of J&K should be entitled to, as they have been denied self-determination. The same applies to the CHT in Bangladesh and in some places of Assam. Autonomy in such cases prevent new forms of internal colonization.
- India has 28 states, most of them as big or even bigger than the big European states. But almost all bigger European states have a second tier of democratic government and legislation, India has not. There are elected municipalities and village councils, but in between the village and the federated state no democratically governed sub-state units have been established.
- Finally a general democratic challenge is the reality of indigenous peoples or tribal people. India with almost 80 million tribal people has the major number all over the world. There is a special responsibility and necessity to ensure forms of self-government or internal self-determination. This must not happen in traditional, mostly weak forms of ethnic autonomy, but can be done also in form of modern autonomy systems.

In Europe, too, there are several autonomy conflicts going on. We should distinguish between conflicts inside existing autonomous regions, which are focused on the extension and enhancement of autonomous powers towards a higher level of self-government, as we can observe in some Autonomous Communities of Spain, first of all the Basque Country, and in Scotland. On the other hand, several regions in European states are aspiring to achieve a modern form of autonomy, as for instance Corsica, or the Szeklerland in Romania. Territorial still by most European states is perceived as a certain threat on the long run for their national integrity, on the other hand no collective right to territorial autonomy has been enshrined in any of the existing European covenants on the protection of national minorities. To conclude, why a comparison of autonomies? This exercise provides possibility to find out which solution suits better for given open issues and requirements, and which autonomy regulation leads to the best practise or best solutions. We can carve out the most interesting and useful single forms to be applied in similar cases. Sure, we can not pretend to transfer or export integral systems of autonomy from one region and state to another, but we may consider the single constituent elements of autonomy and analyse which are the advantages and disadvantages of such regulations. Thus it is possible to work out a minimum standard of autonomy regulations, but the optimum remains to be worked out in a very patient and complex negotiation process among the concerned parties, tailored to the single specific case. Although these parties will strive for an optimum standard of autonomy, it is up to many different factors of the conflict if the solution will eventually be successful. In my book „The World's Modern Autonomy Systems“ (2009) I list different types of success factors.

The world's regions with territorial autonomy

(in 2009, according to selection criteria explained under Chapter 2.2 and 2.10)

<i>State</i>	<i>Autonomous regions/entities</i>	<i>Capital</i>	<i>Population</i>	<i>Area in km²</i>
Italy	Sicily	Palermo	5,037,000	25.711
	Sardinia	Cagliari	1,670,052	24.090
	Friuli-Venezia Giulia	Udine	1,232,000	7.858
	Trentino–Alto Adige	Trento	1,022,000	13.607
	Val d'Aosta	Aosta	127,000	3.263
Spain	Andalusia	Sevilla	8,202,000	87.268
	Catalonia	Barcelona	7,364,000	32.114
	Madrid	Madrid	6,271,000	8.028
	Valencia	Valencia	5,029,000	23.255
	Galicia	La Coruna	2,784,000	29.574
	Castile–Leon	Leon	2,557,000	94.223
	Basque Country	Vitoria/Gasteiz	2,157,000	7.234
	Canary Island	Teneriffa	2,075,000	7.447
	Castile–La Manche	Toledo	2,043,000	79.463
	Murcia	Murcia	1,426,000	11.313
	Aragon	Zaragoza	1,326,000	47.719
	Extremadura	Badajoz	1,097,000	41.634
	Asturias	Oviedo	1,080,000	10.604
	Balearic Islands	Palma	1,072,000	4.992
	Navarre	Pamplona	620,000	10.391
Cantabria	Santander	582,000	5.321	
La Rioja	Logrono	317,000	5.045	
United Kingdom	Scotland	Edinburgh	5,094,800	78.782
	Wales	Cardiff	2,958,600	20.779
	Northern Ireland	Belfast	1,710,300	13843
	Isle of Man	Douglas	80,058	572
	Guernsey	Saint Peter Port	65,573	78
	Jersey	Saint Helier	91,626	65
	Finland	Åland Islands	Mariehamn	26,711
Denmark	Greenland	Nuuk	56,375	2.166.086
	Faroe	Torshavn	47,246	1.399
Belgium	German Community	Eupen	72,000	894
France	New Caledonia	Nouméa	230,789	18.575
	French Ploynesia	Papeete	259,596	4.167
Moldova	Gagauzia	Comrat	171,500	1.831
Ukraine	Crimea	Sinferopol	2,000,192	26.100
Serbia	Vojvodina	Novi Sad	2,031,000	21.500
The Netherlands	Netherlands Antilles	Willemstad	220,000	960
	Aruba	Oranjestad	102,000	
Portugal	Azores	Ponta Delgada	253,000	2.333
	Madeira	Funchal	265,000	964
Canada	Nunavut	Iqaluit	25,000	2.121.000
Nicaragua	Atlantic Region North	Puerto Cabezas	249,700	32.159
	Atlantic Region South	Bluefields	382,100	27.407
Panama	Comarca Kuna Yala	San Blas	47,000	2.347
Tanzania	Zanzibar	Zanzibar	982,000	2.467
Philippines	Aut. Region of Muslim Mindanao	Cotabato City	2,412,159	12.000
Papua New Guinea	Bougainville	Arawa	175,100	9.300
Indonesia	Aceh	Banda Aceh	4,031,589	55.492
India (autonomous districts)	Darjeeling Gorkha Aut. Hills, Bodoland, Leh and Kargil Hill districts (2), North Cachar Hills, Karbi-Anglong, Khasi ADC, Jaintia ADC, Garo ADC, Tripura Tribal Areas, Chakma, Mara, Lai districts (3)		<i>Min. 8,569,000</i>	
Total number of autonomous regions	60			

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

The minimum standard and „best practises“ of territorial autonomy

<i>Functional elements</i>	<i>Minimum standard of regulation</i>	<i>Best practises</i>
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.)
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. Arbitration for disputes between the centre and region	The first level of mediation or arbitration in case of disputes about the autonomy of the A.R. occurs in appropriate joint A-R.-state commissions. The second step has to consist in two levels (regional and state) of the judiciary with appeal to the Constitutional Court.	South Tyrol, Greenland, Faroe, Åland Islands
7. 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 Europ. 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	Nunavut, Comarca Kuna Yala, the Åland Islands, Aceh, Greenland and Faroe, Catalonia, Basque Country and other A.R. in Spain.

	taxes by the A.R.	
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, 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
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 ethnic/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 historical autonomies, Gagauzia, Crimea, Comarca Kuna Yala, Aceh
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
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, 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, South Tyrol
17. Protection of human 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.
18. Demarcation of autonomous territory	Necessity to draw the boundaries of aut. Territory in accordance with historical development and democratic will of the concerned populations	No issue in the case of autonomous islands; democratic method (referendum) used in Gagauzia

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

See: Thomas Benedikter, *The World's Modern Autonomy Systems – Concepts and Experiences of Regional Territorial Autonomy*, EURAC Bozen, 2009, available as PDF at: <http://www.eurac.edu/Org/Minorities/IMR/Projects/asia.htm>