**Foreign Relations of Autonomous Regions in Europe:**

**Comparisons with the Moroccan Initiative on the Autonomy of the Sahara Region**

*by Thomas Benedikter[[1]](#footnote-1)*

1. **Introduction**

As a general rule, autonomous territories possess no international character, and are neither treated as states for the purposes of international law nor are they allowed to conclude treaties or treaty-like relationships with third States. A state with sub-state entities is likely to be unwilling to cede some powers in foreign affairs to the sub-state level, because that would imply the concession of international legal capacities of an autonomous territory. But can there be exceptions? Which kind of regulations for the international relations of autonomous regions has been carved out for Europe’s most advanced autonomy systems?

When dealing with international relations of autonomies, in the absence of a generally accepted definition of territorial autonomy, we should keep in mind its basic features: “Autonomy is the legally established power of ethnic or territorial communities to take public decisions and execute public policy independently of other sources of authority in the state, but subject to the overall legal order of the State” (WELLER/WOLFF, 2005, 5).

Hence, autonomy can be defined as a means of internal power-sharing aimed to preserve the cultural and ethnic variety in a part of the state’s territory, while respecting the unity of a state. Autonomy thus consists in permanently transferring a certain amount of powers suitable for those purposes to a certain territory, giving its population the possibility of self-government, and leaving only residual responsibilities to the central state (WELLER/METZGER, 2008, 16-18).

Territorial autonomy in a proper (democratic) sense not only encompasses administrative powers of local bodies, but requires the existence of a locally elected legislative assembly independent from central state institutions with a minimum power to legislate in some basic domains, as well as an elected executive who implements this legislation in the given autonomous areas. In practice, not every form of government body labelled ‘autonomous’ is consistent with the criterion of ‘democratically elected autonomous bodies’, especially if the concerned region is a part of a non-democratic state. However, if the local or regional population and the national minorities are involved in the management of the affairs of the territory, ‘autonomy’ in a proper sense may not be fulfilled, but we can nonetheless speak about ‘autonomy-like sub-state arrangements’ (BENEDIKTER, 2010, 20). In this paper no comment will be made about the foreign relations of the member units of federal states, as this is no option of conflict settlement in the case of Morocco and the Sahara region.[[2]](#footnote-2)

In the field of foreign relations, the division of powers is not as clear as generally assumed. Although most autonomous regions do not have any powers in international policy, there are some forms of international activities and rights of regions and sub-state entities in the state’s conduct of foreign affairs (SUKSI, 2011, 576). International treaties and conventions are normally signed exclusively by central governments with subsequent ratification by the national parliaments. But autonomous regions can be endowed with some powers to participate to treaty-making procedures, to stipulate agreements on specific matters on their own or to have interregional cross-border relations. For instance, most European regions under the Council of Europe’s Treaty of Madrid of 1980 are allowed to enter into direct interregional cooperation, under the state’s supervision.[[3]](#footnote-3)

In the framework of supranational organizations such as the European Union (EU) interregional cooperation is not only permitted for all regions regardless of territorial autonomy or not, but is also financially fostered by the European Commission and institutionalized in the form of separate bodies representing the sub-state governance level (e.g. the EU Committee of the Regions). In addition, many Autonomous Communities have established a distinct representation with the EU in Brussels, separate and in addition to their state’s official representatives and in accordance with the regulations of their respective states.

With regard to international relations, a special case is given by autonomous regions with national minorities protected by a kin-state, like the German-speaking group in South Tyrol (Austria), the Catholics of Northern Ireland (Ireland) and the Ålanders (Sweden). Official bilateral agreements among the concerned states regulate the exercise of these relations, which include manifold forms of trans-border cooperation, forms of “positive discrimination” of minority members in the respective kin-state, as well as overarching cross-border regional institutions (e.g. the *Dreier-Landtag,* and the EGTC *Europaregion Tirol*).

One further step, again with the pioneering role of the Scandinavian autonomies, is the representation of autonomous regions in international organisations (Nordic Council, Inuit Circumpolar Council) and the central states’ obligations to consult with the autonomous regions if their interests are concerned. The latter possibility even includes the right to opt out of international agreements concluded by the respective national governments (e.g. the Faroe Islands) or to opt out at all of EU membership (e.g. Greenland). The Åland Islands, Faroe Islands and Greenland are members of international fishery organisations and sport federations; New Caledonia, a genuine autonomy system of France, has stipulated agreements with 18 neighbouring states in Oceania (BENEDIKTER, 2010, 176). Generally, regarding membership of autonomous regions in international organizations of their respective states, the autonomous regions can be divided into three groups:

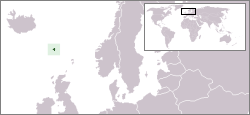
1. Autonomous regions have no right to opt out and are automatically part of international organizations to which the State has acceded (this is the normal case).
2. An autonomous region may be allowed not to be a member or to “opt out” of international agreements and memberships of their states (Nordic Islands).
3. It may be allowed to the autonomous region to enter an international organisation separately even along with the state (examples: Hong Kong, Macau and the People’s Republic [PR] of China as members of the World Trade Organisation [WTO]).

Furthermore, the central state can be obliged to consult the regional government whenever the interests of that region are concerned. Any act of foreign policy which could substantially impinge on the area of self-government of the autonomous region would require the consent of the concerned regional assembly, and eventually also of the population by a referendum. Such an event occurred when, with the accession of Finland to the EU in 1995, the question of Åland’s membership in the EU was raised. EU membership effectively and permanently interferes with the autonomous jurisdiction and theoretically the Åland Islands – like Greenland in 1985 – were entitled to opt out of the EU. But in the consultative referendum held in November 1994 the vast majority of the Ålanders voted in favour of EU membership, and accordingly the Åland Assembly approved the EU membership with a two-thirds-majority giving way for Finland’s accession to the EU. A supra-state integration of the state, which autonomous regions belong to, definitely entails constraints on the capacity of autonomous entities within the member states to exercise their autonomous powers fully. New solutions of coordination and democratic legitimation had to be found.

In the next chapters we briefly discuss four different cases of European territorial autonomy systems with regard to international relations (the Nordic Islands of Denmark and Finland, Scotland, Spain’s Autonomous Communities and South Tyrol in Italy), before drawing some final conclusions and comparing briefly the Moroccan Initiative for the Sahara Region and the European autonomous regions with regard to powers of external relations.[[4]](#footnote-4)

1. **External Relations of the Nordic Islands**

**2.1 General Overview**

The three autonomous island regions of the Nordic states are very different from each other. Greenland and Faroe are very far from the mainland: thus Greenland decided to remain outside the EU, Faroe opted out of some parts of the EU, the Ålanders are Swedish by culture and language, but since 1917 part of Finland. All three entities are members of the Nordic Council and the Nordic Council of Ministers, fly their own flags and exercise a considerable range of rights of self-government. Autonomy was established on the Åland Islands in 1921, on the Faroe in 1948 and on Greenland in 1979.

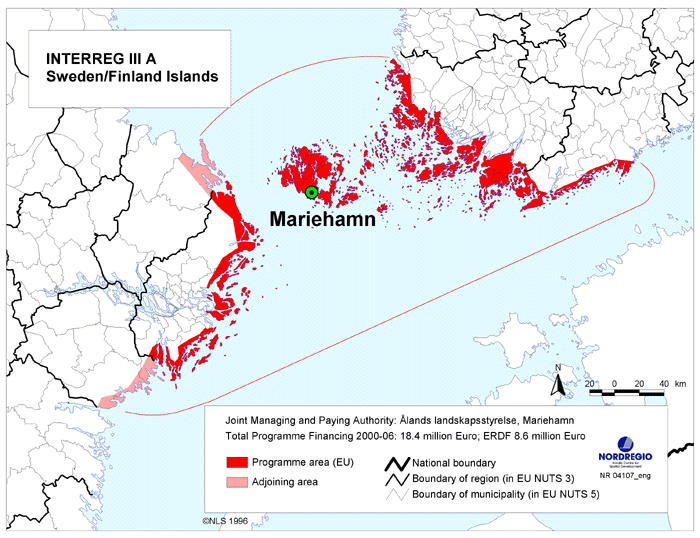
Denmark embraces two remote and very special island territories, the Faroe and Greenland, which had been part of the realm for centuries. Since 1814 the **Faroe Islands** (population in 2015: 50,000), along with Iceland and Greenland, came under the Danish Crown. Autonomy was established only in 1948 by the Danish constitution. Faroese in 1948 has been recognized as the official language, along with Danish. These statutes expressly reserve foreign affairs as the remit of the Danish government (NAUCLÈR 2009, 101), but this does not mean that the Faroe Islands are necessarily included in treaties stipulated by Denmark. Nor has it prevented Denmark to conclude separate treaties concerning only the Faroe Islands.

In 1972 Denmark joined the European Economic Community (EEC). Under the Danish accession Treaty with the EEC, the Faroe Islands were given the option of deciding whether or not to join the EEC. In addition to this option, the Act of Accession also provided the Danish government with the opportunity to delay the application of specific treaties and agreements to the Faroe Islands. Faroe’s economy was entirely dependent on fishing and there were major uncertainties regarding the future direction of the EEC’s fisheries policy. In 1974 the Faroese decided in a referendum to reject membership of the EEC. Thus the Faroe Islands are not are not part of the EU and are not subject to the EU’s international trade regulations and treaties. The Faroe Islands are not a part of the Schengen agreement for free movement; nevertheless there are no border checks when travelling between the Faroe Islands and any Schengen country since 2001. The Faroe Islands are allowed to maintain direct political relations with third parties, based on an agreement with Denmark. The Islands are a member of some international organisations as if they were an independent country, such as international sport federations like UEFA, FIFA, etc. In addition, the Faroe have their own telephone country code, Internet country code top-level domain, banking code and postal country code.

With the Treaty of Famjin of 29 March 2005 the Faroe Islands were endowed with additional rights in foreign policy. Since 2002 the Faroe run a diplomatic mission in London, as a part of the Danish embassy, as well as in Dublin. Since 2007 the Faroe have a separate diplomatic representation in Reykjavik. Since 1972 the Faroe are represented in Brussels with the EU. The Treaty of Hoyvík 2005 set the ground for an Economic Union with Iceland, open also for Greenland. In 2005 the Faroese announced their intention to join the European Free-Trade Area (EFTA), to which also Iceland and Norway are a party.

**Greenland** is a part of Denmark since 1397. The mostly Inuit population of Greenland (56,000 inhabitants) are ethnically very distinct from mainland Denmark. Greenland throughout history has been a colony until 1953, when it was transformed in a regular part of the Danish state. The autonomy movement took off only in the 1970s and achieved its goal in 1979. According to the Home Rule Act, reshaped in 2009,[[5]](#footnote-5) Greenland decides autonomously on all powers except nationality, justice, monetary affairs, defence and foreign affairs. Greenland, which in 1972 had not yet obtained its autonomy, was obliged to comply with the Danish decision for accession to the EEC, although in 1972 some 70 per cent of the Greenlanders voted against EEC membership. For Greenland membership in the EEC meant that foreign (EEC) fishing fleets would have the right to fish. After the introduction of the autonomy in 1979 Greenland organised a new referendum and the rejection of EEC membership of the island was confirmed. In 1985 Greenland left the EEC, but retained links with the EU through an Overseas Countries and Territories agreement. Denmark had to accept the secession of an autonomous territory from its membership to the EEC as this is a right included in the autonomy statute. Eventually the Danish Act on the Self-Government of Greenland of 12 June 2009 leaves it to the discretion of Greenland to decide whether to stay within Denmark or to opt for independence.[[6]](#footnote-6) In two separate Danish Acts enacted in 2005, the Act concerning the entering into agreements under international law by the Government of the Islands, on the one hand, and a similar act for Greenland, on the other, exceptions are made to the treaty-making power of the State of Denmark and a certain capacity is granted to the two autonomous territories to conclude treaties or treaty-like relationships with third states (especially with the Faroe). In such situations, the State of Denmark is, according to the Acts, ultimately responsible for international obligations.

The **Åland Islands** are a demilitarised, neutralised autonomous region of Finland (population: 26,000), consisting of more than 6,500 islands. Culturally they have always been Swedish speaking in history as they were a part of Sweden until 1809. In 1809 the Ålands Island were ceded to Russia along with Finland. Before 1917 Åland struggled to be reunited with Sweden giving way to a dispute between Sweden and Finland.



In 1921 the League of Nations in Geneva decided that Åland should belong to Finland but under the status of an autonomous entity. Thus there are international safeguards for Åland’s autonomy as it is the case for South Tyrol. The Act on Self-Government of Åland has been revised twice, in 1951 and in 1991.[[7]](#footnote-7)

**2.2 The Nordic Council**

The Nordic Council was created in 1952 as a parliamentary forum of cooperation with four member states (Norway, Denmark, Iceland and Sweden). Finland joined in 1955. The Nordic Council with his headquarters in Copenhagen is no parliament in legal terms and has no powers to take binding decisions, but is a key player in the cooperation of the Scandinavian States. The Nordic Council has been a precursor for other international organisations in the context of autonomous territories. In 1962, with the Treaty of Cooperation (Helsinki Treaty), a formal agreement was concluded among the five Member States. Later, in 1967, Denmark proposed the formal representation of its autonomous entity, the Faroe Islands, and the Åland Islands. Greenland was admitted only later as they achieved autonomy in 1979. The representatives of the Nordic Council are elected by the five national parliaments and the three regional assemblies.

This Council is not empowered to make decisions that are binding on the States, but takes important initiatives and gives recommendations to his members. The three autonomous regions are entitled to vote in the Nordic Council and to put questions to the government representatives. They may hold the presidency of the Nordic Council, be chairperson of some committees. In brief the three autonomies are on an equal footing with the five member states (SUKSI, 2011, 606): “In comparison with other international intergovernmental organisations, the Nordic Council is regarded as something of a model for the equal participation of entities below the level of sovereign nation-states” (NAUCLÈR 2005, 105).

**2.3 The Nordic Council of Ministers**

This body was established in 1971 in order to implement the cooperation at governmental level. In 1976 the Faroe and Åland Islands were given the right to send representatives with observer status to the meeting of the Ministerial Council. In 1983 the three autonomous territories were formally included in the work of the Nordic Council of Ministers, giving them the right to participate in the work of the Council of Ministers. Decisions in the Nordic Council of Ministers are based on consensus, but the consent of the autonomous regions is not required. On the other hand, decisions of the Nordic Council are not binding if they fall under the autonomous powers of the three autonomous regions, they may ensure its domestic implementation (NAUCLÉR, 2005, 107). Nevertheless, the autonomous regions are allowed to make proposals to the governments.

When compared with the Nordic Council, the status of the three Nordic self-governing territories is different in the Nordic Council of Ministers, which is entitled to take decisions binding on the five Member States. In this body they are just present with their own representatives, may express themselves, but without formal voting right.

In comparison with other international intergovernmental organisations, the Nordic Council is therefore regarded as something of a model for the equal participation of entities below the level of sovereign nation-states. Whether at the Council of Europe or under the Treaty of Rome, the Treaty of Paris or the Statute of the Inter-Parliamentary Union, non-sovereign territories or national minority groups do not formally and equally participate in these bodies. Their representatives have, at best, been able to obtain some form of observer status. The general structure of Nordic cooperation can accomplish with higher standards of recognition and cooperation. Primarily, it serves as a good example for cooperation between sovereign states with minorities, autonomous areas or regions with cross-border links. Moreover, Denmark and Finland depart from the principle that the state is internationally responsible for everything taking place on a sub-state level (SUKSI, 2011, 576).

**2.4 The Case of the Åland Islands**

Concerning international relations of sub-state entities the various states have opted for different solutions. On the one hand autonomous entities are interested in achieving some powers also for international cooperation. On the other hand also the international community must know who, in the final instance, is responsible for international commitments. Generally, the state, which an autonomous region belongs to, is responsible as a legal person.[[8]](#footnote-8)

Apart from the Faroe and Greenland, the broadest inclusion of sub-state entities in the international relations of States has taken place in the autonomous Åland Islands as they have engaged in direct contacts with governmental representatives of foreign powers that in principle fall outside of the framework of the autonomy (SILVERSTRÖM 2008, 270). Self-Governments Acts and other legislation within the area of international relations have provided the Åland Islands with a relatively wide measure of functions and safeguards within this area.[[9]](#footnote-9) But only the 1991 Act of Self-Government gave a certain position to the Åland Islands in relation to treaty matters. This Act provides for complex web of participation for the Åland Islands in decision making concerning EU matters. However, the Åland Islands, as most other autonomous entities, have no separate legal personality in international law.

Normally it is up to the Finnish Government to engage in treaty negotiations with third states.[[10]](#footnote-10) If Finland contracts an international treaty containing a provision falling under the Åland sphere of responsibility, the consent of the Åland Assembly is required for the treaty to apply to Åland as well. Also the government of Åland may propose negotiations on a treaty or other international obligations to the appropriate state officials. Conversely, the autonomous government should be informed about negotiations on a treaty or another international obligation if the matter is subject to the competence of Åland. The government of Åland shall participate to the negotiations if there is a special reason for it. Thus the government can enter in direct contact with the European Commission regarding matters falling within its powers and concerning the implementation of EU decisions, but it shall notify the Finnish Foreign Ministry about it (SUKSI 2011, 590).

In case there are weighty objections presented by the Åland Islands a Finnish treaty with a third state could be concluded with a territorial exception for the Åland Islands (SUKSI 2011, 592). The Åland Islands are involved in the actual ratification process: “If a treaty binding on Finland contains a provision which under the Self-governing Act concerns a matter within the competence of the Åland Islands the Legislative Assembly must, according to section 59 (1), consent to the statute implementing that provision so that it will enter into force in the jurisdiction of Åland“(SUKSI, 2011, 592).

Most of the treaties in this regard (about ten per year) are treaties about the prevention of double taxation or about social benefits. If the Ålands consent is not given, the treaty does not enter into force within its jurisdiction, but only in mainland Finland. Based on this principle also the Finnish Accession Treaty to the EU itself had to be passed in the Legislative Assembly of the Åland Islands. In case its consent had not been granted, the entire territory of Finland would have been excluded from the EU Treaty of 1 December 2009, placing Finland in a very difficult position. Eventually, the Åland Legislative Assembly gave its consent to the Lisbon Treaty on 25 November 2009.[[11]](#footnote-11)

The government of the Ålands maintains direct contacts with Sweden at the ministerial level (section 27, para 4, Self-Government Act). There is a preferential treatment of students from the Åland Islands in the higher education of Sweden. The government of the Åland Islands also maintains an official information agency in Stockholm which issues information about the Åland Islands and may assist enterprises with activities on the Islands: “Although the Åland Islands cannot conclude treaties under public international law, it seems possible to enter into contractual relations of a private law nature with public entities abroad for the purchase of services” (SUKSI, 2011, 610).[[12]](#footnote-12)

The Åland Islands have also joined the CALRE (*Conférence des Assemblées législatives régionales)* which is a meeting of the 74 presidents of European regional legislative assemblies at the sub-state level. Also Scotland and South Tyrol are members of CALRE.

May the Åland Islands claim for a right to secession? From the perspective of international relations, the Åland Islands settlement established in most unequivocal way that the Åland Islands could not secede from Finland and join Sweden. Through the Nordic cooperation, Finland as well as the Åland Islands have grown closer to Sweden by acquiring a share in the joint decision-making structures at the international levels: “In that way, Sweden is participating in decisions about the common rules that apply not only in Finland but also in the Åland Islands” (SUKSI, 2011, 611).

**2.5 The Rights of the Nordic Islands: an Example for Europe’s Autonomies?**

Summing it up, the powers of the Nordic autonomous territories regarding international relations appear quite far reaching, as they are full participants of the Nordic Council and observers with partial membership rights in the Nordic Council of Ministers. They are entitled to be involved in international treaty procedures and may freely decide whether to join or not supra-national organisations. This current kind of involvement of the three autonomous regions in the Nordic international co-operation means that their representative political bodies are enabled to participate directly on matters discussed in the Nordic Council affecting them. Members of their regional parliaments are members of the Nordic Council and the governments of the autonomous regions have to agree with decisions of the Council of Nordic Ministers, otherwise they would not be bound by their decisions. This is indeed a high degree of political recognition of the role of autonomous entities at inter-state level, taking into account that for all of the three islands regions (Greenland, Faroe and Ålands) the key issues in external relations are dealt with mostly on two “gambling tables”: Scandinavia and the EU.

The situation of the EU is very different from that in the Nordic Council. Crucially, the EU so far lacks any clear provision comparable to the treatment of the autonomous territories in the Nordic Council. In fact, the EU does not recognise any other members than independent states. The autonomous regions of Denmark and Finland could have challenged it, in accordance with their Constitutions, but two of them chose to remain outside the organisation when their “home-states” joined the EU, except the Åland Islands. Other autonomous regions within the EU did not raise their voices, but basically in the first decades of the EU sub-state-autonomies at all were generally rather an exception. Only the federated entities of Germany, the *Länder*, and four of Italy’s Regions with special status could have raised that issue.

In the meanwhile the number of autonomous regions has risen substantially: there are three entities in Belgium, three autonomous regions in Great Britain, two in Portugal, and Spain is composed by 17 Autonomous Communities. Austria is a federal country and even France has two genuine autonomous regions, New Caledonia and French Polynesia. Nevertheless, sub-state autonomies are still an exception and even the member states with constituent regions with legislative powers are still a minority among the 28 EU member states: “With the exception of the Isle of Man and the Channel Islands all these autonomous entities had one thing in common: they could not remain outside the EU when their mother states joined the EU. This distinguishes them from the situation of the autonomous territories in the Nordic countries, whose status allowed them exactly that: the option to ‘opt out’ of EU-membership” (NAUCLÈR, 107). Now let us consider the position regarding international affairs of autonomous regions in the United Kingdom, Spain and Italy.

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**3. Scotland**

Scotland is a part of the United Kingdom (UK) since the Treaty of Union of 1707. For centuries its legal system has remained separate from those of England, Wales and Northern Ireland. In 1997 the Scottish Parliament was re-established with a large range of subjects under autonomous jurisdiction. Scotland today, based on the amended Scotland Act of 2012,[[13]](#footnote-13) constitutes a distinct jurisdiction in public and private law. An all-party commission chaired by Lord Kelvin is currently discussing the further devolution of powers to Scotland, following the referendum on independence of 18 September 2014.

The Scotland Act of 1998 allots foreign relations under the “reserved matters” to the UK Parliament along with state taxes, social security, defence and broadcasting (Schedule 5 of Scotland Act 2012). Nonetheless, Scotland is concerned by issues regulated by the EU, to be applied by domestic UK law. If the implementation of international commitments of the UK has to be done on a regional level, the Scottish jurisdiction gets involved and Scotland is interested to participate in the conclusion of those obligations. The Memorandum of Understanding of 2013 between the UK Government and the Scottish, Welsh, and Northern Irish governments contains a special “Concordat on Co-ordination of European Union Policy Issues”.[[14]](#footnote-14) In this framework some arrangements are set out for the handling of the devolved administration’s interests outside the UK with regard to the international relations particularly vis-à-vis the EU (MoU 2013, para. 18). According to this Concordat on international relations, “the interfaces between the UK Government and the Scottish Government contain at least the following dimensions: exchange of information, formulation of United Kingdom policy and conduct of international negotiations, implementation of international obligations, cooperation over legal proceedings, representation overseas” (SUKSI, 2011, 588).[[15]](#footnote-15)

The UK Government pledges to involve Scotland as fully as possible in discussions about the formulation of the UK’s policy position on all EU and international issues which touch on devolved matters. Thus Scotland is allowed to nominate its share of UK representatives to the Economic and Social Committee of the EU. A similar recognition applies to the creation of international obligations outside of the EU framework. Scotland is responsible for implementing international treaties, the European Convention on Human Rights (ECHR) and EU obligations which concern devolved matters. However UK ministers have powers to intervene in order to ensure the implementation of EU obligations (para. 20 of the MoU 2013). Generally speaking, the UK Parliament and UK ministers retain the power to legislate in order to implement EU obligations throughout the UK.

It seems that Scotland is highly integrated in the management of EU issues in the UK, e.g. a Scottish minister can be a member of the UK team participating in the EU Council meeting. However, the ultimate responsibility lies with the UK minister. According to the MoU of 2013, Scotland has a very strong profile in the area of UK-EU-relations, but may not involve itself directly in EU matters.

A good example of shared responsibility between the state and Scotland are breaches of EU law. This has monetary consequences for the concerned Member State. But the devolved administration is directly accountable through the domestic courts. Scotland has agreed that, if financial penalties are imposed on the UK as a result of any failure of implementation of EU acts, for any damage or costs also Scotland will be held responsible. A breach of the EU law caused by Scotland will be passed on from the UK as primary payee to Scotland. If the breach is due to both the government levels the fine could be shared by both (TRENCH 2007, 63), because UK ministers could intervene in Scottish decision-making on basis of the Scotland Act, section 57.

On the other hand, in traditional international relations Scotland generally is not involved. Within foreign relations Scotland has only moved cautiously into the area of development cooperation. Also in the UK at large, sub-state entities can undertake some activities and share state power without challenging the state. However, Scotland does not undertake anything in the realm of foreign relations in a completely independent way (SUKSI 2011, 588).

Summing it up, Scotland has relatively modest powers to maintain relations with EU institutions and regional governments in other EU countries. It is thus possible to say that the Scottish authorities can utilise a broad framework of consultation for participation in foreign affairs, which in the case of EU matters is more far reaching than in the case of regular international relations: “The framework does not contain the possibility of preventing the UK from supporting a measure at the EU level or stipulating an international treaty, nor does it contain the possibility of opting out from the implementation of an EU obligation or an obligation that is based in international law” (SUKSI, 2011, 589).

# 4. The European Grouping of Territorial Cooperation (EGTC) and South Tyrol

**4.1 General remarks on the EGTC**

One special feature of international relations of autonomous regions concerns the cross-border cooperation of regions of all kind within the European Union. With the creation of the internal market in 1992, the Schengen Treaty of 1998 and the introduction of the euro in 2001 the integration of the EU is deepening especially through the dynamics of free, borderless markets. In addition to that, a deeper territorial cohesion among different territories was required to integrate market developments on the sub-state decentralised level. Cooperation between territories beyond frontiers and across different institutional layers has become a cornerstone of the further integration of regions belonging to different Member States sharing the same interests. After some decades of experiences with INTERREG trans-border programmes, the EU became aware of the need for an appropriate organizational legal structure to carry out the multilevel EU cooperation programmes. Subsequently, sub-national entities got increasingly involved in EU policy-making for territorial cohesion.

Indeed, economic, social and environmental problems do not stop at borders and require joint policies. In order to be more efficient such policies must focus on certain territories sharing such problems, e.g. the Galicia-Northern Portugal region, the Pyrenees-Mediterranean region, the Danube-river-basin regions, or Alpine regions. These regions may pool their resources and coordinate their initiatives, backed by EU financial support, to achieve solutions on an interregional scale. Since the 1980s the EU has funded such programmes, but there was no sufficient uniformity and legal stability to cross-border cooperation. So the Committee of Regions of the EU in 2004 prompted the European Commission to present a proposal which in 2006 became Regulation 1082/2006 establishing the European Grouping of Territorial Cooperation (EGTC).[[16]](#footnote-16)

This tool was established by EU-Regulation 1082/2006 for the purpose to offer an institution for cross-border cooperation of regions and strengthen the multi-level governance of EU cohesion programmes. Ten years after its adoption, 30 EGTCs have been set up, embracing also South Tyrol, which is a part of the EGTC “EUREGIO Tirol-South Tyrol-Trentino”.[[17]](#footnote-17) These EGTCs have stimulated new inter-institutional cross-border-partnerships and established an additional level of governance for cross-border cooperation. The EGTCs are a promising new form of pushing for European cohesion through local development in areas still divided by a state border. As a side effect, EGTCs also foster foreign relations of constitutional regions in the framework of the European Union. Such regions must not be of legislative character, but the higher their degree of autonomy the larger the range of potential cross-border activities. The EGTCs are expected to carry out mainly programmes of territorial cooperation funded by the EU, but are allowed to implement other initiatives without external financial support.

How does an EGTC enhance territorial cohesion across Europe? “Unlike its predecessors (such as Euroregions and working communities), the EGTC allows, within the same cooperative structure, the interaction of different institutional levels in a new form of multilevel governance, where more stakeholders can participate than before: regional and local authorities, Member States, and all those public or private entities (universities, chambers of commerce, foundations, etc.) that are subject to public procurement rules. It allows them to interact on a regional (not only cross-border) basis.

It establishes a legal personality, with binding decisions in remarkably large territories over a wide range of cooperation areas. The legal personality enables it to have a budget and its own managing organs, the capacity of employing staff, holding property, to actively participate in legal proceedings, as well as the “EU legitimation” to promote cross-border, transnational and interregional cooperation. This legal stability reinforces not only the decision-making among the regional partners, but also their position in interaction with the EU institutions. It enhances also their possibilities for improving the management of cooperation programs and projects. In fact, the EGTC was designed to facilitate the implementation of programmes and projects co-financed by the structural funds. But it can also develop other forms of territorial cooperation without Community funding or carry out actions relating to Community policies other than structural policy. Member States may decide on regime applicable to these groupings (SPINACI/VARA-ARRIBAS, 2009, 6). Thus the EGTC is no classical “territorial sub-state entity” such as a region, a *département*, a *Bundesland*, or an Autonomous Community. It is based on a threefold legal basis: EU law, the Member State acts for implementation of Regulation 1082/2006, and the EGTC statute.

**4.2 The EGTC “Euregio Tirol-South Tyrol-Trentino”**

This EGTC includes one federal entity (*Bundesland*) of Austria and two Autonomous Provinces of Italy. It was established in the 2011 statute of Trentino and South Tyrol as a subject of public law with a statute without amending the autonomy statute of Trentino-South Tyrol, under EU and Member State law. Although there had been some other institutions among the historical parts of Tyrol such as the ARGEALP (founded in 1972) and the Europaregion Tirol (founded in 1998) this time the cross-border cooperation gained a new legal quality with much more practical relevance.

On the legal level EU Regulation 1082/2006[[18]](#footnote-18) paved the way to create an EGTC also in the Europaregion Tirol. Italy and Austria had signed the Council of Europe’s Madrid Convention on cross-border cooperation of 1980 and a framework convention of 1993, but only in 2009 all three Additional Protocols to the Madrid Convention were ratified by Italy, opening the possibility to establish EGTCs embracing the two neighbouring states. The EGTC Euroregio Tirol is the only one in Europe composed exclusively by regions vested with legislative powers.[[19]](#footnote-19) The Member States (Austria and Italy) retain important powers of control and supervision on the EGTC Tirol-South Tyrol-Trentino. The EGTC’s functions and programmes are potentially far reaching, depending on the available budgets and the political will.

As all other EGTCs in the EU, the Euregio Tirol is limited to the executive level, whereas no common elected representative assembly is established by the statute. From the perspective of democratic theory this form of cross-border cooperation lacks democratic legitimacy and control by a parliament. On the other hand, it is controlled by both the regional and the Member State governments. Each member region – Trentino, South Tyrol and Austrian Tirol – is vested with a veto right, thus the EGTC is working like an international institution based on the consensus or unanimity principle. All practical purposes and goals can only be achieved by common effort and cooperation (art. 5 Statute of the EGTC Euregio Tirol). However, the main rights of direct control of the EGTC bodies lie with the regional governments, not with the regional assemblies. New forms and procedures of truly democratic control still have to be developed in this regard.

The EGTC Euregio Tirol so far has carried out activities in the area of economy, culture, energy, mobility and transport, public health privileging common research programmes. As some political forces have objected that EGTCs could have a possible subversive role as they embrace ethnic minorities and regions in their kin-states, it has been pointed out that most of the 30 EGTCs have been established in ethnically sensitive border regions such as Portugal-Spain (Galicia), France-Belgium (Wallonia), Austria-Italy (Tirol), Hungary-Slovak Republic. Being under Member State and EU control, they do not bear any threat for territorial integrity, but are expected to foster minority protection, good neighbourhood, cultural cooperation between divided linguistic groups (ENGL/ZWILLING 2008, 175-176). Common commitment to some common problems and to improve the quality of life of the population and the protection of minorities are expected not to trigger new tensions but to create a shared responsibility and more cohesion.

Thus, the first generation of EGTCs are likely not only to present challenges, but also to provide a set of “local solutions”, tackling legal and administrative uncertainties and disparities. This knowledge and expertise could be managed at the EU level to improve the “usability” of the tool and spread its leverage effects across applications: EU project or programme management, large infrastructures, cross-border services, cooperation with third countries, etc. The EGTC can represent a significant development in the political landscape at local and regional level: “It could bring a sense of European neighbourhood to citizens as well as provide local political classes with a substantial European perspective. A new vision for a generation of politicians, no longer divided by post-war borders, who would rather have the shared challenge of jointly projecting their borderless territory within, and beyond, our continent Europe” (SPINACI/VARA-ARRIBAS, 2009, 11).

# 5. The foreign relations of Spain’s Autonomous Communities

**5.1 General issues**

Spain, a so-called State of Autonomies, is a highly decentralized political system, composed of 17 Autonomous Communities and two autonomous cities. The Spanish Constitution of 1978 established a quasi-federal system with international relations as an exclusive power of the central government.[[20]](#footnote-20) But since then, the Autonomous Communities tried to develop their own activities abroad: “For some regions, such as Catalonia and the Basque Country, developing a presence abroad was from the outset of democracy very important because it made possible symbolic representation of three regions as political entities differentiated from the rest of Spain” (ALDECOA/CORNAGO, 2009, 241). Mostly the purpose of international activities of Spain’s Autonomous Communities was the promotion of their economy, but central authorities often were on alert. Issues of European integration induced also other Autonomous Communities to develop international economic and political relations: “Within the limits given by articles 148 and 149 of the Spanish Constitution, each Autonomous Community holds all the powers listed in the respective Statute of Autonomy. The Autonomous Communities wield legislative powers on both exclusive and shared powers.”[[21]](#footnote-21)

The implication of EU membership has been decisive for the internationalization of the autonomous communities (ALDECOA/CORNAGO, 2009, 247). Three milestones are to be remarked in the EU’s political recognition of the EU’s regions:

1. The creation in 1994 of the Committee of the Regions with a consultative role on issues such as territorial cohesion, education and culture, public health, transport and infrastructure;
2. The recruitment of regional authorities as partners in implementing EU policies;
3. The provision that Member States can be represented in the Council of Ministers by ministers of their respective regional governments.

Thus, Spain’s Autonomous Communities prompted the central government to agree on ensuring direct access to EU resources and decision-making procedures. By the way, Spain has been the largest net beneficiary of European structural and cohesion funds in absolute terms until the accession of Romania and Bulgaria in 2007. EU programmes generally provided strong incentives for Autonomous Communities to participate in activities across Europe and beyond (ALDECOA/CORNAGO, 2009, 248).

Spain’s Constitution of 1978 does not explicitly refer to any foreign activity of the Autonomous Communities, but rather establishes “international relations” as an exclusive power of the State (Art. 149,1) along with exclusive power on foreign and defence policy (Art. 97), foreign representation and diplomacy (Art. 56,1) and 63.1)., treaty making (Art. 93, 94 and 96) and many other domains such as nationality, migration, status of aliens, asylum, foreign trade, currency and monetary policy, customs air space, flag shipping and licensing of aircraft (Art. 149.1). But in contrast with other federal countries where central institutions are free to implement any foreign policy measure including European law, the Spanish model requires the cooperation of the Autonomous Communities to implement any foreign policy measure affecting regional powers, thus resembles the model established in Denmark and Finland (ALDECOA/CORNAGO, 2009, 249).

The Autonomous Communities are entitled to act on an international level insofar as their powers are affected by international acts such as European law. Furthermore, the chamber representing the regions, the Senate, is basically irrelevant in the parliamentary decision-making process. The autonomy statutes vary with regard to international powers:

1. Some statutes include the right of the Autonomous Communities to be informed about international treaties signed by the Central Government;
2. Some statutes recognize the right of the Autonomous Communities to ask the central government to enter into international negotiations on matters affecting their interests or concern (Catalonia, Art. 195 to 197);
3. Some statutes even allow for the possibility of participation in international negotiations within the Spanish delegation (Catalonia, art. 185 to 187).

With a judgment (No. 61 of 20 March 1997), the Constitutional Court of Spain clarified the scope and limits of the Autonomous Communities powers in foreign affairs. Therefore they are entitled to develop diverse international activities as far as these activities are instrumental to the effective exercise of their own powers, do not interfere in the power of the central government in foreign policy, and do not create new obligations and responsibilities for the central government: “International relations of Autonomous Communities are allowed as long as it serves to better accomplish the functions assumed by the Autonomous Communities resulting from the powers granted to them by the statute of autonomy (ALDECOA/CORNAGO, 2009, 251).

The new Catalan statute,[[22]](#footnote-22) in force since August 2006, adopted a much more ambitious approach to international issues that will no doubt emulate others. For this reason it deserves more attention. The 2006 Statute establishes a Bilateral Commission between Catalonia and the Spanish government, which will:

* Monitor the participation of Catalonia in the EU; and
* Monitor central-government international action in any area under Catalonia’s jurisdiction.

This bilateral approach has been requested by Catalonia and the Basque Country, but its extension to other Autonomous Communities is rather unlikely. Catalonia shall be informed by the central government of EU treaty-reform initiatives (Art. 187).

Catalonia can engage in foreign relations and promote its interests in this area while respecting the powers of the state in foreign affairs. Catalonia may establish offices abroad as well as sign international treaties which may request to have its own representatives included in the negotiating delegation (Art. 195 and 196). Catalonia shall promote cooperation and establish relations with the European regions with which it shares economic, social, cultural interests (Art. 197), also cooperation with other territories through development-cooperation programmes (Art. 197). Catalonia shall participate in international bodies in matters of major interest especially at UNESCO and other cultural bodies (Art. 198). Finally the new statute provides that Catalonia shall promote international activities in social, cultural and sporting organisations (Art. 200).

The importance of the mechanism is genuine: “For many years the real template for discussions about foreign relations of the Autonomous Communities has been the EU and, more specifically, the controversy surrounding the place of regional governments in the new European polity” (ALDECOA/CORNAGO 2009, 251).

Spain’s Autonomous Communities have been involved in foreign affairs for centuries, especially the most influential ones, the Basque Country, Catalonia and Galicia. Thus these regions developed a sense of natural belonging different from the rest of Spain. They were particularly active through international non-governmental organisations (NGOs), which is an accepted practice. With regard to NGOs there are three features valid for other states:

* Agreements with NGOs cannot incur international obligations binding for the state;
* Agreements must not affect adversely the state’s foreign policy;
* Autonomous regions, when entering into international agreements, cannot be considered subjects of international law.

All 17 Autonomous Communities have established official delegations in Brussels. The Spanish Constitutional Court accepted these offices, holding that the delegations can be considered official because interactions with the EU can no longer be seen as ‘international relations’.

In addition all Autonomous Communities maintain several trade offices or business delegates abroad to attract investment and to promote their regional economies. Catalonia has about 40 business and trade offices abroad called COPA; the Canary Islands have seven business delegations also in Agadir, Praia, Nouakchott. Another field in which Autonomous Communities are very active are cross-border relations. Galicia, Castilla-Leon, Extremadura and Andalusia maintain relationships and EGTCs with Portuguese counterparts; the Basque Country, Navarre, Aragon and Catalonia with French *départements*. EU Regulation 1082/2006 on EGTCs has facilitated the establishment of such interregional cross-border institutions of public law to foster common programmes (see chapter on EGTCs). INTERREG initiatives are aimed to strengthen economic cohesion, co-financed by the EU and the Member States.[[23]](#footnote-23)

**5.2 The EU and Spain’s Autonomous Communities**

Since 1986 many areas that were previously under the jurisdiction of the constituent units have been transferred to the EU by the central government by virtue of its exclusive foreign policy powers. This process eroded the legislative powers of Autonomous Communities while simultaneously requiring their collaboration in implementing EU legislation. The regional elites mobilised efforts to secure greater participation in EU policy making. The Basque Country and Catalonia are very active in this regard.

So the “Sectoral Conference Relating to EU Affairs”, called SCREU (Law 2/1997), was established to discuss general EU matters, specific issues are dealt with at regular meetings for consultation, in order to enhance regional participation in the implementation, management and monitoring of EU policies as well as to facilitate to formulate common positions: “Although the SCREU model is a modest achievement and its use has not produced tangible results, it has served as an avenue for developing experience in intergovernmental policymaking for both the central government and the Autonomous Communities” (ALDECOA/CORNAGO, 2009, 255). Nevertheless, the Basque and Catalan nationalists pursue special bilateral relations with the central government. “Although the system still has many shortcomings, it has afforded the constituent units practice in direct participation in the EU Council of Ministers and in Spain’s Permanent Representation” (ALDECOA/CORNAGO, 2009, 256).

For all autonomous entities belonging to EU Member States (Finland, Denmark, United Kingdom, Belgium, Italy, Spain, France and Portugal) the EU has significantly eroded the distinction between domestic and foreign matters. Since the 1980s many powers previously held by the autonomous regions have been transferred to the EU. On the autonomous regions the sub-state entities claimed and obtained some right of participation in the procedure of implementation of EU law at the domestic level. The autonomous regions urged not only more powers for the EU Committee of Regions, but also intergovernmental mechanisms to allow them to participate directly in the EU policy process, particularly when their powers are affected.

Autonomous Communities have also increasingly become involved in development aid; they are the world’s most active sub-national units in this field. The Spanish Law on Development Cooperation of 1998 provides that local authorities can conduct decentralised cooperation activities consistent with the international cooperation run by the State. It should be kept in mind that the Autonomous Communities have neither the political influence nor the legal power to veto any central-government foreign policy decision, even when these fall within areas of their competence, or affect their crucial interests. Consequently they can address such issues only through intergovernmental coordination and institutional design.

Starting with 15 January 2016, Catalonia will have its own Foreign Affairs Commissioner after the government of the Autonomous Communities decided to create a specific department. Catalonia already has seven foreign delegations in New York, London, Brussels, Paris Rome and Vienna, and plans are underway for a new office in Lisbon. The Catalan government wants to strengthen its efforts to attract international support for independence. In 2015, Catalan diplomatic visits to the USA, Ireland, Belgium, Sweden, Uruguay and Paraguay resulted in protests from the Spanish embassies.

# 6. Reflections and Conclusions

First of all let us recall our original definition of territorial autonomy: autonomous regions are sub-state entities within democratic states with the rule of law, vested with a minimum of legislative and executive powers, which are in the hands of democratically elected regional assemblies and governments. Under this quite strict definition of a democratic territorial autonomy today globally we can find about 60 regions, part of 19 independent states. Most of them are operating in Europe, where modern autonomy was conceived and established for the first time in the Åland Islands in 1921, later in Spain and in the Memel Territory in the 1930s. Among the currently 35 working autonomies in Europe we notice a varying degree of autonomous powers, starting with weaker forms as for instance Corsica in France, extending to Catalonia and the three autonomous Nordic islands groups in Denmark and Finland.

The extension of an autonomy regime – its degree of self-government – is reflected also in its powers in international relations. Generally such participation of sub-state entities to the classical central state power of foreign relations is ruled out by the Constitutions. Most central states draw up careful boundaries in autonomy statutes with regard to powers of international relations. The general rule is: the sub-state entity does not have any independent power to enter into international commitments with subjects of international law, but the central state might allow a certain lower degree of participation in international relations. On the other hand, in most of Europe’s autonomy systems special powers have been created in the autonomy statute to allow for external action in accordance with the international responsibility of the state. Again, these powers in external affairs are regulated differently, ranging from a rather low level as in South Tyrol and Scotland, to a much higher level in the Nordic Islands and some Autonomous Communities of Spain. We may distinguish the following most important rights with regard to foreign relations of autonomous entities:

* The right to be consulted by the central government when an international treaty is signed which impinges on areas under the autonomous jurisdiction;
* The right to be a member of the official state’s delegation when it comes to negotiate international agreements, whenever areas under autonomous jurisdiction are affected;
* The right of the autonomous entity to conclude contracts under private law with foreign institutions;
* The right to adhere to international NGOs and international organisations which do not require that their members be subjects of international law;
* The right to maintain offices of representation in foreign countries;
* The right to be members of international councils of states (as observers or full-fledged members);
* The right to negotiate agreements with foreign subjects of public law (sub state entities, states) after consultation and authorization by the central state which the autonomous entity belongs to.

Against this background it is possible to distinguish between such international relations where international commitments arise, on the one hand, and such relations, where no international commitments arise, on the other. An agreement between the Autonomous Province of Bozen (Italy) with the Public Health Service of the *Bundesland* Tirol (Austria) to purchase specialized health services, or between the Åland Islands (Finland) and a hospital in Sweden under private law today is completely uncomplicated from the perspective of the sovereignty of Italy or Finland. When the Faroe Islands and Greenland enter into economic agreements with Iceland, the case is different. Autonomous regions within the EU are even allowed to establish cross-border groups of territorial cooperation as legal persons with legal capacity. Such EGTCs are allowed to carry out common programmes under EU law and enter into contractual relationship with any private and public entity.

But there is also a domestic sub-state dimension to the international relations of the state, namely the conclusion by the state of international commitments that affect the legislative competences of the autonomous entities on the one hand, and the implementation of such commitments in the domestic legal sphere, on the other. The Åland Islands are entitled to be involved in the negotiations, Catalonia has the right to be informed about such international commitments, but in Italy the five autonomous regions do not have any such right of participation to the formulation of Italy’s foreign policy.

The domestic implementation of international treaties basically is split between the state and the autonomous entity according to the Constitution and the autonomy statute. Again, the most far-reaching involvement has been obtained by the Nordic Islands: they are requested to give their consent to a treaty concluded by the central state which affects the powers under autonomous legislation. If consent is denied, a territorial exception will be applied for the respective autonomous territory. If consent is given, the autonomous entity is obliged to ratify and implement the treaty in its jurisdiction.

What happens if the autonomous entity is in breach of its international obligations? This is quite often an issue with regard to EU regulations and directives. Current international law holds the entire state responsible for such a breach. In some of the cases discussed here, the resulting pecuniary fines can be divided between the state and the sub-state entity depending in special domestic regulations.

Are Europe’s autonomous regions entitled to take up membership of international organisations? There are different regimes. In cases where the state adopts a strict attitude towards the treaty-making powers of autonomous territories, the state is also likely to be careful in not granting the sub-state entities any right to join international organisations of a public law nature. If autonomous regions to a certain extent are involved in the treaty-making procedures, they are likely to be incorporated in international bodies and organisations. The Nordic autonomous territories are treated almost as quasi-states of some sort, being members on an equal footing with the five Member States of the Nordic Council. This is also facilitated by the EU framework. Some Autonomous Communities of Spain are not only members to international organisations such as UNESCO, but are involved in EU institutions with their own representatives as members of the Spanish delegations. All constituent regions, not only autonomous regions in the EU, are entitled to run their own offices in Brussels and enter in direct contact with the European Commission and other EU institutions; many of them are directly represented in the European Committee of Regions with consultative status.

Generally, the supra-state level constituted by the EU creates an additional challenge not only to the internal distribution of powers, but also to the entire working of the multi-level legislative and executive governance. Today altogether only ten out of the 28 current EU Member States have “constituent regions”, either by way of a federal organisation (Germany, Austria, Belgium) or by way of the presence of territorial autonomy or a regional system (Italy, Spain, Portugal, Denmark, Finland, Great Britain, France). In other words, different Member States deal differently with the sub-state level. The EU has started to recognize sub-state-entities (EGTC, regional programmes, Committee of Regions), and also Member States increasingly recognise and involve the sub-state-entities. This is the case with Scotland, which is allowed to be a member of the UK delegations in Brussels; it is applied with the Autonomous Communities of Spain when consulted in intergovernmental (Spanish) committees as the SCREU; but is not the case with Italy’s regions with a special autonomy statute.

Other important differences in international relations remain between the single states: the UK government may intervene in the Scottish jurisdiction for the implementation of EU law; the same happens in Italy with regard to Trentino and South Tyrol, and in Spain with regard to Catalonia and the Basque Country. On the other hand, neither the Danish nor the Finnish government can do so vis-à-vis the Åland Islands, let alone Greenland and the Faroe Islands which have opted out from the EU altogether. This means that autonomy as the power to freely govern oneself under the national Constitution and the autonomy statute is considerably more robust in the Nordic islands as it protects the sphere of autonomous legislation (home rule) not only vis-à-vis the central state, but also vis-à-vis the EU, with its increasing penetration in domestic law. The degree of autonomy in the implementation of EU law is much lower in Catalonia, Scotland and Sicily. But this is also due to the different weight of these regions in terms of economic, political and financial power of such entities. It makes a difference having a population of 7 million and a share of the national GDP of about 20 per cent as Catalonia, whereas the Åland Islands with their 26,000 inhabitants are not much more than a big village compared with Finland’s population of 5 million.

Referring to the external relations of autonomous regions one clear demarcation line is the right to enter into agreement under international law. There are only a few exceptions to the rule to reserve international treaty-making power exclusively to the state. This is the case of Denmark, where the Faroe Islands and Greenland are allowed to conclude treaties or treaty-like relationships with third states. But also in such situations Denmark keeps the ultimate responsibility for the international obligations resulting from such treaties.

Concluding, among all existing autonomous systems also in Europe the extent of participation of autonomous entities to international relations varies very much, from almost no participation to an almost state-like position with regard to regional (European or Scandinavian) supranational organisations. Where autonomous regions have some powers in international relations normally this is carefully defined in state laws. The involvement of the sub-state entities normally is restricted to the areas and powers under autonomous jurisdiction, whereas the classical core function of the central state in foreign affairs and defence is not touched. Finally in the framework of the EU there is a growing importance of interregional cross-border territorial cooperation between sub-state entities, irrespective of autonomy. Such a legal and political supranational framework is still the exception, which only very few autonomous territories outside Europe can count on. Against this situation of some European autonomous regions we can now draw a brief comparison with the proposed autonomy system of the Moroccan Initiative for the Sahara region.

**7. The Moroccan Initiative for the Sahara Region and the European Autonomous Regions: a Comparison with Regard to Powers of External Relations**

After having examined several cases of European autonomy systems with regard to the autonomous powers in the area of external relations, we can brieflycompare the project of the autonomy of the Sahara Region with such European examples. For this purpose we should start from what the Moroccan Initiative provides for the prospected “Sahara Autonomous Region” regarding its future possible external relations, contained in the “Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region“, as officially presented by the Kingdom of Morocco to the United Nations on 11 April 2007.

This concept considers autonomy as a “compromise solution in the form of territorial autonomy which preserves its sovereign rights over Western Sahara and provides the Saharan population with the possibility of running its own affairs” (EL OUALI 2008, 46). In order to be credible, it is added, a territorial autonomy regime has to be profoundly based on democracy, a principle which the author of this paper fully shares.

The comparison of this proposal of autonomy for the Sahara region with working autonomy systems in different countries aims to assess whether the draft autonomy can meet the criteria for a high-level and comprehensive autonomy (EL OUALI, 2008, 47): “The project put forward by the Moroccan Initiative suggested a model for autonomy which gave the Sahara Autonomous Region powers which is difficult to find in any of the most advanced cases of autonomy, notably in Catalonia, the Åland Islands, the Faroe Islands and Greenland” (EL OUALI, 2008, 48).

Generally, the Initiative specifies that the state will retain exclusive jurisdiction in external relations (The Moroccan Initiative, par 14), which is a general rule shared by most of the world’s autonomy systems (BENEDIKTER 2010). But the Moroccan Initiative includes the future Sahara Autonomous region in diplomatic issues where appropriate, providing that “*State responsibilities with respect to external relations shall be exercised in consultation with the Sahara Autonomous Region for those matters which have a direct bearing on the prerogatives of the Region”* (The Moroccan Initiative, par 15.).

The Moroccan Initiative does not stop here, but goes so far as to say that, “*The Sahara Autonomous Region may, in consultation with the Government, establish cooperation relations with foreign Regions to foster inter-regional dialogue and cooperation”* (The Moroccan Initiative, par 15.).

In this respect, it is a very daring initiative, only seen in exceptional circumstances, such as in the case of the Åland Islands, the Faroe Islands, Greenland/Kalaallit Nunaat or Catalonia: “It is perceived as an attempt to adapt to globalisation by allowing autonomous regions to project themselves beyond the state in order to build on the opportunities that globalisation can offer in terms of their own development” (EL OUALI 2008, 48).

As we have outlined in the conclusions under 6), in most European autonomy statutes foreign relations remain excluded from the autonomous entity’s powers, and exclusively reserved to the central state. Just some autonomy statutes create a special competence that allows the autonomous region certain international action within the international responsibility of the state. It is up to the central state to determine the extent of a participation of the autonomous entity to external relations.

Even in such cases one major issue of international relations, however, remains excluded from the autonomous entity’s powers: the direct treaty-making power or faculty for binding international commitment of the autonomous entity. The general principle is rather that sub-state entities do not have any independent power to enter into international commitments with subjects of international law. In Europe, only exceptionally autonomous regions are allowed to enter in international relations where international commitments arise.

In this context the question arises: when an international treaty of the state intervenes in areas under autonomous responsibility, who is entitled to adopt the implementing legislation? In the Åland Islands this matter is resolved by the following method: the autonomous government is requested to give its consent to a treaty concluded by the Finnish state. If consent is given, the Åland Islands is obliged to implement the treaty in its jurisdiction. If consent is not given, the Åland Islands remain simply excluded from the implementation of that treaty within its territory. As a consequence, denial of consent activates a territorial clause at ratification which relieves the state from the responsibility to implement the treaty in the autonomous area, namely the Åland Islands.

One question remains, however: what happens if the autonomous region is in breach of the international obligations, provided that no territorial clause or other reservation has been applied and the Åland Islands have given their consent? Current public international law holds the entire state responsible for such a breach, and depending on the commitment, such a breach may also result in a pecuniary consequences for the state. These pecuniary fines, according to national law, can also be divided between the state and the concerned autonomous region. No such case from the experience of the Åland Island is known yet.

On the other hand, in the framework of the EU and the Council of Europe, autonomous regions as well as other sub-state entities are allowed and fostered to establish cross-border relations with other adjacent regions in one or more neighbouring states. Cross-border-cooperation, which is dynamically developing in the form of the EGTCs, can be useful for both: the good neighbourhood and territorial cohesion of the concerned regions and the quality of the relations of the states which the concerned sub-state entities or regions belong to.

In the case of the Sahara region, potential cross-border-cooperation between the South Western district of Algeria and the Autonomous Region of Sahara could also result in better relations between Algeria and Morocco. No major complications should arise for the possibility of the Autonomous Region to enter in agreements under private law. Because the sub-state entities are legal persons with legal capacity, it should be possible to enter into contractual relationship of a private law nature and to take up membership in international NGOs. The Moroccan Initiative does not appear to exclude such a possibility.

On the other hand, there are international commitments stipulated by the state, which may specifically touch the interests of one or some particular regions, in the given case of Morocco the interests of the future Autonomous Region Sahara. There is a risk that for the sake of national interests the autonomy’s interests are overlooked or sacrificed at all. As an example, we could quote military activities which potentially could damage the environment and health of the local population. Another example is the exploitation of natural resources (especially fish in the case of the Sahara region) done by external commercial companies or foreign states, based on international agreements concluded with Morocco. The case could also emerge whenever deep-sea mineral resources would be discovered along the coastline of Sahara, whose exploitation could potentially damage the coastal environment. In this respect, the Nordic Islands are in a stronger position, compared with Scotland, Catalonia and South Tyrol, as they can become directly involved in the negotiations of their central state.

As other autonomous regions in different continents, these examples of involvement of the autonomous regions in external relations show that there is space for the distribution of powers between the state and sub-state entities such as autonomous regions. There is a certain degree of flexibility managing international affairs, while respecting the general principle of the state’s sovereignty. This happens in a more extensive degree wherever the involved external partners (regions, sub-state entities, NGOs) are all part of the same supra-state organisation.

Membership in international organisations of a public law nature is allowed for the Nordic autonomous islands as they are members of the Nordic Council on par with the five sovereign states. This kind of membership is allowed also for regions within the EU under Regulation 1082/2006 regarding EGTCs (interregional organisations of public law) and under the Treaty of Madrid 1980 for countries which are members of the Council of Europe.

Thus a relaxed attitude is facilitated by the overarching EU framework, which is a quasi-federal construction, and also by the Council of Europe. The EU recognises the sub-state level in different ways (representation, implementation of EU programmes). The stronger the position of sub-state-entities in the respective Member State, the more powerful their standing vis-à-vis the EU institutions, as proved in the case of the Autonomous Communities of Spain.

Summing it up, it can be stated that, in the Initiative regarding the foreign relations of the future Autonomous Region of Sahara, Morocco clearly has opted for a more advanced level of powers in this regard, which comes close to that ensured for the Nordic Islands by Denmark and Finland. The future Autonomous Region Sahara not only will be consulted if some international matters touch on their prerogatives, but it will also be allowed to establish cooperation with neighbouring regions in third states.

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1. Director of the South Tyrol's Centre for Political Studies and Civic Education POLITiS. [↑](#footnote-ref-1)
2. Just one marginal note in this regard: When it comes to the foreign relations of provinces of federal states, the Canadian province of Québec (no autonomous region) clearly stands out for the extent and the scope of its action as well as for the resources allocated to it by the provincial government. Québec has signed several hundred international agreements since 1964 with both states and regional governments from every continent, and it has international representation in more than 25 countries. Institutionally, Québec’s international activities are crafted and supervised by a government department dedicated to international relations, the *Ministère des relations internationals* (MRI), which had a budget of around $100 million. See André Lecours, “Balancing Self-Rule and Shared-Rule: Sources of Tensions and Political Responses in Contemporary Political Systems,” in: Alberto Lopez-Basaguren/Leire Escajedo San Epifanio (eds., 2013), *The Ways of Federalism in Western Countries and the Horizons of Territorial Autonomy in Spain,* Vol. 1, Heidelberg: Springer Verlag, 109. [↑](#footnote-ref-2)
3. The “European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities”, Madrid, 21 May 1980, on: [www.cvce.eu](http://www.cvce.eu) [↑](#footnote-ref-3)
4. Apart from Spain, Italy, Great Britain, Denmark and Finland, the remaining European countries with working autonomy systems are: France (New Caledonia and French Polynesia), Portugal (Madeira and Azores), Belgium (German Community in Eastern Belgium), Serbia (Vojvodina), Moldavia (Gagauzia). No more autonomies are working in the Ukraine, which lost Crimea to Russia, and in the Netherlands, whose Caribbean Island region shifted to another legal relationship with the mainland. [↑](#footnote-ref-4)
5. See the “Act of Greenland Self-Government” of 12 June 2009 on the official website: <http://naalakkersuisut.gl> [↑](#footnote-ref-5)
6. “Where international organisations allow entities other than states and associations of states to attain membership in their own name, the Government may, subject to request by Naalakkersuisut, decide to submit or support such an application from Greenland where this is consistent with the constitutional status of Greenland.” (Act on Greenland Self-Government, Chapter 4, Point 14). [↑](#footnote-ref-6)
7. Aland Act on Autonomy on: <http://www.finlex.fi/fi/laki/kaannokset/1991/en19911144.pdf>. [↑](#footnote-ref-7)
8. “The ability of autonomous entities to participate in international affairs depends primarily on whether the entity has been authorized by the State to do so. It is not surprising if demands for domestic authorizations will increase due to the greater impact and effect of international affairs on autonomies” (SILVERSTRÖM, 2008, 259). This has been the case with Finland’s accession to the EU. [↑](#footnote-ref-8)
9. See the Act on the Autonomy of Åland (1991) at: [<http://www.finlex.fi/pdf/saadkaan/E9911144.PDF>]. [↑](#footnote-ref-9)
10. Protocol No.2 to the Accession Treaty of Finland to the EU is one example, prepared with the involvement of the government of the Åland Islands already during negotiations. [↑](#footnote-ref-10)
11. The relationship of the Åland and the EU is determined in a separate Protocol of Finland's document of accession (SILVERSTRÖM, 2008, 259-271). Certain exemptions were decided upon and included in a separate Protocol to the Accession Treaty. Still, some EU provisions, such as the customs union, are not in force in Åland, which can freely opt out of single EU regulations. [↑](#footnote-ref-11)
12. Both Sweden and the Russian Federation maintain Consulates-General in the Åland Islands. They may also be in charge of observing the demilitarisation of the Islands based on the 1921 Convention, to which Sweden is a party. Russia is a party to the 1940 bilateral treaty concerning the Åland Islands regarding the demilitarisation and non-fortification of the islands (SUKSI 2011, 609). [↑](#footnote-ref-12)
13. The Scotland Act of 2012 on: <http://www.legislation.gov.uk/ukpga/2012/11/pdfs/ukpga_20120011_en.pdf> [↑](#footnote-ref-13)
14. See Part. II, section B of the MoU of 2013 on: <http://www.gov.scot/resource/0043/00436627.pdf>. [↑](#footnote-ref-14)
15. At the UK Embassy in Washington, DC, there is a Scottish official seconded from the Scottish Government, and there is also a Scottish Representation in Brussels with the EU. [↑](#footnote-ref-15)
16. The first EGTC, Eurometropole Lille-Kortrijk-Tournai (France-Belgium), was founded on 21 January 2008, half a year after the entry into force of EU Regulation 1082/2006. Since 2006 about 30 EGTCs have emerged, mainly sharing state borders such as Spain-Portugal, Spain-France, France, Belgium, France-Italy, Hungary-Slovak Republic, Austria-Italy. In some cases the EGTC could build on existing bilateral cooperation agreements such as the Euroregio Tirol, which has been founded in 1998. [↑](#footnote-ref-16)
17. See the Europaregion’s English website: <http://www.europaregion.info/en/default.asp>. [↑](#footnote-ref-17)
18. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:210:0019:0024:IT:PDF [↑](#footnote-ref-18)
19. See the Europaregion’s website on <http://www.europaregion.info/it/22.asp> [↑](#footnote-ref-19)
20. See Spanish Parliament’s website for an explanation of the division of powers in foreign policy in Spain: <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=149&tipo=2> [↑](#footnote-ref-20)
21. See the Spanish Constitution (1978 with amendments of 2011), Section 149, p.1, subsection 3a, on:

    <https://www.constituteproject.org/constitution/Spain_2011.pdf?lang=en> [↑](#footnote-ref-21)
22. See the text at Catalonia’s official website: <http://web.gencat.cat/en/generalitat/estatut/estatut2006/> [↑](#footnote-ref-22)
23. See: <http://www.interregeurope.eu/>. [↑](#footnote-ref-23)