AUTONOMY – A CONFLICT RESOLUTION TOOL?

**Reflections for the Moroccan Initiative on the Autonomy of the Sahara Region**

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## I.        Introduction

States have adopted a variety of institutions in order to accommodate ethnic, linguistic and religious diversity within their borders. In the particularly challenging circumstances of negotiated settlements to end civil wars, conflict parties often rely on institutions which provide for the sharing and decentralization of state power. Institutions offering various forms of territorial autonomy, on the one hand, and 'shared rule' at the central government level, on the other, attempt to accommodate the demands of armed groups and their constituencies, while also preserving the territorial integrity of the state. The decentralization of state power, often through constitutional change, is common when conflicts are fought along ethnic or communal lines.[2] The aim is to allow territorially concentrated ethnic, religious or linguistic groups to manage their affairs with reduced interference from the central government, while remaining a part of the state.

Conflict parties are often sceptical about the ability of new, decentralized institutions to contribute to accommodation within one state. Some governments fear that decentralizing state power is a slippery slope encouraging secessionist ambitions, and in any case unable to untangle conflicting interests, powers and jurisdictions. Minorities and rebel groups do not trust governments to properly implement and respect autonomy arrangements, even if constitutionally entrenched, and often prefer the clean break of independence.[3] This is especially the case in protracted, long-term conflicts during which the state may have not been present in parts of its territory. Some scholars have argued that autonomy and decentralization of state power are essential ingredients of conflict resolution, while others emphasize that although such arrangements may have strong conflict prevention potential they are inadequate in bringing about lasting accommodation after conflict has already taken place.[4] When conflicts have lasted for several decades, these scholars argue, the erosion of trust is so deep that institutional arrangements cannot restore it.

The debate is partly linked to the extent to which analysts and political actors consider institutions transformative. Optimists argue that institutions can transform violent politics by offering political leaders incentives for accommodation and by habituating them to collaborate with each other. Pessimists, however, point out that, in conflict contexts or in the immediate post-agreement period, newly established institutions

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[2] Katia Papagianni, "Accommodating Diversity: Federalism, Autonomy and other Options," Background Paper, Oslo Forum, 2006, Centre for Humanitarian Dialogue.

[3] Katia Papagianni, "Truths and Untruths: Federalism, Autonomy and Decentralization," Background Paper, Asia Mediators Retreat 2006, Oslo Forum, Centre for Humanitarian Dialogue.

[4] Lars-Erik Cederman, Simon Hug, Andreas Schaedel, Julian Wuchelpfennig, "Territorial Autonomy in the Shadow of Future Conflict: Too Little, Too Late?" Presented at the annual meeting of the American Political Science Association (APSA), 22 August 2013.

are unlikely to enjoy wide support and trust, and to be able to transform incentives. Thus, even if institutions were able to foster accommodation in the long term, they are likely to require a lot of support by third-party actors in the short term in order to survive.[5] The lack of trust among parties, who in some cases have fought each other for several decades, is a significant stumbling block in designing and implementing joint institutions of government. Commitment to joint institutions in the long term is a risky proposition for parties who do not trust each other now and for armed rebellions which may have managed their affairs separately from the state for many years. Furthermore, although autonomy may offer minority or other groups to accept living within the state, it doesn't offer incentives for the parties to work together on building a shared vision for the state.

This paper recognizes that there is no one model for any given situation. No two institutional designs are identical and no two autonomy models share exactly the same ingredients. Most countries adopt hybrid institutions, which combine aspects of various approaches. Autonomy arrangements vary along several dimensions: the types of powers given to the regions, the numbers of regions benefiting from an autonomy arrangement, the guarantees offered to the autonomous regions about the stability of their status, the mechanisms for resolving disputes arising in the interpretation of the autonomy arrangements, the protection offered to ethnic, religious and cultural minorities within autonomous regions, and the powers of the central government in the autonomous region. All of these parameters are negotiated between central governments and minority groups to generate, in each case, unique arrangements and state institutions.

Furthermore, autonomy arrangements are important but are not a magic bullet. Their appropriateness and consequences will vary enormously according to context. In contexts of long-term conflict, during which the state may have withdrawn from parts of its territory and rebellions may have delivered services to the population for several years, constructing a sense of common statehood is challenging. The advantage of autonomy is its flexibility and the possibility it offers for creative solutions: it provides for a number of options, ranging from minimal responsibilities being devolved to local or regional levels of government to significant powers being shared – just below independence. This aspect of autonomy arrangements is its greatest strength, namely the fact that which powers can be devolved and to what extent can vary dramatically among different conflict settings. It makes autonomy a versatile tool, adaptable to complex situations. However, it also makes autonomy a difficult arrangement to negotiate given the details on powers and functions that need to be negotiated, as well as the great variety of options available. As usual with negotiated settlements, autonomy arrangements tend to result from long processes and multiple compromises.

## II.      What is Territorial Autonomy?

Territorial autonomy devolves to a country's regions or other localities the power to exercise direct control over agreed upon issues of special concern to them. At the same time, these arrangements allow the

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[5] Papagianni, "Truths and Untruths," 2006, op. cit.

central state to exercise power over other policies of concern to the whole state, including on the territory of the autonomous region.[6] Territorial autonomy is usually applied when a minority group is concentrated in one region of the country and when it constitutes a majority in that region. Thus, territorial autonomy attempts to address local concerns. The main priority is often to manage the internal affairs of geographically concentrated groups with minimal state intervention, but not necessarily influence policy at the centre. This is the case of the Sámi people in Scandinavian countries, for example.

A much-studied autonomy arrangement is that for the Åland islands, which was mediated by the League of Nations in 1921 in order to allow for self-determination for Åland and end the conflict between Finland and Sweden. Finland guaranteed local self-government to the region as well as the protection of Swedish language and customs. Åland was demilitarised to prevent it from posing a military threat to Sweden. The arrangement was entrenched in the Autonomy Act, which was revised in 1951 and 1993.[7]

A different example is that of North Macedonia. Based on the Ohrid Framework Agreement of 2001, North Macedonia introduced symmetric decentralization combined with the specific rights for the major ethnic communities to participate in the political process, including the national parliament. The decision for decentralization was taken in response to demands for self-determination from ethnic Albanians and was intended to foster self-determination of ethnic groups and to improve democratic local governance.

Another relatively recently established autonomy arrangement is that of Aceh, Indonesia. In August 2005, the Government of Indonesia and the Acehnese rebel group, GAM (Gerakan Aceh Merdeka), signed the Memorandum of Understanding (MoU) after a 30-year armed insurgency by GAM against the Government. Indonesia would remain a unitary state, but the MoU guaranteed a degree of self-rule to Aceh. Following the agreement, the Law on the Government of Aceh (LoGA) was passed by the Indonesian Parliament. The MoU established a ceasefire, provided for GAM to disarm its fighters within a few months, offered amnesty to GAM members, restricted the movements of the Indonesian army in Aceh, reformed Indonesian law to allow Aceh-based parties to participate in elections and stated that 70% of the region's natural resources would stay in Aceh. According to the agreement, Aceh could use its own regional flag and hymn, but Jakarta would control its finances, defence and foreign policy. Finally, the agreement provided for over 200 unarmed monitors from the European Union (EU) and the Association of Southeast Asian Nations (ASEAN) to oversee its implementation.

Historically, a key aspect of autonomy arrangements has been that central governments maintained certain key powers in governing autonomy regions. These powers have of course been negotiated leading to agreements which defined how central governments share power in these regions with the regional authorities. For example, in some cases, central governments may appoint jointly with the regional authorities

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[6] Yash Ghai, "Public Participation and Minorities," an MRG *International Report*, 2001.
[7] swisspeace & CSS ETH Zurich, "Decentralization, Special Territorial Autonomy, and Peace Negotiations," *Peace Mediation Essentials*, November 2010, p. 3.

a number of officials working in the autonomous region: police officers, judges, and heads of school districts, border guards, and religious officials. Also, central governments may share powers with regional governments in a number of policy areas as for example higher education and taxation, while superseding regional governments in other areas such as foreign policy. No matter how the powers of central government in autonomous regions vary, it is important for the stability and longevity of autonomy arrangements that the institutions of the autonomous regions are and are perceived to be more than agents of the central government. If this is the case, the autonomy arrangement has a stronger chance to contribute to long term accommodation.

Autonomy arrangements usually define exclusive, concurrent and residual governing powers. Exclusive powers are exercised only by one level of government, while when it comes to concurrent powers more than one level is allowed to decide and act. The residual power defines which level of government is in charge if the constitution or the legislation does not offer guidance on the matter. In general, autonomy arrangements are designed based on the principle of subsidiarity, meaning that higher levels of government only retain those powers on issues that cannot be effectively managed by lower levels of government. Based on this principle, for example, issues such as local infrastructure, basic health care, and parts of education are normally managed by lower levels of government, while foreign affairs (with some exceptions), defence, monetary policy, and customs often remain with the central state. Territorial autonomy may include the right to tax as well as to establish regional institutions charged with legislative and executive functions. It usually provides for the minority language to be the official language of the region. Also, it usually defines primary and sometimes secondary education as the responsibility of regional governments. However, the principle of subsidiarity is relatively vague and all the above is negotiated in detail by the parties in each situation.[8]

Given that agreements leading to territorial autonomy are meant to respond to the complexity of the conflict, in some cases, they include different types of institutional arrangements. For example, some states combine autonomy arrangements with special power-sharing arrangements at the centre. Power sharing involves arrangements which guarantee the participation of representatives of all significant communal or ethnic groups in the central government and especially in the executive.[9] Power sharing usually provides for proportional representation of minorities in cabinets, and proportional allocations of funds and positions. For example, Bosnia and Herzegovina is not only a federal state composed of two constituent entities (the Croat and Muslim Federation and Republika Srpska), but also provides for power sharing in the central government among the three constituent ethnic groups.

In other cases, autonomy agreements may include various types of territorial arrangements. They may for example provide for federalism as well as for decentralization to lower levels of government within federal

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[8] "Decentralization, Special Territorial Autonomy, and Peace Negotiations," *Peace Mediation Essentials*, swisspeace & CSS ETH Zurich, November 2010, p. 8.
[9] Arend Lipjhart, "Constitutional Design for Divided Societies," *Journal of Democracy*, Vol, 15, No. 2, April 2004, p. 97.

units. Negotiating and implementing territorial arrangements is messy, and it is usually part of a complex package of decentralizing powers to a variety of regional or local entities, rather than implementing a purely symmetric system. An example of such a complex approach is the 2005 Constitution of Iraq, which includes complex combinations of territorial jurisdiction. Furthermore, peace processes may lead to agreements which establish special arrangements to areas which the parties cannot agree on how to incorporate into the system applied to the rest of the country: the special district of Brčko in Bosnia and Herzegovina, which is not part of either federal entity, is an example of this.

As discussed earlier, the advantage of autonomy arrangements is the creativity of institutional designs that they can accommodate in response to the complexity of the situation. Given the complexity that territorial arrangements attempt to address, it is crucial that mediators and parties to a conflict do not seek 'prefabricated' solutions, which are imported from other countries. Chances are that an arrangement specifically designed for a particular country needs to emerge from arduous negotiations and meticulous analysis of the plus and minuses of different institutions for that country.

### III.       Guarantees for Autonomy Arrangements

Parties to a conflict seek assurances that the agreement they will eventually reach will be respected. Autonomy arrangements are no different. The management of the relationship between central and regional governments, in the context of autonomy agreements, tends to be challenging. This is especially so in post-conflict situations, when institutions are still nascent and trust is low. The implementation of these agreements inevitably involves disputes in interpreting the powers of each level of government. Groups demanding greater autonomy in running their affairs often argue that only independence can afford them the autonomy they need, because they fear that the central government can at any time unilaterally revoke the autonomy agreement. They therefore demand reliable guarantees that, should they settle for autonomy status, it will not be revoked, suspended or significantly altered without their consent. Although decentralization and special autonomy do not usually require constitutional or special entrenchment, for practical reasons and in order to preserve peace, they can be entrenched so that the central government cannot revoke them unilaterally. Unilateral revocation of autonomy can spark new conflict.

The goal is for the interests of the autonomy region to be taken into account whenever the autonomy arrangement is revised, implementing acts are drafted and adopted, or international agreements are reached which impact the autonomous region. Specific entrenchment of autonomy to protect against unilateral changes as well as special dispute resolution mechanisms can help to prevent conflict, but also help parties reach agreements to begin with. Additionally, autonomy arrangements usually provide for mechanisms which manage the relationship between the autonomous territory and the central government, and address disputes

as they emerge. Dispute resolution mechanisms may include special supervisory bodies or commissions, ongoing political negotiations, and the use of constitutional and supreme courts.

A variety of guarantees may be offered to autonomous regions. For example, autonomy arrangements can be enshrined in the constitution with a high threshold for amendment and a long amendment procedure that requires consultation with the autonomous region. With such a guarantee, minority groups aim to reduce the risk that a government uses its powers in the future to reverse parts of the autonomy arrangement. Enshrining the agreement in the constitution creates the expectation of stability and duration of institutions among leaders and ordinary citizens. For example, the procedures of the North Macedonian parliament require a majority of the Representatives belonging to the communities not in the majority population of the country in order to pass laws which affect culture, use of language, education, personal administration, and use of symbols. This provision also applies to the election of a third of the judges at the Constitutional Court, the members of the Republican Judicial Council and the Ombudsman. An additional example is the predominantly Swedish-speaking region of Åland in Finland, which enjoys significant cultural and political autonomy, and has its own legislative and executive institutions. Ålanders are represented in the national parliament, while the Åland legislature may introduce bills in the national parliament even on issues that are under the authority of national government. Furthermore, there is strong protection for the autonomy of the region: the autonomy provisions may not be altered without the consent of both the national and Åland legislatures.[10]

The Memorandum of Understanding (MoU) between the GAM and the Government of Indonesia stated that "decisions with regard to Aceh by the legislature of the Republic of Indonesia will be taken in consultation with and with the consent of the legislature of Aceh". It also stated that "administrative measures undertaken by the Government of Indonesia with regard to Aceh will be implemented in consultation and with the consent of the head of the Aceh administration."[11] However, the Law on Local Administration adopted by the Indonesian Parliament after the signing of the MoU talks about the "consideration" instead of the "consent" of the parliament of Aceh. It thus provided for a form of entrenchment of autonomy which was less demanding than the one stated in the MoU. The reason behind this deviation from the provisions of the MoU is that the "national parliament in agreement with the central government regarded these provisions of the MoU as constitutionally problematic: As they would infringe upon the constitutional authorities of the President and national parliament respectively, their inclusion in the LoGA might have led to a judicial review by the constitutional court."[12] As a result, the procedure provided for by the LoGA requires that any planned amendment of the LoGA needs to undergo consultations and receive comments from the Aceh legislature. This means that the LoGA is an ordinary piece of legislation issued by the Indonesia parliament, which can be amended by the parliament only following consultation with the Aceh legislature. Thus, at the very least,

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[10] Ghai, 2001, *op. cit*. p. 22.
[11] Bernhard May, "The Law on the Governing of Aceh; the way forward or a source of conflicts?" *Accord*, Issue 20, 2008, p. 44-45.
[12] Ibid.

information on the reasons for a planned amendment is shared with the Acehnese parliament and some consideration of the latter's concerns will take place.[13]

The Law was criticized by the GAM, human rights organisations, women's organisations, and civil society. Some activists rejected the LoGA, called for a judicial review and argued that the role of the central government in Aceh remained too strong. They also argued that the law contravened the spirit of the MoU and was a worse deal than previous arrangements offered by the Government of Indonesia to Aceh. On 12 July 2006, several local NGOs urged the public to oppose the law and called for a transport strike, which, however, was only adhered to by a small number of people. The criticism was to some extent shared by GAM, which was concerned about the restrictions on autonomy as the LoGA allows the central government to 'set the norms, standards, and procedures as well as monitor' the governance in Aceh, thus allowing it to interfere extensively in local affairs. They were also concerned about the curtailing of the power of the local administration in international cooperation and management of natural resources.[14]

## IV.    Implementing Autonomy Arrangements

The implementation of autonomy arrangements takes place in the midst of challenging circumstances. In some cases, tenuous ceasefires are in place, rebel groups have not yet disarmed, civilians may still live in fear, programmes for the return of refugees and displaced persons have not been initiated, governments have not delivered services in certain regions for years or decades, and extensive contacts between administrators in the central government and the soon-to-be-autonomous regions are non-existent. Also, factions belonging to either side might block the implementation of the agreement, even if their leaders have committed to the agreements. Furthermore, issues of justice related to crimes that may have taken place during the conflict have still not been addressed. Finally, if either side meets its commitments reluctantly or inadequately, and if the implementation process is not transparent, then, confidence in the agreement will not be built.

The mechanisms managing the implementation of decentralization and of special territorial autonomy are therefore key components of autonomous arrangements. The pace of the implementation and the sequence through which powers are transferred to the autonomous region run the risk of becoming contentious. If the transfer of powers is delayed, it can undermine confidence in the agreement and create tensions. Furthermore, who manages this process and has the authority to decide the timing and sequence of the implementation is often controversial. For example, in Papua New Guinea, the slow transfer of functions and power to the Autonomous Bougainville Government (ABG) caused tensions with the central government.[15]

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[13] Markku Suksi, *Sub-State Governance through Territorial Autonomy; A Comparative Study in Constitutional Law of Powers, Procedures and Institutions* (Springer, 2011), 254-255.

[14] Kirsten E. Schulze, "Mission Not So Impossible: The Aceh Monitoring Mission and Lessons for the EU," Friedrich Ebert Stiftung, July 2007, p. 9-10.

[15] Anthony Regan, "Bougainville, Papua New Guinea; Lessons from a successful peace process", *The RUSI Journal*, Vol 163, No 6, December 2018.

It can therefore be useful to have an independent implementation commission and other commissions, as needed, mandated to carry out the various implementation tasks. This is especially useful given the complexity of autonomy arrangements, the multiple details they contain and the fact that many issues will inevitably emerge which were not comprehensively defined in the agreement.[16] The implementation institutions monitor the overall progress in the implementation of the autonomy agreement, including the laws and administrative decisions that may be required, the disbursement of funds to ensure that the devolution of powers can actually take place. These institutions should be mandated long enough in order to ensure the long-term implementation of the agreement. It is advisable that the autonomy agreement discusses the implementation process as much as possible, including the implementation timetable, the timetable for the disbursement of funds, the sequencing of tasks, and the mechanisms for dissolving disputes as they emerge.

### V.        Recommendations for the Moroccan Initiative on the Autonomy of the Sahara Region

A major obstacle to the establishment of autonomy arrangements is the acceptance of both conflict parties to exist within one state and to share power. As this paper has discussed, for states, the difficulty usually entails accepting the sharing and decentralization of power. For rebellions which have argued and fought for independence in some cases for decades, the difficulty has to do with accepting the legitimacy of the state and abandoning the dream of independence. This is particularly difficult in contexts where the rebellion has received or believes to have received some international recognition for its claim to independence and/or has managed the affairs of its locality with a substantial degree of separation from the central government. In such contexts, entering negotiations with a pre-agreed goal, namely autonomy within one state, is often challenging as the rebellion side prefers to leave open the scenario of independence.

In the case of the Sahara region, there is a perception of statehood which makes it challenging to start a negotiation whose end goal has been declared to be an autonomy arrangement within the Kingdom of Morocco. Regardless of whether the specificities of the 2007 Initiative on the Autonomy of the Sahara Region are reasonable, the question of how to conduct negotiations that will produce an agreement remains. Comparative experiences offer some approaches for addressing this challenge:

–        Discussing ways of sharing power without labelling them;

–        Conceiving of creative entities or bodies that can begin to bind groups and regions together; and

–        Committing to steps that signal credibly willingness to cede power and coexist.

Regarding the specificities of the 2007 Initiative, it discusses reasonably the powers that will reside with the autonomous region and those that will belong to the central government. It also talks sensibly about the fact that any autonomy arrangement needs to result from negotiations and it usefully states that the Kingdom of Morocco will declare an amnesty.

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[16] Ibid.

As discussed earlier in this paper, the details of any arrangement that will emerge from negotiations will evolve and eventually ripen into a set of provisions that may be close to the wording and vision of the Initiative but will be the unique result of negotiations. Constitutional design is a creative endeavour that can stretch accepted conceptions of statehood, institutions and powers to great degrees. The contribution of the Initiative is that it put forth a vision of a decentralized state which can be discussed and developed as needed.

## VI.     Conclusion

Autonomy arrangements are frequently used in conflict settings in order to manage multiple ethnic, religious or linguistic identity groups which have raised arms in rebellion against the state. In several situations they have been successful, especially when they were utilized before the conflict escalated to violence. They can limit confrontation between the central government and rebellious region, but not necessarily create a sense of common purpose and shared vision. They separate groups to reduce disputes, but take a long time to bind them together effectively.

Caution is needed about excessive faith in the power of institutions to change underlying political realities and interests. Indeed, conflict parties and external actors should be cautious about the ability of new institutions to contribute to accommodation. Institutions can transform politics and create routine collaboration only over the long therm. However, it is important to remember that, in the immediate post-agreement period, newly established institutions are unlikely to enjoy wide support. New institutions are initially empty shells which become real only after lengthy political processes and after they start delivering tangible benefits, such as public services and security, to the population.

Ultimately, institutions which decentralize state power contribute to conflict resolution when they are supported by political processes and practices which favour accommodation and the survival of the state. In the absence of such practices, the sustainability of autonomous institutions is difficult.