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International Research Seminar

Territorial Autonomy :
An effective means for the political settlement of conflicts

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The Permanent Mission
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INTERNATIONAL RESEARCH SEMINAR

ON

TERRITORIAL AUTONOMY: AN EFFECTIVE MEANS FOR THE POLITICAL SETTLEMENT OF CONFLICTS

ORGANIZED BY
THE PERMANENT MISSION OF THE KINGDOM OF MOROCCO
TO THE UNITED NATIONS IN NEW YORK

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FOREWORD

The Permanent Mission of the Kingdom of Morocco to the United Nations had the privilege of organizing, on July 1st , 2019, at the United Nations Headquarters in New York, the International Research Seminar on "Territorial Autonomy: means of political settlement of conflicts ".

This seminar was moderated by internationally renowned experts representing several regions of the world, where different models of Regional Autonomy allowed the restoration and consolidation of peace and stability. It was marked by the participation of representatives of Member States and observers of the United Nations, intergovernmental and non-governmental organizations, research centers and the media.

The choice of the United Nations headquarters in New York to host this international seminar is not fortuitous. The raison d'être of the United Nations is, in particular, to work for the political and peaceful settlement of disputes, through mediation and negotiation.

As demonstrated by panelists and participants, the Autonomy regimes implemented in all regions of the world have put an end to territorial disputes that have sometimes lasted for many decades. Avoiding, also, potential conflicts that could have threatened regional and international peace and security.

The particularity of Autonomy regimes -and which explains their attractiveness and success - lies in the fact that they constitute win-win solutions, in full compliance with the United Nations Charter and international legality. Moreover, Autonomy allows to combine the respect of the sacrosanct and universal principle of the territorial integrity of the States, with taking into account the cultural specificities as well as the regional aspirations of self-management of local affairs.

Autonomy as a means of conflict resolution has proved its worth. Since the end of the Second World War, 70 Autonomy Agreements have been concluded in the world. This makes it, by far, the most favored solution by the International Community to put an end to regional and territorial disputes.

The Kingdom of Morocco, an active and respected member of the Community of Nations, submitted, on April 11, 2007, to the UN Secretary General, the Initiative of Autonomy for the region of the Sahara, in order to definitively end the regional dispute over the Moroccan Sahara. Convinced of the seriousness and credibility of this initiative, the Security Council has enshrined its primacy and pre-eminence in all its resolutions since 2007. It is the basis of the ongoing political process, under the exclusive auspices of the United Nations.

This international seminar, like those that have annually preceded it since 2007, has allowed, with evidence and comparative analyses, to demonstrate the relevance of the Moroccan Autonomy Initiative, to highlight the very broad prerogatives that it grants to the populations of the Sahara region, and to underline the political and legal guarantees which ensure its sustainability and durability.

The Autonomy Initiative, within the framework of the sovereignty and territorial integrity of Morocco, perfectly embodies the parameters of the solution recommended by the Security Council: it is political, realistic, pragmatic, enduring and of compromise. It is, above all, the one and only solution to the regional dispute over the Moroccan Sahara.

Omar Hilale

Ambassador, Permanent Representative
of the Kingdom of Morocco to the United Nations in New York

INTRODUCTION

THE MOROCCAN AUTONOMY INITIATIVE FOR THE SAHARA REGION AS A MEANS TO SETTLE THE CONFLICT

MARC FINAUD[1]

Ladies and gentlemen,

Welcome to this international research seminar on: "Territorial Autonomy: an effective means for the political settlement of conflicts", organized by the Permanent Mission of Morocco to the United Nations, which I warmly thank for taking this initiative.

This seminar is taking place ten years almost to the day after the first academic conference on this theme, hosted by the Geneva Center for Security Policy (GCSP). At the time, the question that had been asked was: "Can autonomy fulfill the right to self-determination?" Experts from various autonomous regions of the world were then able to exchange views and compare their experience, just the way they did the following ten years. They came from a wide variety of countries or regions: Canada, the Caribbean, Denmark, Spain, France, India, Iraq, Italy, Indonesia, Mexico, Nicaragua, the Philippines, Puerto Rico, Portugal, Serbia, Switzerland, Tanzania, etc.

These experts contributed to these seminars by highlighting the whole gamut of situations that led to different forms of regional or territorial autonomy. Year after year, they were able to discuss the issue from the following angles: respect for human rights, the management of natural resources, representativity in the negotiations, regional solidarity, the development model, the role of non-governmental organizations or external relations. But the principle that has always guided these seminars is the need to look into these different types of autonomy as the preferred way to bring about a political settlement to conflicts. These conflicts, which are often protracted, may have been caused by the persecution of ethnic or linguistic minorities, the dismantling of colonial empires or regimes, or by third countries' ambitions. More often than not, autonomy within the borders of a central state provided a sustainable solution and avoided secession, a potential source of new conflicts, while ensuring that the population of the autonomous region would be able to freely manage its own affairs. It is precisely that balance of powers and attributions that can ensure the success of any autonomy arrangement.

This was indeed the spirit behind the Initiative put forward in April 2007 by the Kingdom of Morocco with a view to the autonomy of the Sahara Region. As stated in its content, the Initiative answers the appeal that the Security Council of the United Nations has been reiterating since 2004 for the "parties and States of the region to continue to cooperate fully with the United Nations to end the current impasse and to achieve progress towards a political solution". It aims at bringing "*hope for a better future for the region's populations, [at putting] an end to separation and exile, and promot[ing] reconciliation*." Moreover,

"*7. The Moroccan initiative, which is inspired by an open spirit, aims to set the stage for dialogue and a negotiation process that would lead to a mutually acceptable political solution.*

8. As the outcome of negotiations, the autonomy statute shall be submitted to the populations concerned for a referendum, in line with the principle of self- determination and with the provisions of the United Nations Charter.

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1 Senior Programme Advisor at Geneva Centre for Security Policy (GCSP). The author is expressing himself in a personal capacity.

9. To this end, Morocco calls on the other parties to avail the opportunity to write a new chapter in the region's history. Morocco is ready to take part in serious, constructive negotiations in the spirit of this initiative, and to contribute to promoting a climate of trust."

As can be easily seen, this Initiative offers a solution, which the Security Council has since then regularly qualified as "serious and credible", to end a conflict that has been dragging on since 1975. I would recall that it was at the request of Morocco that the territory called "Western Sahara", under Spanish colonial occupation, was in 1963 put on the agenda of the Fourth Committee of the General Assembly of the United Nations, which deals with decolonization-related issues. The idea was then to encourage an agreement between Spain and Morocco. Such an agreement came to be in the 1975 Madrid Accords that the General Assembly took note of in resolution 3458 B dated 10 December 1975. However, in the context of the Cold War, this dispute turned into a regional conflict.

With a view to definitely solving this dispute, negotiations are currently taking place under the aegis of the Security Council and the Personal Envoy of the Secretary General, between the parties, Morocco, Algeria, Mauritania and the "Polisario" supported by Algeria. After years of sterile discussions, the only breakthrough that made it possible to take the negotiations forward has been the 2007 Moroccan Initiative. As highlighted in the text of the Initiative:

"*In this respect, Morocco pledges to negotiate in good faith and in a constructive, open spirit to reach a final, mutually acceptable political solution to the dispute plaguing the region. To this end, the Kingdom of Morocco is prepared to make a positive contribution to creating an environment of trust which would contribute to the successful outcome of this initiative.*"

In order to once again compare the autonomy statute offered by Morocco for the Sahara Region with other experiences of autonomy around the world to solve conflicts, we shall be hearing several subject matter experts. They will mostly present successful cases of autonomy in the framework of past conflicts, or look into the reasons why some failed. They will also tell us how the Moroccan Initiative could draw lessons from these for the Sahara Region.

But before that, I would like to add that these models of autonomy or their adaptation to specific contexts, could very well be replicated to solve conflicts currently going on in the world. One could think of countries fragmented along ethnic, cultural or religious lines such as in Ukraine (for its Eastern provinces, whose autonomy has been provided for in the Minsk Agreement but hasn't yet been implemented), Mali (where the Tuareg rebellion has been used by terrorist groups), Iraq (in Kurdistan), the Democratic Republic of the Congo, Afghanistan, Myanmar, Libya, Syria or Yemen, that are suffering from fratricidal civil wars. One could also mention now peaceful countries where some regions may still be tempted to secede, such as Catalonia, Scotland, Flanders, the Serbian Republic of Bosnia-Herzegovina, or the Tamil Provinces of Sri Lanka. When existing autonomy arrangements are removed or threatened, it may lead to secession, as was the case in Kosovo.

Invited experts will therefore share with us their knowledge and practice of several examples of autonomy:

- Dr **Katia Papagianni,** from the Center for Humanitarian Dialogue in Geneva, has worked on several conflicts: in Liberia, in Libya, in Syria, in Myanmar, in Ukraine, in the Philippines, in Yemen; she has also worked for the United Nations or the OSCE in Russia, in Bosnia-Herzegovina and in Iraq;

- Mr. **Thomas Benedikter,** expert on South Tyrol-Alto Adige between Italy and Austria, has also studied and worked on other conflicts in Asia where autonomy was instrumental, in Northern India for example; unfortunately Mr. Benedikter was not able to be physically with us today, but he will present us his research via videoconference;

- Dr **Miguel González,** professor at York University in Toronto (Canada) specializes in Latin America where he has studied existing autonomy arrangements, such as in Bolivia, Colombia, Nicaragua and Honduras, in order to protect the rights and interests of indigenous populations;

- Finally, Professor **Mawardi Ismail**, former Dean of the Faculty of Law at the University of Darussalam-Banda Aceh, will share his experience of the autonomy statute of Aceh in Indonesia, which brought an end to this conflict after years of civil war.

Before giving them the floor, I wish to inform you that the International Academic Autonomy Network recently launched its website (***www.academicautonomynetwork.com***), which brings together the contributions of experts from all walks of life on autonomy and which have already been published by Morocco. We hope this tool will advance research on this important subject and will inspire the negotiators of new peace agreements around the world.

AUTONOMY – A CONFLICT RESOLUTION TOOL? REFLECTIONS FOR THE MOROCCAN INITIATIVE ON THE AUTONOMY OF THE SAHARA REGION

KATIA PAPAGIANNI[2]

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.[3] 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.[4] 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.[5] 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 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.[6] 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.

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[2] Director, Mediation Support and Policy, Centre for Humanitarian Dialogue, Geneva.
[3] Katia Papagianni, "Accommodating Diversity: Federalism, Autonomy and other Options," Background Paper, Oslo Forum, 2006, Centre for Humanitarian Dialogue.
[4] Katia Papagianni, "Truths and Untruths: Federalism, Autonomy and Decentralization," Background Paper, Asia Mediators Retreat 2006, Oslo Forum, Centre for Humanitarian Dialogue.
[5] 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.
[6] Papagianni, "Truths and Untruths," 2006, op. cit.

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 central state to exercise power over other policies of concern to the whole state, including on the territory of the autonomous region.[7] 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.[8]

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

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

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 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.[9]

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.[10] 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

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

government within federal 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.[11]

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."[12] 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."[13] 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, 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.[14]

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.[15]

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

[11] Ghai, 2001, *op. cit*. p. 22.
[12] Bernhard May, "The Law on the Governing of Aceh; the way forward or a source of conflicts?" *Accord*, Issue 20, 2008, p. 44-45.
[13] Ibid.
[14] Markku Suksi, *Sub-State Governance through Territorial Autonomy; A Comparative Study in Constitutional Law of Powers, Procedures and Institutions* (Springer, 2011), 254-255.
[15] Kirsten E. Schulze, "Mission Not So Impossible: The Aceh Monitoring Mission and Lessons for the EU," Friedrich Ebert Stiftung, July 2007, p. 9-10.

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.[16]

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.[17] 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.

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

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

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.

CONFLICT RESOLUTION THROUGH TERRITORIAL AUTONOMY – HAS IT WORKED?
FACTORS FOR THE SUCCESS OF TERRITORIAL AUTONOMY IN THEORY AND PRACTICE AND CONCLUSIONS FOR THE CASE OF THE SAHARA REGION OF MOROCCO

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Contents

Chapter 1

Introduction

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

Many questions have arisen as to the feasibility of territorial autonomy in the current political system of Morocco. While the Western Sahara independence movement POLISARIO is outright opposing the autonomy proposal, some Western powers such as the United States, France and other European Union (EU) member countries favour the plan to establish autonomy in the Sahara Region in order to achieve a permanent peaceful settlement of the 44-year-old conflict. Nevertheless, a number of scholars have expressed scepticism about both the feasibility and appropriateness of the autonomy proposal.[19] Other analysts insist that prior to granting territorial autonomy "*the rule of law and full respect for human rights, widely considered key to the smooth functioning of autonomous regions, would have to be instituted first*".[20]

From a fundamental viewpoint, it has to be kept in mind that genuine autonomy can successfully unfold only in a context of a democratic political system with rule of law, which includes first of all an independent judiciary and horizontal division of powers. To make it short: true autonomy can only exist within a democracy in both the concerned autonomous region and in the state at large. Recent progress in the Kingdom of Morocco towards the international standards of pluralist parliamentary democracy

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

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

and the rule of law at every level of government contribute to creating propitious perspectives for a successful establishment of territorial autonomy in its Sahara Region.

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

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

Chapter 2

Conflict Resolution through Autonomy: an Overview

Territorial autonomy is supposed to be an appropriated device to solve conflicts between central states and ethnic communities different from the state's titular majority people, settling homogenously on their traditional home region. Such communities can also be ethnolinguistic minorities, smaller nations (people), indigenous peoples or communities defined just by their particular geographical position with regard to the mainland or their particular history different from the state at large. Autonomy is a mechanism of vertical power sharing to solve internal conflict, to decentralize state power and to accommodate a separate ethnic or regional identity. The basis for an autonomy system is mostly a homogenously settling ethnic group considering its territory as a separate entity but respecting the state's intent to avoid dividing its territory. Today, worldwide, some 58 regions or other sub-state entities can be qualified as modern systems of territorial autonomy according to criteria of definition based on democracy and rule of law.[21]

Ethnic conflict in history often has led into a vicious cycle: violent insurgency, state repression, violation of human rights and massive persecution, traumatized population, democracy jeopardized, freedoms and liberties restricted or abolished. As Ghai and Woodman wrote, "[c]*ountries bedevilled by ethnic conflicts rarely achieve their economic potential. Conflict drives away investors, domestic capital and local qualified youth willing to launch new enterprises, skilled and educated people emigrate, the general level of education declines, large parts of state revenue are wasted for security and arms*."[22] Autonomy has served to settle such conflicts, carried out also by military means, as Bougainville (Papua New Guinea), Mindanao (Philippines), Aceh (Indonesia), the Basque Country (Spain), Kurdistan (Iraq), Atlantic Coast of Nicaragua, Northern Ireland, Bodoland (India), etc.

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

- In **Italy**, the five regions with a special autonomy statute (Trentino-South Tyrol, Aosta Valley,

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

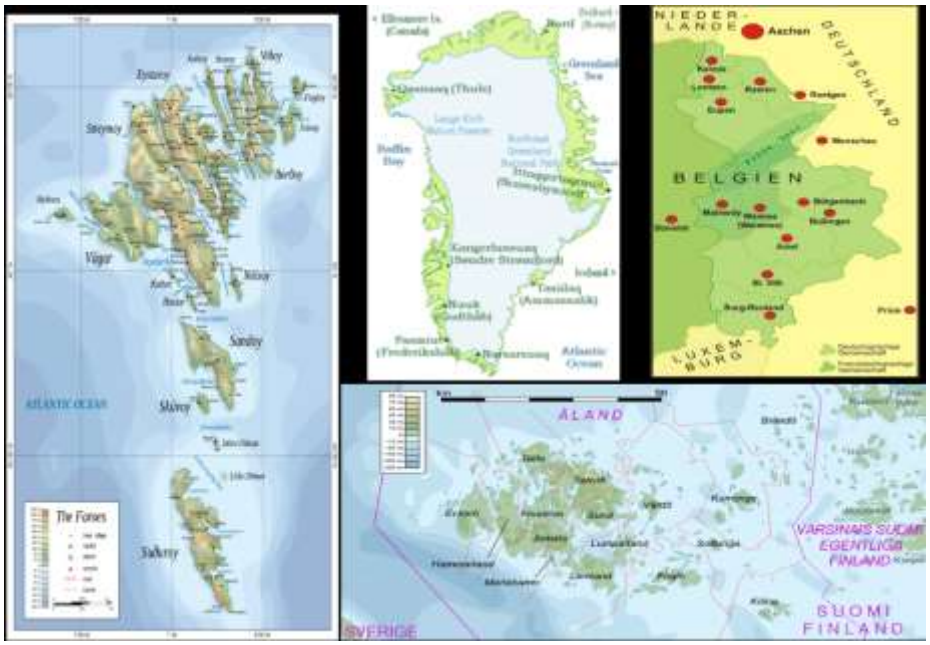
[22] Yash Ghai and Sophia Woodman (2013), *Practising Self-Government, A Comparative Study of Autonomous Regions,* Cambridge University Press, p. 451.

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

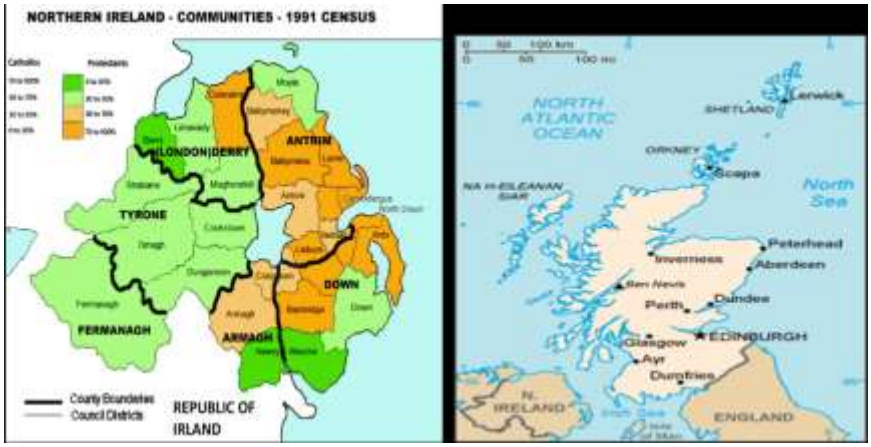
– In **Spain**, the only state fully composed by autonomous communities (and two autonomous enclaves on Moroccan territory), the most striking process of recent years has been the attempt of national self-determination of Catalonia culminated in the popular referendum of 3 October 2017. One of the main reasons of this process towards secession should be kept in mind: although in 2006 a new autonomy statute was adopted by the Catalan Parliament first and its electorate later, in 2010 essential parts of this new statute were cancelled by the Spanish Constitutional Court, driving major political forces in Catalonia on the road to secession. However, territorial autonomy as the basic principle of the Spanish state's internal organisation has not been questioned and keeps on to be the widely accepted basis for power sharing for the remaining 16 autonomous communities.

– In **Belgium** (German Community, part of Wallonia), **Finland** (Åland Islands), **Portugal** (Madeira and Azores) and **Denmark** (Faeroe Islands and Greenland), autonomy is working smoothly and no kind of tensions between the central state and the concerned autonomous entity

are reported.



– The issue is different for the **United Kingdom**. In September 2014 the autonomous country of Scotland held a popular referendum on whether to become an independent state or retain autonomy. As in Spain again, this cannot be deemed a failure of autonomy, but should be interpreted as a democratic expression of the deep-rooted aspiration of the Scottish people to regain statehood after more than 300 years of British rule. As the majority of the voters preferred autonomy, and as the result of the referendum led to a strong effort to enlarge its autonomy, finally genuine autonomy has prevailed. In Northern Ireland, self-governance is linked to a complex consociational arrangement between the two communities (Catholics and Protestants), a permanent challenge for the political parties involved. While the background of the EU for all autonomy solutions within the Union is helpful, the breakaway of the UK from the EU (Brexit) is causing serious troubles for Northern Ireland. This reminds us of the importance of a kin-state, of trans-border cooperation and international integration as well as of consociational arrangements among different ethnic groups within the autonomy systems: factors of success which will be stressed in chapter 3 and 4.



– In **France**, recently territorial autonomy is gaining ground in two different regions with a different legal and political status: Corsica and New Caledonia. The latter held a popular referendum on independence in December 2018, which saw the option of secession clearly defeated. The majority of New Caledonians preferred to keep the status of an autonomous "Overseas Collectivity". In Corsica, since the victory at polls of the political front for self-government in 2015, new political negotiations have been launched to enlarge the autonomy of the island. Secession is not anymore an issue since its supporters are marginalised.

– From **Serbia**'s Vojvodina no major tensions or cutbacks are reported, although this region suffers from general problems regarding Serbia's economy and public finances.

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

- On the other hand, in some other states of **Eastern Europe** and the **Caucasus** region, territorial autonomy is on the table in order to solve long lasting ethnic conflict, but did come to a breakthrough yet. In some cases territories seceded by violent means and declared themselves "independent republics" not recognized by hardly anyone else than Russia (Abkhazia and South Ossetia in **Georgia**, and Transnistria in **Moldova**). Although autonomy was offered by their former states, this solution has been rejected by the breakaway territories. **Romania** since almost 20 years rejects every request of its large ethnic Hungarian minority of Transylvania to achieve territorial autonomy for the so-called "Szeklerland". This currently is the most critical conflict on territorial autonomy within the EU.
- Autonomy is an issue also in **Latin America**, where it is not properly implemented in **Nicaragua**'s two autonomous regions, "Atlantic Coast North" and "Atlantic Coast South." Conversely in **Chile**, a large ethnic community of the indigenous people of the Mapuche demands territorial autonomy for their region, Wallmapu, located in the centre of the country, so far without success.
- In **Africa**, despite several serious crises triggered by ethnic diversity and conflict, a modern system of territorial autonomy is currently working only in Zanzibar (**Tanzania**), while it is envisaged for **Morocco**'s Sahara Region to bring about a stable and peaceful solution.

- The development of territorial autonomy in **Asia** appears more contradictory. On the one hand, in some cases territorial autonomy is not only well entrenched in the country's constitution and accepted by the concerned population (Aceh, **Indonesia**), but the Bangsamoro Autonomous Region (**Philippines**) is currently even extended to a much larger area including all territories inhabited by a majority of Muslims (previous name "Autonomous Region of Muslim Mindanao, ARMM). On the other hand, no progress is reported for the attempt to solve the long-lasting armed conflict between the central government of **Thailand** and the Muslim majority of the Pattani region in the South by means of territorial autonomy. In the island of Bougainville, an autonomous region of **Papua New Guinea**, in 2020 a popular referendum on possible independence will be held according to the autonomy statute of 2002. Secession was also the issue in the Autonomous Region of Kurdistan in **Iraq**, where a referendum on independence was organized in October 2017. Although more of 90 percent of the voters were favouring that solution, the whole operation failed as neither the Iraqi state nor international actors recognised the process. Autonomy is an issue also in post-war **Syria**, as the Federation of Northern Syria-

Rojava, a multi-ethnic, pluralist and multi-religious community mostly inhabited by Kurdish people, is striving for territorial democracy under a new democratic, federal and secular constitution.

Territorial autonomy in ASEAN countries: Bangsamoro (Philippines), Aceh and Papua (Indonesia), Pattani (Thailand, to be established). In Oceania: Bougainville (Papua-New Guinea).

Considering some efforts for self-determination and secession in various autonomous regions, often the objection is raised that autonomy rather than a stable solution would be a step towards secession. For two reasons such developments towards democratic self-determination must not be regarded as traumatic events.

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

Second, in most cases of the currently working modern systems of territorial autonomy, no serious secessionist movements are still operating. When autonomy is established and respected by the central

state, endowed with sufficient resources, fully implemented as a legal framework for self-government and also governed with sufficient consociational respect and protection of minorities, usually no secessionist claims are gaining ground.

Chapter 3

Some Lessons from Europe's Territorial Autonomies

3.1. Practical Lessons Learned

Modern territorial autonomy today is working worldwide in at least 58 regions of 19 countries with a differing degree of self-government and differing scope and depth of autonomy vis-à-vis the central state. Some 38 of those regions are located in Europe. In combination with other forms of autonomy (e.g. cultural autonomy), territorial autonomy has revealed to yield a high capacity of conflict resolution and minority protection. Which lessons can be drawn from the European experiences with territorial autonomy? A comparative analysis of such experiences has to begin with the fundamental goals of every territorial autonomy system and the corresponding regulations. To measure the efficiency and quality of all these regulations would require a highly complex set of indicators, which hardly can be empirically assessed. What can be done is to gauge the success of an autonomy system according to its fundamental goals.[23]

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

In reality, in most cases, territorial autonomy had to match two or three main objectives, namely granting self-governance in a limited area, protecting the national minorities living in that area and ensuring a lasting, peaceful and cooperative relationship between a territory and the central state. Besides the conflict between the central state and the region enjoying or seeking autonomy, such autonomy often has to tackle a double challenge regarding democracy: to grant the protection of the national minority on its traditional homeland giving them more power of decision making but at the same time to include all the groups living in that area into the self-governance system. Territorial autonomy should benefit a whole regional community, not only one group of the population.

According to the specific premises and conditions of a region and national minorities, each autonomy system in Europe shows a particular "architecture" and particular mechanism to ensure participation, conflict solving, power sharing, minority protection, and stability.[24] These autonomies are "work in progress", involved in dynamic processes of reform, correction and transformation. By definition, they have to be dynamic, giving space to new answers for a developing society. On the other hand, there are some elements and conditions which have turned out to be key factors of success. New autonomy projects and negotiations have to take them into account, avoiding repeating the harmful mistakes made in some other cases and adopting devices more likely to bring about a successful solution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"An autonomy arrangement should not be viewed as a zero-sum game whereby the allocation

of a competence to an autonomous unit diminishes the competence and power of the central government and thus diminishes the effectiveness of the state machinery. On the contrary, viewed in the context of overall effectiveness of the state machinery in terms of its impact on democracy, good governance and human rights as well as the maximisation of the welfare of the whole population of a state, autonomous arrangements present themselves as powerful tools to ensure these values."[25]

3.2 Factors of Success from an Analytical Perspective

What are the crucial conditions for the lasting success of an autonomy status? Some experts[26] cite its durability, others propose a list of central criteria ranging from factors measuring political stability up to factors of social and economic performance of the concerned region. Apart from such a comprehensive evaluation of the results of autonomy systems, usually an autonomy system has to match against criteria derived from the very purpose of that arrangement:[27]

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

These general criteria need a careful transformation into empirical categories. Andi Gross,[28] in his report for the Council of Europe, identifies as basic factors of success:

- **The legal design**: history shows that it is easier for the granting of autonomy to be considered legitimate if the territory concerned is clearly delineated and its cultural dimension clearly defined.
- **Geopolitical and demographic aspects**: the autonomous region's distance from or proximity to the central government may determine the political relations between the two tiers of government. Key issues are the number and size of ethnic groups that make up the region's population, their relationship with one another and the central government and the relation between the minorities and the majority population of the state.
- **Political and institutional aspects**: the success of an autonomy system depends on certain political conditions, such as the quality of the relations between the entity, the state and neighbouring states and clear regulations governing the powers of the central authorities and these entities. If the region and the central state share the same aspirations, the central state will grant wider powers.
- **Social, financial and institutional aspects**: adequate material and financial resources are needed to enable the autonomous entities to effectively implement their autonomous powers.
- **Cultural aspects**: when the members of a minority in a particular entity represent a substantial proportion of the population that warrants specific protection, appropriate measures should be taken to preserve their identity.

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

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

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

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

- **Respect for human and minority rights**: this issue has an extremely important role to play in autonomy systems. The competent body and the standards to be applied must be clearly defined. When an autonomous entity has been established, the principles of equality and non-discrimination must be respected. The autonomy status must guarantee the rights of the ethnic groups that are different from the majority group in the region as well as the majority group in the state. Specific steps must be taken to protect the "minority within a minority", so that the members of a majority population or other minorities do not feel threatened.
- **Consociational mechanism**: there is also a need of a consociational mechanism in order to settle the conflict among single social and tribal groups sharing the same autonomous territory.
- **Flexibility of the arrangement**: finally, one recurrent acknowledgement is that each autonomy model is tailored to solve specific problems. Autonomy allows conflict solving on a political level, stability and security. But autonomy systems are not in equilibrium forever: they develop like an ecological system being exposed to external influences and internal transformation. Hans-Joachim Heintze argues that autonomy should not be seen as a static phenomenon but as a phenomenon changing through time and space.[29] This leads to different autonomy arrangements occurring during various periods. Also, after the solution of a conflict between central states and national minorities or regional communities, they cannot be static but have to continuously develop and adapt.[30]

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

- **First** of all, the autonomy system should be effectively applied. This appears to be self-evident, yet in some cases, although being approved at the national level, autonomy has not been applied in all the required legal terms and even less on the ground in the political reality of the concerned region.
- **Second,** success can be registered if an open and violent conflict could be suspended or ceased for a minimum duration. In history, in many cases, the establishment of territorial autonomy has been preceded by violent or even military conflict between the central state forces and rebel or resistance groups of the concerned region, smaller nations, indigenous people or ethnic minorities. Even when such a conflict is calmed down and efforts are made to settle it by political means such as territorial autonomy, deeper causes of conflict do not immediately vanish, but just shift to a political level and can be tackled within democratic institutions and before the judiciary.
- **Third,** success of an autonomy system can furthermore be measured in the international recognition of an autonomy solution, both by the neighbouring states directly concerned and by international organisations. Basically, a working autonomy status does not require international recognition, but just an entrenchment in domestic ordinary or constitutional law is required. Whenever a self-determination conflict was linked to an international conflict, success entails also the appeasement of such international conflict upon that issue.
- **Fourth,** to assess success of an autonomy system, it has to be critically analysed to check whether its main goals could be implemented at least partially. If the starting point has been a conflict between the central state and a mostly peripheral territory of that state, a minimum of effectively achieved self-government can be qualified as success. In history, in many cases,

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

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

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

- **Fifth,** conflict resolution does not only embrace the regulation of conflict between the central state and the autonomous region, but also the conflict inside the concerned region. In history, quite often, violent clashes and conflicts occurred between different ethnic groups sharing the same home region. Furthermore, the members of the national titular people (national majority population) residing in the area feel threatened by the assignment of strong powers to the representatives of the national minority population, due to introducing autonomy with democratic bodies elected by democratic majority rule. In such a situation, success would mean that, by institutional legal arrangements, such conflicts could be definitely shifted to a peaceful democratic level, as in living societies conflicts among groups cannot even be solved definitely.
- **Sixth,** one major criterion of success is the degree of social and economic development of a region. Autonomy should not only provide the full protection of minority rights and self-government, but the survival of both the autonomy system and the minority groups supporting it is linked to the economic and financial working capacity of that system. In history, some cases have occurred when autonomous regions where starved out in financial terms.

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

Chapter 4

Factors of Success and Failure of Autonomy Systems

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

4.1 The International Context of the Autonomy and Kin-states

Third-party actors such as kin-states of the minority community claiming autonomy or the international community represented by their organisations are also crucial for the stability of an autonomy solution in the long term. Some working autonomy arrangements are rooted in bilateral treaties as there have been negotiations and agreements between the kin- and the host-state (South Tyrol, the Åland Islands, Bougainville, Northern Ireland). International support and monitoring is also important to ensure the full implementation of the autonomy statute. This happened for instance in South Tyrol with the Gruber-Degasperi Agreement and the so-called "autonomy package". This autonomy came through a bilateral negotiation between Austria and Italy, while the main political party of the South Tyrolean people in 1969 had the opportunity to accept or reject the new autonomy statute. In South Tyrol after 1948, Austria had to press hard before the UN to force Italy to comply with its obligation under the Gruber-Degasperi Treaty. And only after 20 years of implementation in domestic law did Austria issue its official declaration of the end of conflict.

The existence of a kin-state of the autochthonous population of the autonomous territory is definitely useful for the stability of the autonomy as usually both states parties are interested in good neighbourhood.[31] However, engagement and monitoring by an international organisation or a kin-state must not end after the establishment of autonomy, but the latter should remain active as a watchdog.

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

4.2 Democratic Legitimacy of the Autonomy Solution

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

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

The sub-state entity regularly emerges due to political mobilization of a part of the state's population interested in the self-perpetration of the ethnic, linguistic, religious, cultural, legal or regional characteristics which singles out the respective population segment, mostly the autochthonous people within its traditional territory. Thus one central condition of the very existence of territorial autonomy is that this territorial-administrative entity has to be legally recognised as a legal person under public law with a set of institutions and a clear legal standing and guaranteed funding. This recognition must be entrenched in domestic ordinary or constitutional law and possibly with international agreement. For Salat et al., "*[t]he success of any autonomy arrangement can be measured with the help of two major indicators: the impact on the stability of the overall arrangement and the contribution to the desired self-perpetration of the target-group.*"[32] Democratic procedures for approval of the result of negotiations ensure both the democratic acceptance and peace, as also the defeated minority has to accept a democratic verdict.

4.3 Power Sharing between the Central State and the Autonomous Entity

The legal status and the legislative and executive powers of the autonomous entity form the core of a territorial autonomy system. National minorities and regional ethnic communities mostly push for more powers, and there will always be room for more competencies. States, on the other hand, are usually reluctant to relinquish competencies. According to Salat et al., "*[o]ne factor responsible for the limited success of the arrangement is clearly the insufficient level of competences the relevant institutions have been endowed with.*"[33] Sometimes a central government even grants just a mock autonomy instead of a real empowerment. With vague and ineffective competencies, an autonomy system is very likely to fail. Also the best institutional arrangement remains useless if it is not properly implemented.

An explicit division of powers facilitates the exercise of autonomy and minimizes the conflicts arising between autonomous entities and the central state. Such power sharing scheme from time to time must

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

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

[33] Ibid., p.461.

be revisited. New situations may arise. Especially when the division of powers has been too vague in the statute, conflicts may arise continuously. There are three possibilities to define the respective spheres of powers:

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

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

c) To define precisely both spheres of competencies.

For Ghai and Woodman, "*[c]lear division of powers has facilitated the exercise of autonomy in smaller non-federal units. Competencies should be explicitly specified in a definitive list including so-called 'shared powers*"[34], while all residual powers would lie with the autonomous entity.

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

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

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

As Salat et al. write,

> "*although free and fair elections which guarantee the equal right of participation to each community member (and only to community members) are the cornerstone of the legitimacy of autonomy arrangements based on the personal principle, it should be emphasized that if direct elections are not accompanied by a reasonable level of competencies and finances, they may lose their point. In theory, even a directly elected body devoid of meaningful competencies may serve as an arena for internal contestation and democracy, but if the powers of this institution remain insignificant in the long run, both minority elites and voters will lose their interest in the arrangement, which will also undermine legitimacy*."[35]

4.4 The legal entrenchment of the autonomy

One central condition of the very existence of a territorial autonomy is that this territorial-administrative entity has to be legally recognised a legal person under public law with a set of institutions and a clear legal standing and guaranteed funding. This recognition must be entrenched in domestic ordinary or constitutional law and possibly also be based in an international agreement. Constitutional entrenchment as a key guarantee should be formalised.[36] The entrenchment of the autonomy in constitutional provisions should ensure that the autonomy regime cannot be altered without the consent

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

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

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

of the institutions of the autonomous area. This is self-evident in federal systems, but not with autonomies.[37]

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

- When an autonomous entity adopts its own constitution, a constituent assembly must be set up and a mechanism of popular decision on the constitution must be established.
- The competency to amend autonomy arrangements should be exercised jointly by the state and the concerned autonomous region, involving the kin-state.
- It is necessary to establish a procedure for preventing any usurpation of legislative powers of the autonomous entities by the central state.

4.5 The Economic Resources

The best legal framework will not work if an autonomous region is deprived of the material and financial means to apply its autonomous powers in practice. A "real" autonomy has to provide both the legislative and administrative control of the economic resources of a given territory and a sufficient degree of fiscal autonomy or guaranteed revenues. The financial underpinning of territorial autonomy is of crucial importance for the success of an autonomy system. There are several options:

- An autonomous region has its own resources (taxes, levies);
- An autonomous region has a proportion of the tax revenue collected from the local population;[38]
- An autonomous region can be enabled to add a percentage on the taxes levied by the state;
- Other mixed forms of financial regulation of the revenues of the entity.

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

4.6 Protecting Minority Rights: the Ethnic Factor

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

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

[38] For example, in South Tyrol the autonomous province receives around 90 percent of the taxes levied on its territory, but has very limited powers in the field of tax legislation. It cannot legislate in nearly no field of fiscal policy, but just on some details of local taxation.

Thus the autonomy system must address the region's cultural-ethnic diversity by enshrining participation and involvement in decision making in a complex arrangement of internal minority protection. Territorial (and cultural) autonomy is at the top of the minority rights hierarchy and confers a maximum legal status a minority may achieve within a state. For Salat et al., "*[t]he quality of the general minority rights regime of the state becomes a crucial feature for the success of the autonomy arrangements as the broader framework into which the latter is embedded*."[39] Ethnic identity not only is central in leading to territorial autonomy, but an autonomy system also shapes the identities and characteristics of territories where it is practised. A local or regional form of citizenship can serve to bolster the collective identity of autonomous regions.

4.7 Membership or "Citizenship" in the Autonomy Arrangement

In a modern autonomy system, all legal inhabitants of the concerned territory should be members of the autonomous community entitled with equal rights under the national constitution. If at all, membership of the autonomous community should be defined just by a minimum duration of residence: if it was defined by ethnicity it would be a form of ethnic autonomy or reservation.[40] But in several cases of existing autonomies this does not occur. For instance, in the Atlantic Coast of Nicaragua, the right to stand for election is reserved for persons born in the region and persons with a parent born there provided they are resident for at least one year prior to the election.[41]

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

4.6 Democratic Participation and "Consociational Arrangements"

A modern system of territorial autonomy gives ethno-linguistic communities the chance to preserve their identity in their traditional homeland, but within a democratic setting inclusive of all legally resident people, with and without citizenship. Thus territorial autonomy should not create a kind of "ethnic space" that allows reverse discrimination, but a legal space wherein substantial equality of opportunity is ensured for all groups sharing the same region.[42] Autonomy in a modern democratic sense cannot allow for new discrimination nor a new kind of ethnic reservation: According to Salat et al., "*[t]he challenge lies in making arrangements to ensure that full civil rights are granted to all legally resident citizens irrespective of ethnic affiliation as well as arrangements for protecting internal minorities*."[43]

Formal and substantial equality plays an extremely important role if new tensions are to be prevented. Within working systems of autonomy the principles of equality and non-discrimination have a prominent role to play. The rights of such "internal" minority groups in the autonomous region have to be clearly defined and safeguarded, so that members of the majority population in the state or other minorities are not threatened by measures of the regional majority governing the region.[44]

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[39] Salat et al. (2014), op. cit., p. 473.

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

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

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

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

[44] An example for such a provision is the "proportional admission to public jobs" and positive discrimination in South Tyrol. In order to assess the due proportion, admission to public service jobs is granted in proportion to the ethnic groups' quota. There are further group rights enshrined in South Tyrol's autonomy statute, e.g. the representation rights of the Italian and Ladin group in the government and

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

When everything else fails, judges and courts have to decide on the matter, but conflicts can be tackled by political means first. For Ghai and Woodman, "*[p]ermanent institutions for consultation are a feature of a number of well-established autonomies*."[45] Two examples may be mentioned. In Catalonia, the so called State-*Generalitat* Bilateral Commission provides a forum for negotiation with the central state. In Finland, the Åland-Delegation has been established as a permanent body to arrange bilateral mediation. The Finnish system requires that Åland be consulted also on the acceptance of EU provisions that would affect the Åland legal order. Whenever legal disputes arise with regard to the exercise of the legislative and administrative powers, an independent dispute settlement mechanism is safeguarded by the competent courts.

4.10 Democracy in the Region and State at Large

This criterion refers to the state at large but also to the situation within the concerned region. Internal democracy in the region is a pre-condition for a modern autonomy system. Not only there must be a freely elected regional legislative assembly for the autonomous entity, vested with a minimum of legislative powers. Autonomy must also ensure the full and equal participation of the members and representatives of different ethnic or linguistic groups of the concerned territory in internal decision making. In other terms: majority democracy must be complemented with a mechanism of "consociational democracy", granting participation to each officially recognized group.[46]

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

Chapter 5

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

Morocco's "Initiative for Negotiating an Autonomy Statute for the Sahara Region" was presented in April 2007 to the UN to prepare the ground for establishing a modern system of territorial autonomy in its Sahara Region.[47] This proposal for autonomy for the Sahara Region aims at meeting high standards of regional self-government and minority protection.[48] Yet, after having outlined some of the basic criteria for success of such arrangements as derived from historical experience, we could carefully check to which extent this draft statute of autonomy is already matching international standards and such criteria or whether there is still space for improving both the procedure for creating the autonomy and the draft legal framework for regional self-government as such. In other terms: we should figure

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the provincial assembly, as well as the so-called "budget-guarantee", a kind of veto right when it comes to approve the annual provincial budget.

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

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

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

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

out how Morocco's Sahara Region's future autonomy could be established and designed in order to ensure the major possible success in the long term.

5.1 The Creation of the Autonomy and its Democratic Legitimacy

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

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

Democratic legitimacy for autonomy can be provided by both a parliamentary decision at the central and regional level or by a popular referendum. The main stumbling block for both of these votes will again be the scope of the eligible voters. Whereas the directly elected regional assembly of the Sahara Autonomous Region represents all entitled Moroccan citizens residing there for a minimum period, a popular vote could theoretically also restrict the eligibility to a smaller part of the population emphasizing the duration of residence.[49] Such a decisive step of the procedure could be defined more precisely, e.g. in a memorandum of understanding with the negotiation partners.

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

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

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

5.2 The Powers of the Sahara Autonomous Region

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

- The Region's local administration, local police force and jurisdictions;
- In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;
- The Region's budget and taxation;
- Infrastructure: water, hydraulic facilities, electricity, public works and transportation;
- In the social sector: housing, education, health, employment, sports, social welfare and social security;
- Cultural affairs, including promotion of the Saharan Hassani cultural heritage;
- The environment.

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

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

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

- Popular consultation, direct political participation of the citizens and referendums on regional issues under the present autonomy statute;
- Emergencies and civil protection;
- Consumer protection;
- Energy and mineral mines;
- Public employment and staff in the administrative bodies of the Sahara Autonomous Region, organisation of the autonomous administration;
- Communication infrastructure;
- Cultural affairs should also include the establishment of a regional TV- and radio-broadcasting station under public law as a regional and independent authority.
- Public works.

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

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

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

5.3 Representation of the National Government in the Sahara Autonomous Region

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

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

5.4 Powers of the Courts

Paragraph 23 of the Moroccan Initiatives determines that "…*as the highest jurisdiction of the Sahara Autonomous Region the High Regional Court shall have final decisions regarding the interpretation of the Region's legislation, without prejudice to the powers of the Kingdom's Supreme Court or Constitutional Council*." This construction of administrative and constitutional judiciary may appear inconsistent. Paragraph 22 establishes a "Regional Court" in charge of interpreting regional provisions. In the European legal tradition, this would be equivalent to an administrative court. Due to the

demographic dimension of the Sahara Autonomous Region (roughly 570,000 inhabitants), one administrative court would be sufficient to cover the whole territory. On the other hand, a separate issue is given by judging the compatibility of regional law with the Constitution (as provided by paragraph 24 of the Autonomy Statute) and to central State law whether it encroaches upon regional powers. On such issues, only the national Supreme Court or the Constitutional Court can be called to judge. The different kind and purposes of courts could be more clearly determined in the framework of the Autonomy Statute.

5.5 State-Region Commission

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

5.6 The Implementation Procedure

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

5.7 International Context and the Kin-state

This a very sensitive issue, but it could be the key to solve the long-lasting conflict between the Kingdom of Morocco and that part of the Sahrawi population which is still living abroad on Algerian territory in unfavourable conditions. As in some cases of autonomy (South Tyrol, Åland Islands, Bougainville, Northern Ireland), not only the negotiations to achieve the autonomy status, but also the task of safeguarding the autonomy status can be fostered by involving a third party, called "kin-state". This role could be played by the neighbouring State(s) of Algeria and/or Mauritania, but also by an international organisation as well (African Union, UN). The presence of a kin-state in other cases of existing autonomy systems was definitely helpful in order to allow the representatives of the autochthonous population to enter in the final negotiation and to accept an agreement on autonomy. This does not result in an impingement upon Morocco's sovereignty on the Sahara Region, but recognises a third party which is granted a role of watchdog and protector under international law and ensuring good neighbourhood.

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

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THE LIMITS OF OFFICIAL AUTONOMY IN LATIN AMERICA: INSTITUTIONS, IMPLEMENTATION AND ANTI/POST-STATISM

MIGUEL GONZÁLEZ[50]

Introduction

This paper is intended to look into the way the debate on indigenous peoples' autonomies has been unfolding in Latin America, and describe the notions of self-determination and autonomy, focusing on how the indigenous peoples of the region define and promote the exercise of their rights to autonomy (Almeida, Arrobo & Ojeda 2005; Burguete Cal et Mayor 1998; Diaz-Polanco 1995; Grey Postero & Zamosc eds. 2005; CONAIE-ECUARUNARI-CDDH 1990). Dealing with both these issues within 20 minutes is quite ambitious. I shall therefore rather focus on three elements that I believe are key to understanding autonomies, in Central America as well as in Latin America more generally (Díaz-Polanco, 1997).

To begin with, we shall try to identify the *institutional expressions* of autonomy through the various processes of constitutional reform and democratic change that have been taking place in the region for over 20 years in connection with the recognition of indigenous peoples' rights (González 1997; Roldán Ortega 2000; Stavenhagen 2000). Second of all, we shall look into the results of the effective *exercise* of these types of government, self-determination and autonomy, from the point of view of their *relationship* with the State (*external* autonomy), as well as within indigenous societies (*internal* autonomy) (Anaya 1996; Assies, van der Har & Hoekema, eds. 2000; Assies 1999). Finally, we will have to admit that, we academics, haven't paid closer attention to the autonomies that develop *outside*, on the *margins*, or in blatant *defiance* of national States and their institutions (Hale 2011). It looks as if this third dimension is taking on an epistemological anti/post-statism and anti-colonial turn, decentralizing the role of the state in relation to the conception of the possibilities offered by autonomy (Esteva, 2015: 138).

Regarding the first element, some very important features are now drawing the attention of those observing autonomies: once the right to autonomy is acknowledged in internal or international law, what political/institutional form can the autonomy take? Communitarian, municipal, regional, departmental or provincial? Cultural or territorial, or a combination of both? What are the consequences of such reordering of the legal and structural order of the state? (Hannum 1990; Hannum & Lillich 1980). In 2010, drawing inspiration from the work of Díaz-Polanco, I suggested that autonomy could be envisaged as an "official political regime (i.e. legal) of territorial autonomy under which the state recognizes collective and individual rights to indigenous peoples (and other ethnic and cultural groups, to peoples of African descent for instance) so that they can exercise their right to self-determination" (González, 2010).[51]

It is important to note that in Latin America, autonomy is now taking on various institutional shapes and forms depending on the local realities and context, based on the demands of the peoples, following

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[51] While adopting this definition, Aylwin notes that "this definition of autonomy is in keeping with international human rights law guidelines, especially article 4 of the United Nations Declaration on the Rights of Indigenous Peoples, which recognizes the right of indigenous peoples to autonomy or self-government in matters relating to their internal and local affairs as an expression of self-determination, as well as article 18 that provides for the right of these peoples to maintain and develop their own indigenous decision-making institutions" (Aylwin 2004: 41.

Hoekema's definition (1996) is frequently used and is a descriptive one. It refers to internal political autonomy as the capacity guaranteed by the constitution and granted to a social entity or a territory to govern itself in the framework of state sovereignty (Assies, 2014: 234). This definition seems rather general and does not specifically apply to indigenous peoples.

negotiations with states and indigenous societies' internal processes.[52] By way of example, in Central America, Nicaragua initially opted for a decentralized and multi-ethnic regional/territorial type of autonomy enshrined in the 1987 Constitution (Frühling, González & Buvollen 2007). As for Panama, it has maintained an autonomy arrangement tantamount to a regional and territorial multi-community indigenous autonomy. 53 However, regions are independent of each other, each having its own government and authorities, as well as its individual laws. This system of regions was launched in the the 1970's and abundant literature exists on their history and current challenges. As for Costa Rica, it hasn't yet started studying the draft law presented to Congress by indigenous organizations, which provides for a certain type of autonomous indigenous communities and regional integration arrangements. In El Salvador, no autonomy has been requested, whereas in Honduras and Guatemala many such proposals have been made, both at community and regional level, and many hybrid institutional arrangements that provide for some kind of remodeling of the state in keeping with the principles of plurinationality, interculturality and multiculturalism.

The general picture is that, unlike with some European experiences within which non-territorial cultural autonomies were established for minority ethnic communities (Safran, 1999), in Latin America autonomy takes place in a spatio-temporal framework which confers rights to peoples and their authorities *as* ethno-cultural communities residing on given autonomous territories, the result of territorial/jurisdictional reshuffling, of the transition to indigenous autonomy at municipal level or the creation of a (fourth) regional level of governance on an autonomous territory, such as in Bolivia and, to a lesser extent, in Ecuador. In other words, political, social, cultural and economic rights are exercised over given territories and inside them for certain subjects of law. At the same time, the exercise of these rights is limited and problematic outside these territories (Anaya & Grossman, 2002; Assies, 2005).

It therefore seems to me that is more instructive to list the interesting features of *officially* recognized autonomies, those that I will call *official* autonomies. This raises the following question: how do the liberal institutions of the dominant state model fit in with indigenous forms of government in the framework of autonomy arrangements? In this respect, we must ask ourselves how the two groups of institutions fit together in the framework of autonomy?[54]

Interesting lessons can be drawn here. In Nicaragua, after 25 years of existence, governments and regional councils, multiethnic legislative and implementing entities at regional level ("higher authority") are the *antithesis* of indigenous communal autonomy and that of African descent. One problem has been that of over-representation of metis (non-indigenous) people in the councils, as well as the lack of free prior informed consent of indigenous communities in decision-making processes. The counselors who represent the communities also lose a direct connection with their own communal authorities and their decision-making processes. To a certain extent, this seems to be an issue in the indigenous regions of Panama where the executive power exercises gravitational power over local congresses, undermining indigenous authority and their internal decision-making bodies (Aylwin, 2014: 43).[55] In Bolivia, results appear to have been mixed, giving rise to hybrid models based on

[52] Aylwin organizes recognized rights into two categories: the rights to participate in the state and the rights that stem from their self-determination. The latter refer to the right to autonomy in internal and local affairs, in the development of their own institutions, normative and indigenous justice systems, and to the right to free prior informed consent. (Aylwin, 2014: 23).

[53] « five autonomous territories spread over 75.517 square kilometers, which, together with others that are not recognized, represent 23% of the territory of the country » (Aylwin, 2014: 42).

[54] Assies identifies two major types of reorganization of the state in connection with autonomies: A possible distinction may be drawn between the agreements based on indirect or direct consociationalism. In the first case, administrative reorganization offers indigenous peoples greater influence in local affairs, whereas in the second, the indigenous people is recognized as such and collective rights and covered. (Assies, 2014: 154). In practice, some autonomy arrangements are a combination of these two basic types.

[55] Research confirms this observation. Aylwin, building on Castillo and Ospina, states that the problems that weaken the capacity of indigenous peoples to exercise political autonomy through the regional model are not uncommon. Amongst the biggest are governmental strategies focused on regional intervention through

balance and collaboration, and which deserve a more systemic and comparative study to see how these tensions are evolving. By way of example, the study of the first five Bolivian autonomy statutes carried out by Tockman and.al. reveals "a strong pragmatic willingness to operate within the limits of a legal framework which remains fundamentally liberal and municipal , as well as to work with the institutions and on the basis of the liberal principles often thought to be rejected by indigenous peoples" (2015: 38). As for Acuña, he paints an institutional picture that is particularly skewed against original and farmers' indigenous autonomies due to the scope and interpretation of the autonomy between the state and the peoples, "which leads to unilateral, coerced and tense government action which means that the very concept of autonomy is stripped of its original and existential world vision" (Acuña, s/f handwritten).

In Nicaragua, the adoption of the Law on territorial demarcation (Law 445) made it possible to partially correct the so-called problem of "excess governance" (Hale, 2011) through the establishment of collective land ownership. That law created the institutional conditions conducive to the strengthening of communal territorial autonomies (a bit like "autonomies within autonomy"). Notwithstanding the above, major challenges remain due to the weight of municipal, regional and national institutions in decision-making processes.

In Colombia, indigenous autonomy is exercised through the *resguardos*, autonomous local entities of Colombian origin empowered to administer collective land ownership. The 1991 Constitution gave *resguardos* and municipal councils safeguards such as for collective ownership, in that their land is inalienable. Municipal councils have been equipped with economic competences and can set up associations. They are therefore "public law entities of a specific nature, with legal personality, their own assets and they are autonomous from an administrative point of view » (Aylwin, 2014: 43). With regards to their characteristics, *resguardos* and municipal councils are territorial autonomies, in so far as they are "legal and socio-political institutions of a specific nature, composed of an indigenous community or group which, based on a communal property title, owns its territory and is led by an organization adapted to traditional indigenous law or to its cultural customs and traditions » (article 2, decree 2011 de 1998).

In Ecuador, territorial autonomies have been incorporated into the national political order through a 2008 constitutional reform. The political constitution provides for the establishment of indigenous and Afro-Ecuadorian territorial constituencies, which "exercise the powers of the corresponding autonomous territorial government, and are ruled by the principles of interculturality, plurinationality and the respect of collective rights." Likewise, the procedures which make it possible to create indigenous and Afro-Ecuadorian territorial constituencies are enshrined in a secondary legislation: " The law provides for the standards that apply to the establishment, the functioning and the powers of said constituencies." This provision resulted in the adoption of executive decree 96 of 2009 which, in practice, became a bureaucratic hurdle that prevented the effective exercise of autonomy and indigenous self-determination. According to Ortiz-T. "Institutional weakness and the lack of political willpower on the part of state entities (from the highest level to techno-bureaucratic middle levels of public service) result in delays, unfounded goals and intentions, as well unfulfilled commitments." This also means major differences between the state and indigenous peoples in terms of interpenetration between the ancestral territory and the state's administrative and political jurisdictions. Despite these challenges, the innovative experiences in the creation of indigenous and Afro-Ecuadorian territorial jurisdictions in the Amazon region reflect a "pioneering strategy to advocate for ancestral territorial rights, which also provides for preventive measures meant to avoid potential conflicts" in relation with state and non-indigenous actors (Oriz-T s/f 43).

Bolivia, Ecuador, Colombia and Nicaragua are all paradigmatic cases given the progressive tenets of the formal acknowledgement of autonomy rights and of indigenous self-determination in Latin America. Nevertheless, in each of these countries, secondary laws and administrative standards

politically competent entities with regards to traditional posts (Ospina, 2011), as well as the creation by political parties of internal divisions between the figure of the president of autonomous congresses (as the case may be) and that of other caciques (Castillo, 2007). (Aylwin, 2014: 44).

delineating constitutional rights prevented the full realization of autonomy. If major differences exist between all of these countries, the common denominator has been the preservation of legal and administrative prerogatives by the state, which have a negative impact on the exercise of the collective rights to autonomy. As for the meaning of autonomy for the parties, this is another area in which differences exist. Acuña notes that in Bolivia "indigenous people see in it the symbol of their ethnic emancipation, the return of their ancestral autonomy and [...] their political participation. For the government, it is a mere political, administrative and territorial concession to those who had until then been excluded from the system; in order to enhance its effectiveness at state level and guarantee its internal (plurinationality) and external (implementation of international treaties) legitimacy » (Acuña, s/f, handwritten 13).

The *exercise* or the implementation of autonomy is the second dimension that I decided to look into, especially with regards to Nicaragua and, to a certain extent, other autonomies in the region. Two questions arise here, a normative one and an empirical one. From a normative point of view, trying to assess the *exercise* of autonomies means being limited to what autonomous institutions managed to create *on the basis of the* prerogatives and the functions granted to them by the law, in other words, the exercise turns out to be merely formal and focused on institutions. From an empirical point of view, the idea is to look into the actual development of the exercise of autonomy based on its internal dynamics, taking into account changing realities as well as the social and political environment of the societies in which autonomous institutions operate. In my research I mentioned Andres Hoekema's innovative proposal (1996), later elaborated by Assies (2005: 198), which offers a typology to compare autonomies on the basis of their *formal* characteristics (the political/legal and normative framework), their relative or effective exercise (the way power is allocated between the autonomous institutions and vis-a-vis the state, normative aspect) and based on *empowerment* (« being autonomous », the exercise of autonomy, empirical aspect).

Table 1 A comparison of Latin America's autonomy arrangements

	Panama	**Colombia**	**Ecuador**	**Nicaragua**
***De jure* level of autonomy**	Regional	Local, ETI not implemented	Local, status of territorial circumscriptions unclear	Regional
Type of autonomy	Direct consociation	Direct consociation	Direct consociation	Direct consociation
De facto control of territory	High	Declining	Moderate	Low, but perhaps increasing moderately
Institutional representation	High, through established party system	Formally high, electoral district and own parties at national and municipal level	Not formal, but in practice, through own political parties and representation in government agencies	Low, through established parties but also through regional "popular lists"
Fiscal autonomy	Somewhat	Formally recognized but declining	Municipal level, "alternative" government	Low
Respect	Moderate	Declining on the part of the state	Moderate	Low, largely depending on paltry allocations

	Panama	Colombia	Ecuador	Nicaragua
Empowerment	Reasonable, probably increasing	Tenuous in a context of violence	Increasing	Low and disputed

During my doctoral research on Nicaragua's autonomy arrangement, I took a second look at this typology through the prism of empowerment. I reproduce below the illustration to see how it complements Assies' proposal.

Table 2 Autonomy as empowerment

	a. Levels of analysis	
Formal Politico/legal	**Effective** Distribution of real decision-making power based on the competencies granted to the autonomous entity.	**Empowerment/Outcomes** Degree of self-determination and self-government.
	b. Analyzing criteria	
Legal provisions on autonomy	Degree of implementation.	Does autonomy serve the best interest of the community and its members? Who or whom have been empowered as a result of autonomy?
	c. Dimensions of autonomy as empowerment (or areas of analytical interest)	
Autonomy's enabling legislation	- Degrees of political representation and participation in autonomous bodies; - Regional governments' institutional capacity; - Effect of state's policies toward autonomous entities; - *De facto* self-governing regulations.	- Have indigenous and/or multiethnic rights been respected and promoted as a result of autonomous decision-making? - Has indigenous self-government been effectively exercised? - Have women been empowered?

In order to try and explain both the normative and the empirical dimensions, it is worth noting that when it comes to the exercise of autonomy, and more particularly so in the case of Nicaragua, many challenges remain. First of all, the limited capacity of regional councils to exercise autonomy rights. This situation is on the one hand due to the fact that national governments are not very cooperative, and on the other, to recurrent political polarization within those very councils, that long prevented the consensus needed to move forward on issues of common interest. Although the law gives Regional Councils wide attributions in administrative matters such as natural resources, health services, education and transport, as well as for the administration of justice, the progress made in each of these areas are far from being impressive. The state still regularly influence the decisions made in relation to the administration of public services as well as on the drafting and implementation of public policies in the autonomous regions.

At the present time, within the framework of the second mandate of the ruling party (FSLN), political control has been increasing not only in the councils and governments, but also in municipalities (in the

regions and at national level), in addition to the centralization of governance functions. It is no accident if it is precisely within community territorial governments that these tensions and contradictions are strongest. I would go as far as to suggest that it may be within indigenous territorial governments defined and established over the past ten years, that the empowerment of indigenous peoples and peoples of African descent finds its clearest expression. Not only did the law give them access to legal instruments, consolidating their control over collective property, but it also allowed them to create their own types of authority over the territories given to them. The exercise of autonomy at this level nevertheless remains just as complex due to the illegal occupation by non-indigenous peasant farmers and the little attention granted to the issue by n regional and national authorities. In a nutshell, Nicaragua has a strong political and legal framework in connection with the autonomy arrangement, but in practice, it is of limited effectiveness and the level of empowerment of autonomous subjects of rights is moreover low.

Finally, I wish to discuss self-determination and autonomy from a third angle: that of *external* processes of autonomy, established *in opposition* or *in clear challenge to* national states. Barring some important exceptions, I for one believe that the review of autonomies established from the "top-down", "imposed from the outside", "without authorization", in opposition or in clear challenge to States is biased. I must confess that overall, my work is no exception to the rule. We looked at autonomy in the framework of official autonomy and the forms it takes under the lens of states' recognition. We also studied these processes from the viewpoint of social and political sciences which give precedence to the understanding of political institutions and social regulation processes deriving from it. We must admit that this raises major issues when it comes to analyzing autonomies as evolving and dynamic processes (how are they understood, obtained, defended and promoted by indigenous peoples and organizations?) as well as when it comes to admitting that all autonomies may not take a political form approved by states.

Allow me to explain myself. In my view, in Latin America the demand for autonomy comes in different shapes and forms depending on the circumstances. They obey historical or more contemporary demands - based on a series of social, legal and political phenomena in the region or at global level - and a number of these processes meant to give substance to autonomy (as an expression of self-determination) have taken the path of existing institutions, in other words within the limits, according to the principles and realities established by the states, with all that it implies. I believe that several countries attest to that, such as Nicaragua, Colombia, Panama, Ecuador and Bolivia.

The debate on autonomy has taught us that bringing autonomy to life can lead states to redefine and bring about the most diverse forms of political life, nationality, citizenship, and state institutional order, including in the field of power sharing. All these possibilities make it a creative process interesting to analyze for academics, especially political sciences practitioners. They are a valuable opportunity for indigenous political organizations. However, and this is important, not all autonomies, considered as a form of self-determination, opt for official recognition. In Nicaragua, we can mention the example of the communitarian nation of Moskitia, which promotes a community of autonomous nations outside and in open opposition to the State of Nicaragua. These are communities and peoples, indigenous organizations, which, for various reasons, decide to move *in parallel, in opposition to* and often *challenging* the states' official recognition models and those of their institutions.

It is important to understand why it is so. In this respect, several hypotheses may be considered. It seems to me that in different settings, recognition has reached certain limits since states committed to respect and promote the fundamental rights of indigenous peoples. But in practice, as indicated by various observers, serious implementation gaps remain. In other cases, organizations came to the conclusion that the current political configuration of states is not conducive to the realization of their aspirations as peoples.

These loopholes are not merely a passive feature but often fuel old and new forms of violence, enforced displacements, as well as many violations of the rights of indigenous peoples. The relations with extractive industries and the lack of free prior informed consent of indigenous peoples regarding these

forms of development clearly attest to this. In different settings, despite progressive normative frameworks, it hasn't been possible to deter the violation of peoples' rights. Though not a rule, this has become apparent in different contexts.

On the basis of the example of Nicaragua, I have spoken of the *fatigue of official autonomy* as a way of exercising the right to indigenous self-determination, some kind of fading of the initial optimism generated by regional autonomy, to give rise to new discussions and better understand the challenges related to autonomies, which stem from constitutional reforms and recognition. It therefore seems necessary not only to make sure the limits of official autonomy are better understood and to openly confront the optimism generated by the paradigm of multicultural recognition - by way of example, certain countries refer to the reforms of statutes and the legal order - but also to consider other processes, the so-called "other autonomies" which, in the face of states' resistance or their inability to meet the commitments in the field of recognition, define their own trajectories and strategies, other parameters and ontological horizons to organize power, its sovereignties and the relationship with the states, all this within the framework of a process of self-determination. This is interesting because this would allow us to consider indigenous self-determination not as an end in itself, but as a moving process allowing peoples, their organizations and communities, to fully exercise their fundamental rights, opening up new horizons for autonomy and self-determination.

Autonomy for the Sahara Region

In Latin America, autonomy arrangements haven't always arisen from political solutions to armed conflicts. Truth is, they have been the exception rather than the rule. Notwithstanding the above, in all cases, territorial autonomies stemmed from extended national political dialogues on the overall direction societies have been taking, in order to acknowledge the right of original indigenous peoples and of peoples of African descent to exist as distinct societies (Kymlicka, 2002). In other words, since they first appeared, autonomies shave been considered as a *constructive agreement* aimed at establishing new relations between the state and indigenous people (Rothchild & Hartley, 1999; Vargas Hernández, 2019; Wolff & Weller, 2005). This is a lesson worth keeping in mind in the search for an autonomy-based solution for the Sahara Region.

Since 2007, Morocco has been internationally committed to launching negotiations aimed at granting an autonomy statute to the Sahara Region. To this day, Morocco has taken important measures to this effect through the holding of international meetings on the subject, covering various aspects of autonomy, such as governance and self-determination, human rights, development models, territories, advanced decentralization and political representation. In the framework of this paper, I only hope to bring a modest contribution to this endeavor through the teachings drawn from Latin-American experiences of indigenous and multiethnic territorial autonomy.

I would therefore like to focus on three lessons which could be taken into account while negotiating the autonomy statute for the Sahara Region. These three lessons are thus as follows. The first one has to do with the moral and ethical basis of autonomy - which make it possible to establish new relations between the majority society and socio-culturally differentiated peoples; the second has to do with the challenges inherent in the exercise of the right to self-determination and self-governance; and finally, the third one has to do with the intrinsic and changing demographics that should be taken into account in designing the autonomy.

Moral and ethical justifications of autonomy. When the very first experiences of indigenous autonomy appeared in Latin America, the political elite either openly rejected it, or proceeded with moderate caution (Stavenhagen, 2000). They argued that the existence of autonomous jurisdictions under political and administrative units distinct from municipalities, a form of governance born of the creation of Latin American states upon becoming independent in the 19th century, would undermine the sacrosanct principle of sovereignty and unity of the state. In Latin America, autonomy has shown that it is a political arrangement seen as a *constructive agreement* that does not threaten "national unity" (Van Cott, 2000). It rests on moral, ethical and political foundations, and offers a state and peoples that are different from a social and cultural point of view, the opportunity to *coexist* and overcome historical relations characterized by *domination and subordination* (Roldán Ortega, 2000). The future autonomy

statute for the Sahara Region should consider establishing new relations based on higher moral and ethical standards to ensure social coexistence within an inclusive state and society.

Exercising the right to self-determination. The Latin American experiences of autonomy have shown that it is a promising mechanism for indigenous people who can thus exercise their right to self-determination. However, these experiences also showed that this right can only be efficiently exercised if the constitution offers safeguards that are respected at the highest level of the judiciary. In Latin America, states frequently and officially commit to respect the right to autonomy while unilaterally reserving the right to set the conditions under which this right is recognized. By way of example, one can mention the uneven interpretation by states of the right to free prior informed consent, thus often violating constitutionally recognized indigenous people's rights. In other words, while autonomy can help settle a conflict through a political agreement, the autonomy arrangement is naturally "a house with open doors" whose inhabitants become aware of the adjustments required to best realize their rights.

To do so, the state has to be willing to start new negotiations and to totally rethink, with the subjects of rights, the powers granted to the autonomous regions. Autonomy is therefore in many respects, an experimental model before it becomes a final governance model.

The future autonomy statute for the Sahara Region will need to provide for specific mechanisms at the highest level of the judiciary and the political system, the safeguards needed to make sure the fundamental rights of the population of the Sahara are not eroded by the unilateral decisions of the state - or other state entities - which may run counter to the spirit of the *founding agreement* that underpins the autonomy arrangement (Weller & Wolff eds. 2005; Turner, 2005). To do so, one solution could be to establish autonomous higher courts specifically mandated to settle disputes arising around questions of law between the state and the autonomous region. .

Potentially changing demographics and the design of autonomy. Critics of autonomy arrangements have cautioned against the possible threats to the viability of the autonomy arrangement due to the mobility of peoples and the changes in the composition of the peoples as subjects of rights on a given territory (Lapidoth, 1997). The experiences in Latin America have confirmed the importance and relevance of this element. Independent territories are not frozen in time or space. Quite the contrary, they are subject to constant bio-demographic changes. The indigenous peoples of Latin America live on continuous or discontinuous rural territories as well as in urban areas and medium-sized cities where they can constitute a majority or a minority of the population vis-a-vis other non-indigenous groups. In principle, territorial autonomy cannot guarantee the exercise of collective rights outside these autonomous spaces, which can turn them into exception and exclusion areas. On the other hand, states haven't done enough to control illegal immigration towards autonomous territories, which in certain cases has changed the demographic make-up of autonomous regions, people becoming a minority in an area where they previously were a majority, such as in Nicaragua. In these cases, autonomy is no longer a founding agreement for the rights can only be partially exercised and in a precarious way too. There is also the risk that the ethnic and racial conflict resumes around control over natural resources, the territory and social and political means of participation. The future autonomy statute for the Sahara Region will need to carefully look into whether the inherent rights to autonomy are recognized over the territory or the region (political and administrative autonomy) or for those culturally distinct peoples and subjects residing on theses territories. Otherwise, the autonomy model could be a combination of the two groups of rights (territorial and functional autonomy) so that mobility and changing demographics do not affect the enjoyment of inherent rights of autonomy outside the territory or the autonomous region(s).

Conclusions

In the framework of this paper, I first and foremost want to underscore the need to revisit the *autonomy paradigm* that emerged in Latin America at the time of recognition and multiculturalism as a way of realizing the autonomy rights of indigenous peoples. This paradigm emerged in the public discourse of indigenous organizations and movements, in domestic and international law, in order to open up new political and social spaces through which the various types of autonomies materialized, with varying

degrees of success, and varying levels of powers (at community level, at the level of *resguardos* or regions, municipalities or provinces). However, this paradigm is currently being carefully scrutinized by autonomous peoples and their organizations, as well as by the very elite that had to accept the demands for autonomy in a context of evolving power relations, armed conflicts, crises of democratic legitimacy and growing role of indigenous social movements.

I suggested that in our day and age the different types of *official* autonomies in various countries are being assessed and tested. Moreover, the initial optimism about the implementation of autonomy as an expression of self-determination guided by the state and recognition policies, has been somewhat dampened.

This is a positive development. It compels us, from the viewpoint of social and political sciences, to reconsider the interpretation models through which we assess the effects of conflicts and the negotiations between social actors and the state; the tensions and adjustments that stem from autonomy; the interruptions and continuity in the exercise of state power and the consequences they can have on the possibilities of autonomy. It forces us to study other interpretation frameworks, those that involve the decentralization of the role of the states and highlight peoples' visions.

For indigenous organizations, this means reconsidering the relationship with states and imagining the variants of autonomy in which states would lose their veto right, allowing them to steer the expression of the demand for autonomy, publicize their actual action through bureaucratic hurdles and determine their scope. I believe that the intellectual and political conditions exist to hold this discussion, all the more since concrete autonomy experiences have been publicized throughout the continent, as well as with the growing interest of various players for their effects, modalities and above all related challenges.

In view of the above, I suggest the future statute for the Sahara Region put forward by Morocco takes into account some salient features of Latin America's experiences. I have focused on three specific features: the moral and ethical basis for autonomy; the challenges of exercising the right to self-determination and self-government; and demographics that change the design of autonomy. The Initiative of the Kingdom of Morocco will also have to take into account the international legal framework for the fundamental rights of indigenous peoples, now considered customary standards key to exercising the right to self-determination and autonomy. Convention 169 of the ILO and the United Nations Declaration on the Rights of Indigenous Peoples in particular, seem to contain important parameters on autonomy and self-government through which one could determine the scope of the autonomy initiative for the Sahara Region.

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SPECIAL AUTONOMY AS A TOOL FOR CONFLICT SETTLEMENT A COMPARISON BETWEEN ACEH, INDONESIA AND THE SAHARA REGION, MOROCCO

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Abstract

As post-colonial countries, Indonesia and Morocco often faced similar challenges in the relationship between regional areas and the central government. In order to cope with the insurgency which aimed to separate itself from the central government in a peaceful way, Indonesia has used the referendum with the supervision of the United Nations (UN) in East Timor to resolve the case that ended with the independence of East Timor from Indonesia. Resolving a similar case in the Aceh province, the central government agreed to extensive negotiations with the mediation of international non-governmental organisations (NGOs) in resolving the case that ended with the acceptance of Aceh's special autonomy as the final solution.

In 2001, the Free Aceh Movement (known as Gerakan Aceh Merdeka - GAM) rejected special autonomy for Aceh through Law No. 18 of 2001, because it was considered as a unilateral proposal from the government of Indonesia, while special autonomy under the name of "Governing of Aceh" was considered as a solution to end the conflict through the Helsinki Memorandum of Understanding (MoU) (later published in Law No. 11 of 2006) which was accepted by GAM following many rounds of negotiations. Therefore, the solution was not merely imposed by the government of Indonesia. This success cannot be separated from the provision of facilitation and mediation carried out by the Crisis Management Initiative (CMI) led by Martti Ahtisaari, the former President of Finland. Based on the experience of resolving the Aceh conflict, the 2007 Moroccan Autonomy Plan for regional autonomy as a solution for conflict resolution in the Sahara Region offers a framework to provide sufficient space for compromise while not reducing the sovereignty and territorial integrity of the Kingdom of Morocco.

INTRODUCTION

The Kingdom of Morocco and the Republic of Indonesia have already developed a very good relationship and friendly ties for a long time. Over this period, their bilateral relation has been politically entwining well, mainly because the two countries have much in common both in their policies and political views in addressing various issues of both regional and international importance.

As independent countries that are relatively young, Morocco and Indonesia, like other similar countries, are facing many challenges. Movements of armed insurgency to separate from the central government occur in several countries, including the Moro Islamic Liberation Front (MILF) in the Philippines, polisario in the Sahara Region of Morocco and the Free Aceh Movement (GAM) in Indonesia. In this regard, Indonesia has experienced the dynamic of relations between a regional and the central government, for instance in the case of Aceh.

At the beginning of Indonesia's independence from the Netherlands in 1945, Aceh was a very important region that played a significant role for the existence of the Republic of Indonesia. When the Kingdom of the Netherlands carried out its second aggression in 1948, the entire territory of Indonesia (the Dutch East Indies) was controlled, except Aceh. Through an old radio transmitter in Rimbaraya, Central Aceh, which was established one day after the aggression on 20 December 1948,[57] the Acehnese leader announced to the international community that the territory of a newly independent Indonesia still existed, namely Aceh. On that basis, then Aceh was known as a capital area for the Republic of Indonesia. Aceh was also dubbed as a capital area,because when the Republic of Indonesia needed an airplane, the Acehnese leader through a meeting at the Kutaraja hotel, which was also attended by

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[57] Harry Kawilarang, *Aceh dari Sultan Iskandar Muda ke Helsinki,* Bandar Publishing, Banda Aceh 2008, p.151.

President Soekarno, succeeded in mobilizing the people to collect gold, (at that time a donation of 20 kg of gold was collected). With that capital then the Indonesian Government bought a Dakota DC-3 aircraft, which was named RI-001 Seulawah. This aircraft then became the initial capital of the establishment of the national airline, Garuda Indonesia Airways (GIA).

When based on the results of a roundtable conference on 27 December 1949, the Republic of the United States of Indonesia was formed, Aceh decided not to revive its own State, but remained within the Republic of Indonesia whose capital was Yogyakarta. This was the moment of the Aceh honeymoon led by Tgk Daud Beureueh with Jakarta (Indonesia) led by President Soekarno.

However, Indonesia had to face the turmoil in the form of uprising movements in various regions that wished to separate from the unitary state of the Republic of Indonesia. There were several movements namely: DI / TII led by Karto Suwiryo in West Java; DI / TII led by Daud Beureueh in Aceh; PRRI / Permesta in West Sumatra and the Republic of South Maluku (RMS) in Sulawesi. The various rebellions were successfully overcome, both with violence (West Java, West Sumatra and Sulawesi) and with negotiations (Aceh). After West Irian became part of the NKRI in 1961, there was also a rebellion known as the Free Papua Organization (OPM) which until now has not been successfully quelled.

Besides, Indonesia also experienced conflict with the movement that demanded the independence of East Timor. The East Timor conflict was finally resolved through a referendum on 30 August 1999, with the two options: wider autonomy within Indonesia or independence. The referendum was carried out under the supervision of the United Nations Mission in East Timor (UNAMET) and resulted in the secession or independence of East Timor.

The resolution of the East Timor conflict through a referendum that caused the breakaway of East Timor became a bitter experience for Indonesia. Based on this experience, the demands for a referendum to resolve the Aceh conflict were rejected by the Indonesian government. The government of Indonesia was willing to resolve the conflict with GAM through direct negotiations mediated and facilitated by Crisis Management Initiative (CMI), an international NGO led by Martti Ahtisaari and supported by friendly countries.

The problem faced by Morocco since the polisario was created and self-proclaimed the independence of western Sahara has attracted the world's attention and became a nuisance for the welfare and the historical unity of the people of Morocco. The attention of the United Nations, which has issued several Security Council Resolutions, and the efforts made by the UN Secretary General through his Personal Envoy, have not yet produced a final solution, which would be realistic, practical, based on compromise, fair and sustainable.

Indonesia's experience in resolving the Aceh conflict through peace negotiations which resulted in the issuance of the "Helsinki MoU of 15 August 2005" and "Special Autonomy" with the term "Governing of Aceh" in Law No. 11 of 2006 can be used as a comparison for resolving the conflict in the Sahara Region.

REGIONAL REVOCATION AND ITS COMPLETION

The dilution and existence of Aceh within Indonesia did not work smoothly. This disturbance was initially triggered by pledges during Soekarno's presidency which were not fulfilled (including the implementation of Islamic Shari'a in Aceh). Since then, Aceh felt betrayed, and therefore on 20 September 1953, Tgk Daud Beureueh proclaimed Aceh as part of the Indonesian Islamic State led by SM Kartosoewirjo based in Tasikmalaya, West Java. The DI / TII rebellion in Aceh was initially responded to by the Indonesian government through violence by deploying the Army, but unexpectedly it turned out that this effort was unsuccessful. Finally, after tough negotiations, the rebellion was successfully terminated with what came to be known as the "Ikrar Lamteh" (Lamteh Pledge). After this pledge the government of Indonesia, through the Decree of Prime Minister Hardi No. 1 / Missi/1959, gave Aceh the status as a Special Regional Province, with privileges in the fields of religion, education and culture. The privileges however have never been realized concretely. This caused disappointment among the Acehnese people. In addition to that, Aceh also did not feel the positive impact of the

exploitation of natural gas by PT Arun NGL in North Aceh Regency. The yield from natural gas, which at that time was one of the largest, was all put in the Indonesian National Budget and very little was returned for any development plan in Aceh. Moreover, the villages surrounding the PT Arun NGL complex are classified as poor villages, and up to now Aceh is still a Province with the highest poverty rate in Sumatra (15.97%) and number 6 of the poorest nationally (Data from Aceh BPS in 2018) .

Armed conflict also occurred again in Aceh led by Tgk Hasan Tiro in the name of the Free Aceh Movement (GAM). This movement was revived as a consequence of social and economic inequality during the Suharto regime.[58]

The movement which demanded independence was initially faced by the government with violence, but failed. Finally, following the Indonesian Reformation of 1998, efforts to resolve the Aceh conflict were initiated and tailored in the era of President Abdurrahman Wahid. After alternating between peaceful efforts and military strength, finally the conflict was resolved through peace negotiations in the era of President Soesilo Bambang Yudhoyono. During that presidency, the conflict was resolved through negotiations facilitated and mediated by the Crisis Management Initiative (CMI) led by Martti Ahtisaari, the former President of Finland. The negotiations successfully ended up in a Memorandum of Understanding (MoU) signed on 15 August 2005 in Helsinki, which later became known as the "Helsinki MoU".

The success of this conflict resolution began with the strong determination of President Susilo Bambang Yudhoyono to peacefully resolve the Aceh conflict. According to Damiens Kingsbury, "*The election of Susilo Bambamg Yudhoyono as president in September 2004, and his commitment to finding resolution to the Aceh conflict was a primary contributor to this return to talks*."[59] The peace settlement in Helsinki is supported by the European Union and friendly countries, such as the United Kingdom, Japan and Singapore. According to Kirsten Schulze, even though GAM wanted international support for Aceh's independence, this never happened. International involvement in resolving the Aceh conflict remained based on Indonesian territorial integrity.[60] The international community did not support Aceh's independence, but what they did support was that the Aceh conflict resolution efforts should peacefully go through dialogue. This was stated by the United States Ambassador to Indonesia Robert Gilbard when visiting Aceh in May 2001: "*Only dialogue could lead to a resolution of the conflict*."[61] This is very meaningful for the awakening of Indonesia's belief in choosing a peaceful path and accepting international involvement in resolving the Aceh conflict.

From the above description, it can be seen that the involvement of the international community in resolving the Aceh conflict played an important role. In this context, the government of Indonesia chose international NGOs, which were considered more reliable, independent and impartial. For this reason, for an initial dialogue, the Geneva-based Henry-Dunant Centre (HDC, later Centre for Humanitarian Dialogue) was chosen by President Abdurrahman Wahid and was also accepted by GAM. The negotiations facilitated and mediated by HDC succeeded in agreeing to put an end to violence with the signing of the Joint Understanding on a Humanitarian Pause for Aceh document on 12 May 2000, and then agreeing to the Cessation of Hostility Agreement (COHA) on 9 December 2002. Despite its failure to resolve the conflict permanently, the results of this achievement however was considered as an embryo for further steps in resolving the conflict through negotiations. Furthermore, the choice of international NGOs was again carried out by President Soesilo Bambang Yudhoyono, asking for the involvement of the Crisis Management Initiative (CMI), led by Martti Ahtisaari, to be the mediator of the negotiations.

The resolution of the Aceh conflict in Indonesia through peace negotiations attracted the attention of the international community. On this basis the Philippine Rebellion Leader, the Moro Islamic

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[58] Harry Kawilarang*, Ibid,* p. 156.
[59] Damiens Kingsbury, *Peace in Aceh: A Personal Account of the Helsinki Peace Process,* Equinox Publishing, Jakarta-Singapore, 2006, p. 15.
[60] Kirsten E. Schulze*,* "The Free Aceh Movement (GAM): Anatomy of a Separatist Organizations"*, Policy Studies* 2, East-West Center, Washington, 2004, p. 54.
[61] Edward Aspinal & Harold Crouch, "The Aceh Peace Process: Why It Failed"*, Policy Studies* 1, East West Center, Washington, 2003, p. 27.

Liberation Front (MILF), and the Leader of the Rebellion in Southern Thailand visited Aceh for comparative studies in resolving conflicts. Therefore, it would be useful if the polisario leadership had the opportunity to do a comparative study in Aceh, Indonesia. Their dialogue with the former Free Aceh Movement (GAM) rebels who are now involved in the Governing of Aceh would be very useful to convince them about the advantages of the Moroccan proposal to resolve the conflict in the Sahara Region.

THE SAHARA CONFLICT AND ITS RESOLUTION EFFORTS

The Sahara conflict has been going on since 1975 as an opposition to Morocco's sovereignty over the region by the so-called popular front group for the liberation of Saquia el-Hamra and Rio de Oro (polisario) that was created and self-proclaimed the independence of western Sahara in 1973. The Sahara conflict was complicated by the involvement of Algeria's political support, and Kaddhafi's (former president of Libya) financial and military support to polisario, in the context of the Cold war. The Sahara conflict even became more complicated due to the self-proclamation of the so-called SADR administered by polisario on the territory of Algeria.

Since then, the issue of the Sahara region has attracted the attention of the international community, and has even been discussed in various UN forums. The involvement of the UN in resolving what it calls the western sahara conflict is also supported by the African Union (AU), as stated by the Chairperson of the AU Commission, Moussa Faki Mahamat, in July 2018: he recognized that the United Nations was the only body with legitimacy tasked to find an agreed upon and mutually acceptable solution to the conflict. This also reiterated the AU's support to the UN-led political process to end the conflict.[62]

The settlement of the Sahara conflict is handled by the UN Security Council (UNSC), which among others has issued Resolutions 2414 (2018) and 2440 (2018). The polisario did not clearly accept the Security Council resolutions and has its own interpretation of the texts. This can cause polisario to confront the UN Security Council which has the authority and responsibility to maintain international peace and security.

The above conditions can be utilized by Morocco to get better support from the members of the Security Council and also from the UN Secretary General in negotiations with polisario.

The Moroccan Autonomy Initiative

Following the Security Council calls to resolve the conflict in the Sahara Region, Morocco submitted a proposal containing an offer of autonomy for the Sahara Region, while remaining within the sovereignty of the Kingdom of Morocco. On 11 April 2007, Morocco presented "The Moroccan Autonomy Initiative for Negotiating an Autonomy Statute for the Sahara Region" to the United Nations as a compromise that could facilitate the opening of negotiations for a "just, durable, and peaceful" political solution. The initiative was the product of a year-long consultation process in which all sectors of the local Sahrawi population, the views of foreign governments, and the expert of international authorities were also included. The plan provides broad outlines of an autonomy arrangement for the Sahara Region under Moroccan sovereignty, including a description of areas of local and shared powers for the Region with the central government. The Initiative states that specific arrangements should result from direct negotiations between the parties.[63]

The position of the other parties regarding the referendum is in contradiction with the Security Council resolutions which has been calling since 2004 for a political solution and which do not refer to the referendum since 2001. In fact, the referendum has been buried by the UNSG and the Security Council because it is impossible to implement due to disagreements on the electorate. Indeed, the Secretary-General underlined in his report S/2000/131 of 17 February 2000 that after nine years "*it has not been possible during this period to implement, in full, any of the main provisions of the United Nations*

[62]Safaa Kasraoul, "Western Sahara: Marrakech to host conference on AU Support to UN-Led Process", *Morocco World News*, 24 March 2019 (www.moroccoworldnews.com/2019/03/268817), accessed 30 April 2019.

[63] The Moroccan American Center, on behalf of the Kingdom of Morocco, "Resolving the Western Sahara Conflict", (www.moroccanthemove.com), accessed 30 April 2019.

Settlement Plan, with the exception of the monitoring of the ceasefire", due to "*fundamental differences between the parties over the interpretation of its main provisions*".

In relation to this, Indonesia had a bad experience with the breakaway of East Timor from the sovereignty of the Republic of Indonesia, when the referendum was chosen as a solution to the resolution of the conflict in East Timor.[64]

The Moroccan autonomy plan submitted to the UNSC on 11 April 2007 as a means of conflict resolution was considered as an extremely flexible scheme giving broad autonomy to the Sahara Region within the Kingdom of Morocco. It offers some general guidelines but leaves the details of the arrangement to the negotiations between the parties. The existence of broad support from the international community is a plus for this proposal and this support must be used effectively by Morocco. In all its resolutions since 2007, the Security Council has considered the Autonomy Initiative as "serious and credible".

In the Sahara conflict, Indonesia's position is clear, namely supporting the continuation of the UN mediation process and encouraging dialogue between the parties. In this regard, efforts are needed to strengthen confidence building.

In the latest developments, the negotiation about the Sahara conflict was handled by former German President Horst Köhler, the UN Secretary-General's Personal Envoy, who endeavoured to bring together Morocco, Algeria, Mauritania and polisario through a roundtable process. So far, the four participants took part in two Roundtables in Geneva, from 5 to 6 December 2018 and from 21 to 22 March 2019. This is a direct negotiation after the 2007 attempts failed. Even though no significant breakthrough has been achieved yet, the willingness to conduct direct dialogue is a sign of progress towards the peaceful conflict resolution, as underlined by Köhler in his invitation letter: "*It is time to open a new chapter in the political process*". According to Köhler, another important thing is the fact that "*the four parties have engaged in an open spirit of mutual respect*". Koehler's efforts received full support from the UN Security Council, as stated in the Press Statement dated 31 January 2019, because this process is in line with Security Council Resolution 2440 (2018), calling for a "*just, lasting and mutually acceptable solution that will provide for the self-determination of the people of Western Sahara*".

Indeed, there are still problems that may become obstacles to the political process in the form of exclusive offers from each party. On the one hand, polisario still wants the final status for self-determination through a referendum by including one option, namely independence. On the other hand, Morocco wants regional autonomy for the Sahara Region within the Kingdom of Morocco.

Although there are still serious obstacles due to the differences of principles, meaningful progress has been achieved. The important thing is that there is the willingness of the parties to keep building mutual trust and starting to discuss regional issues. All delegations have recognized that cooperation and regional integration, not confrontation, were the best ways to address the ongoing regional matter, and expressed willingness to continue meeting.

In the second Roundtable of March 2019 in Geneva, significant progress has been achieved as Köhler explained in reading the joint communiqué after the meeting ended: "*Delegations held in-depth discussions on how to achieve a mutually acceptable political solution to the question of Western Sahara that is realistic, practicable, enduring, based on compromise, just, lasting, which will provide for the self-determination of the people of Western Sahara in accordance with Security Council Resolution 2440 (2018). In this regard, they agreed to continue the discussion in order to identify elements of convergence."*[65]

Willingness to have the resolution of the conflict based on compromise is very important, because then the achieved results will be a joint effort and will thus be better implemented, instead of building it upon the pressure of either party. Polisario could be tempted to reject the option of regional autonomy

[64] See: Darmasjah Djumala, *Soft Power Untuk Aceh,* Gramedia Pustaka Utama, Jakarta 2012, pp. 164-165.

[65] UN Office at Geneva, "Near-verbatim transcript of the press stakeout by Mr Horst Köhler, Personal Envoy of the UN Secretary-General for Western Sahara on the Second Roundtable on Western Sahara", Geneva 22 March 2019.

perhaps because this solution was seen as a unilateral gesture from Morocco. This is similar to the rejection by GAM of the 2001 Aceh special autonomy offered by Indonesia because it was considered as a unilateral gift from the government of Indonesia, while the special autonomy in 2006 based on "Governing Aceh" was accepted as a solution to the conflict because it was the result of negotiations that led to the Helsinki MoU. Based on the above point of view, Morocco's proposal has a better chance of being accepted if it is seen as providing space for polisario's aspirations as long as it does not contradict the sovereignty and territorial integrity of the Moroccan Kingdom. At the same time, polisario should also be realistic by not holding on to the option of independence in a referendum, which is clearly not negotiable for Morocco, not realistic, not implementable, nor supported by the international community

In this context, Morocco's willingness to offer the opportunity to improve its proposals regarding regional autonomy in the negotiations could result in broader regional autonomy or other agreed terms (such as "special autonomy" similar to "Governing Aceh") through dialogue, which might greatly help resolving the conflict. Following the resignation of President Horst Köhler for health reasons on 22 May 2019, the UNSG as well as the fours participants agreed to preserve the momentum and expressed their commitment to the roundtable process initiated by the former Personal Envoy Köhler.

Another important aspect in the settlement of the conflict in Sahara is the active involvement of Algeria as one of the parties, since from the outset it was known that Algeria was the main supporter of polisario. Having invited Algeria and Mauritania to the direct talks is very positive and could lead to successful resolution of the conflict.

SPECIAL AUTONOMY AS CONFLICT RESOLUTION IN ACEH

Special autonomy as asymmetric decentralization

In accordance with the 1945 Indonesian Constitution, the implementation of regional government is carried out by:

1. Decentralization, namely the central government delegates some authority to the regions (except in six fields, namely foreign affairs, defence, security, religion, monetary issues and justice);
2. Deconcentration, namely the administration of government is carried out by the central government agencies in the regions; and
3. "Assistance task" or "co-rule" (*Medebewind*), namely the authority of certain agencies of the central government is implemented by the regions whose policies and costs are those of the central government.

The decentralization system is regulated in the Law on Regional Government, which is currently amended by Law No. 23 of 2014, lastly revised with Law No. 9 of 2015. This law recognizes the specificity of certain regions, which is different from the government-regulated system of law. This different system of government is known as Asymmetric Decentralization. The existence of special autonomy that is different from regional autonomy is generally made possible by the provisions of Article 18 B of the 1945 Constitution.

If decentralization as the implementation of autonomy to the regions in general is regulated in the Law on Regional Government (now Law No. 23 of 2014 as lastly amended by Law No. 8 of 2015), different decentralization (asymmetry) in the form of granting special autonomy to certain regions is regulated in each separate law. Now there are five Provinces that have special autonomy, namely: the Special Province of Yogyakarta (with Law No. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta), the Special Capital Region of Jakarta (with Law No. 29 of 2007 concerning the Provincial Government of the Special Capital Region of Jakarta As the Capital of the Republic of Indonesia); Aceh Province (with Law No. 11 of 2006 concerning the Governing of Aceh); Papua Province (with Law No. 21 of 2001 concerning Special Autonomy for the Province of Papua); and the Province of West Papua. Each Province with the special autonomy status obtains different competencies and specificities as stipulated in their respective laws.

Aceh Special Autonomy

The Province of Yogyakarta Special Region, DKI Jakarta Province, Papua Province and West Papua Province obtain special autonomy because they are given special authority by the central government through their respective laws. Although the special autonomy for the Aceh Province was given by the central government through the law, the substance of the Act was the implementation of the Helsinki MoU peace agreement and the results of negotiations between Aceh and the central government. Previously, Aceh also had special autonomy status based on Law No. 18 of 2001, but because the status was considered as granted by the central government, GAM did not recognize it.[66] GAM did not want the term "special autonomy" to emerge at all in an agreement with the government of Indonesia because they felt "allergic and sensitive" to the special autonomy granted by the government of Indonesia unilaterally through Law No. 18 of 2001. Law No. 11 of 2006 exceeded the implementation of the Helsinki MoU because this Law was the result of the Aceh negotiations (represented by the DPRD of the Province of Nanggroe Aceh Darussalam) with the central government and the Indonesian Parliament.[67] The specificity in the field of Islamic Shari'ah and the existence of special autonomy funds which are equal to 2% of the National General Allocation Fund (known as DAU) of the National Budget are not included in the Helsinki MoU, but are contained in Law No. 11 of 2006 concerning Governing of Aceh as a result of negotiations during the drafting of the Bill Act in the Indonesian Parliament (DPRRI).[68] With a mechanism of discussion that indirectly involves the Acehnese people, when the Law on Aceh Governance was passed into Law No. 11 of 2006, there was no significant rejection. Although not all proposals of the Acehnese were accommodated in the Act, the Aceh Government, the Aceh Parliament (DPRD) and GAM could accept and feel proud of the existence of Law No. 11 of 2006, whose contents included the specificity and privileges of Aceh that became known as Aceh's Special Autonomy.[69]

The naming of this Law with the term "Governing of Aceh" was the result of a compromise in the Helsinki negotiations, where GAM wanted the name "Self-Government", while the Indonesian government wanted the name "special autonomy"[70]. GAM refused the term "special autonomy" from the beginning because it assumed that autonomy was a gift from the government. Finally, the government accepted the compromise term "Governing of Aceh", because for the central government it was important that the contents did not come out of the principles of regional autonomy. This principle is then contained in Points 1.1.2.a. of the Helsinki MoU: "*Aceh will exercise authority within all sectors of public affairs, which will be administered in conjunction with civil and judicial administration, external affairs, external security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the Government of the Republic of Indonesia in conformity with the Constitution*". This principle is then contained in Article 7 paragraph (1) and paragraph (2) of Law No. 11 of 2006, which reads as follows:

(1) "*Aceh and Regency / City Governments are authorized to regulate and administer government affairs in all public sectors except government affairs which are under the authority of the Government.*

(2) *Government authority as referred to in paragraph (1) includes governmental affairs of a national nature, foreign policy, defence, security, justice, national monetary and fiscal, and certain matters in the field of religion*."

[66] See: Nur Djuli & Nurdin Abdul Rahman, "The Helsinki negotiations: A perspective from Free Aceh Movement negotiators", in Aguswandi & Judith Large (eds.), "Reconfiguring Policies: The Indonesia-Aceh Peace Process", *Accord - Conciliation Resources*, London, Issue 20, 2008, p. 29.

[67] Draft Law on The Governing of Aceh as mandated by the Helsinki MoU was prepared by many parties in Aceh, starting from Universities, Local Governments, Free Aceh Movement (GAM) and NGOs.

[68] The Provincial Parliament of Nanggroe Aceh Darussalam formed an Advocacy Team to oversee the discussion of the draft of the Law on the Governing of Aceh in the DPRRI so that the interests of Aceh, both those contained in the Helsinki MoU and other interests remain accommodated in the Act.

[69] This law is titled the Law on the Governing of Aceh in accordance with the contents of the Helsinki MoU (1.1.), but the content is in the form of special autonomy for Aceh.

[70] See: Darmasjah Djumala, *Op.Cit*, pp. 226-227.

In the theory of regional autonomy, the authority outside of the six fields which constitute the absolute authority of the central government is a concurrent authority or authority divided between the central government and the regional government. It is in this context of concurrent authority that Aceh obtains greater authority than that obtained by other regions based on ordinary autonomy. The central authority of the national government in Aceh is detailed in Government Regulation No. 3 of 2015, while the authority of Aceh is all authority in which it is not mentioned in that Government Regulation. In other words, the determination of Aceh's authority uses the residual theory, which is what remains or is not referred to in the Government Regulations mentioned above being the authority of Aceh.

Apart from the authority obtained based on the above-mentioned residual theory Aceh also obtained authority and/or specificity/privileges, which included:

A. **Derived from the Helsinki MoU** :

1. Establishment of the Law of the Republic of Indonesia, and international agreements relating to Aceh's interests are carried out with consultation and consideration[71] of the Aceh Parliament (DPRA);
2. Establishment of administrative policies carried out with consultation and consideration[72] of the Governor of Aceh;
3. Aceh has the right to use symbols, including flags, symbols and hymns;
4. The existence of the Wali Nanggroe institution, as a unifier and coach of the customary law of Aceh;
5. Existence of local political parties, who are entitled to take part in general elections for the local legislative, and regional executive elections, both at the provincial level for the election of Governor/Vice Governor, as well as at the district/city level for the election of regents/vice regents and mayors/vice mayors .
6. Management of natural resources, including joint management with the central government of natural resources of oil and gas;
7. The right to oil and natural gas profit sharing is 70%;[73]
8. Appointment of the Head of the Aceh Regional Police and the Head of the Aceh High Prosecutor shall be carried out with the approval of the Governor of Aceh;[74]
9. Establishment of the Human Rights Court in Aceh;
10. Establishment of the Truth and Reconciliation Commission (KKR or TRC) for Aceh.[75]

B. Derived from Law No. 18 of 2001:

1. Applicability of Islamic Shari'ah;
2. Establishment of Ulama (Muslim Scholar) Consultative Council;
3. Establishment of the Aceh Customary Council;
4. The number of members of the DPR Aceh (Aceh Parliament) is 125% of the total nationally;

[71] In the Helsinki MoU, the term used was "consent", not "consideration". The use of the term "consideration" in Law No. 11 of 2006 is not in conflict with the 1945 Constitution of Indonesia.
[72] In the Helsinki MoU, the term used was "consent", not "consideration". The use of the term "consideration" in Law No. 11 year 2006 is not in conflict with the 1945 Constitution of Indonesia.
[73] The right of 70% of oil and natural gas revenue sharing has been in Law No. 18 of 2001, but it is limited to only 8 years, and after that it becomes 50%. For other Provinces in accordance with Law No. 33 of 2004, the yield is 15.50% for oil, and 30.50% for natural gas.
[74] This authority has existed in Law No. 18 of 2001.
[75] The formation of the Aceh TRC (or KKR) was carried out with Aceh Qanun (Law) No. 17 of 2013. The formation of the TRC still leaves problems, because in Law No. 11 of 2006 it was confirmed that the KKR was guided by national law, namely Law No. 27 of 2004, while this law was revoked by the Constitutional Court of the Republic of Indonesia with its Decree No. 006/PUU-IV /2006 dated 7 December 2006.

5. *Zakat* (charity) as Regional Original Income;
6. The election of the Regional Executive/Vice Regional Executive shall be carried out by the Independent Election Commission (known as KIP) and supervised by the Election Supervisory Commission formed by the DPRD;
7. Inauguration and oath taking of the Governor/Vice Governor, Regent/Vice Regent and Mayor/Vice Mayor shall be carried out before the Chairperson of the Provincial/Regency/City Shari'ah Court (Mahkamah Syar'iyah).

C. **Results of the Struggle of the Acehnese Community through the discussion of the Bill in the DPRRI:**

1. The Special Autonomy Fund is equivalent to 2% of the National General Allocation Fund (DAU) for 15 years and 1% of the national DAU for the next 5 years;
2. The Aceh KIP is authorized as the organizer of the Legislative Election, the Election of the President/Vice President and Election of Regional Executives/Vice Regional Executives.
3. The expansion of the authority of the Mahkamah Syar'iyah includes family law, civil law and criminal law, which is regulated by the Aceh Qanun (bylaw).
4. *Zakat* as paid is a deduction factor for the amount of income tax from taxpayers.

From the above description it can be seen that the special autonomy for the Aceh Province, which was named "Governing of Aceh", did not all come from the Helsinki MoU.

The term "Governing of Aceh" was used because GAM had not been pleased with the term "autonomy" from the beginning. In GAM's perspective, the use of the term "Governing of Aceh", not "special autonomy", has the advantage of dealing with its constituents in the field.

1. First: GAM managed to show its constituents that they were not subject to the wishes of the Indonesian government who wanted the term "special autonomy";
2. Second: the use of the term "Aceh Government", gives the impression that Aceh has "self-government" whose authority is wider than "special autonomy".

The Indonesian government accepts the term "Governing of Aceh", insofar as the contents are a form of broad "special autonomy". The Indonesian government is more concerned with the content of autonomy than the term used. The contents of "Governing of Aceh", as outlined in the Helsinki MoU, determine the extent to which extensive special autonomy will be given to Aceh.[76]

The success of the Law No. 11 of 2006 on the Governing of Aceh, which was ratified on 1 August 2006, was greeted with enthusiasm by the Acehnese people. Until now, the Acehnese, including GAM, have always been proud of this Law. Just a few deviations made by the government of Indonesia called for immediate reaction from the Aceh government and the Aceh Parliament[77].

IMPORTANT MATERIALS IN ACEH SPECIAL AUTONOMY

The overall contents of Aceh's special autonomy in the Helsinki MoU, which was then accommodated in Law No. 11 of 2006, have several dominant aspects, namely, among others:

A. GAM political participation in the Election of Regional Heads / Vice Regional Heads.

1. Points 1.2.3. of the Helsinki MoU asserted free and fair local elections to be organized by the Government of Aceh to elect the head of the Aceh administration and other officials in April 2006 as well as the legislature of Aceh in 2009;

[76] See: Darmansjah Djumala, Op.Cit, pp. 144-145.

[77] Politically, the Aceh Parliament (DPRA) is dominated by the Aceh Party as a GAM representative. In the 2009 election, the Aceh Party gained 33 out of 69 seats, while in the 2014 election it fell to 29 from 81 DPRA seats. The number declined again in the last general election 17 April 2019 to 18 seats out of 81 DPRA seats.

2. Since the new Law on the Governing of Aceh was established in August 2006, the election of Regional Executives/Vice Regional Executives provided for by the Helsinki MoU could not be held in April 2006. This election could only be held on 11 December 2006 instead. The election was based on the provisions of Articles 65 to 75 of Law No. 11 of 2006 and Aceh Qanun No. 7 of 2006;[78]
3. Because the local party had not yet been formed, GAM took part in the election through individual nominations, by submitting candidates such as Dr Irwandi Yusuf for Governor, paired with Muhammad Nazar as candidate for Vice Governor. The GAM candidates won with a vote of 38.20%, beating seven other candidate pairs. Dr Irwandi Yusuf and Muhammad Nazar were inaugurated as Governor and Vice Governor of Aceh for the period 2007-2012 by the Minister of Home Affairs of the Republic of Indonesia Mohamed Ma'ruf on 8 February 2007 at the special plenary session of the Parliament (DPRD) of the Province of Nanggroe Aceh Darussalam. This inauguration received the attention of many circles, both from within and outside the country, because for the first time the candidates for Governor/Vice Governor of GAM who advanced through individual nominations became a Governor and Vice Governor within the Unitary State of the Republic of Indonesia;
4. The second election of the Governor/Vice Governor of Aceh after the Helsinki MoU took place on 9 April 2012. In this election, the candidates from the Aceh Party,[79] Dr Zaini Abdullah and Muzakkir Manaf won as Governor and Vice Governor of Aceh with 55.75% of the votes. The Governor and Vice Governor were inaugurated by the Indonesian Minister of Home Affairs Gammawan Fauzi in the Aceh Parliament's (DPRA) special plenary meeting on 25 June 2012;
5. In the last election of Governor/Vice Governor, Dr Irwandi Yusuf and Nova Iriansyah, who were nominated by a combination of local and national parties, namely Nanggroe Aceh Party (PNA),[80] the Democratic Party (Partai Demokrat) and the Aceh Sovereign Party (PDA), were elected as Governor and Vice Governor for the 2017-2022 period. These Governor and Vice Governor were inaugurated by the Minister of Home Affairs of the Republic of Indonesia in the DPRA special plenary meeting on 5 July 2017;
6. After the Helsinki MoU, there were three elections of the Governor/Vice Governor, and in the three elections the candidates from GAM were successfully elected;[81]

B. **Political Participation of Local Parties in Legislative General Elections.**

1. The existence of local political parties mandated by the Helsinki MoU is regulated in Articles 75 to 95 of Law No. 11 of 2006. The regulation in this law is the legalization of the existence of local political parties, which was previously not possible.[82] This provision is a specificity (part of special autonomy) that is very prominent in Aceh, and does not exist in other provinces. The existence of local political parties has enabled legislative candidates from GAM to participate in the general elections at the provincial and district/city levels;[83]
2. GAM figures formed a local political party, with the name "Partai Aceh" (Aceh Party), on 7 June 2007 chaired by Muzakir Manaf.[84] Partai Aceh for the first time participated in the 2009 general election, and managed to emerge as the winner by obtaining 31 of the 65 seats in the

[78] This Qanun is a revision from the Qanun of the Province of Nanggroe Aceh Darussalam No. 2 of 2004 which is the implementation of Law No. 18 of 2001.
[79] The Aceh Party is a local Party formed as mandated by the Helsinki MoU, which is regulated in Law Number 11 of 2006.
[80] The Nanggroe Aceh Party (PNA) is a local party established on April 20, 2012 by GAM figures who were disappointed with the Aceh Party (a local party formed in June 2007 by GAM after the Helsinki MoU)
[81] In 2006, Irwandi Yusuf nominated himself as independent candidate, because at that time the local party had not yet been formed, whereas in 2012 Dr Zaini Abdullah was nominated by the Aceh Party (GAM-formed Party) and in 2017 Irwandi Yususf was nominated by a joint party, local and national parties
[82] In the Indonesian Law concerning Political Parties, there is no known local political party. All political parties formed must be of a national party and should exist in most provinces.
[83] GAM does not want to participate in general elections through national parties.
[84] Muzakir Manaf is the Commander of GAM before the peace agreement (Helsinki MoU) was agreed.

DPRA. In the 2014 general election, the number of seats obtained by the Aceh Party decreased to 29 from 81 DPRA seats. The number declined again in the last general election 17 April 2019 to 18 seats out of 81 DPRA seats, but the party remained the winner because other parties gained fewer seats than those obtained by the Aceh Party;

3. With victory in three general elections (in 2009, 2014 and 2019), the Aceh Party has the right to become Chair of the DPRA.[85] With this specificity (special autonomy), GAM through local parties democratically controls both the legislature (DPRA) and the executive (Governor). Thus, GAM's struggle is no longer carried out in a way that violates the law, but has shifted in ways that are legal, democratic and peaceful.

C. Profit Sharing and Joint Management of Oil and Gas.

1. One specificity as part of special autonomy based on Law No. 18 of 2001 is that oil and gas revenue sharing for Aceh is different than that of other regions. Aceh gets 70% both for oil and natural gas, while other regions get 15% for oil and 30% for natural gas.[86] This provision is regulated in Law No. 11 of 2006 on Aceh Government. Provisions in Law No. 11 of 2006 are also the implementation of points 1.3.4 of the Helsinki MoU, which states, "*Aceh is entitled to retain seventy (70) per cent of the revenues from all current and future hydrocarbons deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh*".
2. Aceh's special authority is also in the management of oil and gas in the territorial territory of Aceh. Nationally, the management of oil and gas is fully the authority of the central government. Provisions regarding joint management of oil and gas are regulated in Article 160 of Law No. 11 of 2006. As a form of implementation of these provisions, with Government Regulation No. 23 of 2015, the Aceh Oil and Gas Management Agency (BPMA) was formed. With the establishment of BPMA, all activities related to the management of oil and gas in the Aceh region are under the authority of BPMA.[87]

D. Aceh's authority in implementing the authority of the central government in Aceh.

In addition to the authority obtained based on the residual theory, Aceh also has authority related to the authority of the central government, namely:

1. International agreements relating to Aceh, made with consultation and consideration[88] of the Aceh Parliament (DPRA);
2. The establishment of laws relating to Aceh by the DPRRI, carried out with consultation and consideration of the Aceh Parliament (DPRA);
3. Administrative product formation (e.g. Government Regulations) related to Aceh are carried out with consultation and consideration of the Governor of Aceh;
4. Additionally, in the field which is the absolute authority of the central government, there is also Aceh's authority, namely:
   a. Appointment of the Head of the Aceh Regional Police by the Chief of the Indonesian National Police, carried out with the approval of the Governor of Aceh;
   b. Appointment of the Head of the Aceh High Prosecutor's Office carried out by the Indonesian Attorney General with the approval of the Governor of Aceh.

[85] In the 2009-20014 period, the Chairperson of the DPRA was Dr Hasbi Abdullah, while for the 2014-2019 period the Chairman of the DPRA was Tgk Muharuddin, and then on 29 November 2019 he was replaced by Sulaiman, SE.
[86] This part of Aceh from oil and gas, the number decreases along with the decreasing production and price of oil and gas.
[87] For the other regions, oil and gas management is the authority and carried out by the state-run company SKK Migas.
[88] In the Helsinki MoU the word "approval" was used. It was changed to the word "consideration" to adjust to the authority of the government based on the 1945 Constitution.

E. Special Autonomy Funds[89]

1. Special autonomy funds are one of Aceh's sources of income, and are part of the specificity of Aceh, which is regulated in Article 179 and Article 183 of Law No. 11 of 2006. These special autonomy funds are not included in the Helsinki MoU, but are the result of Aceh negotiations with the government and Indonesian Parliament (DPRRI) during the discussion of the Bill on the Governing of Aceh. This special autonomy fund is a fund that is the right of Aceh which is given every year by the Government as Aceh's revenue. It is equal to 2% of the General Allocation Fund (DAU) of the National Budget for 15 years and 1% for the next 5 years. This special autonomy fund is Aceh's main revenue, the amount from year to year continues to increase, in line with the increasing the General Allocation Fund (DAU) in the Republic of Indonesia National Budget;[90]
2. Special autonomy funds are considered as part of Aceh's special autonomy, even though they are actually not an authority but are Aceh's rights and the obligations of the central government;
3. The Special Autonomy Fund was also received by the Papua Province[91] based on Law No. 21 of 2001 on the Special Autonomy for the Papua Province;
4. The existence of a special autonomy fund and profit sharing of oil and gas in the Law on the Governing of Aceh is important in order to build Aceh's trust in the sincerity of the central government to realize prosperity and justice for Aceh, which is also important for maintaining peace as a form of conflict settlement. This is important because due to the conflict for approximately 32 years, Aceh still lags far behind in development compared to other provinces.[92] The existence of mutual trust between the centre and the regions is an important tool for maintaining the integrity of the country.

Indonesia's Experience for Conflict Resolution in the Region of Sahara

There are two experiences of Indonesia in peaceful conflict resolution, namely the resolution of the East Timor conflict and the Aceh conflict. The settlement of the East Timor conflict was carried out through a referendum facilitated and supervised by the United Nations Mission in East Timor (UNAMET), while the Aceh conflict was resolved through direct negotiations facilitated and mediated by international NGOs, the Henry-Dunant Centre and Crisis Management Initiative (CMI) led by Martti Ahtisaari and supported by friendly countries.

The East Timor crisis was successfully resolved, but with the disappointing result of the independence of East Timor from Indonesia, while the resolution of the Aceh crisis was resolved by the end of the conflict, with the acceptance of special autonomy with Aceh remaining as part of Indonesia. The new-born country continues to face development and economic shortfalls with a high unemployment rate and low economic growth.

Based on this experience, Morocco’s Initiative aims at safeguarding the principle of the country's integrity while conducting direct negotiations under the auspices of the UN Security Council and with the facilitation of the UN Secretary-General’s Personal Envoy. The role of the UN Security Council in resolving the Sahara conflict is indeed crucial because of the involvement of foreign countries in the crisis, the risk of escalation and the existence of security threats throughout the Sahel region.

Indonesia's success in the case of Aceh results not solely from the substance offered (special autonomy), but also from the process of negotiations that respected the dignity of the parties. The first offer of special autonomy in 2001 was rejected because it was considered as a unilateral gift from the Indonesian government, while the second special autonomy offered in 2005 with the name “Governing of Aceh” was accepted because it was considered as the result of negotiations. Because of that, the Moroccan

[89] This Special Autonomy Fund was not included in the Helsinki MoU, but was considered important as part of the acceleration of Aceh's development, which was also a commitment of the Indonesian government in resolving the Aceh conflict.
[90] The first year (2008) of the Special Autonomy Fund amounting to IDR 3,590 billion, increased to 8,023 in 2018.
[91] The Papua Province is now the Province of Papua and the Province of Papua Bara based on Law No. 45 of 2008.
[92] Data from the Central Bureau of Statistics (BPS) in Aceh, September 2018: Aceh is the poorest province in Sumatra, and ranks 6th in Indonesia.

Autonomy Plan for Sahara has a potential to succeed because it is an open offer to be negotiated whilst maintaining the principle of territorial integrity of the Kingdom of Morocco.

CONCLUSIONS AND RECOMMENDATIONS

Based on the above description, it can be concluded that:

1. The Free Aceh Movement (GAM) rebellion in Aceh was not terminated through violence, but the conflict was resolved through peaceful means, with direct negotiations between the Indonesian government and GAM.
2. Negotiations for resolving conflicts between the government of Indonesia and GAM required the role of mediators. In this case, the government of Indonesia preferred international NGOs compared to the United Nations or foreign countries.
3. Special autonomy, which in the Helsinki MoU was called "Governing of Aceh", was accepted by the GAM Party because it was considered as a result of negotiations and not a unilateral decision by Indonesia as special autonomy contained in Law No. 18 of 2001.
4. The Moroccan proposal for resolving the Sahara conflict has the potential to take into account the aspirations of the Sahara people while preserving the territorial integrity and sovereignty of the Kingdom of Morocco.
5. The approach to countries that have recognized and supported the existence of the Polisario and the SADR must be done more intensively, especially to Algeria and neighbouring countries, both directly and through the mediation of the UN.
6. In negotiations facilitated and mediated by the UN, Morocco's aim should remain to guard the principle of its territorial integrity. Indonesia's experience in resolving the East Timor crisis can be a valuable lesson.
7. The contents of the Helsinki MoU can be carried out because they are then contained in Law No. 11 of 2006. With the domestication of an international agreement into the national law, according to the 1945 Constitution, the central government is bound to implement those provisions.
8. The resolution of the Aceh conflict through peace negotiations received the attention and appreciation of many parties as a model for comprehensive and dignified conflict resolution.
9. It would be important for Polisario leaders to visit Aceh (as it was done by the MILF Philippines) to get information about resolving the Aceh conflict through the combination of the Helsinki MoU and special autonomy.

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CONCLUSIONS

MARC FINAUD

Ladies and gentlemen,

At the end of this research seminar on "Territorial Autonomy: An Effective Means for the Political Settlement of Conflicts", I wish to thank the organizers and experts for their contributions. Without entering into the detail of each of the presentations we heard, I would like to underscore three lessons that can be drawn from them.

First of all, territorial autonomy can be an important means for the political settlement of conflicts, but it is not a panacea and above all there is no such thing as one single model perfect enough to be used in every case. Each autonomy statute must take into account the context, the history of the conflict, the degree of trust or distrust between the parties, their respective interests, but also the whole gamut of existing models, in order to put forward a customized solution.

Second, there can be a contradiction between an autonomy statute, even when it has been incorporated into domestic law, and its practical implementation. As we have seen in some cases the central state can be tempted to revisit some powers granted to the autonomous region, or within the autonomous region some may still be tempted by secession. This is the reason why it is important that the autonomy statute provides for guarantees, in the Constitution, the law, the judicial power, the permanent mechanism for dialogue or for negotiation between the central state and the autonomous region, as well as the possibility to resort to a third party such as a state or an international organization. In this respect, the experts underlined that the Moroccan Initiative for the autonomy of the Sahara provided for such guarantees so that, even should the central state decide to amend the autonomy statute, it wouldn't be able to do it without the consent of the Sahara Region.

Thirdly, one can identify the success factors of operational autonomy regimes. In this respect, a democratic political system based on the rule of law allows indigenous populations or minorities to express their wishes and realize their rights. Autonomy can also work within a wider system of decentralization or regionalization, such as in the case of Morocco, or even within a federal state. Moreover, the success of autonomy can be enhanced by good time management: this is often a long-term project which requires changes to the legislation and different mindsets, but this project must establish deadlines and timelines to reassure the parties. Finally, the autonomy comes into play against the backdrop of a newfound balance between the notion of sovereignty (now compatible with wide power sharing within a supranational body as well as at sub-state level) and the notion of self-determination, which no longer necessarily requires an independent state but can also take the shape of regional or territorial autonomy. This is precisely the kind of balance offered in the Moroccan Initiative for the Sahara, even if the detailed provisions of its statute will have to be negotiated between the parties.

I thank you for your attention.

ANNEX

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Marc Finaud is a former French career diplomat with experience in bilateral postings (Leningrad, Warsaw, Tel Aviv, Sydney) and multilateral responsibilities (in Madrid, Vienna, Geneva, New York) especially in human rights and arms control. Since 2004 he has been sharing this experience with junior diplomats and military officers from all countries trained at the Geneva Centre for Security Policy (GCSP) and has been conducting research on disarmament, the Middle East, and international humanitarian law. In 2013-2015, he was also a Senior Resident Fellow at the United Nations Institute for Disarmament Research (UNIDIR). Among his publications are: "Can Autonomy Fulfil the Right to Self-determination?" (GCSP Geneva Paper, 2010); Multilateralism and Transnational Security (Slatkine, 2009); Global Biosecurity (Slatkine, 2008), etc.

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Katia Papagianni joined HD in 2006 and is the organisation's Director for Policy and Mediation Support. Her work focuses on the design of peace processes and, more specifically, on national dialogues and constitution-making processes. As part of her work at HD, she has supported various peace processes, including in Liberia, Libya, Syria, Myanmar, Ukraine and the Philippines. Katia was also seconded to the United Nations to support national dialogue efforts in Yemen where she shared comparative insights on the design of national dialogue processes. Before joining HD, Katia worked for the National Democratic Institute, as well as for the Organization for Security and Co-operation in Europe, the United Nations Office of the High Commissioner on Human Rights, and for the United Nations Development Programme. She has been based in Russia, Bosnia and Herzegovina and Iraq. Katia holds a Bachelor's degree from Brown University, a Master's degree in Public Administration from Princeton University, and a Doctorate in Political Science from Columbia University. She has taught on the subjects of peacebuilding and state-building at both Geneva's Graduate Institute for International and Development Studies' and at Columbia University.

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Dr Thomas Benedikter has worked for the European Academy of Bolzano (Institute for Minority Rights) and for the EURASIA-Net, an EU-funded project on supranational (regional) policy instruments to promote human and minority rights. His research for years was related to South Asia (e.g. on Maoists in Nepal, the Kashmir issue, the conflict in Sri Lanka, the language policy of India towards its minorities). He has visited the existing autonomous regions of India and published Solving Ethnic Conflict through Self-Government - A Short Guide to Autonomy in South Asia and Europe in 2009. As the Director of the South Tyrol's Centre for Political Studies and Civic Education located in one of the autonomous regions of Italy, he has been directing research and training on autonomous regions in Europe.

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Miguel Gonzalez (PhD, York University) is an adjunct faculty in the International Development Studies programme at York University, Toronto, Canada. In recent years Miguel has taught both in the undergraduate and graduate programs in International Development at York University. His current research relates to two broad themes and projects: first, indigenous self-governance and territorial autonomous regimes in Latin America. On this question he has published extensively (see for instance: http://www.fygeditores.com/fgetnicidadynacion.htm) and he co-edited a themed issue for a specialized academic journal in the field on indigenous studies (http://www.alternative.ac.nz). Miguel is co-edited a thematic issue of the Latin America and Caribbean Ethnic Studies Journal (LACES) on the topic of Indigenous Autonomies in Latin America. His publications also include a book chapter on Central American Indigenous and Afro-descendants social movements which he has co-authored with leading scholars in the field (http://www.routledge.com/books/details/9781857436747/). Miguel's second area of interest is the governance of small-scale fisheries (SSF) in the Global South, with a particular geographical concentration in the Nicaraguan Caribbean Coast. On this question he has completed a paper that revolves around the health-related impacts of commercial lobster diving in the Miskitu Coast. Finally, Miguel is a researcher associated with the Global Partnership for Small-Scale Fisheries Research (http://toobigtoignore.net) and with the Centre for Research on Latin America and the Caribbean (CERLAC) at York University.

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