

## Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe

Doc. 9824

3 June 2003

### Report

Political Affairs Committee

Rapporteur: Mr Gross, Switzerland, Socialist Group

---

### *Summary*

Most present-day conflicts no longer occur between states but within states and are rooted in tensions between states and minority groups which demand the right to preserve their identities. These tensions are partly due to the territorial changes and the emergence of new states which followed the two world wars and the collapse of the old communist system, and also reflect the inevitable development of the concept of the nation-state, which, hitherto, viewed national sovereignty and cultural homogeneity as essential.

Autonomy as applied in states governed by the rule of law can be a source of inspiration in seeking ways to resolve internal political conflicts. Autonomy allows a group which is a minority within a state to exercise its rights, while providing certain guarantees of the state's unity, sovereignty and territorial integrity.

Autonomous status may be applied to various systems of political organisation and means that autonomous entities are given specific powers, either devolved or shared with central government, while remaining under the latter's authority.

In order to provide the right conditions for the permanence of autonomy, the report recommends compliance with a number of basic principles, including the creation of a legal framework for autonomous status, a clear division of powers and the establishment of democratically elected legislative and executive bodies in autonomous regions.

## **I. Draft Resolution [[Link to the adopted text](#)]**

1. The resurgence of tensions in Europe, varying in intensity and frequently the product of unresolved conflicts within states, remains a cause of concern to the Parliamentary Assembly. Today, indeed, most political crises in Europe occur within states.

2. These renewed tensions are partly due to the territorial changes and the emergence of new states which followed the two world wars and the collapse of the former Communist system in the 1990s.

3. These tensions also reflect the inevitable development of the concept of the nation-state, which viewed national sovereignty and cultural homogeneity as essential. Nowadays, particularly in view of developments in the practice of democracy and international law, States are faced with new requirements.

4. Most of the present conflicts can very often be traced to the dichotomy between the principle of indivisibility of states and the principle of identity, and are rooted in tensions between states and minority groups which demand the right to preserve their identities.

5. The vast majority of European states today include communities which have different identities. Some of these demand their own institutions, and want special laws allowing them to express their distinctive cultures.

6. States must prevent tensions from developing by introducing flexible constitutional or legislative arrangements to meet their expectations. By giving minorities powers of their own, either devolved or shared with central government, states can sometimes reconcile the principle of territorial unity and integrity with the principle of cultural diversity.

7. The Council of Europe, which is committed to peace and to the prevention of violence as essential to the promotion of human

rights, democracy and the rule of law, believes that the positive experience of autonomous regions can be a source of inspiration in seeking ways to resolve internal political conflicts.

8. Many European states have already eased internal tensions, or are now in the process of doing so, by introducing various forms of territorial or cultural autonomy, embodying a wide range of principles and concrete measures which can help to resolve internal conflicts.

9. There is no denying that autonomy is a concept which can have negative connotations. It can be seen as a threat to the state's territorial integrity and a first step towards secession, but there is frequently little evidence to sustain this view.

10. Autonomy, as applied in states respectful of the rule of law which guarantee their nationals fundamental rights and freedoms, should rather be seen as a "sub-state arrangement", which allows a minority to exercise its rights and preserve its cultural identity, while providing certain guarantees of the state's unity, sovereignty and territorial integrity.

11. The term "territorial autonomy" applies to an arrangement, usually adopted in a sovereign state, whereby the inhabitants of a certain region are given enlarged powers, reflecting their specific geographical situation, which protect and promote their cultural and religious traditions.

12. The constitutions of most Council of Europe member states do not recognise the right to secede unilaterally. However, indivisibility must not be confused with the concept of unitary state, and indivisibility of the state is thus compatible with autonomy, regionalism and federalism.

13. Autonomous status may be applied to various systems of political organisation, ranging from straightforward decentralisation in unitary states to a genuine division of powers, either symmetrically or asymmetrically, in regional or federal states.

14. In the past, autonomy was introduced in two stages, and originated in three ways, being established by regional entities when central states were founded, introduced to resolve territorial tensions, or sponsored by the international community.

15. Autonomy is not a panacea, and the solutions it offers are not universally relevant and applicable. However, failures should be

blamed, not on autonomy as such, but on the conditions in which it is applied. Autonomous status must always be tailored to the geography, history and culture of the area concerned, and to the very different characteristics of specific cases and conflict zones.

16. With a view to relieving internal tensions, central government must react with understanding when minority groups, particularly when they are sizeable and have lived in an area for a long period of time, demand greater freedom to manage their own affairs independently. At the same time, the granting of autonomy must never give a community the impression that local government is a matter for it alone.

17. Successful autonomy depends on balanced relationships within a state between majorities and minorities, but also between minorities. Autonomous status must always respect the principles of equality and non-discrimination.

18. All interpretation, application and management of autonomy shall be subject to the authority of the State, and to the will and judgement of the national parliament and its institutions.

19. Positive discrimination, i.e. favourable representation in the organs of central government, can often be used to involve minorities more effectively in the management of national affairs.

20. It is fundamental that special measures must also be taken to protect "minorities within minorities", and ensure that the majority and other minorities do not feel threatened by the powers conferred on an autonomous entity. In these autonomous entities, the Framework Convention for the Protection of National Minorities must also be applied, for the benefit of minorities within minorities.

21. The Assembly calls on the governments of member states to respect the following basic principles when granting autonomous status:

i. An autonomous status, which depends by definition on co-operation and co-ordination between central government and autonomous entities, must be based on an agreement negotiated between the parties concerned.

ii. Central government and autonomous authorities must recognise that autonomous status is part of a dynamic process and is always negotiable.

- iii. It would be appropriate for the statutes and founding principles underlying autonomous status to be included in the Constitution rather than in legislation alone, so that amendments can only be made in accordance with the Constitution. To avoid later disputes, agreements on autonomous status must explicitly define the repartition of powers between the central and autonomous authorities.
- iv. Agreements on autonomous status must guarantee appropriate representation and effective participation of the autonomous authorities in decision-making and the management of public affairs.
- v. Agreements on autonomous status must provide that autonomous entities are to have legislative and executive authorities, democratically elected at local level.
- vi. Agreements on autonomous status must provide for funds and/or transfers which allow autonomous authorities to exercise the extra powers conferred on them by central government.
- vii. To ensure that powers are not abused, special machinery must be established to resolve disputes between central government and the autonomous authorities.
- viii. If tensions between central government and the autonomous authorities persist, the international community should sponsor the negotiation process.
- ix. Devolution of powers to autonomous entities must imperatively protect the rights of minorities living within them are ignored or suppressed.

## **II. Draft Recommendation [[Link to the adopted text](#)]**

1. The Assembly considers that autonomous status must always give the autonomous region concerned a legislative and an executive body democratically elected at local level. These bodies should have appropriate powers to pass laws and enforce them in the autonomous territory, while remaining subject to the law and prerogatives of central government – as defined in the European Charter of Regional Self-Government adopted by the CLRAE.
2. The Assembly believes that the adoption of a European legal instrument would enable states facing internal conflicts to find

constitutional or legislative solutions which would allow them to preserve the state's sovereignty and territorial integrity, while respecting the rights of minorities.

3. This legal instrument must stipulate that the exercise of powers devolved to autonomous entities shall comply with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly the principles of equality, non-discrimination and secularism.

4. In this context, the proposals contained in the Helsinki Declaration (28 June 2002), which recognises the possibility of formulating basic concepts and principles applying to all systems of regional autonomy, merit the attention of the Council of Europe's member states.

5. The Assembly accordingly recommends that the Committee of Ministers

- prepare a European legal instrument (Article 11 of the Declaration), based on the principles laid down in the European Charter of Regional Self-Government, taking account of the member states' experience, and also making it possible to recognise and promote the common principles of regional autonomy, with respect for the European Convention for the Protection of Human Rights and Fundamental Freedoms and its principles of equality and non-discrimination.

-----

## Contents

### Explanatory memorandum by the rapporteur 7

#### **I. Introduction**

#### **II. Development of the concept of autonomy**

#### **III. Concept of autonomy and right to self-determination**

- a) Diversity of forms of autonomy
- b) Diversity of institutional frameworks
- c) Defining the scope of autonomy
- d) Legal framework of autonomy
- e) Positive and negative aspects of autonomy

#### **IV. Case studies**

- a) The Åland Islands
- b) Alto-Adige / South Tyrol
- c) Factual comparison of the two most successful historical cases
- d) Sri Lanka
- e) Faeroes Islands

#### **V. Conceptual clarifications**

- a) Right to internal and external self-determination
- b) Autonomy as a system of conflict resolution

#### **VI. Analysis of the functioning of autonomous entities**

- a) Political systems and division of powers
  - i. Federalism
  - ii. Regionalism

- iii. Decentralisation in unitary states
- iv. System of devolution
- v. Free association
- vi. Asymmetric territorial organisation
- vii. Establishment of special status

b) Methods of sharing sovereignty

c) Settlement of disputes

**VII. Identification of the basic factors for the success of autonomy**

a) Legal design and criteria for short and long-term success

b) Geopolitical and demographic aspects

c) Political and institutional aspects

d) Social, economic and financial aspects

e) Cultural aspects

f) Respect for human rights

**VIII. Some thoughts on resolving certain current conflicts by introducing the concept of autonomy**

a) Abkhazia and South Ossetia (Georgia)

b) Kosovo as part of Serbia and Montenegro

c) Chechnya (Russian Federation)

d) Transnistria (Moldova)

**IX. Conclusion**

---



### III. Explanatory memorandum by the rapporteur[1]

#### I. Introduction

1. The Assembly is concerned about the upsurge in violent tensions in Europe, which is often an indication of unresolved antagonisms within a state. For a long time, political crises had their origins in tensions between states, but today the reasons for these tensions are more likely to be found within states. This is Wymore than half of the current wars are civil in nature and the result of cultural conflicts. Based on this observation, a motion for a Resolution ([Doc 8425](#)) was submitted to the Assembly on *Resolution of ethic conflicts in Council of Europe member sates*. This motion represents the original source of this report.

2. This increase in tensions can be partly explained by the profound changes that Europe underwent after the collapse of the old communist system in the 1990s. In the last few years, more than twenty new states have been established in central and eastern Europe.

3. A state is generally composed of peoples (or communities) from different cultures. However, not every cultural community can establish a state to promote its cultural traditions, so every state must provide for and introduce flexible constitutional or legislative rules that allow these cultural differences to be expressed while safeguarding its unity at the same time.

4. In the recent history of Europe, states have been created in three successive stages, namely after each of the two world wars and when the cold war ended. These pivotal stages were either marked by the creation of new states or the establishment of autonomous regions. Examples that illustrate this development are the autonomy granted to the Åland Islands in 1921 under the aegis of the League of Nations; to Alto-Adige / South Tyrol in 1947 under the authority of the UN and to Gagauzia (Moldova) in 1990 or the creation of the Autonomous Republic of Crimea (Ukraine) in 1992.

5. Today, it seems that tensions in certain states that have been facing an internal political crisis for many years are being resolved with the aid of autonomy concepts. This appears to be the case in Cyprus or Sri Lanka.

6. The Council of Europe, which wishes to contribute to finding peaceful solutions to all disputes, would like to know to what extent the positive experience of the autonomous regions can constitute a source of inspiration for conflict resolution. It may be observed that a number of states have dealt with their problems or are in the process of doing so by setting up territorial or cultural autonomies and that the latter offer a wide variety of principles, measures, ideas and concepts for resolving these issues.

7. The purpose of this report is to establish the criteria conducive to the success of autonomy in order to provide guidelines for those who want to resolve internal conflicts by introducing self-government and help them avoid mistakes.

8. In the light of the positive experience gained, it will be necessary to determine the factors and conditions that allow autonomy to succeed, to establish the historical, geographical, political, economic, ethnic and cultural aspects to be taken into account in order to define a conceptualised model or to recommend good practices that states facing internal conflicts will be able to draw on.

9. In the final section, we shall study the actual application of this experience in crisis regions, such as Kosovo (Serbia and Montenegro), Chechnya (Russia), Abkhazia (Georgia) and Transnistria (Moldova).

## **II. Development of the concept of autonomy**

10. The concept of autonomy undeniably has a negative, even threatening, connotation. In order to avoid any misunderstanding, it is important to state that our conception of autonomy does not in any way correspond to the use of the word in the past by authoritarian regimes like the Russian empire, the USSR or Yugoslavia. Our definition corresponds to the way the term is employed in democracies, i.e. states subject to the rule of law that guarantee specific rights and freedoms to their citizens. Democracy and the exercise of basic freedoms are essential for the success of autonomous entities.

11. Autonomy is often seen as a threat to the territorial integrity of a state and the first step towards secession, as might be the case where the Faeroes are concerned. However, it would be wrong to interpret it in this way. Rather, it must be considered as a

compromise aimed at ensuring respect for territorial integrity in a state that recognises the cultural diversity of its population.

12. Avoiding any recourse to violence, autonomy allows a minority group within a state to enjoy its rights by preserving its specific cultural traditions while providing the state with guarantees regarding its unity and territorial integrity. It represents an intermediate solution that makes it possible to avoid both the forced assimilation of minority groups and the secession of part of the state territory. Autonomy thus strengthens the integration of the minorities within the state and is a constructive element for the promotion of peace.

13. It is necessary to emphasise the integrative potential of autonomy. Recent examples of its introduction, such as in Spain, Italy, Russia (e.g. the Republic of Tatarstan, Azerbaijan (the Autonomous Republic of Nakhichevan) or Moldova (the special status of Gagauzia), show that, as a system guaranteeing both respect for the cultural diversity of minorities and the preservation of territorial integrity, autonomy can represent a constructive solution to any real or latent conflict.

14. Moreover, as calls for autonomy have become more frequent and are having a greater impact on the international legal order this issue needs to be examined in greater detail.

15. It is always important to learn from negative experiences. However, any failure in autonomy must not be attributed to the system as such but, rather, be put down to the conditions in which the autonomy has been implemented. Solutions provided by autonomous entities do not have universal validity and applicability. Any autonomy depends on the particular circumstances and must be adapted to the specific geographical, historical and cultural features of the territory concerned and the widely differing characteristics both of the conflicts and the areas where they take place.

16. Autonomy as a conflict-resolution measure in the 20th century<sup>[2]</sup>

autonomic regions

Kin-state or equivalent

First/current

autonomous legislation

Åland Islands

Finland

1920/1991

Alto-Adige

Italy

1946/1972

Atlantic Coast

Nicaragua

1987

Corsica

France

1991

Danzig

League of Nations

1922-1939

Memel (Klaipeda)

Lithuania

1924-1939

Azerbaijan

Iran

1945-46

Kurdistan

Iraq

1970-74

South Sudan

Sudan

1972-1983

Mindanao

Philippines

1976-1995

Tamil Regions

Sri Lanka

1987

Gagauzia

Moldova

1994

17. Territorial autonomy is no panacea as it does not resolve all problems. It is a highly integrative concept but the problems involved with its implementation must not be underestimated.

18. Autonomy is a concept that presupposes the development of balanced relations in a state both between the majority and the minority and between minorities. If in the past the majority disregarded the identity and rights of minorities for a long time or resorted to violence to combat the aspirations of these minorities, the more difficult it will be to enter into a dialogue and envisage the grant of autonomy.

19. In order to ease tensions, the central government must show it understands the minorities when they make precise demands concerning their rights to greater autonomy in the management of their affairs. This is particularly the case when these aspirations originate from numerically large minorities that have been living in a region for a long time. However, in no case must the establishment of autonomy give the citizens the impression that local administration is exclusively their affair.

20. Positive discrimination, in the sense of the numerical over-representation of minorities in the central government bodies, is a way of involving the minority/minorities more in the management of national affairs. For example, in its Young, James and Webster judgment of 13 August 1981 the European Court of Human Rights

urged positive discrimination when it stated that “democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.” (§ 63). Such a system is operated on a reciprocal basis for the Danish minority in the north German *Land* of Schleswig-Holstein, and the German minority living in the Danish frontier region.

21. The concept of autonomy must be precisely defined since it has several meanings depending on whether a philosophical, political, cultural or legal approach is adopted. It is therefore necessary to distinguish between and clarify, by analysing their relations with one another, such concepts as federalism, decentralisation, regionalism and independence, the latter being the result of secession.

22. At the level of international law, the concept of autonomy refers to the rights of peoples to self-determination and to their freedom to manage their own affairs. In this context, it will be necessary to examine the application of these international principles in the national constitutional law.

23. Autonomy, which represents the right of people to govern themselves by means of their own laws, allows certain territories to be granted the right to enact legislation and be given special powers that permit them to give expression to their distinctive historical, cultural and linguistic characteristics.

### **III. Concept of autonomy and right to self-determination**

#### **a) Diversity of forms of autonomy**

24. The constitutions of most Council of Europe member states recognise the principle of territorial integrity and do not permit the right to unilateral secession. However, certain constitutions, such as that of Canada, contain provisions that allow territorial alterations that may affect the unity of the state.

25. However the principle of the indivisibility of the state must not be confused with its unitary character and it is therefore consistent with autonomy, regionalism and federalism. For example, the Spanish constitution states that “(t)he Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible

homeland of all Spaniards; it recognises and guarantees the right to autonomy of the nationalities and regions of which it is composed".

26. The Italian Constitutional Court has declared with respect to the special status of Trentino-Alto Adige (South Tyrol) that "the fact that the ethnic minorities living in this region can elect their own representative body under conditions of genuine equality can only be in the national interest and, indeed, national unity".

27. In Russia, the self-determination of the peoples of the Federation and the integrity of the Federation as a state are the basic principles of the legal order.

28. Similarly, in Moldova section 1.1 of the organic law of 1994 defines the autonomy of Gagauzia as "territorial autonomy with special status (...) and forming an integral part of the Republic of Moldova". This section states that "in the event of a change of the independent status of the Republic of Moldova, the citizens of Gagauzia shall have the right to exercise self-determination".

29. Similarly, in March 1995, the Ukrainian Verkhovna Rada passed the law "on the Autonomous Republic of Crimea", which defines the latter's status as an autonomous administrative and territorial entity within Ukraine. Article 59 of the constitutional agreement of 8 June 1995 states that "the Autonomous Republic of Crimea is an autonomous administrative and territorial entity within Ukraine the powers of which shall be exercised within the limits laid down by the Ukrainian Constitution and legislation".

30. The term autonomy is ambiguous since it can refer to forms of organisation that range from simple decentralisation to regionalism and federalism, i.e. it represents an even or uneven division of power or of certain powers. There are various forms of autonomy in Europe based on the different political systems of which the autonomous entities form a part. Whatever its form, each state contains some elements of decentralisation.

31. It can be said that there have been two historical phases with regard to the establishment of autonomy and that there are three different origins of autonomy: the autonomous bodies established by regional entities when the central state was created (as in the case of Switzerland), those set up to put an end to territorial tensions and those in which the division of powers has been initiated by international authorities, such as the League of Nations.

32. The division of powers between the central state and the autonomous entity may be even or uneven. All the territorial authorities of a certain level of government, such as the cantons or *Länder* in a federal state and the regions in a regionalised state may enjoy autonomy. However, it is possible that only a specific part of the territory does so in the form of a special status with specific characteristics. For example, the Danish constitution confers such a status on the Faeroes and Greenland, while the Italian constitution gives specific rights to five autonomous regions with special geographical and linguistic features by granting them special status. Article 116 of the constitutional law of 18 of October 2001 states that "particular forms and conditions of autonomy are granted to Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige (South Tyrol) and Valle d'Aosta, in accordance with the respective special status adopted by the constitutional law".

## **b) Diversity of institutional frameworks**

In Europe, there are various forms of state that provide for some form of autonomy.

33. In federal states, the federated entities have many delegated functions that allow them to enjoy, by virtue of an even division of power, considerable autonomy in the management of their affairs and have their voice heard by the federal organs. In principle, the entities that make up a federal state are all equal and have identical powers. The federal option is more a reflection of the various historical phases of the formation of a state (Switzerland, Germany, Austria), and respect for the oldest historical entities than of a concern to protect minorities.

- Belgium, however, is a different case. In that country, the recent decision in favour of federalism was motivated by the desire to ensure the coexistence of different linguistic and cultural groups. The region is supposed to provide political, economic and social autonomy and the communities (francophone and Flemish) cultural autonomy.

34. There are also regionalised states with autonomous regions. Regionalisation is in fact a form of decentralisation within a unitary state, with territorial entities enjoying a certain amount of autonomy in specific areas but supervised by a representative of the central state. This is the case with the Portuguese island territories of the Azores and Madeira, which have political and administrative statutes



drawn up by the regional legislative assemblies and approved by the Assembly of the Republic.

35. However, in the regionalised states there is very often an uneven division of powers. Spain and Italy are good illustrations of this.

- In Spain, for example, during the process of restoring democracy after the dictatorship in what was a unitary authoritarian state, autonomy was originally conceived above all for the historical communities with their own specific identity, such as the Basques, Catalans or Galicians. However, the 1978 constitution went further by dividing the country into 17 autonomous communities. It defined the exclusive powers of the central government, with the communities able to assume all other powers. Each community thus has its own autonomy statute, which was adopted in the form of an organic law by the national parliament as the final authority, has the legal force of a local constitution for the community and determines the scope of the powers of the institutions and the extent of each entity's own financial resources. Certain experts consider that the regional autonomous entities in Spain have developed in such a symmetrical manner that the country now has the structure of a federal state .

- In Italy, the arrangements for territorial autonomy vary from one region to another. For example, Articles 5 and 6 of the constitution establish an actual link between regionalisation and the legal situation of the linguistic minorities. Article 5 provides: "The Republic, one and indivisible, recognises and promotes local autonomy; it shall apply the fullest measure of administrative decentralisation in services dependent on the State and adjust the principles and methods of its legislation to the requirements of autonomy and decentralisation", while Article 6 states that "(t)he Republic shall safeguard linguistic minorities by means of special provisions".

36. Finally, there are also states that have undergone recent decentralisation with a delegation of powers, through legislation, from the central government to sub-national entities with specific cultural characteristics. This delegation has sometimes been accompanied by the creation of regions with a special status and extended powers. In the vast majority of cases they are island regions, such as the Faeroes, which belong to Denmark, Greenland following Iceland's independence after the second world war, the French island of Corsica, which is recognised as a territorial entity

with special powers, and France's overseas departments and territories.

37. As far as Corsica is concerned, it needs to be pointed out that the French government presented a draft statute for the island at the beginning of April 2003. It is planned to submit this text to a referendum among the population of the island on 6 July 2003. The text provides for the establishment of a single devolved authority, which would replace the present region and the two departments (Corse du Sud and Haute-Corse) but retain the local tier of government by setting up two "territorial councils", one in the north and one in the south. This new statute also provides for the local Corsican assembly to be able to adapt the laws and regulatory provisions and for the general use and teaching of the Corsican language. However, this draft, the aim of which is to give Corsica more autonomy by means of a greater delegation of powers, falls short of the special status granted to several European regions (especially in Spain and Italy) that have much wider legislative powers. Nor does it go as far as the proposals made by Lionel Jospin, the former prime minister, who suggested a division of national sovereignty.

38. The system of devolution, which is mainly employed by the United Kingdom, also takes account of the various communities making up the country by recognising the existence of separate legal systems in certain parts – i.e. Wales, Scotland, and Northern Ireland. In these areas of the UK, there is a very high degree of decentralisation with an uneven division of powers, resulting in the establishment of entities with broad autonomous powers administered by elected regional assemblies.

39. Some British island regions, such as Guernsey, Jersey or the Isle of Man, have extremely broad autonomous powers in the management of their affairs. This process has been so successful that certain English regions, such as York or the Midlands, are demanding the same rights. This will be the subject of regional referendums to be held by the summer of 2003.

### **c) Defining the scope of autonomy**

40. Etymologically, the word autonomy is derived from the Greek *auto* ("self"), and *nomos* ("law"), so its primary meaning is the right to govern oneself and draft one's own laws (i.e., "self-rule").

41. According to Kjell-Åke Nordquist[3], "an autonomy is a territory with a higher degree of self-rule than any other comparable territory of a State". Cultural traditions, religious differences and particular geographical locations may justify granting specific powers to a particular territory.

42. For Ruth Lapidot[4], a leading specialist in autonomy, "Autonomy is a means for diffusion of powers in order to preserve the unity of a state while respecting the diversity of its population".

43. She distinguishes between three types of autonomy: territorial political autonomy, administrative autonomy and cultural or personal autonomy.

- "A territorial political autonomy is an arrangement aimed at granting to a group that differs from the majority of the population in the state, but that constitutes the majority in a specific region, a means by which it can express its distinct identity."

- Administrative autonomy comes close to decentralisation. However, while the latter only involves a delegation of powers, the former presupposes a transfer of powers, which are exercised by the local elected representatives.

- Cultural or personal autonomy is granted to the members of a specific community (ethnic, linguistic, religious), whatever their place of residence. This model of autonomy, which provides for the members of an ethnic community to be governed through institutions and/or their own legislation, allows minorities a significant degree of autonomy and cohesion, even when minorities are dispersed throughout the territory.

44. The German professor Heinrich Oberreuter understands the concept of autonomy as "the possibility of free self-determination under an existing legal order".

45. According to Hurst Hannum and R. B. Lillich, two lawyers specialising in international law, autonomy could be perceived as "a relative term for describing the degree of independence that a specific entity enjoys within a sovereign state" [5].

46. "'Territorial autonomy' is understood as an arrangement, normally within a sovereign State, whereby the inhabitants of a defined part of the territory have extensive scope for administrative autonomy. In ideal forms, territorial autonomy would require the existence of a locally elected legislative body with some power to

legislate independently in some substantive domains, as well as an executive with power to implement the legislation of the local authority in those areas, whereas the executive in other areas is subject to the laws and orders of the central authorities.” [6]

47. These different meanings of autonomy reflect the different ways in which a cultural minority can participate in the management of the affairs of the territory in which they live. In practice, these different forms of autonomy are very often intertwined.

48. Autonomy-based solutions must be considered as “sub-state arrangements” that benefit a specific part of the population. It is consequently left to the national legislature to determine and give reasons for the interpretation, implementation and management of the autonomy.

49. States and minorities should admit that, far from being final and static, autonomy status is a dynamic process and always subject to negotiation. Once a climate of confidence has been established, the central state will realise that the grant of autonomous power neither jeopardises its sovereignty and territorial integrity nor the existence of other minority groups, and it will be more willing to give the autonomous entity wider powers.

#### **d) Legal framework of autonomy**

50. In order to provide the right conditions for its permanence and stability, every autonomous entity must be integrated into a legal framework. A local autonomy status can be established by a constitution, a law, a regional statute or an international treaty.

51. For example, certain autonomous entities have been set up exclusively by constitutional laws (such as the Faeroes, Greenland or the Spanish provinces), while others have been established by international agreements and then enshrined in constitutions (in the case of the Åland Islands, the Guarantee Act served to amplify and render more precise the League of Nations decision of 1921 which had been previously accepted by Sweden and Finland). Similarly, an Italian constitutional law of 1948 granting special status to Trentino-Alto Adige amplified and rendered more precise the De Gasperi-Gruber Agreement of 1946.

52. Certain autonomous entities, as in the case of Spain, can also be set up by means of regional statutes adopted by the national

parliament in the form of an organic law and then incorporated in the constitution.

53. As regards the legal basis of autonomy status, it may be observed that when the autonomy is conferred on a significant part of the territory the special status is normally provided for in a text with the force of a constitutional law. This is clearly the case with the entities that make up a federal or regionalised state but it is also often true of regions that benefit from special arrangements within a unitary state. For example, the statute of the Autonomous Republic of Crimea is based on a special law of 29 April 1992, the adoption of which required the revision of Article 75 of the Ukrainian constitution. Since the legal basis of the autonomous regions determines the very structure of the state, it is preferable for it to be mentioned in the constitution.

#### **e) Positive and negative aspects of autonomy**

54. The aim of the report is to describe and analyse the cases of various autonomous regions by examining the way they function at the political and institutional levels. The study of the Åland Islands, Alto-Adige / South Tyrol and the Faeroes will enable the historical and political factors to be identified and a list to be subsequently drawn up of similar basic factors that emerge in the very different context of today's conflicts. Sri Lanka, where the negotiation process is sponsored by Norway, is a current example of the relevance of these considerations and this historical experience.

55. The study of the autonomous entities makes it possible to draw up a list of the factors conducive to the lasting success of self-governing regions. Every demand for autonomy takes place within a historical context with cultural, political, democratic and geopolitical dimensions. This wish for autonomy can be explained by reference to specific cultural traditions, a specific language, a feeling of belonging culturally to a neighbouring country or the particular makeup of the territory concerned.

56. There are also key historical factors. For example, very often the country that has accepted an autonomy agreement was itself in the process of being constituted, while in other cases, the autonomy may have been supported by a neighbouring state and/or the international community.

57. As regards geopolitical criteria, it can be said that in many cases the autonomous entities do not possess any significant natural resources and are not of major strategic importance and the big powers are not directly involved in any conflict there.

58. Finally, the success of the autonomous entity depends to a large extent on respect for human rights and democracy in the neighbouring country and on the renunciation of force. Respect for the principles of "good governance" and the grant of autonomous powers are favourable conditions for ensuring the permanence of the autonomy agreements.

#### IV. Case studies

##### a) The Åland Islands [7]

59. The Åland Islands are a demilitarised, neutral and autonomous area of Finland. Their population is 26,000, and the land area totals 1,552 sq. km. The name of the capital is Mariehamn. They are an archipelago consisting of more than 6,500 islands situated between Stockholm and Turku.

60. The Ålanders have been Swedish-speaking since as far back as anybody can trace and are therefore part of the Swedish cultural heritage. Since this is a group of islands, its autonomy is considered to be territorial, even though it would also fit into the notion of cultural autonomy, since they are based on the Swedish language and culture.

61. Åland was a very old region of Sweden and had a Swedish population long before Finland was incorporated into the Swedish realm in the thirteenth century. The Islands, together with Finland, belonged to Sweden until 1809, at which time Sweden, after losing a war with Russia, was forced to relinquish Finland, together with Åland, to the victor. Under Russian rule, Finland benefited from a special form of cultural autonomy.

62. When the Russian Empire began to disintegrate, but before Finland declared independence in December 1917, the Ålanders started to struggle for reunion with Sweden, their traditional mother country. A petition calling for reunion was signed by 96% of the resident Ålanders of legally competent age and conveyed to the King of Sweden. However, the newborn state of Finland, which had been

proclaimed in accordance with the principle of national self-determination, was not prepared to give up part of its territory.

63. After a dispute between Finland and Sweden, the Åland Islands issue took on an international dimension and, on a British initiative, was brought before the League of Nations in Geneva. In 1921, the League decided that the Åland Islands should belong to Finland but have autonomy that would guarantee their Swedish language and heritage. Ten states guaranteed the demilitarisation and neutralisation of the islands. In other words, their autonomy has international backing, and it has been used as an model for resolving minority conflicts throughout the world.

64. The Åland Islands have legislative powers in such areas as social and health care, the environment, trade and industry, culture and education, transport, postal services, policing, radio and TV broadcasting and local government, but relatively little authority to levy taxes compared with Greenland and the Faeroes. Legislative power is vested in the parliament, the *lagting*, and executive power in the *landskapsstyrelse*. Finnish suzerainty over the islands is exercised by the governor, the *Landshövding*.

65. The autonomy of the Åland Islands is enshrined in the Finnish Constitution (Article 120) in accordance with the Åland Autonomy Act, which has been passed by the Finnish parliament and may only be amended or revised by a joint decision of the Finnish parliament and the parliament of the Åland Islands. This means that each of the two parties can veto any changes it does not accept.

66. The autonomy of the Åland Islands has been consolidated and broadened over the years. The Act was supplemented by that of 1951, which defined the powers and operation arrangements of the autonomy. An Act passed in 1991 strengthened the autonomy by widening the province's legislative powers, assigning broader administrative functions and allowing the islands to assume greater responsibilities in the international field. In order to provide more protection for the inhabitants' cultural identity, it incorporates more detailed provisions concerning the right of domicile and the use of Swedish in education. This right of domicile<sup>[8]</sup> entitles the citizen to participate in provincial and municipal elections (including the right to stand as a candidate), engage in commercial activities and acquire real estate. It also gives exemption from military service.

67. Many features of the autonomy of the Åland Islands are very interesting. One of the most unusual aspects is the financial



relationship between Finland and the islands, which pay all the usual taxes to Helsinki like any other Finnish region but are entitled to a reimbursement equivalent to 0.45% of the state's total revenue, this percentage being equivalent to the islanders' proportion of the Finnish population as a whole. This is an unusual relationship since it links the autonomous entity to the development of the Finnish state, and the 0.45% is calculated and paid annually, this being an integral part of the autonomy agreement.

68. The concept of the Åland Islands' autonomy is not based on the decentralisation of power but on an agreement of shared powers established with the help and under the auspices of an international institution, i.e. the League of Nations.

## **b) Alto-Adige / South Tyrol**

69. The 1947 constitution defined Italy as a regionalised state. Although the issue of the protection of minorities poses few difficulties in that country, the constituent assembly considered that the creation of autonomous regional institutions could contribute to solving what was a latent problem.

70. There are three autonomous regions in Italy: Trentino-Alto Adige, Valle d'Aosta and Friuli-Venezia Giulia, which have linguistic minorities[9].

71. The autonomous region of interest to us is Trentino-Alto Adige, which is subdivided into two provinces, Trento and Bolzano (Alto Adige or South Tyrol), the latter being the subject of our study.

72. As regards its historical background, the province of Trento was taken from Bavaria and annexed to Italy in 1918, while Bolzano belonged to Austria and was incorporated into Italy in 1919. These annexations were confirmed by the 1947 Treaty of Saint-Germain-en-Laye, which guaranteed the German minority territorial autonomy and gave the inhabitants of Trento a high degree of autonomy.

73. Trentino-Alto Adige contains three linguistic groups of different sizes: Italian (62% of the population), German (31%) and Ladin (3%).

74. Article 2 of the special statute for Trentino-Alto Adige of 1948, which was amended in 1962, 1971 and 1972 and supplemented by the law of 15 December 1999 (*Standards for the Protection of*



*Historical Linguistic Minorities*) states that "(i)n the Region, equality of rights for all citizens, regardless of the linguistic group to which they belong, and irrespective of ethnic and cultural characteristics, shall be safeguarded".

75. Article 99 states that "(I)n the Region the German language is made equal to the Italian language, which is the official language of the State". Article 100 proclaims that "German-speaking citizens of the Province of Bolzano may use their own language in relations with the judicial offices and the organs and offices of the public administration".

76. It is important to stress that these linguistic rights accorded to national minorities by the Italian government are implemented at the provincial level in accordance with resolutions adopted by the municipal or communal councils. These councils thus play a decisive role in the effective implementation of these rights.

77. 68% of the inhabitants of the province of Bolzano speak German, 27% Italian and 4% Ladin. The Proportional Representation Decree of the President of the Republic of 26 July 1976 provides that "public or semi-public administrative posts shall be distributed fairly among the three linguistic groups". In the case of the Ladins, who represent a minority within a minority, Article 32 of Decree No. 574 of the President of the Republic of 15 July 1988 "authorises the use of Ladin in oral or written communications with the authorities in the province of Bolzano".

78. Under these special provisions, the representation of the Italian and German linguistic groups on the executive council and the presidency of the legislative council of the province of Bolzano must be proportional to the size of the groups in the provincial assembly. The local governments can use German and Italian in the debates in the regional assembly and the provincial councils as well as in the drafting of laws and regulations adopted by these institutions. Parallel to this, jobs in national government departments must be distributed in the province of Bolzano among the Italian- and German-speaking civil servants according to the size of their respective linguistic groups.

79. As regards education, Article 19 of the Special Statute states that in the province of Bolzano German and Ladin shall be taught in the nursery, primary and secondary schools.

80. Apart from specific linguistic rights, these two provinces possess much greater autonomy than other provinces, resembling

that enjoyed by regions with special status. Each of the provinces of Trento and Bolzano has a provincial council with enlarged powers, the members of which are elected by the inhabitants for a period of four years.

81. The provincial council and the local authorities are responsible for all the fields of importance to the population and the local area, especially social services, schools, the language, land-use planning and economic development.

82. However, it needs to be pointed out that no Italian region has any judicial powers, these being the exclusive domain of the state authorities.

83. The legislative and administrative autonomy of the provinces and the region is bolstered by the constitutional guarantee of the allocation of substantial financial resources deriving from the distribution of state tax revenues and local taxes, which belong entirely to the provinces and are directly adopted by the region.

84. It is important to note that the German and Ladin speakers in the province of Bolzano are able to appeal to the administrative tribunal in the event of the local authorities' failure to respect their linguistic rights.

85. This autonomy of the German speakers in Bolzano was not acquired without any difficulties. Rather, in the 1960s it led to violent protest movements that condemned the failure to respect international agreements and called for this province to be reincorporated into Austria.

86. Italy undeniably supports the autonomy of linguistic groups by giving them the opportunity to ensure the preservation and development of their ethnic and cultural identity while respecting the principle of good governance.

87. This study points out a number of important aspects: this is a geographically circumscribed region being situated on the south-east border of Switzerland and the south-west border of Austria, and is made up of several linguistic minorities wishing to assert their cultural individuality. These minorities have a strong sense of belonging culturally to the neighbouring state, although they have never called into question the principles of unity and territorial integrity.

### c) Factual comparison of the two most successful historical cases

88. It is possible to discern 25 historical, political and conceptual factors that have contributed to the success of the two cases of autonomy. With a view to achieving similar success, these successful models may serve as a basis for reflecting on how these factors could be adapted for the purpose of resolving the current conflicts.

89. The experience gained in the Åland Islands and Alto-Adige / South Tyrol has several objective aspects in common:

- a. both geographically easy to identify, one an island region made up of a large group of islands and one of a valley with a number of side-valleys;
- b. one language;
- c. a feeling of belonging culturally to a neighbouring country that served and still serves as a “good old uncle” and ally;
- d. proximity to the neighbouring country to which the population have a sense of belonging and to which they feel they have a common cultural heritage, both have to overcome a natural obstacle, the sea in one case (short ferry crossing) and a mountain in the other (short train journey);

90. They both also have a number of historical elements in common:

- a. the state that was forced to accept autonomy was in the process of being newly established after a historical crisis (Finland was finding its feet after the war of independence and the Russian Revolution; Italy undergoing rebirth after the second world war);
- b. the legitimacy of the political power in all the states concerned, especially Finland and Italy, could not be called into question;
- c. both autonomous regions were established by, or under the auspices of, an international body (League of Nations/United Nations) and have international support and recognition;
- d. both autonomous regions are supported by an important neighbouring country (Sweden/Austria).

91. Both autonomous regions were established by states with the following in common:

- a. Finland and Italy, like Sweden and Austria, were states unreservedly committed to democracy and human rights;
- b. none the states involved was willing to defend its interests with force or violence;
- c. all four states had experience of, or were committed to, good governance;
- d. the peoples concerned, both the Ålanders and the South Tyroleans, had the ability to deal with their local affairs and observe the principles of good governance;
- e. the people in all the states concerned and in both autonomous regions had been extremely poor or living miserable lives;

92. With regard to the general strategic context, it is possible to identify a number of common factors:

- a. in both cases, neither of the big superpowers had been directly involved and had no interests of its own to pursue (with the possible exception of the fledgling USSR):
- b. geographically, both cases were on the fringe of the areas of the world power conflict;
- c. in both territories that were to become autonomous, there were no natural resources or other sources of wealth;

93. The two autonomous regions have some positive factors in common that had an important impact on their success:

- a. the division of powers was clearly defined in detail;
- b. the central government must consult the autonomous regions in cases involving their powers (the Åland Islands have even more rights in this respect than Alto-Adige / South Tyrol)

94. The case of the Åland Islands has a number of remarkable features:

- all parties agreed in advance to accept the ruling of the League of Nations;

- at no phase of the conflict was there any open violence or violent episodes (unlike the case of Alto-Adige / South Tyrol);
- in the early 1920s, Finland wanted to show it was a modern, civilised Nordic country ready to integrate itself into a specific Scandinavian political culture and civil society;

95. It is possible to point to a number of distinctive features of the structure and development of the Åland autonomous region that may have been crucial to its success:

- a. the autonomy of the Åland Islands is protected by the Finnish Constitution;
- b. it is nonetheless dynamic in the sense that is always open to negotiated development and reform;
- c. the financial resources of the Åland autonomous region are not fixed in absolute terms but as a percentage of the Finnish budget, thus providing another dynamic factor that helps the islands to identify to a certain extent with Finland;
- d. the government of the Åland Islands and their people must be consulted when their rights are affected. They sit on a joint commission with the Finnish authorities set up to discuss issues of common interest and avoid misunderstandings.

#### **d) Sri Lanka**

96. Sri Lanka became independent in 1948. The first tensions emerged in the 1970s and were ethnic in origin. They can be put down to a combination of several factors: a multi-ethnic population[10], different religions[11] and social unrest accompanied by a feeling of discrimination. This latter aspect, which is the result of tensions between the various social classes, is crucial and much more important than religious tensions.

97. The origin of these tensions was that both the Tamils and the Hindus felt they were being badly treated by the other communities, notably the Singhalese. They believed they were a harassed minority and victims of violence and discriminatory policies. They missed the privileged position they had enjoyed under British rule.

98. The origin of the social unrest was a law passed in 1956 stipulating that Singhalese was the only official language. This

decision was accompanied by violent protest movements on the part of the Tamil population. This law was amended twice, in 1958 and 1978, and Tamil was also recognised as an official language.

99. The filling of civil service posts is also a factor that has increased the tensions between the Tamil and Singhalese communities. It needs to be remembered that under British rule the vast majority of posts were occupied by Tamils. The better educated Singhalese majority began to take these posts, thus leading to social tensions.

100. Changes in the university admission policy were perceived as discriminatory by the Tamil community. This led to a worsening of the relations between the ethnic communities and is the origin of the radicalisation of the Tamil community. In spite of the modification of these admission criteria in the 1970s and 1980s, the Tamil minority continued for a long time to have a feeling of injustice and resentment.

101. The issue of the delegation of powers was also at the centre of the tensions. Successive governments had to reach a compromise between the position of the Singhalese majority, who were suspicious of any transfer of powers, and the aspirations of the Tamil minority, who favoured a federal system that would grant wide powers to a Tamil province in the north-east.

102. From 1977 onwards, the tensions grew between the ethnic communities in spite of the various measures to calm the situation. An armed ethnic conflict between the Liberation Tigers of Tamil Ealam (LTTE), the so-called "Tamil Tigers", and the government lasted 19 years and claimed more than 65,000 lives.

103. The peace negotiations began in 1985 when the President of Sri Lanka, Chandrika Kumaratunga, asked Norway to broker a dialogue between the government and the LTTE with a view to finding a negotiated solution. Norway was chosen because of its long tradition of involvement in peace processes and the long-standing co-operation between the two countries.

104. The peace negotiations took place in various stages:

- February 2002: signature of a ceasefire agreement between the government and the LTTE
- 16-18 September 2002: negotiations in the course of which the Tamil Tigers declared they give up their demand for the

independence of the Tamil minority in the regions under their control in the north and east of Sri Lanka.

- 31 October 2002: meetings in Thailand aimed at setting up a joint government-LTTE task force to promote reconstruction, especially with international aid, in the areas devastated by the war.
- 31 October-3 November 2002: opening in Thailand of a second round of peace negotiations. They resulted in the setting up of the Sub-Committee on Political Matters, which is charged with studying the conditions and systems of organisation in the areas where there are ethnic rivalries.
- 2-5 December 2002: opening in Oslo of a third round of negotiations on consolidating the ceasefire agreement, commencing humanitarian assistance, initiating reintegration work and proposing political solutions.
- 6 January 2003: opening of fourth round of negotiations in Thailand to resolve the delicate issue of the future government.

105. The parties to the conflict are aware that compliance with the ceasefire agreement remains an essential condition for the negotiations to continue. They believe that the peace process will run for several years to come and that a priority will be to re-establish confidence with the various communities while at the same time improving the security and living conditions of the population as a whole. Ways of using the resources available to optimum effect will gradually be determined and priority projects selected. This definition of priorities is the key to obtaining assistance from the international community (initial aid estimated at \$70 million).

106. The leaders of the LTTE significantly modified their positions during the negotiations: while in September 2002 they were demanding the establishment of a (Tamil dominated) interim administration in the north-east, they said they would now accept autonomy status. An LTTE delegation visited the Åland islands in April 2003 to find out about the positive experience gained there.

107. On 27 November 2001, the supreme leader of the Tamil Tigers, Velupillai Prabhakaran, declared that "(w)e are prepared to consider favourably a political framework that offers substantial regional autonomy and self-government in our homeland on the basis of our right to internal self-determination". However, he added that "if our people's right to self-determination is denied and our demand for regional self-rule is rejected, we have no alternative

other than to secede and form an independent state". A Sub-Committee on Political Matters charged with studying the conditions and systems of organisation in the areas where there are ethnic rivalries has been set up. Its aim is to comment on such questions as models of government, issues of post-conflict transition, the co-ordination of international assistance and the process of reconciliation.

108. More specifically, the task of this sub-committee is to study the various models of autonomy, principles of internal self-determination and federal structures that enable ethnic conflicts to be resolved.

109. The discussions also cover power-sharing both between the centre and the regions and within the central government, as well as legal aspects and public finances and issues relating to territorial boundaries and the protection of human rights.

110. The two parties have also agreed on the establishment of an international monitoring mission to investigate any violations of the terms and conditions of peace.

111. The problems are far from being resolved. The ethnic tensions have recently resurfaced in the east of Sri Lanka. In order to calm the situation, the two parties to the conflict have decided to take quick action to improve security, inter-ethnic co-operation and respect for human rights. At the Oslo meetings in December 2002, additional priorities were identified, such as repopulation and the re-settlement of displaced persons, especially women and children. A Sub-Committee on De-Escalation and Normalisation has been set up to promote dialogue between the different communities.

112. Sri Lanka is an interesting example of the background to the establishment of autonomy: it is a state with specific features, being made up of several communities with different religions, and, faced with a demand for the independence of the Tamil community, the government resorted to armed force. The peace negotiations sponsored by Norway have enabled the parties to accept the grant of autonomy status. It is interesting to note that the autonomy models currently under discussion draw on positive experience gained in this area.



## e) The Faeroe islands

113. Situated 1400 km from Copenhagen, the Faeroe islands have autonomy status within the Kingdom of Denmark. The Faeroese consider themselves to be a separate people, since they have their own language and institutions, have preserved their traditions and possess a highly developed sense of unity.

114. The historical dimension is the key to understanding the process that led to autonomy. In the Middle Ages, the Faeroes belonged to the Norwegian Crown. In the 14th century, the King of Denmark also became the King of Norway. After the Napoleonic wars, what remained of the Kingdom of Norway in the Atlantic ocean (the Faeroes, Iceland and Greenland) remained under Danish rule.

115. When Denmark became a constitutional monarchy in 1849, each of the three Atlantic provinces underwent a different development. Greenland was run like a colony until its incorporation into Denmark when the Danish constitution was revised in 1953. It was given autonomy in 1979. Iceland gradually detached itself from Denmark and became a fully-fledged republic in 1944.

116. During the second world war, Denmark was occupied by Germany and the Faeroes by the United Kingdom. The ties to Denmark were broken. Under a provisional constitution powers were shared between the central Danish government and the autonomous authorities.

117. At the end of the war, the Faeroese wished to retain their autonomy but they did not want full independence, while the Danish authorities demanded a solution compatible with their conception of Denmark as a unitary state. Following the plebiscite held in 1946, new negotiations culminated in the passing of the Home Rule Act of 1948.

118. In the preamble, this Act refers to the recognition of "the special position of the Faeroe Islands within the Kingdom of Denmark from the national, historical and geographical point of view".

119. The legal definition of an inhabitant of the Faeroe islands contains no mention of an ethnic criterion. The recognition of the specific nationality of the inhabitants of the islands is reflected by the existence of a flag and a Faeroes passport. Faeroese is recognised as the principal language spoken in the archipelago, but Danish can be used for all public business. Under the Home Rule Act,

responsibility for all cultural matters, especially those relating to the promotion of the Faeroese language was transferred to the islands under the heading of specific issues.

120. Proposals for power-sharing were made. Generally speaking, the Faeroese authorities are able to express their views on areas remaining under Danish control. The inhabitants of the islands still elect two delegates to the Danish parliament. The administration of justice is in accordance with the Danish system and decisions pertaining both to the civil law in general and to the penal code are taken by the Danish authorities.

121. Among the functions transferred to the Faeroe islands in 1948 were responsibility for trades and industries, such as agriculture, fishing and manufacturing, as well as land-use planning, water management and marine resource management.

122. The activities of the autonomous authorities are mainly funded by revenue from income tax, VAT, indirect taxes and a block grant from the Danish finance ministry. The government of the Faeroes has the power to raise taxes, including import taxes. The islands belong to the Danish currency zone but have their own banknotes.

123. Any disputes involving the powers of the autonomous authorities of the Faeroes and the national authorities are referred to a joint committee.

124. Under the Home Rule Act, the functions of the Faeroese authorities are limited owing to international rights and obligations. However, there is a special adviser for Faeroes affairs attached to the Danish foreign ministry. It must be stressed that, in accordance with the wishes of the Faeroese people, Denmark's membership of the European Union does not extend to the Faeroes (or, since 1986, to Greenland).

125. The system of local self-government in the Faeroes contains a number of specific elements, the primary one being the clear geographical delimitation of this island territory with its own language. In the light of the desire for autonomy expressed by the Faeroese, the Danish government preferred to apply the principle of "good governance" rather than resort to force. The delegation of powers, accompanied by a transfer of substantial funds, enabled this autonomous region to govern itself.

126. Nevertheless, leaving aside the specific features of this autonomy some of its characteristics could act as inspiration for other systems of autonomy when self-government suggests itself as a way of resolving problems of nationality or regionalism.

## **V. Conceptual clarifications**

### **a) Right to internal and external self-determination**

127. The right to self-determination is recognised as one of the key principles of contemporary international law. However, this concept contains a number of ambiguities.

128. Respect for the principle of self-determination became compulsory in 1976 with the entry into force of two covenants relating to human rights dating from 1966 (the International Covenant on Political and Civil Rights and the International Covenant on Economic, Social and Cultural Rights). Article 1 of both texts states that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

129. We understand the term "people" to refer to a group of persons living in society in the same territory and sharing cultural ties, customs and political institutions. By extension, this concept, when considered to refer to the body of the nation, can also designate all the persons subject to the same laws. The term "nation" designates a fairly large group of human beings living in the same territory and sharing the same origins, history, culture, traditions and, sometimes, language and constituting a political community. This community is characterised by an awareness of its unity and willingness to live together. This concept differs from "community", which refers more to a social group whose members possess a common culture, opinions or common characteristics. A community may be dispersed over several territories.

130. The recognition of the right to self-determination has consequences for international and national law<sup>[12]</sup>. To begin with, this presupposes that in the case of the subjugation of a people by another state that people has the right to decide to become independent. This recognition also implies that every people is entitled freely to determine its political system or at least to participate actively in the political life of the state or, indeed, choose the state to which it wishes to belong. It must be stressed that this

last meaning was mainly recognised after the first world war and exclusively related to territories with minorities.

131. The concept of self-determination consists of two aspects: internal self-determination, which refers to the right of peoples freely to determine their own political system, while at the same time respecting the principle of territorial integrity, and to participate in the political life of the state; and external self-determination, which concerns the right of peoples freely to determine their international status, or even choose to become independent. The principle of self-determination is generally applied to any group or individual in a state, but constitutions are not very explicit with regard to its scope, the people to whom it potentially applies and the arrangements for applying it. The purpose of internal self-determination may be to provide the possibility of changing territorial boundaries or even the creation of new entities within a state. In the context of this report we are only interested in cases of external self-determination.

132. The principle of external self-determination is often recognised in the cases of colonised peoples or peoples subject to foreign domination. Opinions are divided with regard to whether minorities or groups belonging to a sovereign state can demand this right to external self-determination, which may become the right to secession.

133. International law considers that the right to self-determination is subject to respect for the territorial integrity of a state. However, it accepts all institutional modifications within a state, provided they are in conformity with national constitutional law and are freely accepted by the population concerned. This was, for example, the case in 1946, when Italy undertook, in the Gruber-De Gasperi Agreement, to grant autonomy to the Alto-Adige / South Tyrol region, which comprises the two provinces of Trento and Bolzano, and take measures to promote the linguistic and cultural identity of the German-speaking minority.

## **b) Autonomy as a system of conflict resolution**

134. Most present conflicts have resulted from the dichotomy between cultural plurality and the principles of the indivisibility of the state and have their origins in tensions between that state and minorities claiming the right to preserve their specific identity.

135. A minority is a group that consists of a substantial part of the population of a state and asks to be allowed to enjoy either specific rights to promote their culture, religion or language or to have recourse to self-determination if the central government does not accord them these rights.

136. Not every cultural minority or community can establish a state to promote its interests and specific identity, so every state must provide for constitutional or legislative rules that permit either a transfer of powers or a division of responsibilities for the benefit of these minorities. By granting these specific rights, the vast majority of states in Europe have managed to reconcile the principles of unity and territorial integrity with the need to support cultural diversity.

137. Since any repressive policies towards minorities are doomed to failure, new approaches must be proposed to resolve such conflicts. Minority rights began to be guaranteed after the first world war by international treaties or declarations made on admission to the League of Nations. After the second world war, treaties put more emphasis on the protection of human rights, it being assumed that the rights of minorities would be guaranteed by these general principles. In the light of the re-emergence of conflicts, the International Covenant on Political and Civil Rights of 1966 had to provide a better definition of minority rights. Article 27 states that "(i)n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

138. Taking account of the commitments on the protection of national minorities contained in the conventions and declarations of the United Nations as well as the documents of the OSCE, and especially the 1990 Copenhagen Document, the Council of Europe has produced its own Framework Convention for the Protection of National Minorities<sup>[13]</sup>. In its various articles, this Convention refers to the principle of non-discrimination (Art. 4), to the right of minorities to preserve their culture, their religion, their language and their traditions (Art.5) or to their right to participate in public life (Art. 15). It should be stressed that Article 21 points out that "(n)othing in the present framework Convention shall be interpreted as implying any right to (: ...) perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States".

139. How can autonomy provide a response to the demands of these minorities and their calls for protection? How can minorities obtain the recognition of a form of autonomy adapted to their needs while respecting the principle of territorial integrity? What type of state can best respond to this objective? How can the territorial autonomy granted to minorities be enabled to promote integration instead of isolating a minority from the national community? What powers should this autonomous entity be granted?[14] The replies to these questions are the key to the peaceful resolution of any intrastate conflict.

140. The establishment of autonomy status may be a response to the demands of minorities while at the same time respecting the principles of state sovereignty and territorial integrity. Article 11 of the additional protocol on the rights of minorities to the European Convention on Human Rights proposed by the Parliamentary Assembly of the Council of Europe in its Recommendation 1201 (1993)[15] states "(i)n the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state."

## **VI. Analysis of the functioning of autonomous entities**

### **a) Political systems and division of powers**

141. The concept of autonomy differs according to whether it is proposed or applied in a federal, regionalised or unitary state. As a rule, the scope of the autonomy, and especially the control or limitation of powers, is defined by the constitution or the law, depending on the country concerned. In order to provide the right conditions for its stability and permanence, it is preferable for both the status and the basic principles of the autonomy to be mentioned not only in the ordinary law but also in the constitution.

142. A distinction is drawn between various types of powers: the exclusive powers of the central state, concurrent powers of the central state and the territorial entities, the powers of the central state to adopt outline legislation (corresponding to the entities' powers to deal with matters specific to them), the parallel powers of the central state and the entities, and the exclusive powers of the entities. The scope of the transferred powers varies greatly from one

political system to another and ranges from a bare minimum to almost one hundred per cent. In cases where the autonomous entities possess broad powers, they are able to participate in the management of public affairs without the state having any right to interfere with these powers.

*i. Federalism*

143. Federalism is a constitutional structure in which the state is divided into several federated entities (such as the cantons in Switzerland or the *Länder* in Germany and Austria) with an even division of powers. In order to guarantee equal representation, the legislative branch of the government is divided into two chambers, the first representing the federated entities and the second the federal state.

144. In Switzerland, which is the most federalised country in Europe, it was the federated entities that conceived and participated in the creation and definition of the concept of the central state. In such a system, the powers not accorded to the federal state by the constitution remain with the federated entities. It should be stressed that any transfer of powers to the federal authorities is subject to the approval of both the majority of the population and these entities.

145. Germany and Russia have a system where powers are separated according to two lists, one for the federal state and one for the federated entities. This principle is rigidly applied in Austria and Belgium, which means it is necessary frequently to revise the lists of subject areas set out in the constitution.

146. For Ruth Lapidot<sup>[16]</sup>, autonomy has many similarities with federalism, which she defines as a “form of political organization which unites separate polities within an overarching political system so that all maintain their fundamental political integrity”.

147. However, differences remain: while the powers of the federation and the federal states have their legal basis in the constitution, the powers of the autonomous entity are often transferable or delegated by the national legislature. Sometimes, as in the case of the Åland Islands, the autonomy status can be guaranteed by an international treaty and the principle of the separation of powers can be protected by the constitution.

148. Finally, autonomy is generally implemented in regions characterised by a specific cultural identity, while the federal



structure is the overarching political architecture. There may be cases in which a constituent entity of the federation demands additional rights that go as far as autonomy. This happened in Quebec, which demanded special status and additional autonomous powers, but it also happened in Spain, where additional autonomous powers were granted to three specific communities (the Basques, Catalans and Galicians), these powers subsequently being given to all the communities of which Spain is composed.

## *ii. Regionalism*

149. The regionalised state shares many similarities with the federal state. It is a system in which the legislative and executive bodies are constituted at the level of the central state and the individual entities. Very often, there is an uneven division of powers.

## *iii. Decentralisation in unitary states*

150. A fortiori, in unitary states in which all powers belong in principle to the central state but a specific status is granted to certain entities the latter only have responsibilities in the areas provided for in accordance with their status. For some states, autonomy represents a form of decentralisation by the delegation of powers that this calls for.

151. However, there are major difference between the two systems: while decentralisation calls for a delegation of powers, by legislative means, from the central government to the local "independent" authorities, autonomy involves in some areas a genuine transfer of powers – i.e., a division of responsibilities.

152. Similarly, decentralisation can be unilaterally revoked by the central government, while the decision to withdraw autonomy status requires in principle the approval of both the central and the autonomous authority. In the case of decentralisation, the scope of the delegated power is a matter for the national legislature, which can impose conditions with regard to the exercise of that power and supervise compliance with the law. In the case of autonomy, the interference of the central authority is in principle only justified in extreme cases (threat to security, excess of authority, etc).

## *iv. System of devolution*

153. The system of devolution, which is mainly employed by the United Kingdom, results in a high degree of decentralisation leading a new form of regional state.



**v. *Free association***

154. Free association status is based on an agreement between two or three states that are often linked to one another by old colonial ties, for example the Cook and Niue Islands, which are associated with New Zealand, or several islands associated with the United States (Puerto Rico, Marshall Islands, Paula Islands). Generally, the associated state retains its autonomy based on its own constitution, but it can choose to delegate to another state certain areas of responsibility, such as defence or foreign affairs.

155. This system of free association is mainly employed in the case of small territories or entities that demand more autonomy but not independence. The association can be considered a form of autonomy with very wide powers.

**vi. *Asymmetric territorial organisation***

156. In order to resolve intrastate conflicts caused by demands for autonomy by certain territories, the state may consider establishing an asymmetric form of territorial organisation that involves granting these territories broad powers or special status.

157. The asymmetric territorial organisation<sup>[17]</sup> involves the implementation of types of regionalisation and federalism that confer varying degrees of autonomy on local authorities while at the same time adapting the purpose and extent of this autonomy according to the territories concerned and the demands made. Some territories have specific geographical features (islands, mountainous regions, frontier regions, etc), while others are different in terms of their culture (languages, religion), their history (e.g., annexed by various states in succession) or their economy (undergoing industrial reconversion, economically backward). Consequently, depending on the specific features of each territory the powers granted to local authorities will refer to different areas of activity.

158. This system of territorial organisation can only establish a general framework for regional autonomy at the national level and subsequently fill in the details of a special status negotiated by each regional entity. The constitution or national legislation may also provide for several categories of special regional or local status and for entities to be assigned to them according to their specific features.

### **vii. *Establishment of special status***

159. Under certain conditions, the establishment of different forms of special status may be a solution to the re-emergence of ethnic or cultural conflicts in some European states. Under this system, local authorities possess considerable power to make regulations, which permits them to adapt or even derogate from national legislation. In certain cases, the local authorities are even granted formal legislative power to protect their own interests and the expression of their culture, although, contrary to what happens in a genuine federal system, any legislation enacted remains subordinate to the national legislation.

160. Such special status is granted to several island regions, such as the Åland Islands, the Azores, Madeira, the French overseas departments and territories and the Faeroes, as well as the Italian autonomous regions.

### **b) *Methods of sharing sovereignty***

161. The sharing of sovereignty between the central government and the autonomous entities can be organised in as many ways as there are individual cases. Very often, financial powers (in terms of the currency, international commerce, customs duties, taxes, control of the banking sectors) are in the hands of the central government. The ability of an authority to impose and/or levy taxes is often laid down by mutual agreement.

162. In the area of security, power sharing differs according to whether external security, internal security (especially the fight against terrorism) or the maintenance of public order is involved. External security is always the responsibility of the central government, while the maintenance of public order, which is the responsibility of the police, is often under the control of the local authorities. The sharing of powers and functions may also vary according to the territory concerned.

163. In most cases, foreign relations, which include the power to conclude and implement treaties, the opening of diplomatic missions abroad and accession to international organisations, are the responsibility of the central authorities. However, certain autonomous entities have the power, subject to central government approval, to accede to an international organisation or ratify an agreement. For example, the authorities of the Åland Islands, which are a member of the Nordic Council, are empowered to sign agreements, and Greenland was able to leave the European

Community. As a rule, the central authorities must consult the autonomous entities before concluding any treaty since its implementation may require changes in the law in areas where powers have been transferred to these entities.

164. Very often, a study of individual cases reveals that the autonomous authorities exercise powers in areas of autonomous electoral administration as well as with regard to cultural, linguistic, educational (management of schools), economic (town and country planning, control of natural resources) and social (community activities, local democracy) matters.

165. The main lesson that can be drawn from these different ways of sharing sovereignty is that greater co-operation between the various levels of authority very often enables a solution to intrastate conflicts to be found and that it is possible both to reconcile the principles relating to respect for the cultural identity of minorities and those concerning the unity and territorial integrity of the state.

### **c) Settlement of disputes**

166. In order to avoid any subsequent litigation, the powers exercised by the autonomous entity must be clearly defined when the entity is set up. The entity's authorities must have the right to take legal action to ensure respect for the free exercise of their powers and the principles of regional autonomy enshrined in domestic law.

167. As a rule, autonomy agreements are fairly flexible and permit the autonomy to be adapted at a later date. If the autonomy is established for a limited period, it is necessary to define in advance the various options envisaged at the end of that period. If the autonomy agreement contains a reference to an obligation to adhere to certain rules, it may be advisable for these rules to be based on recognised international practices.

168. Autonomy status must be established in a general atmosphere of conciliation and before any deterioration in relations takes place. By its very nature, autonomy requires a certain amount of co-operation between the central and local authorities. When the activities of the central government in the areas for which it is responsible directly affect the autonomous region, the local authorities should be consulted as much as possible. Some areas of activity may require joint participation or problems of interpretation may emerge with regard to the assignment of functions.

169. Clear rules must be laid down to resolve any jurisdictional conflict between the two authorities. In this context, it should be determined whether it is necessary to provide for a dispute settlement mechanism between the government and the autonomous authorities and, as the case may be, to define the composition and powers of such a body. Must it be an international body, one that is representative both of the central state authorities and the autonomous entities or a judicial body of the central state? If the body tasked with resolving the conflict does not have a permanent structure, both the composition of the ad hoc group and the procedures to follow must be laid down in advance. In states with a constitutional court, the latter is usually responsible for ruling on such conflicts. In certain federal states, it is the responsibility of the supreme court to rule on legal disputes between the central state and the federal entities.

170. It is also necessary to consider the question of the supervision of the autonomous entity's activities by the central government. As a rule, this supervision only serves to ensure compliance with the law. However, the central government may retain certain means of supervision or ways of assessing the question of expediency. Fiscal measures, the central authority's power of veto, the necessity to approve the autonomous entity's laws or the power reserved to the government to appoint or confirm the appointment of senior officials of the autonomous authorities are measures that give the central government considerable influence. Nevertheless, in most cases the laws adopted by the autonomous entity in the exercise of its functions are not subject to supervision by the central government (except in cases of excess of authority).

## **VII. Identification of the basic factors for the success of autonomy**

### **a) Legal design and criteria for short and long-term success**

171. In order to avoid the dispersal of members of a national minority and enable them to be protected effectively, Recommendation 43[18] of the Congress of Local and Regional Authorities of Europe states that, where the administrative subdivisions of a state are already fixed, it is necessary "to avoid changing the geographical boundaries of the authority in question for the purpose of altering the composition of the population to the

detriment of the minority; "to grant the authorities in question wide-ranging powers, defined by law, in all fields that can afford an effective protection of the members of the minority and mainly in the fields of language, education and culture"; "to make provision in the local finance system for resources and/or transfers enabling these authorities to cope with the increased and specific responsibilities arising from the presence of members of a national minority"; "to grant territorial authorities the power to put in place mediation and collaboration arrangements to promote harmony between the majority and minorities"; and "to establish a guarantee such as to ensure an appropriate level of representation for members of minorities on the elected bodies of the territorial authorities, as well as on the bodies representing these authorities at the level of the federal or national state".

172. There are two aspects to the what constitutes success, depending on the time scale. 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 and the central state have been put in place. Autonomy is positive over the short term when it has been established as a mechanism for the peaceful settlement of political conflicts in a given region or country. However, it may be that experience considered positive conceals tensions and underlying problems.

173. In most cases, autonomy has begun to function on an uncertain basis. History shows that it is easier for the grant of autonomy to be considered legitimate if the territory concerned is clearly delimited and its cultural dimension (identity, religion, language) clearly defined. At the same time, any autonomy status must benefit both the state and the population of the region concerned. The structural and political conditions, the cultural, historical and geographical dimension, the resources available, the demographic conditions and the role of the international community are key factors that have to be taken into account in order to guarantee the right conditions for autonomy to succeed.

## **b) Geopolitical and demographic aspects**

174. When an autonomous entity is established, a number of aspects must be taken into consideration to guarantee the conditions for its success. The geographical conditions, for example, are often a key factor.

175. The autonomous region's distance from or proximity to the central government may determine the political relations between the two entities. It is also necessary to define the autonomous entity's territorial limits. In particular it must be determined whether the territorial autonomy must apply to all the inhabitants of the region in question or whether it only concerns the members for whom powers have been established. The type of autonomy that may be granted also depends on the autonomous region's demographic composition. Key issues are the number and size of the ethnic groups that make up the region's population, their relations with one another and the central government, and the relationship between the minority/minorities to whom it is planned to give autonomy and the "majority" population of the state.

176. Any proposal to change the boundaries of the territory of an autonomous entity must provide for the consultation of the populations concerned, in conformity with Article 5 of the European Charter of Local Self-Government. In the case of a general process of redefining the existing territorial boundaries, the express agreement of each region may be replaced by the consultation of all the territories concerned.

177. In a territory where the members of a minority represent a substantial part of the population that warrants specific protection, the possibility should be examined of merging certain areas in order to bring these people together. However, in most situations in Europe at the moment, it is proving difficult to create boundaries separating ethnic groups. Cultural and linguistic tolerance leading to cultural autonomy is thus very often the only solution.

### **c) Political and institutional aspects**

178. The success of autonomous entities 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 representatives of the central government and the autonomous entity share the same aspirations, the central government will tend to grant wider powers. The institution of autonomy status must be with the agreement of the population that will benefit from it, even though it sometimes happens that a population accepts autonomy status with reluctance and subsequently welcomes it. This was the case with the population of the Åland Islands.

179. As far as the establishment of autonomy status is concerned, it is necessary to draw up a timetable and determine whether this status applies to all areas of activity and throughout the territory and whether it is to be provisional or permanent. In certain circumstances, it may be preferable to provide for the status to be implemented in stages and for powers to be transferred gradually.

180. It is then necessary to determine whether it is intended to establish territorial or cultural autonomy or a mixed arrangement. Political territorial autonomy may be an appropriate solution when the members of an ethnic group constitute a significant majority in a region. However, when ethnic minorities are dispersed throughout the territory, it is only possible to envisage cultural autonomy. When one group is dominant in a region but is dispersed over other regions, a mixed approach combining political and cultural territorial autonomy may be implemented.

181. In a case where an entity that has been granted political territorial autonomy adopts its own constitution, a constituent assembly must be set up. Moreover, it will be necessary to determine whether this constitution requires the approval of a central government body or the holding of a local referendum. As regards the power to amend the autonomy arrangements, several options are possible. This power may be exclusively reserved to the central state authorities, it may be exercised jointly by the latter and the authorities of the autonomous region or be the exclusive responsibility of an international body. At the same time, a decision must be taken in advance when certain laws adopted by the legislature of the autonomous entity diverge from the provisions of the constitution or central government legislation. It is also necessary to establish a procedure for preventing any usurpation of the autonomous entity's legislative powers. In this context, it is clearly essential to set up a joint mediation body made up of members of the central government and the autonomous authority.

182. It is also necessary to determine what institutions are to be set up for the territory or the group (for example, a constituent assembly or a legislative, executive or judicial body), their composition, their responsibilities and their relations with the central government authorities. In the areas that fall within their jurisdiction, the autonomous entities must have decision-making and administrative powers that enable them to implement their own policies.



183. With regard to legal powers, the preliminary issue to be decided is whether the autonomous entity will have its own legal system and, if so, what system is to apply in the various areas of law (private, criminal, commercial). In practice, there are three possibilities: 1) the central government retains all its powers to award contracts; 2) these powers are delegated to the autonomous authority; or 3) two legal systems are established, one falling with the responsibility of the autonomous authority and the other governing functions reserved to the central government. Arrangements must be made to provide for dealing with any jurisdictional disputes between the two systems. The official central government representative in the autonomous entity may be appointed directly by the central government but this appointment may require the approval of the autonomous authority or, if he or she is appointed by the latter, the central government.

184. The same pattern can be envisaged as far as the sharing of legislative powers is concerned. In one case, it would be a question of establishing a system that involves the autonomous entity's authorities possessing their own legislative power except for the areas that are the exclusive responsibility of the central state. Conversely, it may be proposed that the central government exercise legislative power at the level of the autonomous authority but not in the delegated areas, in which case it will be necessary to determine whether the same laws must apply to the entire territory or whether the central government authorities must adopt specific laws for the autonomous entity, taking due account of its distinctive social and ethnic features. Denmark, for example, has adopted a separate penal code for Greenland. The third intermediate option is to recognise the legislative powers of the autonomous entity in specific areas in compliance with the general principles defined by the central government. Such a system that introduces a differentiated approach would appear both legitimate and non-discriminatory.

185. With regard to the mode of participation, the autonomous entities must be involved in the state's decisions on their powers and matters of key interest to them or on the scope of the regional autonomy. The members of a minority must be properly represented on local electoral bodies and on the bodies representing these entities at the national or federal state level. The involvement of the autonomous entities in the business of the state can come about through the appropriate representation of the regions on the legislative or administrative bodies, be the outcome of discussion or consultation procedures between the state bodies and the regions



concerned or result from consultations between the state bodies and a body representing the autonomous entities. At the same time, they must have the appropriate powers to promote the identity of their members, especially with regard to their language, education and culture.

#### **d) Social, economic and financial aspects**

186. The material and financial resources that enable the autonomous entities effectively to implement these additional powers must also be appropriately taken into account in the delegation document. Several options can be envisaged. One possibility is for the autonomous regions to be given their own resources (which mainly consist of fees, levies and taxes), and they should be able to fix the rates of taxes and regional levies. Another possibility would be for autonomous regions that do not raise their own taxes to have a proportion of the tax revenue that has been collected from the local population transferred to them. This could be done by enabling them, within the limits imposed by the constitution or the law, to add a percentage on to the taxes levied by other public authorities.

187. However, it is important to stress that the European Charter of Local Self-Government affirms the principle of the predominance of a territorial authority's own over transferred resources, especially when it comes to exercising its own functions. These resources could be allocated on the basis of a previous decision or periodical negotiations. In certain circumstances, the autonomous authorities should be granted additional resources either under specific agreements or in the form of government appropriations. In the latter case, it should be noted that the autonomous authorities have greater discretionary powers.

188. With regard to the allocation of economic powers, several approaches can be envisaged. Firstly, the central state might retain all its powers but consult the autonomous authorities before adopting any measure that might impact on the local situation. Secondly, the central state might retain its prerogatives but grant the autonomous authorities the power of initiative and recommendation in the region. A third possibility would be for the autonomous authorities to possess limited territorial powers over the region. Finally, the autonomous authorities might have the right to take specific measures with regard to economic development, within the confines of the general policy defined by the central government.

189. In the area of social affairs, powers are usually granted to autonomous authorities in the fields of public health, social security and public assistance. However, in each sector it is necessary to determine whether the local arrangements are completely autonomous or whether they have to conform to the general principles laid down by the central government.

#### **e) Cultural aspects**

190. When the members of a minority in a particular entity represent a substantial proportion of the population that warrants specific protection, the appropriate measures should be taken to preserve their identity.

191. In the case of personal or cultural autonomy, specific powers must be granted in the areas of religion, education and language. It may also be decided that the regional or minority-language must be used in the elected bodies or their administrations. This language may also be recognised as the official language or second official language, or even as the national language of the region.

#### **f) Respect for human rights**

192. The issue of human rights has an extremely important role to play in the system of autonomous entities. 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 must guarantee the rights of the ethnic groups that are different from the majority group in the region as well as the rights of the members of the majority group in the state. When measures in favour of a national minority are taken to guarantee the setting up of a representative government and the effective participation of that minority, it is important that specific steps are taken to protect the "minority within a minority" so that the members of the majority population or other minorities do not feel threatened by the measures initiated by the autonomous entity. This is a key aspect as the intrastate entity will in many cases possess exclusive legislative powers in certain areas that might affect the minorities living in the territory.

## VIII. Some thoughts on resolving certain current conflicts by introducing the concept of autonomy

193. In the Europe of today, there are several regions that have been plagued by conflicts for many years, especially in the central and eastern European countries. This can partly be explained by the fundamental changes after the collapse of the Soviet Union and Yugoslavia.

194. For example, three independent countries (Armenia, Azerbaijan and Georgia) were reconstituted in the southern Caucasus. In these regions, conflicts erupted in Nagorno-Karabakh, Abkhazia and South Ossetia as well as in the Russian Federation (in the Chechen Republic, in the northern Caucasus). the former Yugoslavia (Kosovo) and Moldova (Transnistria).

195. In spite of the efforts made by the international community, no proper political solution has been found to any of these conflicts, which are a threat to the stability of the entire region and an obstacle to regional co-operation and economic development. The concept of autonomy could provide the inspiration for proposing solutions acceptable to all the parties concerned.

### a) Abkhazia and South Ossetia (Georgia)

196. In Abkhazia, the armed conflict between the Abkhaz separatists and the Georgian authorities erupted in 1992. A ceasefire agreement signed in May 1994 provided for the deployment of a peacekeeping force from the Commonwealth of Independent States (CIS) in the conflict zone and for unarmed observers from the UN (UNOMIG). The negotiations to reach a political settlement held within the framework of the so-called "UN led Geneva peace process" seem to be deadlocked at this point in time. The origin of this conflict is that the separatists consider Abkhazia was illegally incorporated into Georgia by Stalin in 1931, and they now want to exercise their right to self-determination. Abkhazia recently reaffirmed its wish to become independent but the international community has not recognised this initiative.

197. Similarly, in May 2002, the so-called "parliament" of South Ossetia called on the international community to recognise "the independence of the state created by the South Ossetian people on the basis of their right to self-determination". The international community has refused to recognise this act and therefore does not regard South Ossetia as an independent state. In the light of these demands, especially with regard to the exercise of self-

determination, it should be remembered that any use of force must be ruled out and that this right applies to all peoples and not just to minorities as such. In addition, self-determination is not a synonym for secession and can be exercised within a state through autonomy status or similar arrangement. Finally, secession requires the consent of both parties and must, on the side of the separatists, reflect the will of the entire population and not just a single group.

198. In order to restart the peace process and stabilise the region, the authorities of the various parties should not focus on the concept of sovereignty but, rather, examine in what way a division of powers and responsibilities between Abkhazia and the central government and between South Ossetia and the central government could meet the needs and expectations of the respective populations.

#### **b) Kosovo as part of Serbia and Montenegro**

199. The Kosovo issue is extremely difficult to resolve and Kosovo's location in the heart of the Balkans only makes it more complicated. The two regions of Kosovo and Vojvodina enjoyed considerable autonomy until September 1990, when the new constitution of the Republic of Serbia was adopted and resulted in the abolition of their so-called "autonomy status". The 1974 constitution of the Federation of Yugoslavia granted a "large degree of autonomy" to the "autonomous socialist provinces" of Kosovo and Vojvodina. For example, these provinces had their own assembly, an executive council, a constitutional court and a supreme court and the public administration was placed under their supervision.

200. The Parliamentary Assembly of the Council of Europe has commented on this conflict on several occasions. For example, in its Recommendation 1422 (1998), it stated that "the basis for the normalisation of the situation in Kosovo should be full and strict implementation of the United Nations Security Council Resolution 1244". While urging international guarantees preventing any attempts to return to the status quo or to secede in its Recommendation 1384 (1998), it said that the political status of Kosovo had to be "based on a high level of autonomy within the Yugoslav federation (...) including a) the highest possible form of autonomy for Kosovo in the fields of law-making and the executive, the judiciary, public order, the economy, education and culture; b) respect for the rights of Serbs and other minorities living in Kosovo; and c) direct participation of Kosovo representatives in the federal institutions".

201. On this subject, the Venice Commission defined, in Doc. (076/1998 fry), the key areas and the executive and legislative responsibilities to be exercised by the competent bodies in Kosovo. These responsibilities include the organisation of political institutions and procedures of government (constitution, parliament, legal system), local and regional authorities, local and regional elections, the management of the public sector (transport, natural resources), education and cultural affairs (especially the media and relations between the religious communities) and financial issues (taxes and the budget).

202. One way of resolving these tensions is to grant Kosovo special autonomy status. This status, which ought to be provided with international guarantees, would not call into question the territorial integrity and sovereignty of Serbia and Montenegro and would encourage respect for the rights of the minorities in both Serbia and Kosovo. In the light of the new situation with regard to Serbia and Montenegro, it seems possible that such a status could be granted, especially as there are many examples today of special autonomy status that could provide a stimulus for the relevant negotiations.

### **c) Chechnya (Russian Federation)**

203. As far as the conflict in Chechnya is concerned, the present draft constitution of the Chechen Republic proposes new political bases for resolving this issue, which has now lasted for several years.

204. The European Commission for Democracy through Law, to which this matter was referred for opinion<sup>[19]</sup>, made a number of remarks on this draft constitution that seem to me to be important enough to include in this report.

205. The general remark made by the Commission is that this text was not drawn up to meet the particular need to resolve a conflict situation. More particularly, it does not take sufficient account of the specific character of part of the Chechen population and the needs they claim to have and which are at the origin of this conflict. At the same time, this draft constitution does not provide for the federated entities to have specific powers in the fields of education and culture.

#### d) Transnistria (Moldova)

206. The issue of Transnistria is mainly about the constitutional status granted to this region. What can we do to understand this dispute and what solutions can we put forward to resolve it?

207. To begin with, this dispute can be explained by reference to historical, linguistic and geographical factors. Firstly, from the historical point of view the population are still aware that Transnistria was part of the Russian empire well before Russia's annexation of Bessarabia. Secondly, the people of Transnistria share the feeling that they have a different identity (specific language) and reject the principle of being governed by a central power. The geographical situation is also important as many people consider the Dniester to be a natural frontier. The first discussions on granting this region autonomous powers began in 1990.

208. In June 1992, the Moldovan parliament adopted a document containing the "basic principles for a political settlement of the armed conflict and the restoration of peace in the districts in the east of Moldova". This document provided, among other things, for the drafting of a law on a special legal status for these districts in conformity with international demands and the specific historical aspects of the formation of the Transnistrian region. In response, the Transnistrian authorities asked, as a condition for agreeing to a political settlement of the conflict, to be allowed to examine and adopt a document determining the legal status of this region.

209. Under the pressure of governments and international organisations, the Moldovan parliament examined, in January 1996, a new draft law defining "Transnistria as a territorial formation with the structure of an autonomous republic, which includes the localities situated on the left bank of the Dniester, and possesses special status in conformity with the constitution of Moldova and the law in question". In this draft, Transnistria was described as being part of the Republic of Moldova.

210. The Transnistrian authorities rejected this draft as they refuse to recognise the territorial integrity of the Republic of Moldova. They consequently do not want to be governed on the basis of a special status, which, in their opinion, presupposes the imposition of limits to their powers by the central government. Rather, they want Transnistria to be recognised as an independent state and bilateral relations to be established on the basis of mutual understanding. To be more precise, they want it to become an



independent state within a confederation. The Transnistrian authorities have therefore rejected all the proposals that have been made to define the various levels of jurisdiction. These proposals defined the central government's exceptional powers, the powers of the regions with special status, and mixed powers. Such a system of the division of powers, like that employed in Alto-Adige / South Tyrol or Greenland, did not correspond to the degree of autonomy envisaged by the Transnistrian authorities.

## **IX. Conclusion**

211. How can this report contribute to the resolution of these conflicts and how and under what conditions could the criteria conducive to the success of autonomy be applied in these particular cases?

212. Without wishing to appear presumptuous, this report sets out some proposals that are worth considering in some depth. First of all, their assessment must be based on the basic documents on this subject drawn up by the Council of Europe's Congress of Local and Regional Authorities of Europe, such as the European Charter of Local Self-Government and the draft European Charter of Regional Self-Government.

213. Proceeding on the basis of the principle of subsidiarity, these legal texts suggest different bases and guarantees, both for the state and for the sub-state entity, for the development of genuine autonomy.

214. For example, Articles 4 and 6 of the draft European Charter of Regional Self-Government define the powers to be granted to regions (or sub-state entities), Article 9 specifies the arrangements for the participation of the regions in the affairs of the state, Articles 14 and 15 cover regional finances and Article 16 concerns the protection of the territorial boundaries of sub-state entities.

215. To be sure, the Framework Convention for the Protection of National Minorities, the Framework Convention on trans-frontier Co-operation and the European Charter of Regional or Minority Languages can also serve as a basis and as guarantees for the various parties involved in a conflict.

216. For example, it seems that a solution to the Kosovo problem could be achieved by granting the region broad-based autonomy backed by trans-frontier co-operation agreements with the

neighbouring Albanian-speaking communities. At the same time, Part III of the European Charter of Regional or Minority Languages, which deals with promoting the use of a language in education, in dealings with the judicial authorities, the administrative authorities etc, provides a way of reaching an agreement that could strike a balance with the linguistic rights of the Serb minority in Kosovo, as well as those of the minorities in Vojvodina

217. Nevertheless, I remain convinced that most current conflicts can be resolved by granting special status to territories inhabited by cultural minorities. By virtue of this status, territories can be governed by special legislation that takes account of their distinctive historical, geographical, cultural and linguistic characteristics.

218. Granting special status is a means, on the one hand, of preventing cultural diversity in a state from being seen as a threat to the state in which it exists and, on the other hand, avoiding the state being perceived as a threat to every minority in its territory. The existence of these regions that enjoy special territorial autonomy is compatible with the unity of the state and contributes to the preservation of its territorial integrity.

219. As we have seen, the history of the organisation of the state in several countries (Spain, Italy, Finland and France) shows that it is possible, and sometimes indispensable, to provide for differentiated solutions that reflect different degrees of autonomy for regions with a specific cultural character that belong to the same state. This status instituted for a specific part of the territory can take on established forms of state territorial organisation (federalism, regionalism, unitary). The special status granted must respect the integrity and sovereignty of the state and should in principle be provided with a constitutional guarantee.

220. In order to ensure the success of autonomy, the first rule is to consider that each case has its own specific features and to adopt a voluntary and conciliatory approach. No system of human coexistence can function without the various parties entering into a constructive dialogue with peaceful intentions. If a conflict situation, involving the use of armed force, already exists, the autonomy will thus find it harder to stand the test of time.

221. For various reasons, states very often hesitate to grant autonomy status. They are afraid this will be prejudicial to certain state interests and values and lead to secession. They fear that the autonomy granted to an entity may constitute discrimination against



the other inhabitants or provoke the intervention of a foreign country with ethnic or other ties to the inhabitants of the region that is demanding autonomy.

222. Autonomy is not a panacea but it does above all constitute a system based on a compromise between different parties. One of its big advantages is its flexibility: it provides a large number of possibilities, ranging from minimal responsibilities to the grant of enlarged powers – just below independence. A number of governments have resorted to autonomy in order to strike a balance between the principles of state unity and cultural plurality. In certain cases, autonomy functions reasonably well, while in others it does not respond to people's hopes for everyone to live together in peace. With regard to certain factors that enable the success of autonomy to the determined, current studies show that political and constitutional aspects are crucial, although the international dimension remains important, especially with regard to the monitoring of agreements.

223. Not all situations in which the "separatist" claims of minorities predominate necessarily call for the creation of an autonomous entity. Many problems can be resolved in compliance with general rules relating to human rights, such as the ban on all forms of discrimination and the citizens' right to participate in political life.

224. Recently, the Helsinki Declaration<sup>[20]</sup> recognised the possibility of developing basic concepts and common principles for all models of regional autonomy and proposed the creation of a European legal instrument (Article 11) that would take account of the experience of member states. Such a legal instrument should "respect the sovereignty, identity and freedom of states to determine their own internal organisation" and "be broad enough to recognise the wide variety of democratic forms of regional self-government" while "(allowing) the states a degree of choice in order to take account of specific characteristics of their regional self-government system". The Council of Europe should support the creation of such a European legal instrument, which would make it possible to recognise and promote the common principles of regional autonomy while taking account of the variety of experience gained by member states.

225. The creation of such a European legal instrument, which would encourage the promotion of the common principles of regional autonomy, would help European states confronted with internal

conflicts to find constitutional solutions that would enable them to preserve their sovereignty and territorial integrity while respecting the rights of ethnic minorities.

---

## APPENDIX

Doc. 8425 28 May 1999

### Resolution of ethnic conflicts in Council of Europe member states

#### Motion for a resolution

presented by Mr Atkinson and others

---

*Reporting Committee:* Political Affairs Committee

*Reference to Committee:* [Doc. 8425](#), Reference 2404, 21.06.99

*Draft Resolution* adopted by the Committee on 20 May 2003 with 2 abstentions

*Draft Recommendation* adopted by the Committee on 20 May 2003 with 1 vote against and 2 abstentions

*Members of the Committee :* Jakic (Chairman), Rogozin (Vice-Chairman), Feric-Vac (Vice-Chairperson), Spindelegger (Vice-Chairman), Aguiar, Aliyev, de Aristegi Ates, Atkinson, Azzolini, Berceanu, Beres, Bianco (*alternate: Malgieri*), Blaauw, Blankenborg, Cekuolis, Clerfayt, Davern, Dreyfus-Schmidt, Druviete, Durrieu, Frey, Glesener, Goulet (*alternate: Loncle*), Gross, Hedrich, Henry, Hörster, Hovhannisyan, Iwinski, Judd, Karpov, Kautto, Kirilov, Klich, Koçi, Kostenko, van der Linden, Lloyd, Loutfi, Magnusson, Margelov, Martinez-Casan, Medeiros Ferreira, Mercan, Mignon, Muratovic, Naudi Mora, Neguta, Nemcova, Nemeth, Oliynyk, Ouzky, Pangalos, Petrova-Mitevaska, Pourgourides, Prentice, Prisacaru, de Puig, Ragnarsdottir, Ranieri (*alternate: de Zulueta*), Roth, Severin, Severinsen, Tabajdi, Tekelioglu, Tritz, Vakilov, Vella, Volpinari, Voog,

Voulgarakis, Westerberg, Wielowieyski, Wohlwend, *Wurm*, Yarygina, *Zacchera*, Zhvania, Ziuganov.

*N.B. : The names of the members who took part in the meeting are printed in italics*

*Secretariat of the Committee* : Mr Perin, Mr Chevtchenko, Mr Dossow, Ms Entzminger, Ms Alléon.

-----

[1] I would like to thank the authorities and experts who gave me the benefit of their experience in the course of my research, which began in December 1999 and took me to the Åland Islands, Alto-Adige / South Tyrol, the Faeroes, Copenhagen, à Cagliari (Sardinia), the Azores and Madeira (Portugal), Madrid and Barcelona. I apologise in advance for any errors in, or omissions from, this document and would be grateful for any suggestions.

[2] Nordquist Kjell-Åke. *The Second Åland Islands Question*. Mariehamn 2002, Jansson Salminen (ed).

[3] "Autonomy as a Conflict-Solving Mechanism", in Suksi Markku (ed.), *Autonomy, Applications and Implications*, Kluwer Law, Dordrecht, Netherlands, 1998.

[4] "Ruth Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts*, United States Institute of Peace Press, 1997.

[5] Hannum, Hurst and Lillich, R.B., *The concept of autonomy in International law*, 1980.

[6] Local self-government, territorial integrity and protection of minorities, Lausanne 25-27 April 1996, Proceedings of the European Commission for Democracy through Law, contribution by Asbjorn Eide, Director of the Norwegian Institute of Human Rights, Oslo.

[7] I would like to thank Elisabeth Naucler for her help in writing this chapter and for giving me the book Jansson/Salminen (ed), *The Second Åland Islands Question, Autonomy or Independence?*, Mariehamn, 2002.

[8] According to section 7 of the Autonomy Act, the right of domicile in the islands is granted on request to any Finnish citizen who has settled in the province, lived there continuously for at least five years and has a sufficient command of Swedish.

[9] There is a group of German speakers in the province of Bolzano, French speakers in Valle d'Aosta, and Slovenian speakers in the eastern part of Friuli-Venezia Giulia as well as a small group of Ladin speakers in the provinces of Bolzano and Trento.

[10] The Sinhalese make up 74% of the population, the Sri Lankan Tamils 12%, the Indian Tamils 5.5% and the Muslims 8%.

[11] Buddhists 70%, Hindus 15.5 %, Muslims 7.5% and Christians 7.7%.

[12] Markku Suksi, *Mechanisms of Decision-Making in the Creation of States*, 1996.

[13] Opened for signature on 1 November 1995.

[14] Congress of Local and Regional Authorities of Europe: *Federalism, Regionalism, Local Autonomy and Minorities*. 1996

[15] Recommendation 1201 (1993) on an additional protocol on the rights of minorities to the European Convention on Human Rights, Assembly debate on 1 February 1993. See Doc. 6742, report by the Committee on Legal Affairs and Human Rights, rapporteur: Mr Worms, and Doc. 6749, opinion of the Legal Affairs Committee, rapporteur: Mr de Puig.

[16] *Autonomy: Flexible Solutions to Ethnic Conflicts*, United States Institute of Peace Press, 1997.

[17] See Jean-Marie Woehrling, *Droits locaux comme instrument de renforcement de l'autonomie territoriale et de gestion des spécificités sociales et culturelles propres à certains territoires*. CPLRE. CG/GT/CIV (5) 3

[18] Congress of Local and Regional Authorities of Europe, Recommendation 43 (1998) on "territorial autonomy and national minorities".

[19] CDL-AD (2003) 2, Opinion on the draft constitution of the Chechen Republic.

[20] Declaration presented at the 13th session of the Conference of European Ministers Responsible for Local and Regional Government, meeting in Helsinki on 27-28 June 2002.