REGIONE AUTONOMA
TRENTINO-ALTO ADIGE
AUTONOME REGION
TRENTINO-SÜDTIROL

Conference on

ORGANISING COHABITATION

The Trentino-South Tyrol Experience and Prospects for the Balkans

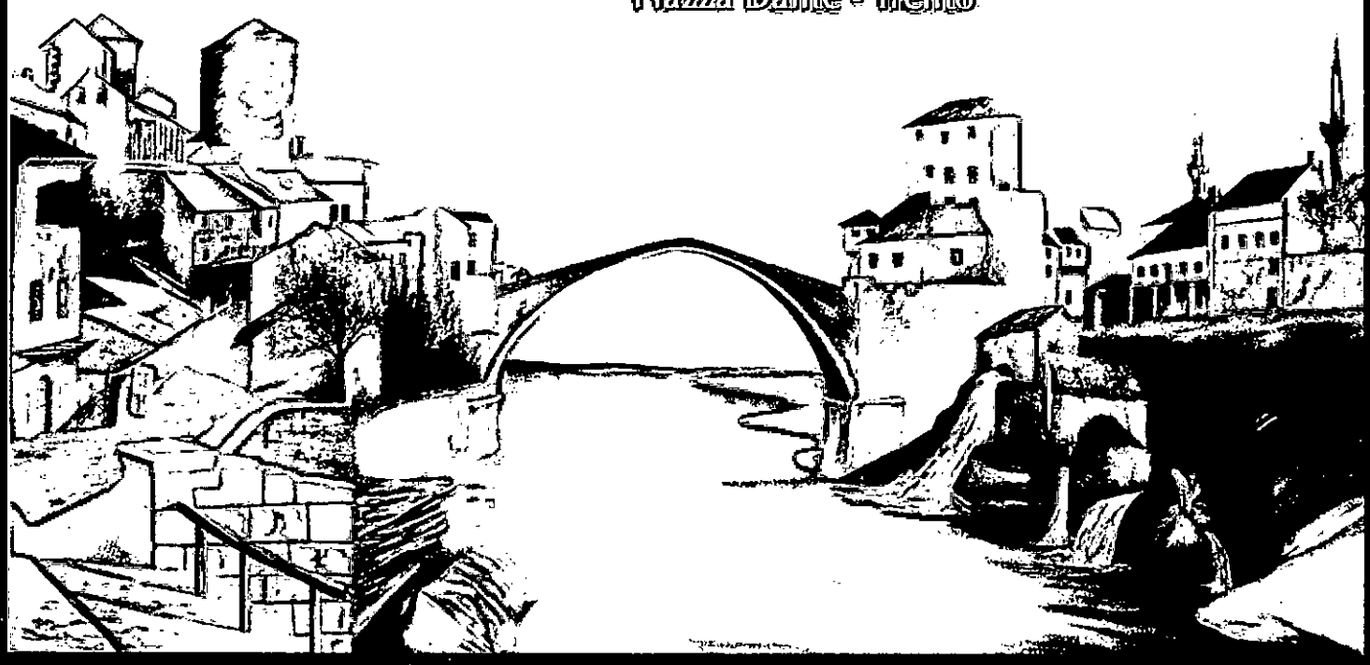
In collaboration with:
European Academy
Bolzano/Bozen
Free University
of Bolzano/Bozen
University of Trento

and with the scientific
cooperation of the
International Affairs
Institute / Rome

ORGANIZZARE LA CONVIVENZA
L'esperienza del Trentino-Alto Adige e le prospettive per i Balcani

DAS ZUSAMMENLEBEN ORGANISIEREN
Erfahrungen in Trentino-Südtirol und Perspektiven für den Balkan

Trento/Trient, 26.-27. January/Gennaio/Jänner 2001
Palazzo della Regione – Sala di Rappresentanza
Piazza Dante - Trento



ORGANISING COHABITATION.
THE TRENTINO-SOUTH TYROL EXPERIENCE
AND PROSPECTS FOR THE BALKANS

Regione autonoma Trentino-Alto Adige
Accademia europea di Bolzano
Libera Università di Bolzano
Università di Trento
Istituto affari internazionali (IAI)
Trento, 26-27/I/2001

a. Programme
b. Ambiti tematici = Terms of reference
1. The protection of minorities between autonomy and self-determination: the cases of the Åland Islands and Kosovo / Markku Suksi
2. Economic sustainability of small areas and international economic support / Alfred Steinherr
3. Cross-border cooperation as indicator for institutional evolution and autonomy : the case of Trentino-South Tyrol / Francesco Palermo
4. Strategies of ethnic conflict resolution: the Trentino-South Tyrol case and the Balkans / Paolo Foradori, Riccardo Scartezzini
5. Social structure, social capital and institutional agreement: the Trentino Alto Adige model / Antonio M. Chiesi
6. Centralism and fiscal federalism / Gisela Färber
7. Sustainable local economic development and the reconstruction of community in the Yugoslav successor states: bringing the local state back in / Milford Bateman
8. Address / Kiro Gligorov
9. Challenges in accomodating diversity : address / Max van der Stoel
10. The Oslo recommendations regarding the linguistic rights of national minorities and explanatory note (1998) / The Foundation on Inter-Ethnic Relations
11. Raccomandazioni di Lund su un'effettiva partecipazione delle minoranze nazionali alla vita pubblica e nota esplicativa (1999) / The Foundation on Inter-Ethnic Relations
12. Autonomy / Yoram Dinstein
13. Italia e Austria per le minoranze dell'Alto Adige-Sudtirol: un modello?, in *ISIG magazine*, a. 9., n. 2-3 (novembre 2000), http://www.isig.it/files/isig_libri_1429_resource_orig.pdf

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organised by
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in collaboration with:
European Academy of Bolzano/Bozen
Free University of Bolzano/Bozen
University of Trento

and with the scientific cooperation of the
International Affairs Institute (IAI), Rome

Scientific Committee:
Prof. Natalino Ronzitti (President)
Prof. Antonio Chiesi
Prof. Bruno Dallago
Dr. Jens Woelk

Working language: English
Simultaneous translation into Italian and German

Dopo la fine della guerra fredda e l'esplosione, in diverse parti del pianeta, di conflitti di natura etnica o religiosa sino ad allora rimasti allo stato virtuale, si è registrata una crescente attenzione verso la Regione Trentino-Alto Adige, dove le soluzioni adottate per organizzare la convivenza tra popolazioni di lingua, cultura e tradizioni diverse hanno consentito di raggiungere risultati unanimemente considerati soddisfacenti. Alla base di questa conferenza internazionale è dunque l'idea che la particolare esperienza maturata in Trentino-Alto Adige possa fornire, anche attraverso uno studio comparato con analoghe sperimentazioni europee, preziosi suggerimenti per la pacificazione di altre entità territoriali, in particolare nell'Europa centro-orientale e nei Balcani, dove il problema delle minoranze e dei conflitti territoriali connessi hanno avuto effetti dirompenti.

Lo status autonomistico del Trentino-Alto Adige potrebbe servire da modello proprio in quanto ha consentito di promuovere i diritti delle minoranze senza sconvolgere le frontiere statali. A rendere ancor più interessante l'esperienza di questa Regione è il fatto che le soluzioni istituzionali adottate si sono evolute nel tempo, affinandosi nel corso dei decenni, ed un'indagine comparata potrebbe essere utilizzabile anche per valutare come tali soluzioni possano oggi essere indirizzate verso forme più avanzate.

La conferenza costituisce l'approdo di specifiche ricerche, volte ad approfondire gli aspetti sociologici, economici, giuridici e culturali che stanno alla base delle tensioni tra i gruppi etnici nei Balcani e che, viceversa, hanno creato le basi per la convivenza in Trentino-Alto Adige ed in altre aree dell'Europa. Essa potrebbe rappresentare una prima manifestazione di un'analoga conferenza da organizzare successivamente nei Balcani.

PROGRAMMA

Venerdì 26 Gennaio

9.30 Indirizzo di benvenuto:
Margherita COGO, Presidente, Regione Trentino-Alto Adige

Discorsi di apertura:
Zdenka MACHNIYKOVA, Consigliere giuridico, Alto Commissariato alle Minoranze Nazionali, OSCE, Vienna
Gianni BUQUICCHIO, Segretario della Commissione di Venezia, Consiglio d'Europa, Strasburgo

10.30 **"Il quadro giuridico"**
Presidenza: Jens WOELK, Accademia Europea di Bolzano/Bozen e Università di Trento

Relatore:
Markku SUKSI, Åbo Akàdemy University
La tutela delle minoranze nazionali tra autonomia ed autodeterminazione

11.00 Pausa-caffè

11.15 Relatore:
Joseph MARKO, Università di Graz e Accademia Europea di Bolzano/Bozen
Il pluralismo etnico: integrazione o separazione

11.45 Commenti:
Nina DOBRKOVIC, Institute for International Politics and Economics, Belgrado
Natalino RONZITTI, Istituto Affari Internazionali (IAI), Roma

12.15 Discussione

13.00 Buffet

14.30 **"La dimensione internazionale dell'autonomia"**
Presidenza: Bruno DALLAGO, Università di Trento

Relatore:
Yoram DINSTEIN, Max Planck Institute for Comparative Public and International Law, Heidelberg e Università Tel Aviv
Le garanzie internazionali dell'autonomia

15.00 Relatore:
Alfred STEINHERR, Rettore, Università di Bolzano/Bozen
La sostenibilità economica di territori di dimensioni ridotte e il sostegno economico internazionale

15.30 Commenti:
Steven R. RATNER, Università del Texas, Austin
Vladimir GLIGOROV, Vienna Institute for International Economic Studies

16.00 Discussione

16.15 Pausa-caffè

16.30 Relatori:
Riccardo SCARTEZZINI, Università di Trento,
Paolo FORADORI, Università di Catania
Le strategie per la risoluzione del conflitto etnico: il caso del Trentino-Alto Adige e dei Balcani

17.00 Relatori:
Francesco PALERMO/Jens WOELK, Accademia Europea di Bolzano e Università di Trento
La cooperazione transfrontaliera quale indice dell'evoluzione istituzionale dell'autonomia

17.30 Commenti:
Mitja ZAGAR, Center for Ethnic Studies, Lubiana
Sergio BARTOLE, Università di Trieste e Membro della Commissione di Venezia, Strasburgo

18.00 Discussione

Sabato 27 Gennaio

9.30 **"La dimensione sociale ed economica delle istituzioni"**
Presidenza: Massimo EGIDI, Rettore, Università di Trento

Relatore:
Antonio CHIESI, Università di Trento
La struttura sociale, il capitale sociale e l'intesa istituzionale: il modello del Trentino-Alto Adige

10.00 Relatore:
Giorgio FODOR, Università di Trento
La politica economica e la configurazione dei mercati: limiti e vantaggi dell'autonomia

10.30 Commenti:
Ettore GRECO, Istituto Affari Internazionali (IAI), Roma
Bruno DALLAGO, Università di Trento

11.00 Discussione

11.15 Pausa-caffè

11.30 Relatore:
Gisela FÄRBER, Deutsche Hochschule für Verwaltungswissenschaften, Speyer
Centralismo e federalismo fiscale

12.00 Relatore:
Milford BATEMAN, Direzione per gli affari fiscali, finanziari e d'impresa, OECD, Parigi
Lo sviluppo economico sostenibile a livello locale e la ricostruzione della comunità negli stati successori della Yugoslavia

12.30 Commenti:
Daniele FRANCO, Direzione finanza pubblica, Banca d'Italia, Roma
Ivo BICANIC, Università di Zagabria

13.00 Discussione

13.15 Buffet

After the end of the cold war and the outbreak, in various parts of the planet, of ethnic or religious conflicts which had remained virtual until then, attention is being increasingly devoted to the Trentino-South Tyrol Region, where the solutions adopted to organise the cohabitation of people with different languages, cultures and traditions have led to results that are unanimously considered satisfactory. As a result, this international conference is based on the idea that the specific Trentino-South Tyrol experience might provide precious suggestions - also by means of a comparative study with similar European cases - for the pacification of territories, in particular in Central and Eastern Europe and in the Balkans, where the problems of minority groups and connected territorial conflicts have had disruptive effects.

The autonomous status of Trentino-South Tyrol might represent a model for the very reason that it has allowed for the promotion of the rights of minority groups without upsetting the state borders. The experience of this region is even more interesting in that the institutional solutions adopted have evolved and been refined over the decades: a comparative analysis might also be used to assess how such solutions can be directed towards more advanced forms today.

This conference will present specific studies thoroughly analysing the sociological, economic, legal and cultural aspects which underlie the tensions among ethnic groups in the Balkans and which have, instead, laid the basis for cohabitation in Trentino-South Tyrol and other areas in Europe. The conference could be followed up by a similar event in the Balkans.

PROGRAMME

Friday, January 26th

9.30 Welcome:
Margherita COGO, President, Autonomous Region of Trentino-South Tyrol

Opening Addresses:
Zdenka MACHNIYKOVA, Senior Legal Advisor, High Commissioner on National Minorities, OSCE, Vienna
Gianni BUQUICCHIO, Secretary of the Venice Commission, Council of Europe, Strasbourg

10.30 **"The Legal Framework"**
Chair: Jens WOELK, European Academy of Bolzano/Bozen and University of Trento

Speaker:
Markku SUKSI, Åbo Akademy University
The Protection of National Minorities between Autonomy and Self-Determination

11.00 Coffee-break

11.15 Speaker:
Joseph MARKO, University of Graz and European Academy of Bolzano/Bozen
Ethnic Pluralism: Integration or Separation

11.45 Discussants:
Nina DOBRKOVIC, Institute for International Politics and Economics, Belgrade
Natalino RONZITTI, International Affairs Institute (IAI), Rome

12.15 Discussion

13.00 Buffet

14.30 Uhr **"Die internationale Dimension der Autonomie"**
Vorsitz: Bruno DALLAGO, Universität Trient

Referat:
Yoram DINSTEIN, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Heidelberg und Universität Tel Aviv
Die internationale Verankerung der Autonomie

15.00 Uhr Referat:
Alfred STEINHERR, Rektor der Universität Bozen
Wirtschaftliche Eigenständigkeit von kleineren Gebieten und internationale wirtschaftliche Unterstützung

15.30 Uhr Beiträge:
Steven R. RATNER, University of Texas, Austin
Vladimir GLIGOROV, Wiener Institut für internationale Wirtschaftsvergleiche

16.00 Uhr Diskussion
16.15 Uhr Kaffeepause

16.30 Uhr Referat:
Riccardo SCARTEZZINI, Universität Trient
Paolo FORADORI, Universität Catania
Strategien für die Lösung ethnischer Konflikte: Der Fall Trentino-Südtirol und die Balkanfrage

17.00 Uhr Referat:
Francesco PALERMO/Jens WOELK, Europäische Akademie Bozen und Universität Trient
Grenzüberschreitende Zusammenarbeit als Merkmal der institutionellen Entwicklung der Autonomie

17.30 Uhr Beiträge:
Mitja ZAGAR, Forschungszentrum für ethnische Fragen, Lubljana
Sergio BARTOLE, Universität Triest und Mitglied der Kommission von Venedig, Straßburg

18.00 Uhr Diskussion

Samstag, den 27. Jänner

9.30 Uhr **"Die soziale und wirtschaftliche Dimension der Institutionen"**
Vorsitz: Massimo EGIDI, Rektor der Universität Trient

Referat:
Antonio CHIESI, Universität Trient
Sozialstruktur, Sozialkapital und Zusammenarbeit zwischen den Institutionen: das Modell Trentino-Südtirol

10.00 Uhr Referat:
Giorgio FODOR, Universität Trient
Wirtschaftspolitik und Gestaltung der Märkte: Grenzen und Vorteile der Autonomie

10.30 Uhr Beiträge:
Ettore GRECO, Institut für internationale Angelegenheiten, Rom
Bruno DALLAGO, Universität Trient

11.00 Uhr Diskussion
11.15 Uhr Kaffeepause

11.30 Uhr Referat:
Gisela FÄRBER, Deutsche Hochschule für Verwaltungswissenschaften, Speyer
Zentralismus und Finanzföderalismus

12.00 Uhr Referat:
Milford BATEMAN, OECD, Abteilung für Steuer-, Finanz- und Unternehmensangelegenheiten, Paris
Zukunftsverträgliche Wirtschaftsentwicklung auf lokaler Ebene und gesellschaftlicher Wiederaufbau in den auf dem Gebiet des ehemaligen Jugoslawiens entstandenen Staaten

Nach dem Ende des Kalten Krieges brachen in verschiedenen Teilen der Welt ethnisch oder religiös motivierte Konflikte aus, die bis dahin nur latent vorhanden waren. Dies rückte die Region Trentino-Südtirol zunehmend in den Blickpunkt des Interesses. Die hier angewandten Lösungen für ein friedliches Zusammenleben der Bevölkerung mit unterschiedlicher Sprache, Kultur und Traditionen werden allgemein als zufriedenstellend angesehen. Die Erfahrungen in Trentino-Südtirol stehen daher im Mittelpunkt dieser internationalen Konferenz. Sie sollen, auch durch den Vergleich mit anderen Beispielen in Europa, wertvolle Anregungen für andere Gebiete geben, insbesondere für Mittel- und Osteuropa und den Balkan, in denen Minderheitenprobleme und territoriale Konflikte verhängnisvolle Auswirkungen hatten.

Die Autonomie Trentino-Südtirols ist beispielhaft, weil es hier gelang, die Rechte von Minderheiten zu garantieren und zu festigen, ohne staatliche Grenzen zu verändern. Besonders interessant sind die hier gemachten Erfahrungen aber auch wegen ihrer inzwischen jahrzehntelangen institutionellen Entwicklung. Der Vergleich mit anderen Regionen kann so auch helfen festzustellen, ob ein weiterer Ausbau dieser Lösungen möglich ist.

Die Tagung stellt die Ergebnisse spezieller Forschungsarbeiten vor, welche die soziologischen, rechtlichen, wirtschaftlichen und kulturellen Faktoren zu ergründen suchen, die auf dem Balkan für die Spannungen zwischen ethnischen Gruppen verantwortlich sind, aber in Trentino-Südtirol und in anderen Teilen Europas ein friedliches Zusammenleben ermöglichen. Eine weitere Tagung ist geplant; diese soll auf dem Balkan stattfinden.

PROGRAMM

Freitag, den 26. Jänner

9.30 Uhr Grußwort:
Margherita COGO, Präsidentin der Autonomen Region Trentino-Südtirol

Eröffnungsansprachen:
Zdenka MACHNIYKOVA, Rechtsberaterin beim Hochkommissariat der OSZE für nationale Minderheiten, Wien
Gianni BUQUICCHIO, Sekretär der Kommission von Venedig, Europarat, Straßburg

10.30 Uhr **"Der rechtliche Rahmen"**
Vorsitz: Jens WOELK, Europäische Akademie Bozen und Universität Trient

Referat:
Markku SUKSI, Åbo Akademy University
Der Schutz der nationalen Minderheiten zwischen Autonomie und Selbstbestimmung

11.00 Uhr Kaffeepause

11.15 Uhr Referat:
Joseph MARKO, Universität Graz und Europäische Akademie Bozen
Ethnischer Pluralismus: Integration oder Trennung

11.45 Uhr Beiträge:
Nina DOBRKOVIC, Institut für internationale Politik und Wirtschaft, Belgrad
Natalino RONZITTI, Institut für internationale Angelegenheiten, Rom

12.15 Uhr Diskussion

13.00 Uhr Buffet

14.30 **"The International Dimension of Autonomy"**
Chair: Bruno DALLAGO, University of Trento

Speaker:
Yoram DINSTEIN, Max Planck Institute for Comparative Public and International Law, Heidelberg and University of Tel Aviv
The International Guarantees of Autonomy

15.00 Speaker:
Alfred STEINHERR, Chancellor, University of Bolzano/Bozen
Economic Sustainability of Small Areas and International Economic Support

15.30 Discussants:
Steven R. RATNER, University of Texas, Austin
Vladimir GLIGOROV, Vienna Institute for International Economic Studies

16.00 Discussion

16.15 Coffee-break

16.30 Speakers:
Riccardo SCARTEZZINI, University of Trento
Paolo FORADORI, University of Catania
Strategies of Ethnic Conflict Resolution: The Trentino-South Tyrol Case and the Balkans

17.00 Speakers:
Francesco PALERMO/Jens WOELK, European Academy of Bolzano/Bozen and University of Trento
Cross-Border Cooperation as Indicator for Institutional Evolution of Autonomy

17.30 Discussants:
Mitja ŽAGAR, Center for Ethnic Studies, Ljubljana
Sergio BARTOLE, University of Trieste and Member of the Venice Commission, Strasbourg

18.00 Discussion

Saturday, January 27th

9.30 **"Social and Economic Dimension of Institutions"**
Chair: Massimo EGIDI, Chancellor, University of Trento

Speaker:
Antonio CHIESI, University of Trento
Social Structure, Social Capital and Institutional Agreement: The Trentino-South Tyrol Model

10.00 Speaker:
Giorgio FODOR, University of Trento
Economic Policy and Markets Configuration: Limits and Advantages of Autonomy

10.30 *Discussants:*
Ettore GRECO, International Affairs Institute (IAI), Rome
Bruno DALLAGO, University of Trento

11.00 *Discussion*
11.15 *Coffee-break*

11.30 *Speaker:*
Gisela FÄRBER, Deutsche Hochschule für Verwaltungswissenschaften, Speyer
Centralism and Fiscal Federalism

12.00 *Speaker:*
Milford BATEMAN, Directorate for Fiscal, Financial and Enterprise Affairs, OECD, Paris
Sustainable Local Economic Development and the Reconstruction of Community in the Yugoslav Successor States: Bringing the Local State back in

12.30 *Discussants:*
Daniele FRANCO, Directorate of Public Finances, Bank of Italy, Rome
Ivo BICANIC, University of Zagreb
13.00 *Discussion*
13.15 *Buffet*

15.00–18.00 **ROUND TABLE**

Chair: **Gianni BONVICINI,** *Director, IAI, Rome*
Rapporteur: **Natalino RONZITTI,** *Scientific Advisor, IAI, Rome*

Participants:
Umberto RANIERI, Undersecretary of State, Ministry of Foreign Affairs, Rome
Renzo DAVIDDI, Directorate General Economic and Financial Affairs, European Commission, Brussels
Lorenzo DELLAI, President, Autonomous Province of Trento
Luis DURNWALDER, President, Autonomous Province of Bolzano/Bozen
Sergio FABBRINI, Professor of Political Science, University of Trento
Kiro GLIGOROV, Former President of Macedonia, Skopje
Guido LENZI, Ambassador of Italy, Permanent Mission of Italy to the OSCE, Vienna
Rasim LJAJIC, Minister for National and Ethnic Groups, Belgrade
Günther PALLAVER, Political Science Institute, University of Innsbruck
Furio RADIN, Member of the Croatian Parliament, Zagreb
Giuseppe ZAMPAGLIONE, Resident Representative, World Bank Liaison Office, Pristina (requested)

Conclusion: **Margherita COGO**, *President, Autonomous Region of Trentino-South Tyrol*

organizzato da
Regione Autonoma del Trentino-Alto Adige

in collaborazione con:
Accademia Europea di Bolzano
Libera Università di Bolzano
Università degli studi di Trento

e con la cooperazione scientifica
dell'Istituto Affari Internazionali (IAI), Roma

Comitato scientifico:
Prof. Natalino Ronzitti (Presidente)
Prof. Antonio Chiesi
Prof. Bruno Dallago
Dr. Jens Woelk

Lingua ufficiale del convegno: inglese
traduzione simultanea: italiano-tedesco

15.00–18.00 **TAVOLA ROTONDA**

Presidenza: **Gianni BONVICINI**, Direttore, IAI, Roma
Rapporteur: **Natalino RONZITTI**, Consigliere scientifico, IAI, Roma

Partecipanti:
Umberto RANIERI, Sottosegretario di Stato, Ministero Affari Esteri, Roma
Renzo DAVIDDI, Direzione Generale per l'Economia e gli Affari Finanziari, Commissione Europea, Bruxelles
Lorenzo DELLAI, Presidente, Provincia Autonoma di Trento
Luis DURNWALDER, Presidente, Provincia Autonoma di Bolzano
Sergio FABBRINI, Docente di Scienza della Politica, Università di Trento
Kiro GLIGOROV, Ex Presidente della Macedonia, Skopje
Guido LENZI, Ambasciatore, Rappresentanza Italiana presso l'OSCE, Vienna
Rasim LJAJIC, Ministro per le minoranze nazionali ed etniche, Belgrado
Günther PALLAVER, Istituto di Scienze Politiche, Università di Innsbruck
Furio RADIN, Membro del Parlamento Croato, Zagabria
Giuseppe ZAMPAGLIONE, Rappresentanza della Banca Mondiale, Pristina (da confermare)

Conclusioni: **Margherita COGO**, Presidente, Regione Autonoma Trentino-Alto Adige

12.30 Uhr Beiträge:
Daniele FRANCO, Italienische Zentralbank, Direktor der Abteilung Öffentliche Finanzen, Rom
Ivo BICANIC, Universität Zagreb

13.00 Uhr Diskussion

13.15 Uhr Buffet

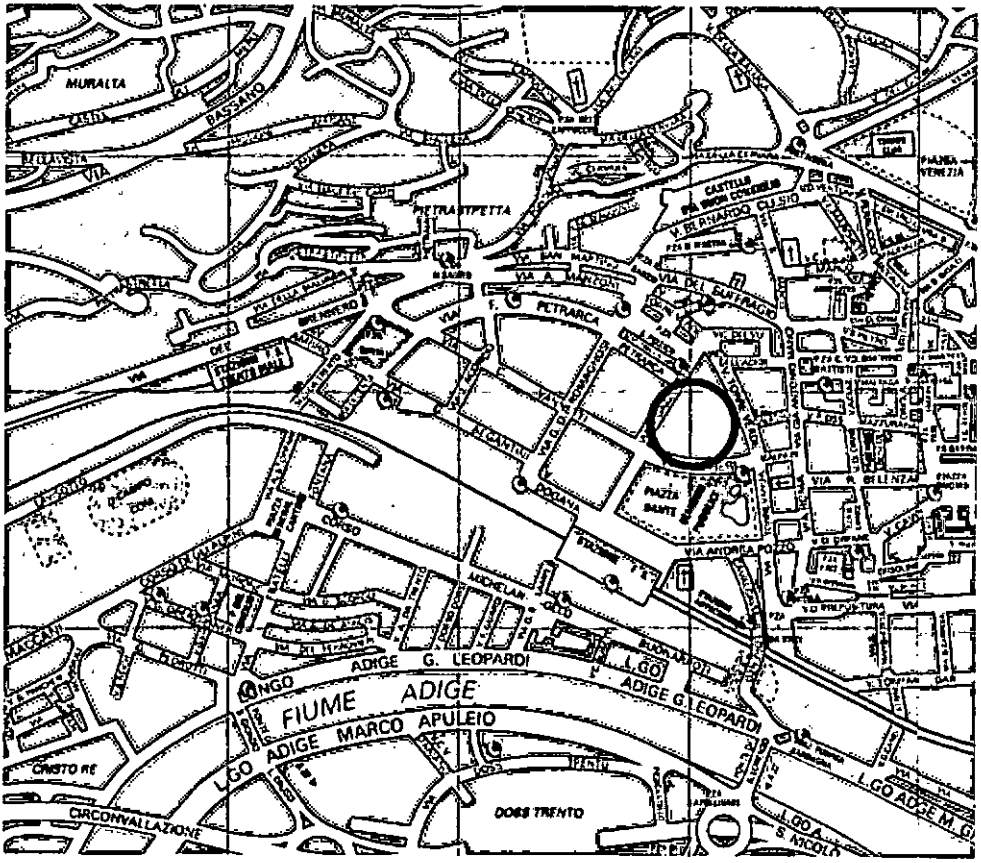
15.00–18.00 Uhr **PODIUMSDISKUSSION**

Vorsitz: **Gianni BONVICINI**, Direktor des Instituts für internationale Angelegenheiten, Rom

Referent: **Natalino RONZITTI**, wissenschaftlicher Berater, IAI, Rom

Teilnehmer:
Umberto RANIERI, Referent des Außenministers, Rom
Renzo DAVIDDI, Generaldirektion für Wirtschaft und Finanzangelegenheiten, Europäische Kommission, Brüssel
Lorenzo DELLAI, Landeshauptmann des Trentino
Luis DURNWALDER, Landeshauptmann von Südtirol
Sergio FABBRINI, Dozent für Politikwissenschaften, Universität Trient
Kiro GLIGOROV, ehm. Präsident von Makedonien, Skopije
Guido LENZI, Botschafter, Italienische Vertretung bei der OSZE, Wien
Rasim LJAJIC, Minister für nationale und ethnische Minderheiten, Belgrad
Günther PALLAVER, Institut für Politikwissenschaften, Universität Innsbruck
Furio RADIN, Abgeordneter des kroatischen Parlaments, Zagreb
Giuseppe ZAMPAGLIONE, Vertretung der Weltbank, Pristina (noch zu bestätigen)

Schlußbemerkungen: **Margherita COGO**, Präsidentin der Region Trentino-Südtirol



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Tel.: +39.0461.201257 - Telefax: +39.0461.201.025
e_mail: pubblrel@regione.taa.it
www.regione.taa.it

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PROGRAMME

Friday, January 26th

9.30 Welcome:
Margherita COGO, President, Autonomous Region of Trentino-South Tyrol

Opening Addresses:
Zdenka MACHNIYKOVA, Senior Legal Advisor, High Commissioner on National Minorities, OSCE, Vienna
Sergio BARTOLE, University of Trieste and Member of the Venice Commission, Strasbourg
Stefano PONTECORVO, Director Table III, Stability Pact, Bruxelles

10.30 **"The Legal Framework"**
Chair: Jens WOELK, European Academy of Bolzano/Bozen and University of Trento

Speaker:
Markku SUKSI, Åbo Akademy University
The Protection of National Minorities between Autonomy and Self-Determination

11.00 Coffee-break

11.15 Speaker:
Dragolyub KAVRAN, ECPD - Belgrade
Ethnic Pluralism: Integration or Separation

11.45 Discussants:
Nina DOBRKOVIC, Institute for International Politics and Economics, Belgrade
Natalino RONZITTI, International Affairs Institute (IAI), Rome

12.15 Discussion

13.00 Buffet

14.30 **"The International Dimension of Autonomy"**
Chair: Bruno DALLAGO, University of Trento

Speaker:
Yoram DINSTEIN, Max Planck Institute for Comparative Public and International Law, Heidelberg and University of Tel Aviv
The International Guarantees of Autonomy

15.00 Speaker:
Alfred STEINHERR, Chancellor, University of Bolzano/Bozen
Economic Sustainability of Small Areas and International Economic Support

15.30 Discussants:
Steven R. RATNER, University of Texas, Austin
Vladimir GLIGOROV, Vienna Institute for International Economic Studies

16.00 Discussion

16.15 Coffee-break

16.30 Speakers:
Francesco PALERMO/Jens WOELK, European Academy of Bolzano/Bozen and University of Trento
Cross-Border Cooperation as Indicator for Institutional Evolution of Autonomy

17.00 Speakers:
Ettore GRECO, International Affairs Institute (IAI), Rome
Strategies of Ethnic Conflict Resolution: The Trentino-South Tyrol Case and the Balkans (Riccardo SCARTEZZINI, University of Trento / Paolo FORADORI, University of Catania)
Rastimir NEDELJKOVIC, ECPD, Belgrade

17.30 Discussants:
Mitja ZAGAR, Center for Ethnic Studies, Lubljana
Sergio BARTOLE, University of Trieste and Member of the Venice Commission, Strasbourg

18.00 Discussion

Saturday, January 27th

9.30 **"Social and Economic Dimension of Institutions"**
Chair: Massimo EGIDI, Chancellor, University of Trento

Speaker:
Antonio CHIESI, University of Trento
Social Structure, Social Capital and Institutional Agreement: The Trentino-South Tyrol Model

10.00 Speaker:
Giorgio FODOR, University of Trento
Economic Policy and Markets Configuration: Limits and Advantages of Autonomy

10.30 *Discussants:*
Jovan TEOKAREVIC, Institute for European Studies, Belgrade
Bruno DALLAGO, University of Trento

11.00 *Discussion*
11.15 *Coffee-break*

11.30 *Speaker:*
Gisela FÄRBER, Deutsche Hochschule für Verwaltungswissenschaften, Speyer
Centralism and Fiscal Federalism

12.00 *Speaker:*
Milford BATEMAN, Directorate for Fiscal, Financial and Enterprise Affairs, OECD, Paris
Sustainable Local Economic Development and the Reconstruction of Community in the Yugoslav Successor States: Bringing the Local State back in

12.30 *Discussants:*
Daniele FRANCO, Directorate of Public Finances, Bank of Italy, Rome
Ivo BICANIC, University of Zagreb

13.00 *Discussion*

13.15 *Buffet*

15.00–18.00 **ROUND TABLE**

Chair: **Gianni BONVICINI,** *Director, IAI, Rome*
Rapporteur: **Natalino RONZITTI,** *Scientific Advisor, IAI, Rome*

Participants:
Umberto RANIERI, Undersecretary of State, Ministry of Foreign Affairs, Rome
Renzo DAVIDDI, Directorate General Economic and Financial Affairs, European Commission, Brussels
Lorenzo DELLAI, President, Autonomous Province of Trento
Luis DURNWALDER, President, Autonomous Province of Bolzano/Bozen
Sergio FABBRINI, Professor of Political Science, University of Trento
Kiro GLIGOROV, Former President of Macedonia, Skopje
Rasim LJAJIC, Minister for National and Ethnic Groups, Belgrade
Günther PALLAVER, Political Science Institute, University of Innsbruck
Furio RADIN, Member of the Croatian Parliament, Zagreb

Conclusion: **Margherita COGO**, *President, Autonomous Region of Trentino-South Tyrol*

(b)

Organizzare la convivenza.

L'esperienza del Trentino Alto Adige e le prospettive per i Balcani"
Trento, 26 – 27 gennaio 2001

AMBITI TEMATICI

- **MARKKU SUKSI**

"La tutela delle minoranze nazionali tra autonomia ed autodeterminazione"

Questo intervento si concentrerà sugli indirizzi politici adottati basandosi sia su esempi di tutela delle minoranze europee ed extra-europee che sui diritti collettivi ed umani delle minoranze. L'analisi considererà non solo l'autonomia ma anche rivendicazioni di autodeterminazione interna ed esterna, cercando di determinare se vi sia un vero e proprio conflitto tra autonomia ed autodeterminazione e se le istituzioni dell'autonomia possano essere valide anche per l'autodeterminazione.

- **JOSEPH MARKO**

"Il pluralismo etnico: integrazione o separazione"

Vi sono due concetti opposti di stato nazionale, il modello francese di indifferenza etnica basato sulla *citoyenneté* ed il concetto di affiliazione etnica proprio dell'Europa centro-orientale.

Il modello "francese" della nazione-stato si basa da una parte sulla nozione di sovranità popolare come principio normativo per l'organizzazione democratica dello stato e dall'altra sulla nozione liberale di eguaglianza individuale dinanzi alla legge indipendentemente dalla razza, lingua, sesso ecc..

Il modello opposto dello stato-nazione caratteristico dell'Europa centro-orientale si basa sull'idea di un popolo che disponga di un suo proprio stato grazie alla formula dell'autodeterminazione. La sua funzione politica non è l'organizzazione democratica dello stato, ma l'unificazione politica per la formazione dello stato.

La relazione si occuperà di queste due idee contrapposte dello stato nazionale che sono uno dei maggiori ostacoli alla formazione di un'identità dell'Unione europea. Al livello regionale è possibile osservare da un lato esempi estremamente negativi quali la Bosnia ed il Kosovo e dall'altra l'Alto Adige quale modello positivo di risoluzione dei conflitti. Ecco che l'integrazione dei Balcani costituisce un momento cardine nella contrapposizione tra omogeneità etnica e diversità multiculturale.

- **ALFRED STEINHERR**

"La sostenibilità economica di territori di dimensioni ridotte e il sostegno economico internazionale"

L'autonomia/L'indipendenza di territori di dimensioni ridotte difficilmente è sostenibile dal punto di vista economico se si basa esclusivamente su risorse locali. Poiché soluzioni quali l'autonomia/l'indipendenza possono essere importanti per affrontare problemi politici quali i conflitti etnici, il sostegno economico (e politico) internazionale può essere una soluzione efficace ed un'alternativa all'intervento militare.

Questa relazione si occuperà delle forme che il sostegno internazionale dovrebbe assumere per essere efficace, favorendo energie locali ed evitando di produrre dipendenza economica e politica.

- **RICCARDO SCARTEZZINI**

"La geopolitica e la risoluzione del conflitto civile: il caso del Trentino-Alto Adige"

Questa relazione considererà il modo in cui è possibile affrontare ed eventualmente risolvere conflitti civili e politici attraverso la progressiva concessione di autonomia amministrativa e politica.

Nella prima parte la relazione esaminerà la letteratura sui confitti civili e il loro superamento attraverso le strategie contrapposte di separazione/segregazione e autonomia/indipendenza. Si passerà poi ad analizzare la questione della rivalità di confine ed i nuovi concetti chiave del regionalismo etnico e della sicurezza transnazionale.

Quindi si esaminerà nel dettaglio il caso del Trentino-Alto Adige quale valido esempio di risoluzione dei conflitti. Dopo un'attenta analisi delle peculiarità storiche e geopolitiche nel caso specifico, la relazione si occuperà della possibile "esportabilità" del modello in altre aree di crisi.

- **YORAM DINSTEIN**

"Le garanzie internazionali dell'autonomia"

Questa relazione si concentrerà in particolare sulla garanzia internazionale dell'autonomia, in quanto i contenuti dell'autonomia verranno trattati in un altro intervento. Si considererà qualunque tipo di garanzia, quali trattati, risoluzioni del consiglio di sicurezza dell'ONU ed altri strumenti di legge "morbidi". Si potranno prendere in considerazione anche le Nazioni Unite, la NATO, la OSCE ed altre organizzazioni. Di conseguenza l'orientamento della relazione dovrà essere non solo *de lege lata* ma anche *de lege ferenda*.

- **ANTONIO CHIESI**

„La struttura sociale, il capitale sociale e l'intesa istituzionale: il modello del Trentino-Alto Adige"

L'intervento si concentrerà su due importanti fattori storici che hanno favorito un processo combinato di sviluppo economico e politico nella regione Trentino-Alto Adige e mostrerà inoltre come per popolazioni di confine con distinte identità etniche la soluzione dell'autonomia locale abbia avuto successo incentivando la coabitazione e la crescita economica.

Tali fattori sono:

a) una struttura sociale che ha progressivamente ridotto le disuguaglianze economiche durante il periodo postbellico attraverso l'istituzione di un sistema di *welfare* a livello locale che ha spesso anticipato e integrato i principali obiettivi del *welfare state* a livello centrale;
b) il ruolo svolto dal capitale sociale (definito sia in termini di norme, regole comunitarie e cultura, sia in termini di rete di relazioni interpersonali nella vita quotidiana e nelle attività economiche) garantendo una coesione del sistema a livello macro e la cooperazione a livello micro.

Sebbene il concetto di capitale sociale sia ancora oggetto di discussione teorica nelle scienze sociali, esso si è dimostrato utile per spiegare il rapporto tra i prerequisiti sociali e culturali dello sviluppo economico. Recenti ricerche comparative su regioni italiane altamente sviluppate o meno sviluppate hanno evidenziato che il capitale sociale non può essere considerato un fattore a senso unico in grado di garantire la crescita economica in ogni caso. Al contrario, il suo rapporto con la crescita è più complesso. Mentre a livello macro il capitale sociale appare effettivamente correlato con uno sviluppo economico a lungo termine e si configura come un bene pubblico, a livello micro il capitale sociale può innescare sia circoli virtuosi di crescita – come evidenziato negli studi sulle zone del Nordest italiano – sia circoli viziosi di particolarismo, come risulta da alcuni studi sociali sull'Italia meridionale, dove il capitale sociale si configura come un bene proprio di una determinata cerchia ed è correlato a un meccanismo di chiusura sociale.
La discussione riguarderà quindi le condizioni sociali e politiche che possono favorire la formazione di capitale sociale, soprattutto a livello micro, mentre la formazione di capitale sociale a livello macro è più facilmente legata a un ambiente istituzionale favorevole.

- **GIORGIO FODOR**

"La politica economica e la configurazione dei mercati: limiti e vantaggi dell'autonomia"

L'autonomia trasferisce parte delle competenze politiche alle autorità locali. In tal modo si favorisce l'efficienza e l'efficacia degli strumenti politici, come mostra ad es. l'approccio della sussidiarietà. Tuttavia in un economia in via di globalizzazione le autorità locali possono essere troppo deboli e i loro strumenti politici troppo limitati per conseguire in maniera efficiente ed efficace obiettivi locali. Ciò può rendere necessario un accurato coordinamento tra i vari attori della politica locale e tra questi e il governo centrale. L'intervento si propone di individuare i fattori esterni che influenzano le politiche locali, la migliore configurazione attualmente possibile in un mondo che va globalizzandosi e le soluzioni per evitare conseguenze sgradite.

- **MILFORD BATEMAN**

"Il finanziamento interno e il trasferimento di risorse finanziarie e umane"

La disponibilità di risorse finanziarie e umane supplementari è la chiave decisiva perché qualsiasi tipo di autonomia e indipendenza risulti sostenibile. Questo genere di soluzioni sono dispendiose e richiedono capacità nuove (per la società e l'economia locale), poiché comportano l'istituzione di nuove strutture (dai governi all'infrastruttura). Ma il nuovo assetto (autonomia o indipendenza) può produrre un netto incremento delle risorse interne disponibili dovuto a maggiori incentivi o al cessare del trasferimento di risorse finanziarie e umane verso altre regioni. In tal caso il finanziamento interno può essere sufficiente per coprire tali costi aggiuntivi. In altri casi sono necessarie risorse esterne, almeno nella prima fase di sviluppo del nuovo assetto. L'intervento si concentrerà sui processi interni, illustrando quali sono le condizioni per il finanziamento interno, come tale finanziamento può essere favorito, quali sono le conseguenze della ridistribuzione interna delle risorse finanziarie e umane derivante dall'autonomia/indipendenza e in che modo un appoggio esterno possa essere utile per sostenere e regolare i processi interni. Sarà benvenuto l'apporto di particolari esperienze con valore illustrativo.

- **GISELA FAERBER**

"Centralismo e federalismo fiscale"

Nell'autonomia è fondamentale considerare in che modo vengono utilizzate le entrate fiscali raccolte su un territorio, se queste rimangano sul territorio e siano gestite direttamente dalle autorità locali o se siano prima convogliate verso il centro e quindi ridistribuite o investite a livello locale. Questo è di solito un aspetto estremamente delicato nelle regioni in cui sono presenti minoranze, e la soluzione data a tale questione ha grande influenza sulla stabilità economica, sociale e politica.

L'intervento intende passare in rassegna le possibili soluzioni del problema – tra centralismo e federalismo fiscale – con i rispettivi vantaggi e svantaggi, e le condizioni da cui dipendono la praticabilità e la sostenibilità delle singole soluzioni.

- **FRANCESCO PALERMO/JENS WOELK**

"La cooperazione transfrontaliera quale indice dell'evoluzione istituzionale dell'autonomia"

Nell'ultimo decennio si sono registrati due eventi di grande rilevanza per l'autonomia della Regione Trentino-Alto Adige: la dichiarazione formale di risoluzione del conflitto tra Austria e Italia (1992) e l'entrata dell'Austria nell'Unione Europea (1995) con la conseguente scomparsa delle frontiere. I recenti sviluppi e cambiamenti istituzionali sembrano confermare l'inizio di una nuova, terza fase nell'evoluzione dell'autonomia dell'Alto Adige, che potrebbe anche portare a una riforma del vigente statuto di autonomia. Nell'intervento, dopo un'analisi delle principali linee di tendenza e dei principali cambiamenti, sarà affrontata in particolare la cooperazione transfrontaliera come un fenomeno che sembra offrire nuovi spazi di manovra per la politica e l'economia così come per l'evoluzione della struttura istituzionale del sistema autonomistico.

(b)

"Organizzare la convivenza. L'esperienza del Trentino Alto Adige e le prospettive per i Balcani" - Trento, 26-27 Gennaio 2001

TERMS OF REFERENCE

- **MARKKU SUKSI**

"The protection of national minorities between autonomy and self-determination"

This paper should be a policy-oriented paper, focused on both european and extra-european examples of minority protection and on minorities collective and human rights. The analysis will take into account not only autonomy but also claims to internal and external self-determination, trying to determine if there is a real conflict between authonomy and self-determination and if the institutions of the autonomy could fit also for self-determination.

- **JOSEPH MARKO**

"Ethnic pluralism: integration or separation"

There are two opposing national-state-concepts, the French model of ethnic indifference based on citoyenneté and the East-Central-European concept of ethnic affiliation.
The "French" model of a state-nation is based on the notion of popular sovereignty as a normative principle for democratic state organization on the one hand, and the liberal notion of individual equality before the law regardless of race, language, sex, etc. on the other.
The opposite East/Central European model of the nation-state is based on the idea of one people in possession of its own state under the formula of self-determination. Its political function is not democratic state organization, but political unification for state-formation.
The paper deals with the opposing national-state-concepts, which are a major obstacle for the formation of a European Union identity. On the level of regions there are worst case scenarios such as Bosnia and Kosovo on the one hand, and South Tyrol as a model for successful conflict-resolution on the other. Thus, the integration of the Balkans is a test-case at the cross-roads of ethnic homogenity versus multicultural diversity.

- **ALFRED STEINHERR**

"Economic sustainability of small areas and international economic support"

The autonomy/independence of small areas is hardly economically sustainable if only based on local resources. Since such arrangements as autonomy/independence may be important to solve political problems such as ethnic conflicts, international economic (and political) support may be an efficient solution and an alternative to military involvement.
The paper should deal with the forms international support should take in order to be effective, foster local energies and avoid to produce economic and political dependence.

- **RICCARDO SCARTEZZINI**

"Geopolitics and Civil Conflict Resolution: the Case of Trentino Alto Adige"

This paper will focus on the issue of how civil and ethnic conflictuality can be addressed and possibly solved by means of progressive concession of administrative and political autonomy.
In its first part, the paper will review the literature on civil conflicts and their overcoming through the opposing strategies of separation/segregation *versus* autonomy/independence. The issue of border-line rivalry will be also examined as well as the new key concepts of ethnic-regionalism and transnational security.
The case of Trentino Alto Adige as a successful example of conflict resolution will be then analysed in detail. After a careful consideration of the historical and geopolitical peculiarities of this specific case, the paper will look at the possible "exportability" of this successful example into other areas of crises.

- **YORAM DINSTEIN**

"The international guarantees of autonomy"

This paper should particularly focus on the international guarantee of autonomy, since the content of autonomy will be dealt with in another paper. It will be taken into account any kind of guarantee, such as treaties, UN Security Council resolutions and other instruments of soft law. Also UN, NATO, OSCE and other organizations could be explored. So, the paper should be not only *de lege lata* but also *de lege ferenda* oriented.

- **ANTONIO CHIESI**

"Social Structure, Social Capital, and Institutional Agreement: the Trentino Alto Adige Model"

The paper will focus on two important historical factors that have promoted a combined process of economic and political development of Trentino Alto Adige region, and how the solution of local autonomy for border populations with distinct ethnic identities has been successful in promoting both cohabitation and economic growth.

These factors consist of:

a) a social structure which has progressively reduced economic inequalities during the post war period through the institution of a welfare system at local level, that has often anticipated and completed the main purposes of the welfare state at central level;
b) the role played by social capital (defined both in terms of norms, community rules and culture, and in terms of network of interpersonal relations in everyday life and economic activities) granting systemic trust at macro level and co-operation at micro level.

Although the concept of social capital is still a matter of theoretical debate in the social sciences, it has been proved useful in explaining the relation between social and cultural prerequisites of economic development. Recent comparative research on highly developed and less developed regions in Italy have stressed the fact that social capital cannot be considered as a one way factor that can grant economic growth in any case. On the contrary its relation with growth is more complex. While social capital at macro level seems in fact related to long term economic development and takes the form of a public good, social capital at micro level can both draw to virtuous circles of growth – as evidenced in the studies on area districts in north-eastern Italy – and to vicious circles of particularism, as evidenced in some community studies of southern Italy, where social capital takes the form of a club good and is related to mechanisms of social closure.

The discussion will concern also the social and political conditions that can foster the formation of social capital, especially at micro level, while the formation of social capital at macro level is preferably related to a favourable institutional environment.

- **GIORGIO FODOR**

"Economic policy and markets configuration: limits and advantages of autonomy"

Autonomy reallocates part of policy province to local authorities. This way foster efficiency and effectiveness of policy instruments – as, e.g., is envisaged by

subsidiarity approach. However, in a globalising economy local authorities may be too weak and their policy instruments too limited to pursue efficiently and effectively local goals. This may require careful coordination among local policy makers and between these and central government. The paper should research the external factors that influence local policies, the latter best configuration in a globalising world and solutions to avoid cumbersome outcomes.

- **MILFORD BATEMAN**

"Domestic financing and transfer of financial and human resources"

Availability of additional financial and human resources is the crucial key of sustainability of any kind of autonomy and independence. Such kinds of arrangements are costly and require new(for the local society and economy) capabilities, since they entail setting up new structures (from governments to infrastructure). However, the new arrangement (autonomy or independence) may produce a net increase of available domestic resources due to stronger incentives or the stop to transfer of financial and human resources to other regions. If so, domestic financing may be sufficient to cover those additional costs. In other cases, external resources are necessary – at least in the first development period of the new arrangement. The paper should concentrate on domestic processes and explain what are the conditions for domestic financing, how this financing can be fostered, what is the implication of domestic reallocation of financial and human resources deriving from autonomy/independence and how external support can be of use to support and give order to domestic processes. The use of particular experiences as an illustrative device is welcome.

- **GISELA FAERBER**

"Centralism and fiscal federalism"

One crucial question of the autonomy is how fiscal revenue that is collected on a territory is utilised, whether it is left on the territory and is directly managed by local authorities or it is first centralised and than redistributed or invested locally. This is usually a highly sensitive question in regions where minorities live and the solution that is given to this question has much influence on economic, social and political stability.

The paper should review the solutions that can be given to this problem - between centralism and fiscal federalism - their advantages and drawbacks and the conditions upon which the viability and sustainability of each solution depend.

- **FRANCESCO PALERMO/JENS WOELK**

"Cross-border cooperation as indicator for institutional evolution of autonomy"

The last decade is marked by two major events for the autonomy of the Region Trentino-South Tyrol: the formal declaration of conflict-settlement between Austria and Italy (1992) and the accession of Austria to the European Union (1995) and the subsequent disappearance of the borders. Recent institutional developments and changes appear to confirm the beginning of a new, third phase in the evolution of the South Tyrolean autonomy, which might even lead to a reform of the current autonomy statute.

The paper, after analysing the most important trends and changes, should deal in particular with cross-border cooperation as a phenomen which seems to offer new maneuvring-space for politics and economy as well as for the evolution of the institutional structuring of the autonomy-system.

Markku Suksi:

THE PROTECTION OF MINORITIES BETWEEN AUTONOMY AND SELF-DETERMINATION: THE CASES OF THE ÅLAND ISLANDS AND KOSOVO[1]

1. Introduction

Most unrest in the world of today is caused by conflicts not between two States but between parties inside States. The typical situation is the one in which a central government and a minority population are involved in a defence of their positions. The minority population often claims that it is subjected to oppression, while the central government, in turn, puts forward arguments of national interest and national security. Under international law, a minority is entitled to all general human rights and, in addition to them, to some special minority rights as defined, for instance, in Article 27 of the CCPR. Oppression of a minority is as such against international law, but if a minority is very severely oppressed, it may even have a valid claim of self-determination. However, under international law, a State, too, is entitled to certain things, such as respect for its territorial integrity and national sovereignty.

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[1] This article relies heavily on previously published works by the author, such as Markku Suksi (ed.), *Autonomy – Applications and Implications*. Dordrecht: Kluwer Law 1998, Markku Suksi: *Frames of Autonomy and the Åland Islands*. Meddelanden från Ekonomisk-Statsvetenskapliga fakulteten vid Åbo Akademi, Ser. A:433. Åbo: Åbo Akademi, 1995, Markku Suksi, 'The Åland Islands in Finland', pp. 193-220, in *Local Self-Government, Territorial Integrity and Protection of Minorities*. International Colloquium, Lausanne, 25-27 April 1996. Zürich: Schulthess Polygraphischer Verlag, 1996, Markku Suksi, 'On Mechanisms of Decision-Making in the Creation (and Re-Creation) of States – with Special Reference to the Relationship between the Right of Self-Determination, the Sovereignty of the People and the *pouvoir constituant*', pp. 426-459 in *Tidsskrift for Rettsvitenskap* 3/97, and Markku Suksi, 'Constitutional Options for Self-Determination: What Works?' Paper presented at a policy conference on "Options for Kosovo's Final Status – Quo vadis, UNMIK?" on 12-14 December 1999 in Rome, organised by the United Nations Association of the United States of America and the Istituto Affari Internazionali. Published in electronic form at http://www.unausa.org/issues/kosovo/rome/suksi.htm. Hence for more extensive referencing, please see these works.

The issue is therefore how these two positions can be reconciled: how can both the minority and the State get most or at least something of what they want without a total defeat of their original position? In a number of instances, the international community has answered the question by recommending or instituting territorial autonomy of some kind for the region in question. Through such an arrangement, the State retains its overall self-determination, while the minority is granted a strengthened protection of its rights and a share in the internal self-determination of the State. The Åland Islands and Kosovo are examples of such deals. However, it is not necessarily only territorial autonomy that can be called upon in situations of this kind. Also different forms of non-territorial or cultural autonomy may offer relevant options, as is indicated by the Kosovo example. It should also be taken into account that whereas autonomy may in some cases have the aim of protecting a minority, it in many cases, such as in Spain, does not have that as its primary objective.

Very few things unite and are common to the Åland Islands and to Kosovo. The one region is called the islands of peace, while the other has been and still is plagued by violence. The one region is regarded a reasonable fulfilment of human rights and especially minority rights,[2] while the other is characterised by a wish of the various population groups to extinguish each other. There is, however, a formal element that is common to the Åland Islands and Kosovo, namely the existence of a decision by an authoritative international body concerning the administration and national affiliation of the region with a view to promoting international peace and security and the rights of the individuals in those areas. In particular, both regions are interesting because of the attempt to guarantee the rights of the inhabitants by granting these regions an autonomous status. Within this autonomy framework, the rights of the individuals are supposed to be secured.

Between 1917 and 1921 the population of the Åland Islands wished to secede from Finland and to unite with Sweden. This wish was expressed, for instance, in two different petitions addressed to the Swedish state bodies, signed by an overwhelming majority of the population of the Åland Islands. However, after a British initiative to deal with the issue, the Council of the League of Nations formulated and approved unanimously a Resolution on 24 June 1921 that under certain conditions, Finland should continue to have

[2] This article will not discuss the issue of whether the inhabitants of the Åland Islands (approximately 25000 persons) constitute a formal minority of its own or if the inhabitants constitute a special part of the Swedish-speaking minority (approximately 300000 persons) in Finland.

sovereignty over the Åland Islands. The conditions set by the Council of the League of Nations agreed to by both Finland and Sweden in a Settlement of 27 June 1921 (appended to the earlier Resolution) include a guarantee of the self-government of the Åland Islands and the explicit grant of certain special rights to the *population* of the Åland Islands to be inserted in the Finnish "autonomy law" for the Åland Islands. The Resolution also contained the condition for the de-militarisation of the Åland Islands by stating that a certain agreement is to be concluded to this effect. However, the Settlement did not become a formal treaty under international law, although it has, later on, been held to have assumed a binding character under the principles of customary international law.[3]

U.N. Security Council Resolution 1244(1999) deals with the situation in Kosovo and refers to the need to develop self-government and/or substantial autonomy in that region in order to prevent a secession from the Federal Republic of Yugoslavia and, potentially, a unification with Albania. Although the resolution refers to the *people* of Kosovo in paragraph 10, it does not at all refer to any self-determination that could be exercised by any population in the territory of Kosovo, but departs from the understanding that the Federation of Yugoslavia is in the possession of its sovereignty and self-determination, as restricted by the action of the international community in the Resolution. Under Article 25 of the Charter of the United Nations, the decision of the Security Council is legally binding upon the member states and upon the international community, and the member states are under a legal obligation to obey such a resolution. In addition, Chapter VII of the United Nations Charter establishes the power of the Security Council to take action with respect to threats to the peace, breaches of the peace, and acts of aggression and gives the Security Council an array of economic, political and military means to address the situation, e.g., in an individual country. Such a country is under an obligation to comply with the decisions of the Security Council. Paragraph 2 of the Security Council Resolution on Kosovo nevertheless makes reference to the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements, such as the texts of two annexes to the Resolution, referred to in Paragraph 1 of the Resolution. Hence there is also an element of voluntary compliance on the part of Yugoslavia present in the Resolution.

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[3] Hannikainen 1993, *passim*; Rosas 1997, *passim*; Hannikainen 1997, *passim*.

The two decisions by the two international bodies constitute the focal point of this article. The issue is, therefore, the following: What kind of parallels can be drawn between the Åland Islands and Kosovo as concerns the contents of the decisions made in the Council of the League of Nations and the U.N. Security Council? What are the similarities and differences? In addition, it could be asked to which extent the self-government or autonomy in the Åland Islands and in Kosovo can be viewed as constituting a share in the self-determination of Finland and Yugoslavia, respectively. Or, even more specifically, what is the share of the Åland Islands in the internal self-determination of Finland against the background of the decision of the League of Nations and how has the self-government been implemented and, similarly, what kind of a share in the internal self-determination of Yugoslavia should be accorded to Kosovo by means of an institutional arrangement that involves self-government and autonomy and how should this take place? Ultimately, it can be asked whether such internationally mandated self-government as has been created in the case of the Åland Islands and which is aimed at through S.C.Res. 1244/1999 for Kosovo is such an institutional solution which could be used in the future to prevent the disruption of the strong international law principle of the territorial integrity and the sovereignty of a State? In the more substantive sphere, the question is what rights the two international decisions envision for the populations of the two areas?

The focus of this article is on the contents the two international decisions identified above. The decisions have been adopted by two different organs, and one of the organs, the Council of the League of Nations vanished in the wake of the Second World War and was replaced by the Security Council of the United Nations.[4] The two organs can, nevertheless, be understood as being of the same "rank" and having a similar peace-promoting function. The practical implementation of the two decisions is, in this context, of somewhat secondary importance. We will, however, not try to answer the question whether the population of the Åland Islands and the Kosovars possess such a right to self-determination which could lead to statehood, but concentrate on the institutional and substantive issues related to self-government elaborated in the above-mentioned international decisions. The purpose of this article is hence to explore, against the background of the two decisions, the interface between the concept of self-determination at the

[4] However, the United Nations or any of its bodies did not assume the task of overseeing the implementation of the Åland Islands settlement. See Hannikainen 1993, pp. 41-48. See also Modeen 1973, pp. 61-76.

level of international law and the institutional solutions for its realisation that are available at the level of national constitutional law in the form of self-government and the rights of the individuals concerned.

This article does not deal with the general position of the Åland Islands under international law. Although that topic is interesting, it has been covered already in a multitude of publications, and very little new perspectives can be opened on the issue.[5] Instead, the point of departure is that in the international legal order, the right of self-determination of peoples culminates in the exercise of this right by the populations in the established States so as to prevent disruptions of borders and territories. For this reason, the international community needs, for the future, examples of solutions that create forms of internal self-determination inside established States, for instance, through autonomy and self-government.

2. Some Background Issues

The nature of the conflict was quite different in respect of the Åland Islands in comparison with Kosovo. In the Åland Islands, there existed no previous experience of self-government at the regional level, while in Kosovo, the revocation of constitutionally guaranteed self-government or autonomy in 1989 could be regarded as the starting point of the whole conflict. As concerns the level of oppression that could spark demands of secession, even legitimate demands, the oppression of the Kosovars by the Serbs reached such levels that they could be regarded as grave breaches of human rights and humanitarian law and even as genocide. The Åland Islanders seem to have moved for secession in another situation, in anticipation of such migration from mainland Finland that could de-stabilise the linguistic composition of the Islands and also in anticipation of Finnish nationalism without there being any concrete evidence of violations of the rights of individuals or of the whole population. At that juncture, the level of militarisation of the conflict was, in fact, surprisingly low in respect of the Åland Islands, especially with a view to the fact that Finland had just experienced a Civil War and had also unofficially supported military adventures across the Eastern border.

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[5] See, e.g., Rosas 1997, *passim*; Hannikainen 1997, *passim*; Horn, 1997, *passim*; Fagerlund, 1997, *passim*; Spilopoulou Åkermark 1997, *passim*.

However, in the 1920s, it was still difficult to speak about human rights at the level of international law. What existed was a prohibition of slavery and some other rather limited provisions, such as the minority regimes included in formal treaties between certain countries. In addition, the peace after the First World War had introduced the concept of the self-determination of peoples, but the application of this concept was limited in the Versailles Peace Treaty to those areas that belonged to the parties to the Treaty. As an element of the international legal discourse it can be located in the narrow form in the Versailles Peace Treaty, at which point it mainly concerned border adjustments between States by means of the referendum or other forms of popular consultation. Here the point was that a minority in one State could, in some instances, choose the sovereignty under which to live. In most cases, the other State was one where the majority population was of the same "ethnicity" as the minority population in the area in which the referendum was organised. In that respect, the principle of self-determination was one that was applied mainly in relation to the losers of the war. In the Åland Islands context, where neither Finland nor Sweden had been directly involved in the First World War and did not constitute parties to the Peace Treaty of Versailles, the combination of minority rights and self-determination nevertheless produced a setting that was conducive to an autonomy solution.

The development of a comprehensive set of international human rights started only with the Second World War and after the approval of the Charter of the United Nations, which, on the top of granting binding powers of decision-making to the Security Council, makes reference to the self-determination of peoples and to human rights. The broader notion of self-determination that emerged after the Second World War seems to have developed itself into a concept that is able to establish a bridge between constitution-making at the level of national constitutional law and the protection of certain rights accorded at the level of international law. On the latter level, self-determination has been formulated as a legal right that contains such concepts as the free determination of the will of the people and the people's right to political participation. The principle of self-determination focuses not only on the immediate national setting, but complicates the picture by adding to the scene a number of options provided under public international law and especially under human rights law. However, self-determination is rarely a term under national constitutional law. Substantive human rights were declared at a global level in 1948 in the Universal Declaration of Human Rights and made binding through the two

Covenants of 1966, the one dealing with civil and political rights and the other with economic, social and cultural rights.

Common Article 1 of these Covenants establishes the right of self-determination of a people as a legal norm, but the current interpretation of self-determination outside the colonial context is that self-determination is exercised by the populations of established States. However, this interpretation does not as such take into consideration the fact that States are not homogeneous in terms of the composition of the population. Furthermore, according to that Article, *all* peoples, not only those under colonial domination, have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. The two Covenants clearly state the existence of the concept of self-determination as a right under public international law. It is also a permanent and continuous right for peoples and it can be activated also after it has been exercised for the first time. It seems as if it were considered a collective right that can be viewed as a precondition for the realisation of most other human rights.

In the 1966 Covenant on Civil and Political Rights, Article 27 says that "in 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 practice their own religion, or to use their own language". Article 27 reminds States of the fact that in reading Common Article 1 on self-determination, it should be taken into account that States are not homogeneous, but consist of different groups of people which may have diverging aspirations and traditions. Article 27 could also, in relation to the principle of non-discrimination, be used to create space for special protection of minorities or for so-called positive discrimination. The provision does not say that minorities have the right to autonomy; the bottom line is rather that the State shall not deny minorities certain common activities that are peculiar to the minority in question. However, because the provision expresses a collective character through the sentence "in community with the other members of their group", autonomy is clearly one option that is permissible under Article 27.

As an indication of this, the requirement of effective participation was in 1992 introduced in the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (G.A.Res.

47/135(1992)). Article 2(2) of the Declaration emphasises the right of the persons belonging to minorities to participate effectively in cultural, religious, social, economic and public life, while Article 2(3) stipulates that persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. Autonomy is specifically mentioned as an organisational option in the OSCE principles adopted at the Human Dimension Meeting in Copenhagen in 1990. Here, autonomy and minority protection are connected in Paragraph 35(2), according to which the "participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned". The language is very cautious, but the connection between minority protection and autonomy is there.

In the context of international law, the position of the people is encapsulated in the concept of self-determination and its two sub-categories, external and internal self-determination. The former refers to the existence of a State as a sovereign subject of public international law and is widely recognised as a peremptory norm of international law. The latter is used to refer to sovereign states in a number of ways, for instance, in the sense that the population determines by means of elections the composition of its government. It may also refer to different autonomy or sub-state arrangements within the borders of sovereign states and perhaps even to the freedom for a minority from oppression by the central government. One of the crucial points in this article is that the focus is on minorities, but the question is, under what conditions and under which forms may minorities start to enjoy that right to self-determination which is granted to peoples? When a minority is distinguished from the rest of the population not only by its own action under Article 27 of the CCPR but also by discriminative action of the State, then it should be possible to offer the protection of self-determination to such a group of persons, especially if the treatment of that group of persons is oppressive. The issue is then: under what forms should such protection be offered? The cases of the Åland Islands and Kosovo offer one solution: autonomy and special rights.

The realisation of the right of self-determination has consequences both at the level of international law and national law. *First*, a people in an established State shall not be subjugated by another State (non-interference and territorial integrity). This is actually an understanding of self-determination that relates to the principle of the sovereignty of States and protects State sovereignty. *Second*, if there is a subjugated people, it shall have the right to free itself and become independent. This was especially the case with colonies after World War II and relates to de-colonisation. *Third*, a people's right to self-determination can be understood as a right of (a certain part of) the population to choose the State under which authority they live. This was a common concept with respect to territorial changes after the First World War and, it should be stressed, concerned almost exclusively areas inhabited by a minority population. In most cases, its purpose was to facilitate the integration of a minority population in one country into the population of the kin-State. As sub-categories of territorial self-determination may be mentioned the possibilities of the population to attain autonomy, and perhaps even the option of secession. *Fourth*, there seems to exist a right of a people to create, and perhaps re-create, their own political system, a right which is more or less overlapping with the concept of the *pouvoir constituant*. *Fifth*, self-determination is in conjunction with Article 25 of the UN Covenant on Civil and Political Rights often referred to as the right of the people to participate in government and determine the content of policies. The first and the second category relate to external self-determination, while the fourth and the fifth category mainly denote internal self-determination in its various manifestations.[6] The fourth and the fifth categories also conform with the main interpretation of the exercise of self-determination in a post-colonial situation, which is that the reference to the right of self-determination of all peoples is a reference to the total populations of the existing States regardless of their internal sub-divisions. The third category may be viewed as a special or perhaps as an intermediate case. The third, fourth and fifth categories are particularly relevant for national constitutional law and necessitate substantial legislative action at that level.

The UN Declaration on Friendly Relations of 1970 recalled the existence of the concept of self-determination and, more importantly, accounted for the

[6] See also Suksi, Markku, Bringing in the People – a Comparison of Constitutional Forms and Practices of the Referendum. Dordrecht: Martinus Nijhoff Publishers, 1993, p. 236 f.

modes of implementing the right of self-determination by a people. These modes are:

a) the establishment of a sovereign and independent State;
b) the free association or integration with an independent State; and
c) the emergence into any other political status freely determined by a people.

Hence self-determination is still, in line with the post-First World War situation, a determination of sovereignty over people under certain forms, but the broader legal concept is not only designed for a minority so that it can choose the sovereignty under which it will live, but it is designed so as to make possible the creation of a new State or sovereign for the population on the one hand and the integration of the population into an existing State or sovereign on the other.

In so far as the exercise of self-determination is a determination of under which law, that is, under which sovereignty, a people will live, then the constitutional devolution of legislative powers to sub-State entities is simultaneously a limited devolution of both sovereignty and self-determination to such an entity. It is submitted here that the concept of self-determination exists parallel to sovereignty and that the culmination of both self-determination, especially in its internal form, and sovereignty in its internal form, is the exercise of the highest decision-making authority over a certain territory. Hence, just as law-making powers of autonomies are a devolved part of the internal sovereignty of the country in question, the law-making powers of autonomies may constitute a devolved part of the internal self-determination of a country. Hence exclusive law-making powers granted to a sub-State entity can be viewed as constituting a share in the internal self-determination of that State. This conclusion would, however, be valid under international law only in so far as devolution has concerned peoples or at least certain distinct groups or populations. It is thus possible that an autonomy arrangement becomes, if it is accepted by the population or group in question either through their representatives or directly through the referendum or through long-time practical acceptance, an exponent of their self-determination and wins legitimacy under international law so as to be protected under international law. Such protection under international law would involve a prohibition of the weakening of the autonomy arrangement against the will of the population concerned.

International law is, however, careful in pointing out that the exercise of the right of self-determination shall not be disruptive of the territorial integrity

of the existing States, and at a European level, this is sustained by the principles contained in the various OSCE principles adopted by the participating States. According to public international law and under certain conditions provided therein, the Security Council of the UN is the only body that can authorise actions by the international community or by third States that are in breach of the sovereignty of a State and of its territorial integrity.

The constitutional consequences of the realisation of the different above-mentioned categories of self-determination are manifold. The establishment of a sovereign and independent State means that a moment of exercise of self-determination takes place. This moment is apparently simultaneously of a pre-constitutional character and can be described in terms of the *pouvoir constituant*, which may contain in itself the adoption of a constitution for the new State or result as a consequence in another constitutional action at which the constitution is adopted either by means of a referendum or through an elected assembly. This parallellism between the exercise of self-determination to create a new State and the exercise of the *pouvoir constituant* is necessarily not a feature that has drawn much attention from the international community. Whereas international law grants the right of self-determination and is interested in its realisation, it has had very little to say about the next step, that is, about what should take place after the exercise of self-determination. How should the new State or entity be organised? Should its method of governance be democratic? Of course, if the exercise of self-determination is democratic according to the UN criteria, it could perhaps be assumed that the emerging State or entity, too, should be democratic. However, a more legal link to the participation of the people in a democratic manner is established if common Article 1 is read together with Article 25 in the CCPR, which further on involves at least the adjacent political rights of expression, association and assembly as well as equality and non-discrimination. Hence human rights law can today be interpreted so as to require the enactment of the first constitution of a new State (or another entity) with at least these rights. During the past decade, the international community has, in fact, been involved in the State-creation processes in a number of places. The UN was very active in Namibia and gave, by means of incorporating the document into a UN decision, a certain legitimacy to an internal agreement between the parties in Namibia on constitutional principles and on the adoption of the constitution. The elections in 1989 under UN supervision to the constitutional convention, the enactment of the Constitution of Namibia on 9 February 1990, and the formal Declaration of Independence on 21 March 1990 illustrate an interesting path of decision-

making that combines the right of self-determination at the level of international law and the *pouvoir constituant* at the national level. The international community is also actively involved in Bosnia and Herzegovina through the Dayton Agreement, which creates the country as a federal State with a number of institutions that have been designed against the background of democratic concepts. The existence of sub-state entities or units of governance that have their own and exclusive legislative powers is one part of the Bosnian solution.

What would paragraph b) mean in constitutional terms, that is, what is implied by the possibility of a people to free association or integration with an independent State? Firstly, it would seem to mean that there exist two different entities, a people that wants to associate or integrate with an existing State and a State that is willing to receive such a people. Secondly, in harmony with Principles VII-IX of UN General Assembly Resolution 1541(XV) of 1960 on the Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter, that is, principles concerning Non-Self-Governing Territories, it seems that association with an independent State implies a confederal or at least a loose federal constitutional setting in which the associated territory retains the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. Such a people shall continue to have the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes, a freedom that may actually amount to a right of secession or lead in the other direction, towards various forms of closer relationship with the "receiving" State. The constitution of the confederation should probably contain a provision establishing the right of secession. Integration is clearly more far-reaching and may even be interpreted as the creation of a unitary State, because the peoples of both territories should, according to these Principles, have equal status and rights of citizenship and equal guarantees of fundamental rights without any distinction or discrimination. Both peoples should, according to the Principles, have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial

organs of government. Representative government and effective participation are hence the objectives of international human rights law.[7]

Between these extremes that could be chosen by a people in the exercise of their self-determination, that is, an independent State or a State in a confederation on the one hand and a unitary State on the other, there seems to remain a sphere of constitutional options that are covered by point c) in the Declaration on Friendly Relations, namely the emergence into any other political status freely determined by a people. This is a position that could cover all constitutional solutions ranging from a federation through various kinds of autonomy arrangements and arrangements of devolution to cultural autonomy. However, there does not seem to exist much guidance at the level of international law as to what kind of institutional arrangements point c) exactly covers. This is not surprising, because public international law normally leaves the organisation of the national administration at the discretion of the State and establishes in the best of situations only principles that should be implemented by the national administrations, which is quite different than the requirements in human rights law concerning, for instance, courts of law. Such principles can be found in the 1921 Settlement on the Åland Islands and in the 1999 Resolution on Kosovo.

The conclusion is, however, that public international law can, under the right of self-determination, tolerate almost any institutional arrangement at the sub-state level, provided that the people concerned has determined its status in a free process. Concerning the term "autonomy", which term was used for the sub-state status of Kosovo under the 1974 Constitution of Yugoslavia until 1989, we can probably still agree with the view of Hannum & Lillich, according to which autonomy could be viewed as "a relative term which describes the extent or degree of independence of a particular entity, rather than defining a particular level of independence which can be designated as reaching the status of 'autonomy'".[8] However, it should be kept in mind that no express right to autonomy or to federalism is created at the level of

[7] It is in this respect interesting to point out that General Recommendation No. 21 of the CERD Committee (U.N.Doc. CERD/48/Misc. 6/Rev. 2/1996) distinguishes between internal and external self-determination of peoples and holds that there exists a link between internal self-determination and the right of every citizen to take part in the conduct of public affairs at any level, as referred to in Article 5(c) of the CERD. In its General Comment on Article 25, Par. 2, of the CCPR, the U.N. Human Rights Committee makes a somewhat similar connection between Common Article 1 and Article 25 of the CCPR (U.N.Doc. CCPR/C/21/Rev. 1/Add. 7(1996)).

[8] Hannum, Hurst & Lillich, Richard B., 'The Concept of Autonomy in International Law', in Yoram Dinstein (ed.), *Models of Autonomy*. New Brunswick, London: Transaction Books, 1981, p. 249.

general international law. To the extent the right of self-determination has any effect at all for the internal legal orders of States, it may imply that a sub-state arrangement, for instance, an autonomy, is protected under that right, provided that the beneficiary of the arrangement is a distinct people. In other respects, the institutional solution is normally entirely in the hands of the constitution-maker of the State. This does not preclude the possibility that a State agrees in a special treaty to create a sub-State entity. Such a deal was stricken between Italy and Austria in Paris Peace Treaty of 1946, in which Italy agreed to "grant autonomy coupled with measures for the cultural identity of the German-speaking minority"[9] for South Tyrol.

It is in this context of modern human rights that the case of Kosovo appears. The Kosovars were denied both representative government and effective participation through the actions that started in 1989. At the moment, the international community is in the process of designing legal mechanisms through which Kosovo could re-emerge as a part of the Federal Republic of Yugoslavia. According to U.N. Security Council Resolution 1244(1999) of 10 June 1999, the aim of the international community is to promote "the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo," taking full account of annex 2 in the Resolution and of the Rambouillet accords (S/1999/648). Annex 2, in turn, starts "[a] political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions". A position as an international protectorate reminiscent of the position of the Free City of Danzig on the basis of Articles 100-108 of the Versailles Peace Treaty between the Allied and Associated Powers and Germany should thus be excluded, so also a situation which the Saar had after World War I and World War II. Hence the discussion concerns institutional solutions within the Yugoslav constitutional setting to restore representative government and effective participation for the Kosovars.

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[9] Schreuer, C., "Autonomy in South Tyrol", in Yoram Dinstein (ed.), *Models of Autonomy*. New Brunswick and London: Transaction Books, 1981, pp. 53-65.

In both cases now under review, the Åland Islands and Kosovo, the international decision-making bodies have actually prevented the areas concerned from exercising their "presumed" self-determination in the form that existed by the time of the decision-making and on the basis of the wishes of the populations concerned. Instead, the decision-making bodies of the international organisations replaced the populations of the areas concerned and adopted the basic features of the institutional solutions. It could be said that in both cases, the international bodies have chosen the mode according to which self-determination of the population is to be realised at the sub-State level. Perhaps it could even be said that the two decision-making bodies exercised the self-determination on behalf of these areas. The aim of both international decisions is to give protection to the populations and – at the same time – to maintain the territorial integrity of the States concerned.

It should be pointed out that it is not as such totally unique that the international community decides over the self-determination of a certain area. The International Court of Justice has concluded, in the context of decolonisation, that "(t)he validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a "people" entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances."[10] In addition, the ICJ held in the same case that the "right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized".[11] For instance, in the cases of Eritrea, Sabah and Sarawak, and Bahrain, the U.N. ascertained the wishes of the population by means of missions of inquiry.[12] It is hence not always the population itself that has to express itself on its self-determination, but this can be done also by means of a competent international body.

In so far as the final solution is modelled against the background of self-determination it may be worth pointing out that self-determination seems to assume peace. Hence the path towards the implementation of the

[10] *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12, at p. 25.
[11] *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12, at p. 28.
[12] Rigo Sureda 1973, p. 312. On Eritrea, see also Gayim 1992, pp. 152-157.

institutional solutions in Kosovo may be long, especially with a view to the fact that for the purposes of self-determination, Kosovo is today neither a state nor an autonomous sub-state entity, but at least for the time being an international protectorate. There is no doubt, moreover, that the degree of militarisation was and still is considerable in relation to Kosovo.

The Åland Islands were never placed under any international authority, although Paragraph 7 of the Settlement created a supervisory mechanism. The situation between the Åland Islands in the 1920s and Kosovo in the 21st century is therefore fundamentally different, for instance, in respect of the parties that are expected to implement a resolution on the internal structures and in respect of the conditions that prevail on the ground. In the Åland Islands case Finland would implement the settlement by means of internal legislation and the Åland Islanders grew to accept the situation, but in the Kosovo case there seems to exist more parties that have a strong role in the implementation, at least the Federal Republic of Yugoslavia and the Republic of Serbia as well as the United Nations (the international community) and the Kosovars themselves. In addition, the prospect of convincing the Kosovars of the reasonableness of the solution is weaker.

Even with this variation in the background issues related to the two cases, two international bodies have passed decisions on how the position of the populations of the two areas should be organised. These two bodies had before them the task of reconciling demands of self-determination with those of sovereignty and territorial integrity of the State concerned. Against this background, solutions were created which involve the grant of extensive self-government to the disputed areas and the grant of certain rights to the inhabitants of these areas. The underlying idea seems to be that such an international or external involvement can be able to produce a more lasting solution. According to the existing research, however, the internal conditions for autonomy nevertheless seem more important than the external.[13] Hence an emphasis on constitutional and political solutions at the national level continues to be important.

The case of the Åland Islands offers many pieces of valuable information about institutional design. In fact, the whole Åland Islands Settlement of 1921 departs from the point that certain institutional and substantive guarantees must be introduced by Finland into the 1920 Autonomy Act. The

[13] Nordquist 1998, p. 73.

so-called Guaranty Act was enacted in 1922 as an addition to the 1920 Autonomy Act. It was only after 1922 that the population of the Åland Islands became willing to act within the framework of self-government created as early as in 1920. The current legal framework in force at the Åland Islands is the 1991 Autonomy Act. This Act continues to embody the principles of the 1921 settlement. The processes aiming at internal solutions for Kosovo started already before S.C.Res. 1244(1999). One of the concerns is that the rather general S.C.Res. 1244(1999), which is intended to be of a temporary character pending final settlement, becomes much more permanent a foundation for the governance of Kosovo than originally planned, extending its validity, for instance, over the first decades of the 21st century. However, the resolution makes a number of references to the Rambouillet Accords[14] and demands that full account be taken of these Accords. The Rambouillet Accords comprise the text of a settlement of the Kosovo issue between the so-called Contact Group, the Federal Republic of Yugoslavia, and the representatives of Kosovars entitled the Interim Agreement for Peace and Self-Government in Kosovo. However, the meeting in Rambouillet, France, did not manage to receive the Yugoslav approval to some of its elements, although the representatives of the Kosovars accepted them. Therefore, the Accords did not, in the beginning of 1999, emerge as an official settlement of the Kosovo crisis. In spite of that, the Federal Republic of Yugoslavia is referred to in Paragraph 1 of the the Security Council Resolution as having accepted a number of principles and elements in June 1999, including the Rambouillet Accords and, as a part of that, the Constitution of Kosovo. Hence as for the Åland Islands in the form of the 1920 Autonomy Act, so also for Kosovo there exists a constitutional framework the implementation of which is more or less controversial. This constitutional framework has been made a part of the Security Council Resolution by way of reference to the Rambouillet Accords or the Interim Agreement.

Recent research suggests, however, that "autonomies within democratic states are more likely to be durable than other autonomies".[15] The Åland Islands has existed in a democratic State from the beginning. The first steps towards democratisation have recently taken place in Yugoslavia (and Serbia) which may work in this direction and support the durability of an autonomy solution for Kosovo. Nevertheless, it would seem to be important

[14] Published as the U.N. Document S/1999/648.
[15] Nordquist 1998, p. 73.

to start to establish those institutions of Kosovo that should exercise the exclusive jurisdiction of Kosovo, to define their powers, and to transfer powers to them from the international administrative machinery created by the international community. At the same time, these institutions should start to exercise the jurisdiction now held by the international administration together with the latter so as to create procedures for the future. It should, of course, be pointed out that in the 1920s, there existed no comparable international administration over the Åland Islands as there at the moment exists over Kosovo.

To be sure, the Åland Islands Settlement of 1921 was much more specific than the bare text of the Security Council Resolution 1244(1999) in terms of the internal arrangement. However, both contain a number of corner-stones for final implementation, which at least in the case of the Åland Islands is full of examples for further development and refinement. In the Kosovo case, the institutional and substantive parameters included in the Security Council Resolution contain such issues as substantial self-government and/or autonomy, the protection and promotion of human rights, and de-militarisation.

3. Self-Government

3.1. The Åland Islands

The operation of international law and international politics can sometimes result in the creation of self-*government* at the sub-State level. Such instances include, *inter alia*, the Camp David Agreement relating to a Framework for Peace in the Middle East, which aims at guaranteeing full autonomy to the inhabitants of the West Bank and Gaza, and Section IX, Articles 100-108, in the Treaty of Versailles, which established the Free City of Danzig under the protection of the League of Nations. In so far as self-*determination* is created at the State level against the background of international law, it could also at a sub-State level produce an institutional arrangement which acquires a share in the totality of internal self-determination of the State in question. This includes exclusive law-making powers at the regional level and special representation of the region in the decision-making organs of the State. To this end, elaborate constitutional mechanisms are required for the creation of a devolved share of exclusive legislative powers in the sub-State entity, which may be a constituent state of

a federation or an autonomous territory. Such self-determination at a sub-national level would obviously quite naturally assume the character of self-government.

The Åland Islands Settlement departs from the fact that the organs of government created by the 1920 Autonomy Act (Nr 124/1920),[16] the communes (or municipalities) and especially the Landsting, that is, the Legislative Assembly, shall continue to exist at the Åland Islands. These organisms are created to represent the population at the local government level and at the regional level. This is implicit in paragraph 4 of the settlement, according to which such immigrants into the Åland Islands who enjoy rights of citizenship in Finland shall only acquire the communal and provincial franchise in the Islands after five years of legal domicile. Conversely, this should mean that those who fulfil the residence requirement have the right to vote in municipal elections and also in elections to the Legislative Assembly of the Åland Islands. A special category of Finnish citizenship is envisioned as a precondition for the right to vote on the Åland Islands.[17] The acquisition of the right of domicile and its forfeiture is regulated in Sections 6-8 in the 1991 Act on Autonomy (1144/1991), *infra*, 4.1.

The representative character of the Legislative Assembly is spelled out more clearly in paragraph 5 of the settlement, according to which the Governor of the Åland Islands, who in principle is an agent of the Government of the State, shall be nominated by the President of the Finnish Republic in agreement with the President of the Landsting of the Åland Islands. The population of the Åland Islands shall hence have the possibility to influence the choice of the State Governor, who is in charge of the implementation of the powers of the State in the Åland Islands. One of the tasks of the State Governor could, according to the settlement, relate to the security of the State. It can, against this background, be concluded that the implicitly guaranteed contents self-government is that of representative decision-making at the regional and local government level where the decision-makers at the Åland Islands for issues designated specifically for the Åland

[16] The word "autonomy" is not the concept used by the Finnish legal order in respect of the Åland Islands. The Swedish and Finnish language versions of the Act regulating the Åland Islands issue translates more correctly as the "Act on the Self-Government for the Åland Islands".

[17] Although the term "regional citizenship" is used in an explanatory parenthesis in Article 1 of Protocol 2 on the Åland Islands in the Act of Accession of the Treaty Concerning the Accession of Austria, Finland and Sweden to the European Union in 1994, the correct terminological use would not make reference to citizenship, but rather to "right of homeland" of some sort.

Islands are selected by means of elections by the qualified residents, presumably from among those qualified residents who have the right to vote. No mention of direct forms of decision-making or of the referendum is included, but according to the current interpretation, advisory referendums can be organised on the basis of an Ålandic Act in matters that fall into the sphere of competence of the Åland Islands.

However, very little is said about the powers of the Åland Islands in the settlement. Hence it is not clear on the basis of the Settlement only in what matters the Legislative Assembly should be competent to act and what matters are left to the Parliament of Finland to decide. Paragraph 3(2) of the Settlement deals with real property and paragraph 3(3) stipulates that a law regulating this area may not be modified, interpreted or repealed except under the same conditions as the Law of Autonomy. It was, of course, clear to the Council of the League of Nations that the 1920 "Law of Autonomy", as it was termed in the Council decision, had been enacted by the Parliament of Finland, and therefore the enactment of a law on the purchase of real property at the Åland Islands, too, should be understood as a task for the Finnish Parliament.

It was obviously also clear for the Council of the League of Nations that the 1920 Autonomy Act created an exclusive law-making capacity in the Legislative Assembly of the Åland Islands. This is proven by the reference in paragraph 6 of the settlement to Section 21 in the 1920 Autonomy Act, which creates a certain taxation competence in the organs of the Åland Islands. In fact, the title of the Settlement hints at this through its reference to the "Guarantees for the Autonomy (...) of the Åland Islands", which must be understood as a reference to the 1920 Autonomy Act. It is also possible to conclude on the basis of the 1920 Autonomy Act that the organisation of local government, that is, of municipal administration, would belong to the competence of the Åland Islands. In fact, the exclusive law-making competencies originally accorded to the Legislative Assembly in the 1920 Autonomy Act were of a residual character, while the exclusive law-making competencies of the Parliament of Finland were enumerated. However, the law-making competencies of the Åland Islands were restricted to those areas of law that were under legal regulation by the time of the inception of the arrangement. This has changed over the years and the point of departure is now an enumeration of the exclusive law-making powers of both the Legislative Assembly of the Åland Islands and the Parliament of Finland, with a reference to implied powers of some sort at the end of both

enumerative lists ("other matters that are deemed to be within the legislative competence of the Åland Islands/the State according to the principles underlying this Act").

Hence at the same time as Section 13 of the 1991 Autonomy Act stipulates that the members of the Legislative Assembly are to be chosen by direct and secret vote following the rule of general and equal vote, Section 18, Paragraph 1, creates in the Legislative Assembly the competence to enact an Ålandic act on the election of the members of the Legislative Assembly. Paragraph 4 in the same Section gives the Legislative Assembly the right to regulate by an Ålandic act various local government issues, among them municipal elections. Both elections are regulated in the same Ålandic Act on Elections to the Legislative Assembly and Municipalities (No. 39/1970)[18] and establish a proportional method of election. The consequence of this is that there exists a multi-party political system on the Åland Islands which forces the parties to form coalitions to be able to create politically viable majority governments for the executive branch, that is, for the government of Åland. The self-government of the Åland Islands is therefore to a great extent a responsibility of the institutions of the Åland Islands themselves.

The Settlement is silent about the powers of implementation of the two spheres of law-making competence. However, Section 17(2) of the 1920 Autonomy Act connects the administrative powers to the exercise of the legislative powers and results hence in a similar division of the executive powers in those of the Åland Islands and those of the State of Finland. The latter should, according to the Autonomy Act, be overseen by the State Governor, who is, it must be stressed, not an organ of the government of the Åland Islands, but is separated from that and belongs to the administration of the State.

However, the Ålandic jurisdiction is not completely separated from the institutions of the State. Firstly, the president of Finland has, on the basis of Sections 19 and 20 of the Autonomy Act, the powers to veto an Act enacted by the Legislative Assembly or a part of such an act. In practice, this is the final point of control concerning the relationship between the Ålandic Act and the Autonomy Act, for instance, in respect of the correct exercise of the legislative powers in the exclusive sphere of competence assigned to the Legislative Assembly. The veto power of the president can be exercised on

[18] Landskapslagen om landstingsval och kommunalval (39/1970).

the condition that a legal opinion is requested from the Supreme Court of Finland. As concerns judicial powers in the Åland Islands, the court system of the State of Finland is competent to resolve all cases, including those arising under the laws enacted by the Legislative Assembly of the Åland Islands. However, there is no constitutional court in Finland, and it is debatable whether Section 106 in the Constitution in Finland concerning the primacy of the Constitution in case of evident conflicts between an Act and the Constitution, including the Autonomy Act, which is of a constitutional character, can be applied to the ordinary Ålandic Acts.[19]

A special feature connected to the Åland Islands is that Section 6, Sub-Section 1 of the Election Act (714/1998) of Finland stipulates that from the Åland Islands, which for the purposes of elections to the Parliament of Finland is designated as one of the constituencies, one Member of Parliament is elected. This is actually an implementation of Section 68 of the 1991 Autonomy Act, which concludes that in parliamentary and presidential elections, the Åland Islands shall constitute a constituency. The Ålandic representative in the Finnish Parliament can be viewed as an example of so-called special representation, but it must be emphasised that this arrangement is not a part of the settlement before the League of Nations, but has been inserted in the domestic election law without external pressure. A mandate in the Finnish Parliament represents in mathematical terms approximately 25500 citizens. Hence because the MP elected from the Åland Islands on the basis of special provisions would represent around 25000 citizens, the special representation would not result in any relevant disproportionality.

With regard to the fact that the electoral system in Finland is based on the principle of proportionality in multi-member constituencies, the one MP elected from the Åland Islands creates a peculiar situation. Under Section 110, Sub-Section 1, of the above-mentioned Election Act, 30 persons with a right to vote in parliamentary elections may found a so-called electoral association for the purpose of nominating one candidate in the parliamentary elections and that two or more electoral associations may present a joint list, which may include a maximum of four candidates. Hence instead of a regular first-past-the-post election in a single-member constituency, the Ålandic representative to the Finnish Parliament is actually elected by means of a modified proportional election which could be called the first-*list*-past-

[19] For such an argument, see Jyränki 2000, p. 52.

the-post, provided that lists are used in an actual election. This results in a partially proportional election to the Parliament. It should be noted that the Ålandic MP, too, represents citizens, not persons who are in the possession of the regional citizenship of the Åland Islands. For this reason, it is natural that the one Ålandic MP is not prevented from participating in decision-making in the Finnish Parliament concerning such nation-wide legislation which according to Section 18 of the Autonomy Act belongs to the legislative competence of the Åland Islands.

3.2. Kosovo

The Preamble to the Security Council Resolution on Kosovo refers to the creation of substantial autonomy and meaningful self-administration for Kosovo. In Paragraph 10, the Kosovo Resolution mentions substantial autonomy for the people of Kosovo within the Federal Republic of Yugoslavia. Under the Resolution, an interim civil presence of the international community shall administer Kosovo. However, one of the main responsibilities of this international administration is, according to Paragraph 11, to promote the establishment of substantial autonomy and self-government in Kosovo until a final settlement is reached. This arrangement with autonomy and self-government shall take full account of the Rambouillet Accords, that is, of the document which was intended to result in an interim settlement about the restoration of the autonomy of Kosovo. Furthermore, the international administration is expected to transfer its administrative responsibilities to these provisional institutions created against the background of the Rambouillet Accords. Finally, the international presence is expected to oversee the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement. Because the future status of Kosovo, too, should take into account the Rambouillet Accords, the final settlement should be drawn up in conformity with the principles from that document. It is nevertheless important to point out that the reference to a political process for the determination of Kosovo's future status may leave the door open for independence, although this is a rather unlikely option under the terms of the Security Council Resolution, with such States as the Russian Federation and China as permanent members of the Security Council, and against the background that the Federal Republic of Yugoslavia will probably not voluntarily agree to a secession of Kosovo.

The Kosovo Resolution may be understood so that it makes a conceptual distinction between contents and institutions. The reference to substantial autonomy could be interpreted as a definition of contents, that is, the subject-matters to be dealt with by the institutions of Kosovo and the decisions to be made by them, while the reference to democracy and self-government is a description of the nature of the decision-making institutions. Paragraph 11 expresses explicitly the core meaning of democracy and self-government, namely elections, when giving the task of holding of elections to the international administration. Hence the intention seems to be that elections are held by which the people of Kosovo elect its decision-makers, but neither the electorate nor the decision-makers are explicitly identified in the Resolution. No mention is made of the referendum or other direct forms of decision-making. What the contents and institutions are has not been directly spelled out in the Kosovo Resolution, but should be determined on the basis of the Rambouillet Accords.

However, the reference to substantial or meaningful autonomy may also relate the institutions to the processes that take place within the institutions. Apparently, a reasonable interpretation of the term "autonomy" could be that the elected institutions, especially an elected assembly for Kosovo, would have a law-making capacity which is more or less exclusive in relation to the law-making capacity of the Parliament of the Federal Republic of Yugoslavia and the Republic of Serbia. This, again, is made dependent on the Rambouillet Accords.

The Preamble to the Rambouillet Accords refers to the need for democratic self-government in Kosovo, including full participation of the members of all national communities in political decision-making. In fact, the principles of the framework formulate a right to democratic self-government for the *citizens* of Kosovo through legislative, executive, judicial, and other institutions established in accordance with the Accords. This right to democratic self-government is specified so as to include the right to participate in free and fair elections. Such elections shall be organised under Chapter 3 of the Accords and in line with the OSCE principles with free and fair elections. According to Article I(8) of the Constitution, the basic territorial unit of local self-government in Kosovo shall be the commune. It is apparent that the communal assemblies shall be created[20] and elected

[20] See UNMIK Regulation No. 2000/45 11 August 2000 on Self-Government of Municipalities in Kosovo, which has the purpose of organizing and overseeing the development of provisional institutions for democratic and autonomous self-government in Kosovo pending a political determination of the future

pursuant to the terms in the Accords. In fact, on 28 October 2000, the first elections to the communal assemblies took place in Kosovo for a two-year period.[21]

At the regional level, an Assembly of Kosovo is created in Article II(1) of the Constitution. This Assembly shall have 120 members, but only 80 members shall be directly elected, while a further 40 members shall be elected by the members of the qualifying national communities. The special representation of the national communities is thus an exception to the principle of direct election and is designed to guarantee representation of most minority groups in the Kosovo Assembly. Communities whose members constitute more than 0.5 % of the Kosovo population but less than 5 % shall have ten of these seats, which will be divided among them in accordance with their proportion of the overall population. Communities whose members constitute more than 5 % of the Kosovo population shall divide the remaining thirty seats equally. The Serb and Albanian national communities shall be presumed to meet the 5 % population threshold. Hence under the terms of the Rambouillet Accords, also the Serb community in Kosovo should always manage to receive up to 10-15 seats in the Kosovo Assembly.

The national communities mentioned above may be understood as institutions of non-territorial cultural autonomy which exist in addition to the two territorial-institutional layers and which have their own tasks and competencies established in the Constitution. They also have their own additional rights specified in Article VII(4) of the Constitution, *infra*, 4.2. Under Article VII(3), a national community elects, through democratic means and in a manner consistent with the principles of Chapter 3 of the Agreement, institutions to administer its affairs in Kosovo. The structure of the Constitution of Kosovo is hence very complicated and tries to address the issue of minority within minority by creating layers of public institutions with different tasks and competencies for different categories of persons.

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status of Kosovo. The Regulation refers to the European Charter on Local Self-Government, and in particular to Article 3 which denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a of substantial share public affairs under their own responsibility and in the interests of the local population. The Regulation also took into account the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, the European Charter for Regional or Minority Languages, the Council of Europe' s Framework Convention for the Protection of National Minorities and the Convention on the Elimination of All Forms of Discrimination Against Women.

[21] See Regulation No. 2000/39 of 8 July 2000 on the Municipal Elections in Kosovo.

The distribution of powers between the different institutions of Kosovo on the one hand and the institutions of the Federal Republic of Yugoslavia and the Republic of Serbia on the other is established in Article I(3) and I(4). The Federal level has an exclusive competence in respect of territorial integrity, maintaining a common market within the Federal Republic of Yugoslavia (which power shall be exercised in a manner that does not discriminate against Kosovo, monetary policy, defence, foreign policy, customs services, and federal taxation and concerning other areas specified in the Agreement. The Republic of Serbia, again, shall have competence in Kosovo in respect of elections in the Republic and otherwise as specified in the Interim Agreement. Hence the point of departure is that the institutions of the Federation and the Republic of Serbia have enumerated powers within which they are exercising their exclusive law-making powers as specified by the Federal Constitution and the Constitution of Serbia. This makes Kosovo a sub-sub-national part of the Federation and leaves it with the residual powers and an exclusive law-making competence in respect of these powers: what is not specifically allocated to the Federation or to the Republic of Serbia shall be taken care of by Kosovo.

The internal distribution of powers in Kosovo is much more complex. It does not actually start with the powers of the Assembly of Kosovo, but with those of the communes. According to Article I(8), all responsibilities in Kosovo not expressly assigned elsewhere shall be the responsibility of the communes. This provision looks like a principle of subsidiarity in administrative matters, but the powers of the communes receive a legislative character under Article II(5)b of the Constitution. Namely, in matters that fall within the authority of the communes, the Assembly has a conditional right to enact laws. The conditions are that the matter cannot be effectively regulated by the communes or that regulation by individual communes might prejudice the rights of other communes. The assumption is therefore that in the first instance, the communes exercise law-making powers in those matters which they have been charged with (Article VIII(4)), and only in the second instance will there be a need for legislation in those matters by the Assembly of Kosovo. In addition, if there is no law enacted by the Assembly under this provision with the effect that communal action becomes preempted, the communes retain their authority to enact norms. Because the internal law-making authority of Kosovo is based on an enumeration of subject-matters for the Assembly of Kosovo in Article II(5)a of the Constitution, it is possible to conclude that it is actually the communes of

Kosovo that are the carriers of the residual powers of Kosovo and that the structure of the administration is highly decentralised both in terms of the institutions and the powers.

This does not prevent the statement in Article II(5) of the Constitution that the Assembly shall be responsible for enacting laws of Kosovo. The areas of competence include politics, security, economics, social affairs, education, science and culture. The list of specific subject-matters for which the Assembly shall be responsible are enumerated in 18 points and is very comprehensive. The exclusive law-making authority of the Assembly is confirmed by the statement that the Constitution of Kosovo and the laws enacted by the Assembly of Kosovo shall not be subject to change or modification by authorities of the Republic or the Federation. For determining the internal constitutionality of the Kosovo legislation and other decisions and acts, Article V(5-6) creates a constitutional court which has powers to resolve disputes relating to the meaning of the Constitution. The same Article creates a court system of its own for Kosovo. The executive branch is headed by a president elected by the Assembly of Kosovo and by a government. The legal order created for Kosovo seems in many respects to be a self-sufficient and self-supporting system isolated in the specific areas of competence from the other jurisdictions of Yugoslavia.

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The Constitution of Kosovo presumes a citizenship of Kosovo. However, the Constitution of Kosovo does not establish the grounds of citizenship in Kosovo. Because Kosovo is to remain a part of the Federal Republic of Yugoslavia, it is apparent that the Yugoslav citizenship is the foundation that should govern, for instance, the movement of persons over international borders. Hence the citizenship of Kosovo would be an additional qualification, indicating for internal purposes the legal status of a Yugoslav citizen. A citizen of Kosovo is therefore at the same time a citizen of Yugoslavia, but all citizens of Yugoslavia are not automatically citizens of Kosovo. What the qualifications for that are, other than perhaps residence, remain unclear on the basis of the Rambouillet Accords. To the citizenship of Kosovo, a number of exclusive rights are connected, such as a right to vote in the elections in Kosovo.

The intention of the Constitution of Kosovo is by no means to exclude the citizens from Kosovo from participation in the organs of the Federation or of the Republic of Serbia. Article I(5) makes the point that the citizens in Kosovo may continue to participate in areas in which the Federation and the

Republic of Serbia have competence through their representation in relevant institutions, without prejudice to the exercise of competence by Kosovo authorities set forth in the Interim Agreement. Under Article IX(1), citizens in Kosovo shall have the right to participate in the election of at least 10 deputies in the House of Citizens of the Federal Assembly and in the election of at least 20 deputies in the National Assembly of the Republic of Serbia. In addition, at least one citizen of Kosovo shall serve in the Federal Government and at least one citizen in the Government of the Republic of Serbia. At least one judge on the Federal Constitutional Court, one judge on the Federal Court, and three judges on the Supreme Court of Serbia shall be drawn from a list of candidates compiled by the Assembly of Kosovo. Therefore, as a practical matter, the population of Kosovo should now be persuaded to participate in the government of the Federation and the Republic of Serbia by including their representatives in the elected bodies and other institutions of Yugoslavia and Serbia. These quotas signify a special protection or minority protection of those persons who are identified as citizens of Kosovo.

Also, the international administrative machinery in Kosovo should begin to explore ways in which to incorporate the Federal or Serbian institutions in the exercise of that exclusive jurisdiction that remains for them in the territory of Kosovo. Security Council Resolution 1244(1999) with its references to the Rambouillet text and its full implementation, offers a good basis for the development of a scheme of devolution and a transfer of power from the interim administration under the UN to the Federal and Serbian institutions.

4. The Rights Granted

4.1. The Åland Islands

Both in the Åland Islands case and in the Kosovo case, the guarantee of certain substantive rights to the individuals concerned has been a principal issue. Above, an account of the participatory rights has already been made, pointing in the direction of a number of procedural guarantees of autonomy, such as the creation of exclusive law-making powers for the areas concerned. The right to vote and the right to stand for election are important because they help forming the outcome of the decisions so as to conform to the wishes of the populations in question. The two rights give "flesh on the

bones" of autonomy and make it possible to realise the contents of self-government. In addition, the autonomy arrangements dealt with here provide the individuals concerned with a number of other rights.

In the Åland Islands case, the arrangement should, according to the Resolution of 1921, aim at "the maintenance of the landed property in the hands of the Islanders, at the restriction within reasonable limits of the exercise of the franchise by newcomers, and at ensuring the appointment of a Governor who will possess the confidence of the population". To that end, certain guarantees specified in the Settlement between Finland and Sweden before the Council of the League of Nations were outlined that had the purpose of guaranteeing not only the autonomy but also the Swedish character of the Åland Islands. These guarantees should help preserving the language, the culture, and the local Swedish traditions of the population of the Åland Islands. Above, the electoral rights and the method of selecting the Governor of State as well as the taxation issue and the "regional citizenship" or the right of domicile were already dealt with. The Settlement of 1921 contains also provisions concerning language of instruction and the possession of real property.

The rights dealt with above are, of course, not the only ones that apply to the inhabitants of the Åland Islands. They are special rights that exist inside the competencies of the Åland Islands in addition to or as exceptions to the rights that the Constitution of Finland guarantees to everyone. On the top of the regular constitutional rights, the inhabitants of the Åland Islands also enjoy international human rights, at least to the extent to which the Legislative Assembly has consented to such an international commitment which Finland has taken on herself.

The language of instruction is dealt with in Paragraph 2 of the Settlement. According to that provision, the Government of the Åland Islands or the municipalities on the Åland Islands shall in no case be obliged to support or to subsidise any other schools than those in which the language of instruction is Swedish. Moreover, in the scholastic establishments of the State, instruction shall also be given in the Swedish language. Hence Swedish is identified as the exclusive language of instruction, leaving no room for the Finnish language. In addition, it is provided in the same Paragraph that the Finnish language may not even be taught in the primary schools supported or subsidised by the State or a municipality but with the consent of the municipality in question. Hence under the Settlement, the

only possibility for establishing a primary school where Finnish is the language of instruction or – provided that there is no consent from the municipality in question - in which Finnish is taught is to start a private school which is completely privately funded. The matter is presently regulated in Section 40 of the 1991 Autonomy Act, according to which the language of instruction in schools maintained by public funds or subsidised from the said funds shall be Swedish, unless otherwise provided by an Ålandic Act. This leaves the issue of the language of instruction and, in fact, under Section 18, Paragraph 14, of the Autonomy Act placing the law-making competence in the field of education in the hands of the Legislative Assembly, also the issue of private schools, to be regulated by the Legislative Assembly of the Åland Islands. Article 17 of the Ålandic Act on Basic Schools (18/1995) 17 §. According to the provision, the language of instruction in the basic school is Swedish. It is, under the provision, of course possible to use another language when teaching that other language. Some exceptions to the general rule of Swedish as the language of instruction are possible, for instance, to ensure supporting instruction to the pupil in the mother tongue of that pupil.

However, through this regulation of the language of instruction, nothing much has been said about the preservation of the Swedish language, the culture and the local Swedish traditions of the Åland Islands. It is clear that the language of instruction is important, and its importance is enhanced through its exclusive position on the Åland Islands, but it would probably not be enough. Here the 1920 Autonomy Act comes into play with its indication that because cultural and linguistic matters and areas that are relevant to them, such as traditions, are not enumerated among the legislative subjects of the Parliament of Finland, they automatically belong to the legislative competence of the Åland Islands. The 1920 Autonomy Act does not fix any official language of the Åland Islands, but it may be presumed that it should be Swedish, especially as Section 29 of the 1920 Act establishes Swedish as the administrative language of State agencies and as Section 30 of the 1920 Act designates Swedish as the language of correspondence for contacts between the Ålandic authorities and the authorities of the State (be it in the Åland Islands or in the central government of the State). Through guaranteeing also the original autonomy arrangement of 1920, the Settlement therefore emerges as a comprehensive framework for the maintenance of all aspects of culture and customs on the Åland Islands.

The current Autonomy Act of 1991 designates in Section 36 Swedish as the official language of Åland. It is also provided that the language used by the State and Ålandic authorities and in the municipal administration shall be Swedish, so, too, the language used in the Evangelic Lutheran Church, unless otherwise stipulated in the Church Act. The language of correspondence shall, according to Section 38, continue to be Swedish. In addition, on the basis of Section 18, Paragraph 14, of the current Autonomy Act, education, culture, sport, youth work, the archive function; and the library and museum service shall as a general rule belong to the competence of the Legislative Assembly of the Åland Islands. Hence the whole framework established in the 1991 Autonomy Act continues to embody the principles adopted at the beginning of the 1920s so as to ensure the best possible conditions for the preservation of the language, culture and local Swedish traditions at the Åland Islands in an exclusive manner in relation to the Finnish language. Nevertheless, under Section 37 of the 1991 Autonomy Act (as already under Section 29 of the 1920 Autonomy Act), a citizen of Finland shall have the right, in a matter concerning himself, to use the Finnish language on the Åland Islands before a court of law and other State authorities in the Åland Islands.

Interestingly enough, the parties to the 1921 Settlement felt that the possession of real property could play a role in the preservation of language, culture and traditions on the Åland Islands. There perhaps existed a fear that the Finnish-speaking population of the mainland would purchase lands on the Åland Islands. However, a limitation on the purchase of real property was perhaps one way of keeping the Åland Islands less attractive for permanent settlement by large numbers of Finnish-speakers. Therefore, Paragraph 3 of the 1921 Settlement aims at creating a preference system by which those legally domiciled in the Åland Islands, the Council of the Åland Islands and the municipality in which the piece of real property is situated that has been sold to a person who is not legally domiciled in the Åland Islands, would have the right to buy the estate at a price which, failing agreement with the buyer, shall be fixed by the Court of First Instance by having regard to current prices. Although the principle of the freedom of contract would prevail and the possibility would exist that a non-Islander could purchase real property, the Åland Islanders or their own institutions would have the possibility to control the transfer of real property.

Currently, Section 10 of the 1991 Autonomy Act defines the right to acquire real property at the Åland Islands by way of reference to another Act enacted

in the same way by the Parliament of Finland as the Autonomy Act: "Provisions concerning limitations on the right to acquire real property or property of a similar nature in Åland with right of ownership or usufruct are stipulated in the Act on the Acquisition of Real Property in Åland (3/1975). The limitations shall not apply to a person with the right of domicile."

A special Act on the Acquisition of Real Property in Åland was enacted for the first time as late as in 1938 (Act No. 140/38), that is, more than 15 years after the Settlement of 1921. The important change that took place with the new Act in 1975 was that under the previous Act, anybody could buy real estate on the Åland Islands, but faced, in the absence of the right of domicile, the risk of the property being redeemed by the above-mentioned categories of persons or institutions. However, under the 1975 Act, an advance permit by the Government of the Åland Islands is required of persons who are not in the possession of the right of domicile before they can purchase the property. This permit regime is, naturally, a clearer restriction of the freedom of contracts and right to property than the earlier system.

In addition, the autonomy arrangement confirmed before the League of Nations in 1921 included already from 1920 on a system by which the inhabitants of the Åland Islands, that is, those persons who were registered as residents of the Ålandic municipalities under a Finnish Act that covered the whole of Finland, were exempted from military service. Neither the 1856 Convention of Paris between France, Great Britain, and Russia nor the 1921 Convention Relating to the Non-Fortification and Neutralisation of the Åland Islands presuppose such exemption. However, it could be said that a general conscription of all Finns, or Finnish males, as the matter is defined, including those from the Åland Islands, would have created a permanent cadre of reservists on the Åland Islands. Therefore, there may exist a root for the exemption from military service in the early wishes to pacify the then strategically important Åland Islands. This matter is currently regulated in Section 12 of the 1991 Autonomy Act.

All the special rights that the inhabitants of the Åland Islands enjoy do not flow directly (right to vote, language of instruction, property) or indirectly (organs of self-government, exemption from military service) from the 1921 Settlement. Some rights have been formulated and granted afterwards by the Finnish Parliament, such as the right of trade, which was formulated for the first time in 1951 and is currently included in Section 11 of the 1991

Autonomy Act: "The right of a person without the right of domicile to exercise a trade or profession in Åland for personal gain may be limited by an Ålandic Act. However, such an Ålandic Act may not be used to limit the right of trade of a person residing in Åland, if no person other than a spouse and minor children is employed in the trade and the trade is not practices in business premises, an office or any other special place of business."

The right of domicile, too, was formulated for the first time as late as in 1951. Apparently, there existed a need to specify in a uniform manner the grounds for certain material rights; the right to vote and to acquire property, the right of trade, and the exemption from military service. The definition of the right of domicile created at this point a clearer distinction between the inhabitants of the Åland Islands and those of mainland Finland and emerged as a more protective shield in relation to the former than under the previous legislation. This definition of the right of domicile may have had a more discouraging effect on persons from the mainland – both Finnish and Swedish speakers - as concerns their intention to move to the Åland Islands.

The 1991 Autonomy Act spells out the details of this exclusive characteristic in respect of citizenship: only citizens of Finland may have the right of domicile in Åland. The arrangement amounts to a special regional citizenship, which is possessed, by virtue of Section 6 of the Autonomy Act, by a person who at the time of the entry into force of this Act had the right of domicile according to the 1951 Autonomy Act and by a child who is under 18 year of age, is a citizen of Finland and is resident in the Åland Islands, provided that the father or the mother of the child has the right of domicile. Hence the right of domicile follows the principle of *jus sanguinis*. However, according to Section 7 of the Autonomy Act, the right of domicile is, in general, granted upon application to a citizen of Finland who has moved to the Åland Islands and who has, without interruption, been habitually resident in the Åland Islands for at least five years, and who is satisfactorily proficient in the Swedish language. The rules concerning the acquisition of the right of domicile may thus be viewed as exclusive in relation to citizens of other countries and restrictive as concerns the citizens of mainland Finland. Under Section 8 of the Autonomy Act, the forfeiture of Finnish citizenship shall also mean the forfeiture of the right of domicile, while the forfeiture of the right of domicile of a person who moves permanently away from the Åland Islands shall be regulated in an Ålandic Act.

This exposé of the rights granted to the inhabitants of the Åland Islands shows that the Settlement of 1921 has resulted in an elaborate construction of mechanisms that protect that group of persons. It can, of course, be asked whether or not lesser forms of institutional and substantive arrangements would have sufficed.

4.2. Kosovo

In Kosovo, certain principles of the Rambouillet Accords form the point of departure in respect of the rights granted in the Constitution of Kosovo. Paragraph 1 of Article 1 in the Principles of the Framework says that all citizens in Kosovo shall enjoy, without discrimination, the equal rights and freedoms set forth in the Interim Agreement. Paragraph 3 of the same Article obliges all authorities in Kosovo to fully respect human rights, democracy, and the equality of citizens and national communities. The picture is completed by reference in Paragraph 2 of the same Article to the national communities. They and their members shall have additional rights as specified in the Constitution of Kosovo. The authorities of Kosovo, the Federal Republic of Yugoslavia and the Republic of Serbia shall not interfere with the exercise of these additional rights. The national communities shall be legally equal as specified in the Constitution, and shall not use their additional rights to endanger the rights of other national communities or the rights of citizens, the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, or the functioning of representative democratic government in Kosovo.

The Preamble to the Constitution of Kosovo exclaims the belief in human rights and in the rights of the communities in Kosovo, and Article I(2) of the Constitution stipulates that all authorities in Kosovo shall fully respect human rights, democracy, and the equality of citizens and national communities. This position is enhanced in Article VI of the Constitution, according to which all authorities in Kosovo shall ensure internationally recognized human rights and fundamental freedoms. The strong position of the human rights is apparent on the basis of Article VI(2), which makes the rights and freedoms set forth in the European Convention on Human Rights directly applicable in Kosovo. On the top of that, the Assembly of Kosovo is entrusted with the powers to enact into law other internationally recognised human rights instruments. These rights and freedoms, that is, apparently the rights and freedoms of the ECHR and those enacted into law by the Kosovo

Assembly, shall have priority over all other law. This rule of precedence may hence apply also to those laws that may exist within the sphere of the exclusive competencies of the Federation or the Republic. The priority is guaranteed in Article VI(3), according to which all courts, agencies, governmental institutions, and other public institutions of Kosovo or operating in relation to Kosovo shall conform to these human rights and fundamental freedoms. Hence formally speaking the system for the protection of human rights in Kosovo is among the strongest ones in the world.

On the top of these general human rights brought into the legal system of Kosovo through the Constitution of Kosovo, national communities shall, according to Article VII of the Constitution, have additional rights in order to preserve and express their national, cultural, religious, and linguistic identities in accordance with international standards and the Helsinki Final Act. These additional rights shall be exercised in conformity with human rights and fundamental freedoms. It is also clear on the basis of Article VII(3) of the Constitution that despite these additional rights, the national communities shall be subject to the laws applicable in Kosovo. However, all acts and decisions concerning national communities must be non-discriminatory.

Article VII(4 and 5) makes a distinction between the additional collective rights of the national communities and the additional individual rights of the members of such national communities. The additional collective rights of the national communities include a) the right to preserve and protect their national, cultural, religious and linguistic identities; b) the right to be guaranteed access to, and representation in, public broadcast media, including provisions for separate programming in relevant languages under the direction of those nominated by the respective national community on a fair and equitable basis; and c) the right to finance their activities by collecting contributions the national communities may decide to levy on members of their own communities. Thus the national communities seem to have powers of taxation of some kind. To letter a), a long list of examples is attached which includes, *inter alia*, local names of towns, villages, streets, and squares and of other topographic names in the relevant language in addition to the signs in Albanian and Serbian, providing for education and establishing educational institutions, protecting national traditions on family law (e.g., inheritance rules, family and matrimonial relations, tutorship, adoption), and operating religious institutions in co-operation with religious

authorities. Article I(7) of the Constitution opens a door for at least the Serbs of Kosovo towards Serbia by establishing that there shall be no interference with the right of citizens and national communities in Kosovo to call upon appropriate institutions of the Republic of Serbia for the following purposes:
a) assistance in designing school curricula and standards;
b) participation in social benefits programs, such as care for war veterans, pensioners, and disabled persons, and
c) other voluntarily received services, under certain conditions.

The grant of the individual additional rights to the members of the national communities in Article VII(5) of the Constitution of Kosovo is quite broad, but perhaps not as far-reaching as in the Åland Islands case. They shall have a) the right to enjoy unhindered contacts with members of their respective national communities elsewhere in the Federal Republic of Yugoslavia and abroad; b) equal access to employment in public services at all levels; c) the right to use their languages and alphabets; d) the right to use and to display national community symbols; e) the right to participate in democratic institutions that will determine the national community's exercise of the collective rights set forth in Article VII, and f) the right to establish cultural and religious associations, for which relevant authorities will provide financial assistance.

The Constitution of Kosovo does not contain any firm prescription of how membership in a national community will be acquired, but stipulates in Article VII(7) that every person shall have the right freely to choose to be treated or not to be treated as belonging to a national community, and no disadvantage shall result from that choice or from the exercise of the rights connected to that choice.

5. Concluding Remarks

It is apparent on the basis of the two decisions by the international bodies that the understanding of self-government is not limited to the representation of the larger territorial entity, that is, the Åland Islands or Kosovo, in one decision-making forum. Instead, the concept of self-government is comprehensive and is extended to all levels of participation inside that territory, including the municipal level. The autonomy to be established in Kosovo seems even more self-sufficient or self-supporting than the one of the Åland Islands. The Kosovo arrangement is also an example on how

territorial autonomy could, in a multi-ethnic setting, be married with forms of non-territorial autonomy or cultural autonomy. However, for both the Åland Islands and Kosovo, an exclusive legislative authority is established in spheres that are relevant for the two territories. Also, for both, a special category of citizenship is presumed, although the definition of the citizenship of Kosovo is, surprisingly enough, not included in the Constitution. In addition, for Kosovo, a scheme of special representation in the law-making bodies of the Federal Republic of Yugoslavia and the Republic of Serbia is designed, a feature which was absent from the original Åland Islands settlement but which in fact fits well in the Finnish electoral system and constitutes a natural part thereof.

The Kosovo Resolution illustrates how international human rights are implemented in a statute for an area plagued by violence. In that Resolution, the grant of human rights on a non-discriminatory basis is extended with a number of provisions that create a special protection for some categories of individuals and their national communities in the area. With its grant of special rights in the areas of participation through elections, property, and language, the Åland Islands Settlement of 1921 may go beyond in what might be possible without greater difficulty at the eve of the 21st century and against the background of international human rights. Comparing the two decisions and their actual or projected outcome in a very rough way, it seems as if Kosovo had more autonomy but less rights for the inhabitants, while the Åland Islands would have less autonomy but more rights for the inhabitants. Nevertheless, both decisions contain valuable examples of minority protection.

In addition, both decisions contain an element of pacification of the areas concerned by requiring de-militarisation. In the Åland Islands case, de-militarisation was mainly a matter of de-mantling the military installations in the area and making sure that no troops are stationed there that could, for instance, threaten Sweden. Whereas the Åland Islands case contains provisions which exempt the inhabitants from general military service, the Rambouillet Accords are silent about this matter in respect of Kosovo and could, in fact, even be interpreted so that because defence is a federal matter under Article I(3), citizens of Kosovo could be called to military service for the Federation. The spirit of the Rambouillet Accords and the situation on the ground nevertheless speak for the opposite solution.

Both decisions also envision a certain level of international involvement in the implementation, the Åland Islands Settlement by means of general monitoring and of a complaints procedure established in Paragraph 7 of the settlement. The complaints procedure became a desuetudo without any example of actual use, but in theory, it put the Council of the League of Nations in a position to interpret the Åland Islands settlement, with the help of the Permanent Court of International Justice. There is no similar mechanism included in the Kosovo Resolution, but on the basis of that Resolution, the international community takes on an active role in the actual implementation on the ground. A step in that direction is nevertheless mentioned among the Principles to the Framework, in which Article I(5) stipulates that every person in Kosovo may have access to international institutions for the protection of their rights in accordance with the procedures of such institution. This is a reference to individual complaint procedures under human rights conventions, but for the time being, there exists no idea of a collective procedure of the kind established for the Åland Islands in the 1921 Settlement. However, after the interim administration of Kosovo, the final settlement that should be reached should probably contain provisions which identify an international supervisory mechanism to oversee the application of the final settlement, either by means of general monitoring or by means of a complaints procedure, or both.

Above, reference was made to the durability of an autonomy arrangement and to the fact that it is not necessary the external conditions, those created by the international environment, that determine the success of an internationally mandated autonomy solution. Instead, the durability of such an arrangement may depend more on the internal conditions, that is, on conditions that relate to the politics and law of the State in which the autonomy arrangement exists. The durability issue may, especially in its internal form, translate itself to the method of entrenchment, which the sub-State arrangement is subject to. What is meant with entrenchment is various legal guarantees for the permanency of the arrangement.

It is possible to distinguish between six different forms of entrenchment. The Åland Islands case involves at least the general, special, regional, and international forms of entrenchment and is a pointer to the direction that elaborate and overlapping methods of entrenchment may create stability for the arrangement. The first one entails the inclusion of a reference to Ålandic self-government in Section 120 in the Constitution of Finland, while the second one refers to the fact that the Autonomy Act is not an ordinary Act of

Parliament, but enacted in the same way and under the same requirements of a qualified majority of two-thirds in the Finnish Parliament as the Constitution. The regional entrenchment, again, means the safeguard that the Autonomy Act and the Act on the Possession of Real Property on the Åland Islands can only be changed by the Parliament of Finland upon approval by the Legislative Assembly of the Åland Islands. Finally, the international entrenchment is a reference to the settlement under the League of Nations which has developed for itself a firm status under customary international law and which would seem to protect the Ålandic arrangement against such weakenings of the same that have not been approved by the inhabitants of the Åland Islands and that have caused protests from the international community. In the Kosovo context, the final form of entrenchment is still unclear. However, Article X on the amendment of the Constitution of Kosovo indicates a fairly high standard, because only the Legislative Assembly of Kosovo is competent to amend the Constitution of Kosovo. In doing so, it has to take into consideration the rule that a majority of the Members elected from each national community adopt the proposed amendment. Moreover, Article X prohibits any amendments to Article I, Sub-Sections 3-8, where the basic features of the arrangement, including the territorial integrity of Yugoslavia, are spelled out. It also prohibits amendments to Articles VI and VII, which deal with the human rights and fundamental freedoms and the rights of the national communities in Kosovo.

Entrenchment of the arrangement is probably extremely important not only for the population concerned, but also for the State concerned so that no unilateral changes in the status of the sub-State entity can take place and lead to the disruption of the territorial unity of the State. This is the message of Article X in the Constitution of Kosovo and this is also the message of Security Council Resolution 1244(1999). This, too, is the point of departure in the Åland Islands Settlement. It could be asked what other mechanisms of entrenchment there could be in the case of Kosovo in comparison, for instance, with the Åland Islands. Probably at least an internationally granted entrenchment in the final settlement concerning Kosovo and, in addition, a number of provisions in the constitutions of the Federal Republic of Yugoslavia and the Republic of Serbia which indicate the position of Kosovo inside the constitutional systems of those jurisdictions. The concept of self-determination therefore works in two directions: at the same time as it may affect the situation of a population or a people within an existing State by making possible for them exclusive law-making competencies and involving them in the decision-making at the national level, self-

determination also gives assurance to the State concerning its territorial integrity and the permanency of the arrangement.

Both the Åland Islands decision of 1921 and the Kosovo decision of 1999 represent attempts to protect minorities by means of autonomy so as to recognise to some extent the demands of self-determination of both the minority and the State in question. Nevertheless, the international community does not have any established procedures to deal with situations of the kind that emerged in the Åland Islands at the beginning of the 20th century and in Kosovo at the end of the same century. It may be premature to speak about the necessity of any future parties to a conflict to submit to such patterns as established in advance for this kind of situations, but it would probably be important to develop, within the framework of the United Nations, some models of action that can be lifted in where needed and on the basis of which more permanent solutions can be sought for. However, case by case, certain patterns may develop, and in this respect, the decision concerning the Åland Islands in 1921 by the League of Nations may serve as an important point of reference.

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ECONOMIC SUSTAINABILITY OF SMALL AREAS AND INTERNATIONAL ECONOMIC SUPPORT*

by

Alfred Steinherr

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1. Introduction

It is often thought that in economic matters size is an advantage. Rulers and nationalistic trends have always found advantage in the control of larger areas or populations. However, once we do away with the lust for power, on purely economic grounds, size is no advantage. Starting from the top the two most populous countries, China and India, are unimpressive in terms of per capita GNP. Russia with its vast surface has equally vast economic problems.

Some may be ready to accept that too much is too much and argue that a medium size is desirable. This paper takes a more extreme view and rejects the middle-of-the-road view. It argues instead that small economies have no clear disadvantage and a list of advantages. Smallness by itself, therefore, is no reason for external support.

Where do I take this positive evaluation of "smallness"? Partly from the statistics, partly from theory. In Western Europe, the richest countries are Luxembourg (a population of 450 000), Lichtenstein (30 000), Monaco (30 000), Switzerland (7 million), Denmark (5 million). For those who sense a European aberration, let's look to distant shores. The richest country of sub-Saharan Africa is Botswana (2 million), if we consider South Africa as being a bit particular. The richest country of North Africa is Tunisia (9 million). In Asia, among the smallest countries are rich Singapore and Hong Kong.

Of course, smallness is neither a necessary condition for success (there are successful large countries) nor a sufficient condition (some small countries are abjectly poor). Smallness is an opportunity.

Successful countries are able to develop institutions that work: an efficient political process, an efficient administration, markets for labour, capital and goods and services that work well. Institutions are the result of social choices and the

advantage of small countries is double. First, a small country has a more homogenous population, sharing more easily a vision of their society. Second, a small country is less likely to suffer from the "folie de grandeur" (megalomania) than large countries. On both accounts it will be easier to find good solutions for institutional design in smaller economies.

An example may illustrate this argument. A robust monetary system guaranteeing price stability and access to foreign credits is a valuable and precious institution. For ten years, Russia has tumbled from one catastrophe to the next, unable to create monetary stability. Estonia, by contrast, had no difficulty in accepting the facts of life, namely that it is a small country. It, therefore, opted in 1992 for a currency board and has had a stable monetary system from the beginning. This is an example of how being small can be an advantage.

Another economic advantage resides in the fact that a small economy in difficulty can more easily obtain credits or grants than a large country, simply because the total amounts involved are more easily manageable. Suppose that, for some reason, it was felt that Russia and Montenegro would need 100 per capita. For Russia this would amount to 15 bn, for Montenegro to 65 million. Montenegro would stand a much better chance of obtaining support than Russia.

More concretely, enlargement of the EU is conditioned by the size of the CEEC-10. If fewer and only small countries were to apply, the EU would find it easier to be generous.

Small countries also benefit from "free-riding" because if ever they do not play by the rules it will not cause too much upset. All the small European economies are rich because they free ride on fiscal and banking rules. In what follows I shall try to focus on the Balkans, since in the abstract there is no more to be said.

The end of the wars and fall of the authoritarian regimes in Croatia and Serbia in 1999/2000 opened a window of opportunity to establish the basic elements of a new order, before special interest groups and political rivalries can come into play. The basic elements of a new economic order (multilateral free trade and euroisation) could thus be established rapidly.

This paper treats all of South-East Europe (SEE) in the same way. However, this does not mean that it makes sense to pursue a regional approach in the sense of trying to foster trade within SEE. For most of the countries in SEE trade with the region is only one tenth of their trade with the EU and the dominance of the EU in trade terms is not likely to diminish over time. Gravity equations that simulate the trade patterns the countries in the region would have in a free trade environment and after a reasonable recovery indicate that the EU market would take 70-80% of their exports (see also Gros and Steinherr (1995)).

This paper is organised as follows: Section 2 and 3 discuss the proposed trade and currency regimes. Section 4 draws the lessons from the experience of Montenegro and Section 5 concludes.

2 The importance of free trade

All of the states and territories of SEE are so small in economic terms that they can develop only if they have access to the EU market. For example, the GDP of Serbia, the largest country in the region, is at present of the same order of magnitude as that of Luxemburg. The entire SEE region represents a market smaller than Greece. Table 1 provides some basic data:

Table 1 The Balkans – Basic Data

Country	1998 Population (millions)	1998 GNP (euro billions)	GNP Per capita
Albania	3,4	3,1	810
Bosnia and Herzegovina	4,2	4,0	920
Croatia	4,6	21,3	4 520
FR Yugoslavia	10,6	17,4	1 700
Macedonia	2,0	3,5	1 290
Memo:			
Greece	11.0	130.0	12 000

Source: Adapted from: The Road to Stability and Prosperity in South Eastern Europe – A Regional Strategy Paper, The World Bank, (Washington DC: March 2000)

Trade between the EU and the candidate countries has reflected a liberal regime by growing strongly over the last decade (tripling in value in many cases). By contrast, trade between the EU and SEE countries has stagnated at best (Croatia) or actually fallen. For example, official trade between the EU and Serbia even collapsed over the last decade. Exports from the FRY have fallen by 75%, from about 6 bn $ in 1990 to less than 1:5 bn in 1999. The sanctions might have played a part in this, but the economic mismanagement of Serbia was probably even more important. Moreover, a large part of the 'cross border' economic activities between Serbia and its neighbouring countries consisted of sanctions busting and smuggling.

2.1 The status quo

The EU has emerged as the major trading partner of the countries in the Western Balkans. The latter's share on the EU market is negligible – 0,6% of total extra EU imports. (exports to the EU are only half the value of imports in the case of Croatia and FR Yugoslavia, only a quarter in the case of Albania and a fifth in the case of Bosnia and Herzegovina; only for Macedonia do exports to the EU approach the value of imports [See Table 2]).

Trade is very important for all the countries in the Balkans, but there are some differences. Trade is essential for Macedonia with a trade-to-GDP ratio of 90%, Croatia and Bosnia and Herzegovina (60%) and less important for Albania (35%).

The data for the past for the FR Yugoslavia, which gives a trade to GDP ratio of over 40% probably underestimates the importance of trade, which should expand as sanctions and political uncertainty disappear. (See Table 2)

The countries in the Western Balkans differ substantially in their relationship with the EU compared with Bulgaria, Romania, and Slovenia, which signed association agreements with the EU and are currently in the process of membership negotiations. The countries of the Balkans face generally the normal 'most favoured nation' treatment, but enjoy some EU trade preferences.[1] Their difficulties are compounded by the fact that they are also not yet members of the World Trade Organisation (WTO) or the Central European Free Trade Area (CEFTA).

Table 2 Trade with the EU

Country	Trade/GDP ratio	Share of exports to EU	Share of imports from EU	EU trade preferences	Export share covered by "managed" trade measures of EU	Nominal average import tariff
Albania	35%	92,5%	82,5%	GSP[2]	61%	15,9%
Bosnia and Herzegovina	60%	49,6%	40,5%	ATP	26-44%	7-8%
Croatia	60%	38%	39%	ATP	26-44%	12%
Macedonia	90%	44%	36%	TCA	58%	15%
FR Yugoslavia	>40%	85%	76%	ATP[3]	N/A	13,5%

Source: Adapted from Study on Trade Policy in South East Europe, Trade Development Institute of Ireland (September 1999)

There already exists a high degree of duty free access to the EU market (around 80%)[4] but tariff ceilings and quotas (measures falling under the category of "managed trade") govern still some industrial products, like textiles, steel, chemicals.

[1] The autonomous trade preference regime commonly is referred to as the autonomous trade measures. This instrument does not cover Albania at present, as its origin is the former EC-SFRY Cooperation Agreement, denounced in 1991 when the SFRY ceased to exist.
[2] To be replaced by Autonomous Trade Preferences
[3] These preferences have been suspended.
[4] *Op. cit.*, EC press release (07 June 2000)

Agricultural exports are subject to a number of restrictions. Table 3 provides information on the structure of exports from the Western Balkans to the EU.

Table 3 Structure of Exports from the Balkans to the EU (1998) as % of total

	Albania	Bosnia and Herzegovina	Croatia	FR Yugoslavia	Macedonia
Agriculture	9,9%	2,1%	3,2%	13,5%	9,4%
Textile	35,2%	33,7%	27,9%	17,5%	39,3%
Footwear	29,6%	16,3%	8,5%	4,0%	3,7%
Iron and Steel	5,6%	3,7%	0,7%	19,2%	23,5%
Wood	3,5%	16,4%	9,1%	4,2%	1,5%
Total of the above	83,8%	72,2%	49,3%	58,4%	77,4%
Other	16,2%	27,8%	50,7%	41,6%	22,6%

Source: Adapted from: The Road to Stability and Prosperity in South Eastern Europe – A Regional Strategy Paper, The World Bank, (Washington DC: March 2000)

Intra-regional trade is relatively insignificant, on average 12 to 14% of the total. This average however conceals some disparities – trade between Croatia and some parts of Bosnia and Herzegovina can be substantial, and Macedonia trades extensively with almost all countries in South East Europe. Over the last few years some countries in the Western Balkans have negotiated free trade agreements (FTA) to liberalise bilateral trade flows: Croatia has an FTA with Slovenia and Macedonia. The latter has an FTA with Croatia, Slovenia, FR Yugoslavia (applied at present only to Kosovo), Bulgaria and Turkey.

The trade regimes of the countries of the Western Balkans are generally protective. Trade protection in the countries of the Western Balkans is relatively high both in terms of tariffs and in non-tariff measures (NTMs). The nominal average tariff is over 10% (with the exception of Bosnia and Herzegovina).

The small size of the home markets and the great differences between imports and exports suggest that trade policy in the Western Balkans should be geared even less than elsewhere towards the protection of domestic producers. The only justification for keeping border taxes in the Western Balkans is the public finance arguments. In tariffs in the countries Western Balkans act essentially like a sales tax. This implies that non-tariff protection does not make sense in the region. The public finance argument should be openly acknowledged, but there is a way to take care of it as suggested below.

On the EU side there is a tendency to be liberal for all the products that the Western Balkans countries do not generally export and maintain protective measures for the rest, which hit *de facto* a large proportion of regional exports to the EU. This implies that liberalisation should be across the board so as to avoid giving special interest groups to intervene to stop imports of some items from the countries concerned.

2.2 The way forward

The data presented so far suggest that a sustained recovery of the region depends on rapid growth of export to the EU. The natural conclusion is that the EU should recognise this and eliminate all barriers to imports from all the countries from this region. Given that the combined exports of all SEE to the EU amount to less than 1% of overall EU imports this would not have any appreciable impact on the EU market.

A lot of progress has already been made since the end of the Kosovo war and the EU is offering a 'SAA-Stabilisation and Association Agreements' that foresee some further liberalisation. There thus already exists a high degree of duty free access to the EU market (around 80% on paper)[5] but tariff ceilings and quotas (measures falling under the category of "managed trade") govern still some industrial products, like textiles, steel, chemicals. Agricultural exports are subject to a number of restrictions. There is a tendency by the EU to be liberal in areas in which the export potential is limited. It is likely that Serbia will also be offered an SAA, but this would seem inadequate under present circumstances. Daskalov et alii (2000) present a detailed and comprehensive trade policy plan for the Western Balkans which describes how free trade could be reached quickly, but still step by step. In the particular case of Serbia the political 'honey moon' should be used to override special interest groups in the EU and go to free trade immediately.

[5] EC press release (07 June 2000)

The free trade should not be limited to industrial products because the only sector in the region that still works is agriculture. The Common Agricultural Policy (CAP) consists of a jungle of distortions that could not, and should be exported. However, the EU should grant generous tariff free quotas. In order to illustrate to politicians and the farmers lobby that the countries from Serbia (and indeed all of SEE) do not represent a serious threat to farming in the EU one could put the duty free import quota at 1% of EU production. As the combined imports from all SEE countries amounted to about 0.01 (one hundreds of one percent!) of EU production in 1997 (see Gros et alli (1999)) such a quota would allow for a very substantial expansion of SEE exports to the EU without any appreciable impact on the EU market. But this could be particularly important for countries with little industry left and agricultural production should be easier to get going. Most countries in SEE would anyway specialise in products (fruits and vegetables) that are least problematic for the CAP.[6]

The standard argument against throwing the EU market open for the countries in the region is that the EU would then be morally obliged to offer the same treatment to everybody (all LDCs, or at the minimum all of North Africa?). However, this is not the case. The countries in SEE have been recognised to have a European vocation. Which is not the case for North Africa or other LDCs. Moreover, the SEE countries are in critical economic situation because of the political turmoil of the last decade. Their actual exports are only a fraction of their long term potential (and the pre-war level). If the European vocation is not considered as sufficient to warrant free access to the EU market because it might still lead to demands for similar treatment by other countries one could just take the following approach: the EU could simply grant countries from the region a duty free quota equal to the level of EU imports

[6] If the EU continues to subsidise its own agricultural exports to the countries in the region, which are anyway 20 (twenty) times as large as EU imports (see Gros et alli (1999)) the importing countries should impose countervailing duties of the amount of the EU subsidies. The impact of any EU subsidies would thus be neutralised and their effect would simply be to provide revenues for SEE government. EU subsidies for exports of agricultural products would thus result merely in transfers. One is thus tempted to argue that these EU subsidies should be as high as possible in order to help government budgets in the region.

from them in 1990 (or 1995). This would be several times the level of exports today.[7]

But access to the EU market is not enough. It is also imperative that governments in the region do not have the power to protect inefficient domestic industries against external competition and that the potential for corruption at the border be reduced to a minimum. The countries in SEE should thus also abolish tariffs on imports from the EU and apply the (low) common external tariff to the EU to third country imports. This might politically difficult at a time when the little industry that survived a decade of neglect, sanctions and wars has difficulties surviving. However, it is imperative to seize this occasion and ensure that a 'new economy' develops. Keeping the remaining large industrial plants alive would place a heavy burden on the budget and would lead to further stagnation for a long time. The industrial structure of the region was frozen at the level of the late 1980s. Keeping it there would a disaster. The political honeymoon should be used to let the enterprises fail that cannot be competitive on open markets

In order to keep borders within the region as open as possible, the principle of free trade should also extend to trade within the region. How can one lock in free trade? The best way to do so would be for the EU to invite countries from the region to join a bilateral customs union with the EU, thus cementing commitment on both sides. Having differentiated tariffs against the rest of the world would anyway not be significant for the small economies of the region and it would leave the temptation to use tariff policy in particular sectors. Moreover, it would make customs controls more difficult and thus provide more occasions for corruption.

EU compensations for the lost tariff revenues

In states with weak fiscal structures taxes on trade constitute an important source of revenues and the new democratic governments will need all the revenues it can get

[7] This approach could be 'safely' extended to non-European countries because, except for countries with major

since with the onset of economic reforms fiscal revenues typically fall. However, in the reality of the Balkans frontier controls are also a major source of corruption and harassment so that in reality trade barriers are much higher than the official tariff rates. Making borders easy to pass is thus very important. But the EU should also recognise the fiscal need for trade taxes and compensate the countries that chose to follow this approach for the loss of tariff revenues that arise through the customs union regime.

The loss of tariff revenue might be substantial as tariff revenue on trade with the EU will disappear completely. The external tariffs of the EU are very low, hence very little tariff revenue can be obtained from duties on third country imports.

How much would this be? Table 4 provides some preliminary calculations, based on current data, which suggest that the loss of tariff revenues for the entire region should be around 600-700 million euro p.a. A part of this can be recovered by the countries themselves through fiscal measures, as in the case of Turkey. A modest increase in a generalised VAT would be appropriate in this context. However during few years substantial financial support from the EU to soften the transition to a different regime would be essential to facilitate the adjustment. It should be transitory with a sliding scale: e.g. compensation almost full for one year, 2/3 during year two and 1/3 during year three. This might amount to 600, 400 and 200 million euro in EU transfers to the region during 2001, 2002 and 2003.

political or civil disorders, EU imports from LDCs have tended to grow rapidly.

Table 4 Loss of tariff revenue from an EU-SEE customs union

	Tariff revenues loss from the CU with EU mill USD	Tariff revenues loss as % of GDP %	Nominal average import tariff %
Croatia	248	1.1	12
B&H	92	2.3	8
Yugoslavia	250	1.8	13.5
Macedonia	43	1.4	15
Albania	70	2.3	15.9
Total/Average SEE	703	1.8	12.9

Source: *Own calculations*

Payment of compensation for tariff revenue would be subject to strict monitoring of the effective implementation of an honest and efficient border control (still necessary for rules of origin, third country trade and excises, which should be approximated).

Competition policy

Even with open borders some sectors might still not become fully competitive. Application of strong competition policy rules (i.e. those of the EU) would thus also be necessary. The general purpose of opening the economies in SEE as much as possible to competition could be furthered in a next step by extending the opening to sectors that have became tradable only through the international market programme. The most important examples here are utilities, which are usually organised as local monopolies, which in weak states are usually dominated by party politics. It would therefore be important, for example, to link Serbia to the electricity grid of the EU and then liberalise and privatise this sector. Experience has shown often that privatisation that preserves local monopolies (e.g. in telecommunications and other network industries) does not eliminate the influence of political structures. Countries in SEE should thus take over step-by-step the acquis Communitaire of the internal market. The logical final step in this process would be that they could de facto participate in a sort of European Economic Area mark II long before they become full EU members.

Going beyond free trade and the customs union will of course be much more demanding in terms of implementation, and therefore time. The acquis of the internal market involves basically the entire administration of a country. Proper implementation thus requires a minimum degree of efficiency (and honesty) throughout a large number of ministries, regulatory agencies, local administrations, etc. Implementation of the customs unions requires 'only' disciplining the customs administration so that it conducts the necessary controls at the EU border, delivers certificates of origin and applies the common external tariff at the external border, with a minimum cost for traders. Even in the larger countries of the region this would involve less than a thousand civil servants, which could be put under the supervision of EU personnel where needed as mentioned above. However, it is not possible to do the same with the entire public administration of a country, which runs in the tens, if not hundreds of thousands. The EU-Turkey customs union provides an example how a deep customs union can transform the economy of a country that had hitherto been rather protectionist.

3. Monetary regime: adopt the euro!

All the new democratic governments in SEE had to choose a monetary regime. The advice from the 'competent' bodies, e.g. the IMF, was predictable: get the budget under control, liberalise carefully and try to stabilise the currency step by step. This conventional approach can work, but it risks disappointing the expectations of the population and the case of Turkey shows that such a process can be quite arduous, especially when the external environment deteriorates. The Turkish adjustment programme, which was proceeding well and had the blessing of the IMF, was in 200/2001 suddenly made much more difficult as the turbulence on US stock markets in late 2000 led to a sudden increase in the risk premium for emerging markets, causing an increase in domestic interest rates of over ten percentage points.

3.1 What to do?

The authoritarian regimes, especially in Serbia, used the central bank to finance wars and some high profile public expenditure. This blatant abuse of the printing press stopped with their overthrow. But a credible low inflation regime cannot be created overnight by conventional means. This is why in times of crisis one has to resort to unconventional measures. Examples are the currency board of Bulgaria, introduced in the wake of hyperinflation, the DM currency board regime for Bosnia-Herzegovina and the full Dmarkisation/euroisation chosen by Montenegro. We would argue that this last approach is the most promising.

Why go for the full adoption of a foreign currency? Monetary stability is one key consideration. But for countries under tight IMF control hyperinflation is not really a danger as the IMF usually keeps the central bank and the Ministry of Finance drip-feed and intervenes whenever there is the slightest danger that the country deviates from its agreed programme. An even more important advantage of euroisation would be its systemic impact, in transforming the political economy inside the country, and thus the chances of healthy economic growth. The banking system was especially corrupted in SEE because it is a key conduit for large-scale money laundering and political intervention in the economy. All the new democratic leaderships wanted to stop this. They will face great difficulties in doing so because it will remain difficult to stop supporting loss-making state (or privately) owned enterprises or just favouring politically well connected 'business men'. By throwing away the key to the central bank this will be easier to achieve.

Euroisation would appear to have particular advantages for the Serbia, whose economic health is politically so important. But introducing foreign notes and coins is not enough. To reap the political economy benefits it is imperative to liberalise and privatise the banking system, which at present does little more than offering primitive transfer services. Allowing competition from EU banks will be essential. The entire Yugoslav banking system is blocked by enormous amounts of de facto

frozen foreign exchange assets and liabilities which were accumulated over the last ten years and which are essentially dead wood. They date from a previous attempt to introduce a hard dinar and the distant past, when Yugoslavia was an open economy. Disentangling these claims (inter alia the deposits of an entire generation of savers) is a Herculean task, which will take a long time. But before it is accomplished the banking system will remain in limbo, unable to provide financial services. Moreover, the confidence of the population cannot be recuperated quickly. It is thus essential that clean foreign banks be allowed to operate immediately in Serbia. The laws and regulations from the pre-Milosevic regime, which are still on the books, are actually in general adequate to provide with some minimal changes an adequate legal framework for this. But at present even basic banking functions like withdrawals of cash from deposits are not possible.

The countries from the region (B.-H., Montenegro, Bulgaria) that chose to anchor their currencies on the euro have chose the DM as the unit of account because the DM existed until 2002 in the form of banknotes widely used in the region. But after 2002 this is no longer appropriate.

Euroisation can be achieved simply by declaring it legal tender, as the dollar in Ecuador or Panama, but that is not strictly necessary, encouraging its use would be enough. The example of Montenegro the shows that it is enough that the government pay out salaries and pensions in euros. This will already put a large amount of euros in circulation and encourage shops to start using prices in euro as well.

On the monetary side the 'European choice' would also have a desirable regional dimension. Serbia could thus soon be part of a 'euroised' Balkan, including:

- Montenegro (already now 90% Dmarkised, plans to switch to euro)
- Kosovo (on DM as well, will also switch to euro?)
- Bosnia-Herzegovina (on 1:1 DM based currency board)
- Bulgaria (on 1:1 DM based currency board)

- Croatia (has enough reserves to euroise after the devaluation required to establish external equilibrium)

3.2 What will it cost?

A country that wants to eurocise needs to have enough foreign currency reserves to convert its monetary base, essentially cash, into euros. How much would this be? The foreign exchange required for euroisation would not be very large given that the SEE economies have shrunk so much. In Montenegro 25 million DM (12.5 million euro) were sufficient to start Dmarkisation. The Serbian economy is perhaps 20 times larger, this would still lead to about 250 million euros as the starting capital required for euroisation, less than the reserves available to the new government in late 2000. This approximate calculation was confirmed by the actual data on the stock of dinars in circulation, which amounted to less than 150 million euros at the exchange rate of 60 dinars per euro prevailing at the end of 2000.

A necessary requirement for the creation of a currency board arrangement is that the country disposes of adequate reserves to back the monetary base. This backing should be provided by the EU. The funds necessary to make the currency board viable, i.e. 100% of the currency in circulation should be provided to the local authorities in the form of a zero interest loan. The EU would have to raise these funds from the capital market, and the budget of the EU institutions would have to carry the interest cost. How much would this be?

The main economic argument usually advanced against currency boards (or full dollarisation/euroisation schemes) is that they might make it more difficult to adjust the real exchange rate. This argument is based on the observation that in well established economies nominal wages and prices are usually rigid in the sense that they are very difficult to lower. However, this argument does not apply to SEE. In Serbia, as in many of the countries of the region, wages are not set in national agreements and can thus adjust much more easily to market conditions. Rigid

Organizing Cohabitation
The Trentino-South Tyrol Experience and Prospects for the Balkans
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Cross-border cooperation as indicator for institutional evolution of autonomy

The case of Trentino – South Tyrol

by Francesco Palermo and Jens Woelk*

European Academy Bozen/Bolzano
"Ethnic Minorities and Regional Autonomies"
Via Weggensteinstr. 12/A
I-39100 Bozen/Bolzano - South Tyrol, Italy
Tel: ++39/0471/306 124 / -125
Fax ++39/0471/306 199
Francesco.Palermo@eurac.edu
Jens.Woelk@eurac.edu

University of Trento
Faculty of Law
Via Verdi 53
I-38100 Trento - Italy
Tel: ++39/0461/88 18 19 / - 23
Fax ++39/0461/88 18 99
Palermo@jus.unitn.it
Woelk@jus.unitn.it

* Chapters 1 and 2 by Francesco Palermo, chapters 3 and 4 by Jens Woelk; concluding remarks by both.

1. Introduction. Political and economic cooperation vs. historical legacy?

Borders are generally seen as something which divides. Especially in the context of the Nation-State, the primary historical function of borders is that of barriers[1]. But borders also function as filters, as "discriminating mediators between two or more political-institutional or economic systems", creating economic advantages and disadvantages. A third approach, the concept of the "open border", stresses the function of contact (instead of separation) between two or more political-institutional systems or social-economic subsystems, allowing synergies between border areas and transforming the border-economy into a cross-border economy by means of cooperation.[2]

The genesis of the idea of cooperation between territorial units belonging to different States is not per se a new one. On the contrary, this idea can be considered to be one of the basic phenomena of the federative (federalizing) process that lead to the formation of most of the present federal States within the last two centuries.[3] The federative origin of many federal constitutional orders is basically founded on the common interest of different sovereign entities in jointly managing specific policies and/or competencies. Usually, the federative agreement was concluded between (more or less) culturally homogeneous entities as a means in the process of formation of nation-States (e.g. Germany and, by a certain degree, the United States). Nevertheless, cultural homogeneity was not the only reason for closer integration of formerly separate entities, but also functional elements played an important role, like for example defense, common economic interests, etc. This is shown by the case of Switzerland, where these factors clearly prevailed over linguistic and religious elements, and, to a lesser extent, also by the case of Germany, with its religious divide between north and south. However, only in more recent times, and in a specific area (western Europe), the idea of closer integration as a mean to pacification and economic growth became popular again, as it is shown by the foundation of the Council of Europe (1950), the European Communities (1952-1957) and, more recently, by the aim of including the ex-socialist countries into the European Union.

In the (peaceful and economically more and more integrated) European context after WW II, border areas (so far a mere "periphery of the Empire") started to express two needs. It was more and more perceived that the increased integration between the States and the consequent dilution of national sovereignty, transformed these areas from mere peripheries of the nation States they belonged to, to "new centers in the periphery"[4], i.e. integrated and more efficient areas from the economic, cultural, etc. point of view, performing a sort of bridging role as contact areas between different systems[5]. In addition to that, the necessity of a joint management of common problems between neighboring areas belonging to different States became of overall evidence and of increasing importance. This is

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[1] See recently L. Hutchman, Beyond **borders**, Fredericton, Broken Jaw Press, 2000, H. French, Vanishing **borders**: protecting the planet in the age of globalization, New York, W.W. Norton, 2000 and G. Mantovani, Exploring **borders**: Understanding culture and psychology, Philadelphia, Routledge, 2000.

[2] Remigio Ratti, Regioni di frontiera. Teoria dello sviluppo e saggi politico economici, CCM, Lugano 1991, p. 57-67.

[3] See C.J. Friedrich, Trends of Federalism in Theory and Practice, New York 1968, D.J. Elazar, Exploring federalism, Tuscaloosa 1987.

[4] R. Toniatti, La bozza di statuto della Regione europea, in: P. Pernthaler, S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo. Rechtliche Voraussetzungen und Schranken der Institutionalisierung/Le basi giuridiche ed i limiti della sua istituzionalizzazione, Autonome Region Trentino-Südtirol/Regione Autonoma Trentino-Alto Adige, Trento, 1997, p. 23.

[5] R. Ratti, Regioni di frontiera. Teoria dello sviluppo e saggi politico economici, CCM, Lugano 1991, p. 67; G. De Vergottini, Regioni di confine comuni: dalla cooperazione alla istituzionalizzazione, Rivista di studi politici internazionali, LXII (1995), p. 1 ss.

particularly true for the case of environmental issues, but goes also for problems affecting the fields of economy (commerce, trade and tourism), transport, the cultural sphere and many others.

Only in a more recent time interregional cross-border cooperation activities started also between areas where ethnic, linguistic or cultural groups live, constituting a minority within their State, but to the majority on the other side of the border (e.g. between the German-Czech, the Italian-Slovenian, the Austrian-Italian border)[6]. Therefore, also CBC began to draw political attention, especially because some cooperation projects were (and still are) seen as a tool for the creation of ethnically homogeneous Regions and consequently of a Europe not based on the cultural integration, but on the federation of small and ethnocentric areas.[7]

On the other hand, the overall tendency in governance and its organization is the search for (more) efficiency, which can be best achieved by more flexible and result-oriented cooperation between (already existing) entities. This does not only explain phenomena like cooperative federalism (and regionalism), but also supranational forms of cooperation, e.g. the European Community. In the context of CBC this supranational cooperation proves to be a guarantee for the States with respect to fears for their sovereignty. In this new and less "ideological" context, cross-border cooperation can also be a useful indicator for the institutional evolution ("ripeness") of autonomy-systems.

The autonomy in South Tyrol is often seen as a model for conflict resolution[8], but one must ask whether it really represents a "success story" which can be repeated in other cases and contexts, perhaps also in the Balkans?[9] The most interesting aspect of the South Tyrolean autonomy - apart from looking at how the current agreement was reached - probably lies in the duration of this same agreement. Because there are only few other cases with such a long practical experience in working autonomy, the experiences of South Tyrol, as a mature system of territorial autonomy, could also provide valuable insights into the goals and the means of CBC in a post-conflict situation.

2. The phenomenon of cross-border cooperation and its legal nature

The concept of the border as a "barrier" has been more and more perceived as anachronistic, creating interest in overcoming it by means of cross-border co-operation (CBC). This phenomenon is of increasing importance, but only recently has been thoroughly studied by legal scholars. International lawyers have explored this field for some years from their perspectives, but constitutional lawyers, focussing mainly on questions of sovereignty, usually did not pay too much attention to it until recently. The deep changes in the role of the State require more attention to the phenomena of and the opportunities provided by CBC.

2.1. A Changing Global Environment: interrelation, cooperation and integration

Since the end of the Cold War, the claim of self-determination has increasingly been used as a justification for demanding independence or secession. Rapid secularization, democratization and

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6 For practical examples see Council of Europe, Examples of Good Practice of Trans-Frontiers Co-operation Concerning Members of Ethnic Groups on the Territory of Several States, Strasbourg 1995; also R. Strassoldo/G. Delli Zotti, Cooperation and Conflict in Border Areas, Angeli, Milano 1982.

7 See, for example, G. Delli Zotti/L. Bergnach, Etnie, confini, Europa, Angeli, Milano 1994 and B. Luverà, Oltre il Confine, il Mulino 1996.

8 For example Alcock 1994, 46, Feiler 1997, 10, Magliana 2000 (esp. 127 ff.), and, critical, Kager 1998, 1.

9 See for this question Böckler 1996, Böckler/Grisenti 1996 and Böckler 1999, 87 ff.

urbanization often have a strong impact on ethnic sentiments, which frequently serve as a substitute for religion. Democracy also tends to emphasize the importance of the nation[10].

Despite the ongoing changes in international law, which seem to be putting an end to absolute State-sovereignty and to the principle of non-interference, there is normally great reluctance to the alteration of international borders, still seen as a guarantee for stability. Since ethnic groups do not always concentrate in a compact-settlement area, means other than secession or independence have to be used in order to solve conflicts of ethnic diversity within the State.

On the other hand, the various processes of globalization are weakening the nation States, which are increasingly unable to perform the functions of an all-purpose-organization. This is evident in, but not limited to, the economic field.[11] Furthermore, there is also a growing and widespread dissatisfaction with the inefficiency and remoteness of the large-scale, bureaucratic State.

The answer to these developments is sought in the form of a political organization which combines the cooperation - and even integration - of States on a supranational level with a general trend towards greater decentralization through the devolution powers and responsibilities to sub-State entities.[12] Without raising the question of its State-like character, the European Union, with its functional approach and the often-quoted principle of subsidiarity provides a formidable example of this tendency towards the establishment of multilevel governance.

Contrary to the situation during the Cold War, where genuine autonomy was sometimes seen as incompatible with State-sovereignty, it now not only represents an attractive alternative to secession, but is also perfectly in line with a pattern of general decentralization and the creation of multilevel governance-structures by integration. These developments give more room for differentiation and for activities on a regional and sub-State level,[13] both within the State as well as across its borders, as it is well demonstrated by the (lobbying) activities of various European regions in Brussels,[14] their engagement in economic development projects in other countries and the formation of so-called Euroregions across State-borders. In this perspective CBC activities constitute a flexible horizontal link, a necessary and important addition of internal decentralization of the States.

After the phase of immediate economic reconstruction that followed WW II (until the 1960ies) and with the beginning of the European integration, cross-border cooperation between territorial units significantly increased in Central (esp. Western) Europe, e.g. along Germany's Western and Northern borders. Immediately after the fall of the Berlin wall, in the whole area, on both parts of the former iron curtain, interregional cross-border cooperation developed between German, Austrian and Italian entities on one side and Polish, Czech, Slovenian ones on the other[15]. Due to the lack of public-law instruments allowing the Regions to perform their functions also across their borders or boundaries, the legal instruments for this kind of cooperation were mainly forms of private law (associations, foundations, companies, working groups, etc.).

As cross-border organisms, the so-called Euroregions are the institutionalization of spontaneous and informal CBC-activities and thus the highest developed link in the chain of their evolution. They first appeared in three vast regions of Europe, which are particularly sensitive to issues related to traffic

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[10] For a deeper analysis on the changing concept of democracy with regard to citizenship and multicultural society see Dunne, Citizenship....?, W. Kymlicka, Multicultural citizenship, Oxford 1995.

[11] R. Ratti/A. Bramanti, Verso un'Europa delle Regioni. La cooperazione economica transfrontaliera come opportunità e sfida, Angeli, Milano 1993.

[12] See S. Ortino, Il nuovo nomos della terra, il Mulino, Bologna 1999.

[13] F. Marcelli, Regioni e ordinamento internazionale, Milano ???.

[14] V.E. Bocci, ???, in Istituzioni del federalismo 2000, p. ???

[15] See R. Hilf, I progetti tedeschi di regioni transfrontaliere, in Limes 4/1993, pp. 79.

and/or environment: Scandinavia (*Nordic Council*), along the river Rhine (*Regio Basilensis* and *Euregio*) and in the Alps (*Arge-Alp*, *Alpe Adria*).[16] A Euroregion can be defined as "a formal structure established by muncipalities or regions for the purpose of cross-border cooperation with the participation of economic and social partners".[17] These structures do not represent a new level of government, but a horizontal and flexible link for persons, enterprises and public bodies on both sides of the border by offering practical and psychological advantages and respecting the common interests.[18]

These cross-border entities have appeared all over Europe, in different forms and times. There is a great variety in the institutional and administrative structures which has direct effects for the possibility of influencing effectively policies related to the territory, the environment, the traffic or the economic cooperation of its members. The following factors influence the level of integration most:[19]

- internal factors: the geographical and demographic dimensions, and the historical aspects as well as the relationship with the Central State, the administrative capacities and the (different) legal framework;
- external factor: the real prospect for social and economic integration, i.e. whether the participating entities are similar or complementary to each other.

These variable factors explain the wide range of CBC-activities, in their "soft" and institutional forms;[20] as a consequence, one cannot draw conclusions from CBC in general for one single case. A thorough case to case analysis is necessary.

2.2. The legal base in International and European Community-law

In the last 25 years cross-border activities between sub-national territorial entities increased enormously, especially under the legal and political umbrella of the Council of Europe.[21] In 1980 the member States of the Council of Europe agreed upon an Outline Convention on cross-border cooperation between territorial communities or authorities[22], that aims «to facilitate and foster cross-

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16 P. Bajtay (ed.), Regional cooperation and the European integration process: Nordic and Central European experiences, Hungarian Institute of International Affairs, Budapest 1996.

17 Definition by J. Gabbe, European Models of Inter-Regional and Cross-Border Cooperation in the European Union, LACE, Gronau 1995, p. 3.

18 W. Ferrara, Regioni frontaliere e politiche europee di cooperazione, ISIG, Gorizia 1998, W. Ferrara/P. Pasi, Come funzionano le euroregioni. Esplorazione in sette casi. I.S.I.G. Gorizia 2000, p. 10.

19 W. Ferrara/P. Pasi, Come funzionano le euroregioni. Esplorazione in sette casi. I.S.I.G. Gorizia 2000, p. 11. In their comparative study, the authors present 7 case-studies on different forms of Euroregions: The Dutch-German Euroregion, the *Regio Basilensis* (Switzerland, upper-Rhine area), *Pamina* (a very small euroregion in the framework of cooperation on the river Rhine), the Euroregion *Neisse* (on the Eastern borders of the EU, between Germany, Poland and the Czech Republic), the Euroregion *Carpathia* (outside the EU, between Hungary, Romania, Slovakia, Ucraine and Poland), the *Regio Insubrica* (Italy and Switzerland) and the Euroregion in the Trentino-South Tyrol-Tyrol area.

20 See also U. Beyerlin, Dezentrale grenzüberschreitende Zusammenarbeit als transnationales Rechtsphänomen, in: Archiv des Völkerrechts 27 (1989), p. 286 ss.; U. Beyerlin, Rechtsprobleme der lokalen grenzüberschreitenden Zusammenarbeit, Heidelberg 1988; W. Lang, , Die normative Qualität grenzüberschreitender Regionen – Zum Begriff der 'soft institution', Archiv des Völkerrechts (ArchVR) 3/1989, p. 253 ss.

21 In 1966 the Recommendation 470 was adopted by the Consultive Assembly (now Parliamentary Assembly), followed in 1974 by Resolution 8, regarding the cooperation at municipal level in border areas, adopted by the Commitee of Ministers. See Council of Europe, Documents and Agreements concerning Transfrontier-Cooperation in Europe, Strasbourg 1997, and C. Ricq, Manuale sulla cooperazione transfrontaliera in Europa ad uso delle collettività locali, Consiglio d'Europa, Strasburgo 1996. In English?

22 Signed in Madrid on May 21st, 1980 (after 5 years of working on the drafts) and entered into force (after 4 ratifications) on December 22nd, 1981; see M. Frigo, , La cooperazione regionale nella convenzione del Consiglio

border co-operation between territorial communities or authorities [...] and to promote the conclusion of any agreements and arrangements that may prove necessary for this purpose with due regard to the different constitutional provisions of each Party» (article 1)[23].

The Outline Convention established an international legal base for the already existing activities and for the further development of this new kind of cooperation. Nevertheless, as it is typical for international law mechanisms, the Convention only provides a programmatic context and a minimum standard which shall be common to all the contracting parts.[24] In the case of the Convention, the minimum standard is the opportunity for the local communities or authorities to cooperate «in particular by agreements in the administrative field» (point 3 of the preamble), having regard, in any case, to the different constitutional provisions of each State (articles 1, 2 al. 1, 3 al. 1, 4). The most relevant consequence of the Convention therefore is, that it brings CBC into the domestic legal system of the contracting States, transforming it by this means from an activity at best "tolerated", into an explicitly mentioned "legal" one, the promotion of which the States have agreed upon.

On October 20th, 1995 a very important additional protocol (no. 2) of the Madrid Outline Convention was opened for signature[25]. This Protocol aims to strengthen the Outline Convention by clarifying the legal nature of CBC agreements and euroregions. It expressly recognizes, under certain conditions, the right of territorial entities to conclude cross-border co-operation agreements, the validity in domestic law of the acts and decisions made in the framework of a cross-border co-operation agreement, and the legal corporate capacity ("legal personality") of any co-operation body established under such an agreement (art. 5). Thus, the additional Protocol opens new opportunities for internationally regulated CBC, but its importance should not be overestimated, because it needs the ratification by the involved States[26] and additional implementation measures.

It can therefore be said that the foundations for CBC provided by international law, alone are not sufficient as a legal base for concrete measures to be taken as interregional cross-border activities.

This is also true for EC-law, at least from a formal point of view. EC-law cannot directly intervene in this field, because the internal organization and distribution of powers between the various levels of governance is still vested in the Member States. Nevertheless, the regional policy of the EC, especially by means of financial incentives and support in order to promote cross-border cooperation activities, play a crucial role in – indirectly - stimulating the States to improve the competence of their regions to connect themselves with regions belonging to other States.[27] The most relevant instrument is the initiative INTERREG, which since 1990 provides founds for common initiatives between border

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d'Europa del 1980 e i limiti della sua attuazione in Italia, in: A. Mattioni, G. Sacerdoti (eds.), Regioni, costituzione e rapporti internazionali. Relazioni con la Comunità europea e cooperazione transfrontaliera, Angeli, Milano 1995, p. 71 ss., and Documents in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 193 ss. and http://www.conventions.coe.int/treaties/EN.

[23] About the genesis and aims of the Madrid outline convention see E. Decaux, La Convention-cadre sur la coopération transfrontalière des collectivités ou des autorités locales, in Revue Générale de Droit International Public, LXXXVIII, 1984, pp. 557.

[24] R. Toniatti, How soft is and ought to be the law of interregional transborder cooperation?, in: R. Kicker, J. Marko, M. Steiner (eds.), The Legal System and the Economy on New Borders, Graz 1997, p. ???.

[25] Open for signature by the States which have signed the Outline Convention, in Strasbourg, on 9 November 1995 and entered into force on 1 December 1998; see Documents in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 269 ss. and http://www.conventions.coe.int/treaty/EN/cadreprincipal/htm.

[26] By the end of 1999, the Protocol had been signed and ratified by 7 countries, other 7 countries had only signed. Italy signed the Protocol on 5 December 2000 but has not ratified it yet. Austria did not even sign it.

[27] European Commission, A Practical Guide to Cross-Border Cooperation, Luxembourg 1992; European Parliament, Cross-Border and Interregional Cooperation in the European Union, Regional Policy Series, Luxembourg 1996.

regions within and outside the EU[28]. The INTERREG-funds promote CBC as a means for the economic development of border regions in order to overcome (mainly economic) problems of regional markets in the peripheries of the EU. Of great importance in terms of awareness- and trust-building is the involvement of the States which, by participation of the regional and local entities, have to provide cooperation-programs (5 years duration) in order to make use of the funds. The total amount of INTERREG-IIA (1994-1999) was around 4 billion ECU. Currently, the INTERREG initiative has entered its third phase, with a constantly increasing budget.[29]

They are open for each region situated on borders, within the EU or with non-Member States.[30] There are special programs for the Eastern borders of the EU (Phare-Cross Border Cooperation Program)[31] and the cooperation with the successor States of the former Soviet Union (Tacis-Cross Border Cooperation Program)[32]. Another significant European initiative for the promotion of CBC is the LACE project, aimed at informing and increasing the exchange of know-how related CBC between European border regions;[33] other European initiatives grant (financial) aids to enterprises acting across the borders[34].

In simple words, the phenomenon of CBC, with its typical bottom-up approach, is increasingly determined by EC-law (and policies), even though only in an indirect way, by means of promoting economic cooperation (esp. through a generous financial support). Nevertheless, the legal foundations of CBC still remain with the single (and often different) domestic constitutional systems of the States.

2.3. Comparative constitutional analysis of regional treaty making power in Europe

2.3.1. Provisions in federal and regional EU Member States

Federal systems usually allow their member States a partial treaty making power (Germany, Austria, Belgium), whereas so called regional States do not provide this power to the regional level (Spain and Italy).[35] A deeper analysis of the praxis of member States' treaties and "foreign policy" in federal States belonging to EU shows that:

- international treaties are very rarely used by the sub-national entities;

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[28] Already in 1989, a first financial support of CBC activities had been included in art. 10 ERDF (European Regional Development Funds). See Commission des Communautés Européenes – Direction Générale des Politiques régionales, INTERREG. Fair sauter les frontiéres, Bruxelles 1990 and the short overview in W. Ferrara/P. Pasi, Come funzionano le euroregioni. Esplorazione in sette casi. I.S.I.G. Istituto di Sociologia Internazionale di Gorizia. Gorizia 2000, p. 7 ss.

[29] See Communication from the Commission to the Member States of 28 April 2000 laying down guidelines for a Community initiative concerning trans-European cooperation intended to encourage harmonious and balanced development of the European territory - Interreg III (OJ C 143, 23/05/2000 p. 6).

[30] The specific aims of the EC's structural policies are no longer a precondition; also local and private bodies can apply.

[31] European Commission, Phare Cross-Border Cooperation Programme, Brussels 1994.

[32] See Special Report No 16/2000 of the Commission on tendering procedures for service contracts under the Phare and Tacis programmes, (OJ C 350 , 06/12/2000 p. 1).

[33] LACE - Linkage Assistance and Cooperation for the European Border Regions. The operative assistance, e.g. assistance in the preparation of INTERREG-IIA-projects, is given by the Working Group of European Border Regions (AGEG). See AGEG/LACE (eds.), EG-Pilotprojekt LACE, AGEG, Gronau, 1991.

[34] Cf. AGEG (ed.), Zusammenarbeit zwischen Unternehmen und Entwicklung in Grenzregionen, AGEG, Gronau, 1991.

[35] Cf. L. Pegoraro, A. Rinella, Cooperazione transfrontaliera e potere estero: profili comparatistici (con particolare riferimento ad alcuni ordinamenti confinanti con l'Italia), in: T. Groppi (ed.), Principio di autonomia e forma dello Stato. La partecipazione delle collettività territoriali alle funzioni dello Stato centrale nella prospettiva comparata, Torino 1998, p. 179 ss.

- they can be concluded only if they respect some limitations;
- those limitations are exactly the same that are provided for external relations of the regions in the regional States.[36]

2.3.1.1. Constitutional provisions in federal States

In **Germany** article 32 al. 3 of the Basic Law (GG) provides the *Länder* with the treaty-making capacity in their fields of legislative competence. In 1957 the *Länder* freely agreed upon a limitation of their own treaty making power (Lindau agreement), recognising that in some matters of their competence (e.g. navigation, membership to international organisations, trade, etc.) it could have been more efficient to have the treaties stipulated on State-to-State level, because the *Länder* would simply be inadequate in dimension for operating efficiently in those matters. According to the Lindau agreement, also treaties in the competence sphere of the *Länder* can be concluded by the federation, after co-decision with the *Länder* within a mixed commission. In other matters (e.g. school and culture) the *Länder* still keep their treaty making capacity, but agreements are few in number and very similar to each other regarding the contents. Moreover, in almost all cases the Federation is also contracting part of the treaties[37]; by this means, the necessary federal consent to the regional treaties is given. In addition, article 59 GG reserves to the Federation the exclusive competence for treaties "regulating political issues", which in practice can mean everything.

In **Austria** the treaty making power was conferred to the *Länder* only in 1988, in the process of the federal reforms, which have begun on 1974 and slowly but constantly granted a brighter autonomy to the *Länder*. From that time, no international treaty has been stipulated by the *Länder*, even though in some cases concrete attempts were made[38]. This is mainly due to the complicated mechanisms of previous political control by the Federation (art. 16 B-VG) as well as, above all, to the attractive alternative for the *Länder* to operate also in co-operation with foreign countries and also in matters which do not fall within the fields of their legislative competence, simply by acting in forms of private and not by public law (art. 17 B-VG). This mechanism not only allows to bypass the division of competencies between *Länder* and Federation provided by the federal constitution, but is also much more flexible from the functional point of view.

Also in **Belgium** the treaty making power of regions and communities has been introduced in the constitutional system later (1980), and only in 1993 in the formal constitution. Like in Austria (and unlike Germany), this power has not been granted for historical reasons[39], but for only political reasons in the process of transition into a federal constitutional order. Especially in the '80ies, the Belgian regions and communities tended to use the instrument of the international treaty quite frequently, in particular for political aims, in order to stress their "quasi"-State-quality. After formal transformation of Belgium into a federal State and re-definition of the limits of international action of the member entities (1993), a decrease of the number of treaties concluded by regions and communities can be observed. This seems to be due mainly to the fact, that the federal structure provided by the 1993 constitution contains various mechanisms allowing co-operation or even making it unavoidable. Nevertheless, Belgium still remains the country, where sub-State

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[36] Cf. F. Palermo, Il potere estero delle regioni, Padova 1999 and, idem., Die Außenbeziehungen der italienischen Regionen in rechtsvergleichender Sicht, Frankfurt et al. 1999.

[37] O. Rojan, *Art. 32* in: I. von Münch (Hrsg.), *Grundgesetz-Kommentar*, München 1983, 309.

[38] Kärnten and Styria with the Republic of Slovenia, (partially) Tyrol with South-Tyrol and Trentino, etc. Further examples in: W. Burtscher, *Die Betätigung der Länder im Bereich des Auswärtigen und ihre Beteiligung an internationalen Abkommen*, in: *La acción exterior y comunitaria de los Länder, Regiones, Cantones y Comunidades Autónomas*, IVAP, Oñati, 1995, 409.

[39] Cf. C.J. Friedrich, *Trends of Federalism in Theory and Practice*, NewYork 1968 and R. Dehousse, Fédéralisme et relations interlationales, Bruxelles ???

international treaties are basically used as a political instrument, as a manifestation of the differences between the Belgian cultures; it is not by accident, that Belgian sub-State entities stipulate international treaties almost only in the cultural field.[40]

2.3.1.2. Limitations

Concerning the limitations in concluding international treaties, all three federal systems share the same basic rules. In spite of various procedural differences in reaching co-operation, the member States are allowed to stipulate international treaties only under the following conditions:

- there must be the consent of the federal level (before or after the conclusion);
- there is a control by the federal level, which can always prohibit the treaties or force the member States to denounce them;
- the sub-State treaties must not affect the international liability of the whole State nor its foreign policy. Especially where "foreign policy" is concerned, the concrete limitations depend largely on discretion, limited only by means of a previous intense co-operation between the member States and the Federation.

2.3.1.3. Parallel situation in regional States

The substantial limitations to the international activities of member States in Federations are basically the same that regional States' constitutions provide for "external" relations of the regions. In Italy and Spain, according to the constitutional provisions, neither the "ordinary", nor the autonomous (historical) regional autonomies have any possibility to establish relations with foreign States or their regions.[41] Nevertheless, the progress of European integration, the growth of the regional autonomy in both States and the continuos and rapidly increasing interaction of nearly all public activities (globalisation) requested to allow the Regions to act at European and international level.

Such an evolution in the Italian and Spanish "living Constitution" was due to many reasons. Firstly, both the Italian and the Spanish "regional" constitutions provide some flexibility in order to allow an adequate evolution of the regional self-government. Secondly, the legal base to reach some kind of regional external power was founded in the co-operation between the regional and the central government. In this sense, one could argue that "external relations" are in fact merely "internal matter", because the regions may establish some relation with foreign public bodies only through co-operation with the State. Finally, an important role in this matter was assumed by the constitutional courts in both countries. The Courts (especially the Italian one) developed different types of regional external activities allowed under the constitutional order.[42]

All those activities are allowed under the same limitations set by the federal constitutions to the international and the "other" activities of the member States:

- no interference with the international liability of the State and with its foreign policy;

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[40] A. Schaus...

[41] G. S. Beltran, La cooperación interregional o la conclusión de acuerdos por los entes subestatales en Europa; los casos particulares de Italia y Espana, Barcelona 1998.

[42] G. Sacerdoti, La cooperazione interregionale europea tra vincoli costituzionali e principi di diritto internazionale, in: A. Mattioni, G. Sacerdoti (eds.), Regioni, costituzione e rapporti internazionali. Relazioni con la Comunità europea e cooperazione transfrontaliera, Angeli, Milano 1995, p. 41 ss., and L. Pegoraro, A. Rinella, Cooperazione transfrontaliera e potere estero: profili comparatistici (con particolare riferimento ad alcuni ordinamenti confinanti con l'Italia), in: T. Groppi (ed.), Principio di autonomia e forma dello Stato. La partecipazione delle collettività territoriali alle funzioni dello Stato centrale nella prospettiva comparata, Torino 1998, p. 179 ss.

- mechanisms of State control;
- consent of the central State.

The State has to be informed about the regional external activities and can stop them if they violate two basic principles: the international liability of the State and the unity in the guidelines of the foreign policy. In any case the regions may impugn the denial to the constitutional court. These conditions become limitations for the regions if they are not able to co-operate with the State. An efficient co-operation reduces the need for State control and the discretion in considering a regional activity interfering in the "foreign policy".[43]

Thus the comparative legal analysis demonstrates that, because of the similarity of the limitations, the common core of these activities consists in the procedures of reaching the co-operation between the levels of government.

2.3.2. Constitutional cooperation as the very essence of the law of CBC

Modern public law is looking more and more alike private law: on the one hand the autonomy to negotiate its own conditions, the fundament of private law, is increasingly characterising the relations between public bodies; on the other, a wide range of functions which were formerly performed in the form of public law are now subject to privatisation. Private law is therefore more often used by public bodies instead of public law. In the field of CBC the use of private law is even more frequent, because of the lack of specific public law-instruments.

As the autonomy of private persons to stipulate contracts is not unlimited, also CBC is subject to some limitations. While the limits of international liability, foreign policy and necessity of a State control must be respected in any case, this procedure provides reciprocal limitations to both the regional activities abroad and the mechanisms of State intervention in controlling and prohibiting them. It can be Stated that the law of CBC is a procedure which provides limitations to both the regions and the central State and those limitations can only be managed in the framework of the co-operation between State and regions.

Therefore, legally speaking, and especially from a constitutional perspective, CBC does not constitute a matter of competence but a mere set of procedural rules. Being it impossible to define precisely the single activities and measures that regions can carry out and adopt within the framework of CBC, its legal regulation does not (and cannot) deal with specific cases, but only with a procedural framework which makes them realise. CBC is not law in itself: it is a law in the making, and the instrument to make it possible is a (constitutionally) regulated procedure.

Thus, the activities of CBC are representing a new "experimental" law, as soft law or in forms of private law[44]; the rules of experimentation are provided by the co-operation within the domestic constitutional order, although influenced by international and European law as well as by the practice. To be able to co-operate with foreign regions and States, the sub-State entities must therefore first of all co-operate with and within the central State. This fits into the general scheme of weakening of State-control which is increasingly compensated by more participation and co-operation (co-operative federalism and regionalism)[45].

It has become clear from the comparative analysis that the principles of CBC are common to both the "regional" States (Italy, Spain) and the "federal" States (Austria, Germany, Belgium). The

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[43] F. Palermo, Il potere estero delle regioni, Padova 1999.

[44] R. Toniatti, How soft is (and ought to be) the law of interregional cross-border cooperation? in J. Marko, R. Kicker, M. Steiner (eds.), The Legal System and the Economy on New Borders, Graz 1997, p. ???.

[45] J. Woelk, Konfliktregelung und Kooperation im italienischen und deutschen Verfassungsrecht. Nomos, Baden Baden 1999 and R. Bifulco, La cooperazione nello stato unitario composto, Padova 1995.

federal systems basically tend to provide the member States with a limited treaty making power, whereas this is not the case in "regional" constitutional orders. Nevertheless, the practical use of this power by the member States is very limited (Germany, *mutatis mutandis* Belgium) or it does not even exist (Austria). Also the controlling power of the central State is provided for in both the federal and the regional systems, in order to guarantee the unity in the international liability and in the foreign policy.

In other words, the more intensive the co-operation between the central State and the regions, the more effective the law (in the sense of procedures) of CBC. Therefore, in all countries, the best way to improve the cross-border co-operation capacity of the regions is to improve the co-operative mechanisms, making them more efficient, between the central State and the regions. Only under this point of view a difference between the various constitutional systems can be observed, but it does not affect the regional or federal nature of the countries: the more developed the mechanisms of co-operation between the levels and the participation of the regions in the State affairs, the more efficient the law of CBC.

This explains why – paradoxically – the absence of constitutional provisions concerning external relations of regions (as in the cases of Italy and Spain) seems to constitute even an advantage for the flexible evolution of CBC. In fact, "law in the making" can easier develop where there is no (or only few) formal law in place: in our case, experimental law of CBC (and other regional external relations) could be "tested" in Italy and Spain, where the constitutional courts "followed" step by step and adapted the "living constitution" to the "concrete necessary law" (the evolution of CBC).

On the contrary, international treaties concluded by sub-national entities play hardly any role in the field of CBC. As shown before, those treaties can be considered additional instruments, but their legal limitations are more effective than their field of application. Moreover, the increasing internationalisation of almost all matters due to phenomena known as "globalisation", requiring softer and more flexible instruments, makes them more and more useless. In fact, CBC, in most cases, is enacted through different mechanisms[46].

In some regard, the uncertainty concerning the very legal nature of CBC mirrors the uncertainty of European Law of the beginning[47]. During the first decades of the European communities, nobody really could precisely say what their nature was like and how (or how far) it could develop. Today it is generally accepted that EC/EU Law constitutes a category of its own.[48] The same seems to be true for the present legal panorama of forms of CBC.

At present, however, at least one basic legal achievement can be pointed out: flexibility of the constitutional legal order seems to be the most important factor for allowing the necessary external power to the regions. Thus the main legal obstacle for a complete realisation of external relation powers of the regional level of governance is not the absence of treaty making power in the constitution (this seems to be in fact merely an additional support to the regional competence) but the lack of mechanisms allowing a permanent co-operation and an effective regional participation in the policy making process at a federal/central level.

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[46] In Germany, in addition to art. 32 al. 3 GG - Basic Law (foreign powers of the *Länder*), rarely used, a new constitutional provision has been adopted in 1994 (art. 24 al. 1a GG), in order to permit the creation of permanent CBC-bodies of public law. This provision represents the only attempt to formalise innovative legal forms of CBC at Constitutional level, so far.

[47] Cf. S. Ortino, *Uno spunto di riflessione: l'Euregio e la fase iniziale delle Comunità europee*, in: P. Pernthaler, S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 107.

[48] See European Court of Justice, Judgement of 5 February 1963, Van Gend en Loos, case 26/62.

The conclusion which can be drawn from this comparative analysis of external powers of sub-national entities in both, federal and regional, constitutional systems is that internal co-operative mechanisms are much more effective, in practical terms, than a formalised treaty-making power.

3. The autonomy system of Trentino-South Tyrol

Before exploring the Trentino-South Tyrolean experiences with cross-border cooperation, which will then lead to the general question of how and under what preconditions CBC might be used as an instrument in post-conflict situations, it is important to recall the process leading to the settlement of the South Tyrolean question as well as the basic principles of the current autonomy.

3.1. The settlement of the South Tyrolean question

South Tyrol, situated in the very North of Italy on the border to Austria, is a Province which covers only 2,4 % of the Italian territory. Its major valleys form passageways through an overall mountainous terrain. The population of about 450.000 inhabitants (corresponding to 0,5 % of Italy's population) consists of two-thirds German speakers, less than one-third Italian speakers and some 20.000 Ladin speakers.[49] The majority of German speakers live in the valleys and rural areas.[50]

In some way, the conflict in South Tyrol reflects the main historical developments of the 20th century: it dates back to the annexation of the former Austrian territory by Italy in 1919, which was done in spite of Woodrow Wilson's declarations of self-determination as guiding-principle for the Post-War-order.[51] The 1920s saw the repression of the native German speaking group by a totalitarian regime, the Italian fascists. After the end of WW II (and a short period of Nazi-occupation), the peace treaty with Italy recognized South Tyrol as a part of Italy, for many (and not always clear) reasons. What seems certain is that Russia wanted to satisfy the Yugoslavian demands for Istria and Dalmatia, quasi "in exchange" for the South Tyrolean territory[52].

To avoid the dangers of the past, the Paris peace treaty provided an international anchoring for the South Tyrolean autonomy, ensuring to the German-speaking population special provisions to guarantee "complete equality of rights with the Italian-speaking inhabitants" and to safeguard "the ethnic character, and the cultural and economic development" of the Province of Bolzano. In 1948 the Italian Parliament issued an autonomy statute, which contained a large autonomy (for that time), but basically only at a regional level, where the Italians were the majority, and not at a provincial level. The statute ensured the co-officiality of the German language.

These autonomy measures were considered to be inadequate, and at the end of a process of political claims, the South Tyrolean Peoples Party (SVP) left the Regional Government (1959). The political struggles aimed at achieving a satisfying autonomous regime began, reaching their climax with several bombings on power lines in the Sixties and the discussion of the case before the UN General Assembly. In two resolutions (1960 and 1961) the U.N. General Assembly recommended that a

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[49] The Ladin population is concentrated in two valleys in the Dolomite mountains, in the southeastern portion of the Province. Although interesting, because of the special regime applied in the Ladin municipalities (e.g. trilingual road signs, a "mixed" school system with German and Italian as languages of instruction), the two valleys are to small and isolated for exercising a major influence on the policy of the Autonomous Province as a whole or on the relations between the two major language groups, this article is focussing on.

[50] Due to the immigration policies of the past and the attempts at industrialization, the Italian group is concentrated in the three major cities (Bozen/Bolzano, Meran/Merano and Brixen/Bressanone) and in the southern parts of the Province, bordering on the Province of Trento (Trentino) which is almost entirely Italian.

[51] A. Alcock 1970.

[52] Oskar Peterlini, Autonomy and the Protection of Ethnic Minorities in Trentino-South Tyrol, Trento, Regione autonoma Trentino-Alto Adige, 1997, p. 82.

friendly solution be found by further negotiations. A special commission was established by the Italian Government with representatives of the minority, which finally led to the so called "Package" of legislative measures in favour of the inhabitants of the Province of Bolzano, which put an end to the conflict.

It was only 30 years ago, that after long negotiations this legal framework came into force: the "Package", consisting of 137 detailed implementation-measures, which "updated" the first and unsatisfactory autonomy and resulted in the actual 2nd Autonomy Statute.[53] It took another 20 years to have all of its enactment laws adopted and implemented, so that formally the conflict was settled just a decade ago, in 1992.[54] Three years later, Austria joined the European Union and in 1998 the Schengen-Treaty entered into force also in Italy and Austria, an event which transformed the Brenner border, formerly a strict line of division separating cultures, languages and peoples, into a mere administrative boundary. Besides its legal effects, this event was of great symbolic importance for the population which can now pass the border without any (visible) control.

After reaching a balance and subsequent to the establishment of a satisfactory standard of protection, there have been a growing number of indications of a period of opening up and of (increasing) normality. The formal declaration of conflict-settlement in 1992 marks the beginning of a period which requires new orientation and new objectives. In the last decade, overall in the political field ethnic tensions seem to be on the decline, the autonomous powers were strengthened.[55]

In the last years, South Tyrol has not only received relevant additional powers from the Italian State (e.g. roads, electricity, teachers and school-staff), but there are new developments in the fields of competencies provided for by the Statute, concerning especially the – delicate - sphere of culture.[56] In the context of general reform of Italy's regional system, the Autonomous Region Trentino-South Tyrol - today an empty shell and a mere roof-structure - will most probably soon be reformed: a Constitutional Law amending the 2nd autonomy-statute and adopted in October 2000 by the Italian Parliament (supported by the SVP) confirms the factual reality and at the same time provides for future changes. On an institutional level, since 1993 there is increasing interest in cross-border cooperation, demonstrated, for instance, by plans which were made for a Euroregion with North Tyrol and Trentino.

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[53] The "new" Autonomy Statute, although formally adopted for the Region Trentino-South Tyrol (Presidential Decree, d.p.r. 31.8.1972, no. 670), elevated its Provinces, South Tyrol and Trentino, to the rank of Autonomous Provinces, transferring all important powers to them.

[54] By a formal Declaration of Austria recognizing the fulfillment of all obligations undertaken by Italy in the so-called "Package" of 137 measures (one of which was the adoption of the 2nd Autonomy Statute) in order to create a genuine autonomy on the basis of principles already contained by the De Gasperi-Gruber-Agreement of 1946 (an annex to the Peace Treaty with Italy), the international anchoring of South Tyrol's autonomy. For more details see Pallaver 1990, Alcock 1982 and 1994, and Feiler 1997, 35.

[55] F. Palermo, Die zwei Dimensionen des Zusammenlebens in Südtirol, in: Europa Ethnica 1999/1-2, p. 9 ss. and J. Woelk, Südtirol: ein Lehrbeispiel für Konfliktlösung?, Die Friedens-Warte 1/2001.

[56] There are some experiments taking place in the (Italian) kindergartens and schools regarding second language acquisition, the first signs of asymmetry in a separate, but parallel education system. The European Academy Bozen/Bolzano, a research institute founded in 1992, is the first publicly financed institution which operates in the sphere of culture and which caters to all language groups. It also served as the foundation of the Free University of Bolzano (Teacher formation and Economics), founded in 1997, which offers courses in three languages, not only aiming at local students. See F. Palermo 1999, 15, S. Baur/I. von Guggenberg/D. Larcher, Zwischen Herkunft und Zukunft. Südtirol im Spannungsverhältnis zwischen ethnischer und postnationaler Gesellschaftsstruktur. Ein Forschungsbericht, Meran/Merano, AlphaBeta, 1998, p. 272 ss., M. Zappe 1996 and A. Lampis, Autonomia e Convivenza, Quaderni dell'Accademia Europea di Bolzano n. 17, Bolzano 1999. For the feelings of identity R. Wakenhut 1995, p. 139 – 154.

3.2. Basic principles of the Trentino-South Tyrolean autonomy

Analysing the autonomous system established one has to distinguish various levels:

3.2.1. Relations between Minority and Kin-State

The Autonomy Statute does not contain any provisions regarding contacts between the German speaking group and its kin-State, Austria. There are, however, some bilateral treaties promoting economic relations and recognizing educational and vocational diplomas. Economic cross border activities with the Austrian *Land* North Tyrol were possible and undertaken even prior to the Austrian EU-membership,[57] and are now intensified within the framework of a "Euroregion", which includes the Province of Trento. A number of South Tyroleans study at Austrian universities, especially in Innsbruck.

3.2.2. Influence of the Minority-Group/Autonomous Entity on Central State-Decisions

Due to its relatively small size in both territory and population, there are only few provisions dealing with the representation and participation of South Tyrol on central level. South Tyrol is represented by the Province's President in meetings of the Italian cabinet, whenever questions of the Province's interest are discussed (art. 52 Autonomy Statute). Because of the political instability which has characterized Italy over the past decades (more than 50 governments after WW II), the members of Parliament elected in South Tyrol often had great political influence, their support being potentially decisive for the survival of the Italian government. In addition, South Tyrol is one of the most active entities in defending its rights against the State before the Italian Constitutional Court and has thus contributed significantly to the evolution of Italian regionalism as a whole.[58]

As the Italian regions in general, South Tyrol is responsible for the enactment of a large part of EU-provisions;[59] correspondingly it is represented in the Committee of Regions established by the Maastricht Treaty (art. 263 EC Treaty).

3.2.3. Autonomous Powers

The desire to conduct one's own affairs on the basis of independent responsibilities and through independent representatives can generally be regarded as a basic goal of minorities. South Tyrol's autonomy satisfies these aims through its key features: autonomy of legislation and administration, proportional ethnic representation, and a commitment to bilinguality.[60] Finally, but certainly fundamental, is the generous financial basis provided for the implementation of these provisions.

South Tyrol's autonomous powers are quite outstanding,[61] not only when compared to other minority-situations. Considering that Italy is not a federal State, it is quite surprising that the competencies currently attributed to the autonomous Province of Bolzano are even greater in quantity and quality than those of its northern neighbor North Tyrol, a member State of federal Austria.[62] The legislative and administrative autonomy of the Province includes a wide range of

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[57] Zeyer 1993, 195 ff.

[58] R. Bin, L'importanza di perdere la causa, in Le Regioni 1995, 1012 ss.

[59] N. Ronzitti, L'attuazione del diritto comunitario da parte delle Regioni e delle Province autonome, in: Riv. Dir. Int. Priv. Proc. 3/1990, 587 ss.

[60] Feiler 1997, 35.

[61] Of course, only a very brief overview of the most important features can be given, for further information see H. Hannum 1996, 435 ff. and M. Magliana 2000, 50 ff.

[62] S. Morscher, Land und Provinz. Vergleich der Befugnisse der autonomen Provinz Bozen mit den Kompetenzen der österreichischen Bundes*Länder*, Institut für Föderalismusforschung, Innsbruck, Bd. 21, Wien 1981.

important issues, with the exception of defense, the justice system, the police and the power to raise and collect taxes.

South Tyrol's **legislative powers** are primarily concerned with economic, social, and cultural matters, e.g. place names, local customs and usages, town and country planning powers, environment, mining, agriculture, tourism, communications, and transport (areas in which the province has primary competence) and elementary and secondary education, commerce and public health (the Province only has secondary competences). The Assembly (Provincial Council) is the law-making body and elects the Provincial Government which carries out the **executive functions**.

3.2.4. Relations between the Different Groups Residing in the Autonomous Entity

With regard to the relations between the various language groups, two different levels must be distinguished: the first deals with the German/Ladin speaking minority in South Tyrol and the Italian nation-State, and the second deals with the relations within the province itself. On the latter level, the German/Ladin speakers are a majority, and the Italian speakers, which also consider South Tyrol to be their homeland, increasingly feel like a minority.[63]

Based on strict separation of the two main linguistic groups in South Tyrol, a complex and highly differentiated legal system has been created which calls for a mix of rotation, parity and proportional representation,[64] and which might be characterized as **"tolerance established by law"**. As a result of this system, the conflict was to a certain extent civilized and institutionalized, and could be transformed into one between politicians over the interpretation of the Autonomy Statute (ASt).[65] The main ingredient of the system is power sharing, or "consociationalism", which includes the diffusion of power from the center to the periphery.[66] All of its key elements can be observed in South Tyrol:

According to the **power-sharing model**, the composition of the South Tyrolean Government must be proportional to the ethnic groups in the Council;[67] the presidency of the Council rotates between members of the different groups (art. 49 ASt).

The principle of **cultural autonomy** is established by art. 2 ASt, which States that the parity of rights of citizens of all language groups is recognized, and "their ethnic and cultural characteristics are protected". In other words, the differences between the three cultures are recognized and the "value" of this diversity highlighted. The cultural autonomy and the provisions for the protection and promotion of cultural characteristics, including the system of separated schools, are typical

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[63] There is hardly any awareness of these two levels in South Tyrol: until the present, German and Ladin speakers did not distinguish between Italians in South Tyrol and Italians in general. Most of the people did not even distinguish between the Italian people and the Italian government; T. Kager 1998, 5 and 9. On the other hand, being a minority seems in a strange way attractive to the Italian group because of the "victim-status", which generates the idea of need for protection, see S. Baur/I. von Guggenberg/D. Larcher 1998, 42 s.

[64] For an overview see P. Hilpold 1996, 117 ss.; F. Palermo 1999, 9 ss. and A. Lampis 1999 are giving an interpretation of the development of the autonomous regime, which is characterized by a increasing accentuation of functional criteria rather than focussing exclusively on minority-protection.

[65] T. Kager 1998, 8.

[66] According to A. Lijphart 1977, and A. Lijphart, 1991, 492-494 power sharing, or "consociationalism" comprises four main-elements: (1) Participation of the representatives of all significant groups in the government, through jointly exercising governmental (and particularly executive) power, e.g. grand coalition cabinet. (2) A high degree of autonomy for the groups (especially for issues which are not of common concern). (3) Proportionality as the basic standard of political representation, public service, appointments, and allocation of public funds. (4) Minority veto as the ultimate weapon for the protection of vital interests, however only on issues of fundamental importance.

[67] Art. 50 ASt, this goes also for the Regional Government, art. ??? ASt; a similar principle applies to the municipalities, art. 61 ASt.

expressions of group-protection. All decisions in these fields require a wide consensus within the respective group.[68]

The Autonomy Statute provides for a system of **proportional representation** of the language groups for public employment and for the allocation of funds for cultural activities of the groups, as well as for social welfare and services (i.e. housing). The establishment of the numerical proportions is based on a free individual declaration of affiliation of every resident in occasion of the general Italian census, every ten years.

The principles of **equality** of all residents, regardless of their group affiliation (art. 2 ASt), and the **quasi legal-personality** of the language-groups counterbalance the provisions on proportional representation.[69] This is particularly true for the right to request separate voting by the language groups in the Regional or Provincial Council, whenever a draft-law is judged to be in violation of the parity of rights or the cultural characteristics of one group (art. 56 ASt). The ultimate means available to the language groups is an action before the Constitutional Court, founded on the same motivation.[70] These are emergency-mechanisms in case the normal means of consultation in the organs should not work.

But it is the **combination** of minority-protection – i.e. the protection of persons and groups - and the principle of territoriality – i.e. self-government of the autonomous entity with all its residents - which has led to a unique institutional mix and balance of the fundamental principles of segregation and integration under international guarantee.[71]

Following the Austrian tradition of **minority-protection**, a precondition for the cultural and linguistic protection of minority-members is their declaration of belonging to the group. This practice, namely the interpretation of everything in terms of ethnic categories is favored by the system of ethnic proportion, which, based on the census proportions, makes the organization of the South Tyrolean society dependent on a declaration of affiliation with one of the language groups.[72] The emphasis placed on language rights and on the rights of language groups is intended to preserve the status quo. In the name of protection, a strict interpretation of provisions often tends to produce a defensive attitude and resistance of the group to changes or innovations.[73]

Thus, the dominant cleavage within the society still remains ethnicity; other cleavages, such as class, are subordinated to ethnic polarization. Both the German/Ladin and the Italian groups have built up their own organizational structures and societal subsystems: kindergartens, schools, political parties, trade unions, public libraries, youth clubs, sports clubs, media, and even churches are mono-ethnic. There is not much contact between the groups, for structural reasons (urban-rural

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68 A. Lampis 1999, 19 ss.

69 A. Lampis 1999, 29 ss.

70 According to art. 56 al. 2 ASt. There are additional rights which can be made separate use of by the language groups, like articles 19, 54 and 84 ASt. The group action to the constitutional Court for the safeguard of the equality between the ethnic groups, so far has only been used by the smallest language group, the Ladins, but never by the two major ones, which demonstrates that this ultimate legal means of conflict-prevention has been effective in practice.

71 J. Marko 1999, 257.

72 T. Kager 1998, 1 and S. Baur/I. von Guggenberg/D. Larcher 1998, 29, and, more optimistic, G. Rautz 2000, 81 ff. After ongoing public discussions before the last census, in 1991 a 4th category, "others" was created, which can be chosen in alternative to the three groups, a possibility especially for EU citizens and foreigners, but also for the increasing number of bilingual people with parents from different groups. In that case, however, in the line below, a "second choice" between the three groups has to be made for the purposes foreseen by the Autonomy Statute. Statistically only the three language groups are considered for the distribution of ressources and the allocation of funds. The declaration cannot be changed for ten years (until the next census).

73 S. Baur/I. von Guggenberg/D. Larcher 1998, 29.

antagonism and divided economic structure) and due to linguistic difficulties (fluency in both languages is still not reached, especially with the elder generations).[74] The reality is therefore characterized by "parallel societies";[75] often heard is the allusion to different "clubs".[76]

Nevertheless, this segregation or "ethnically divided governance" is, at least in part, counterbalanced by the **territoriality-principle**, which adds a functional dimension, related to the territory as such comprising all residents, to the application of law in the autonomous entity. Participation, integration and co-responsibility are achieved through the equality and equal standing of all citizens,[77] a principle which can be made justiciable in the Courts (art. 98??? Ast). The territorial dimension also offers the chance of a frequent exchange between majority- and minority-positions: a German-speaking resident of Bozen/Bolzano, for instance, is a member of a minority in Italy, at the same time a member of the majority on provincial level, and again part of a minority in the city of Bozen/Bolzano.[78] This should also help to understand the positions of others.[79]

To sum up: a peaceful coexistence (*Nebeneinanderleben*) was established as a basis for the cohabitation of the groups (*Zusammenleben*) by paying particular attention to security and to other sensitive interests of the groups and by following a step-by-step policy. Already from the beginning, however, the Autonomy Statute did require cooperation and contacts between the groups.[80] Whereas in the past emphasis was above all placed on the aspects of minority-protection, there already is the possibility of a more flexible and functional interpretation for the future, based on the principle of territoriality, or better said, of "normal governance".[81]

3.3. "Dynamic autonomy"? Future perspectives

Actually the package of measures for the South Tyrolean population, introduced in 1969 to provide German and Ladin populations with a better protection in the framework of the Italian constitutional system through a larger territorial self-government, can be considered, at least from a legal point of view, fulfilled, a fact which was confirmed by the Austrian declaration of 1992. From that date, minority problems can be considered as satisfactory resolved, since minorities living within the provincial territory of Bolzano have attained a level of protection which, if not threatened by improbable and in any case internationally sanctionable violation, is to be considered optimal.

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74 T. Kager 1998, 9, also insists on ethnicity, because of a policy of "voluntary apartheid", which a "majority in both ethnic blocks" still believes in.

75 A. Langer 1996, 171.

76 Another mechanism of protection is the requirement of holding a permanent residence in the regional territory for at least four years in order to be permitted exercise the right to vote (art. 25 al. 4 ASt), once adopted against undesired migration from the rest of Italy and especially with the objective of not disturbing demographic balances by short-term stays of members of the security forces (e.g. military, border-police and customs).

77 S. Baur/I. von Guggenberg/D. Larcher 1998, 29.

78 The demographic composition of the capital Bozen/Bolzano is opposite to that of the Province in general: it is inhabited by two-thirds Italian speakers and one-third German speakers.

79 An example of the dual character of the Statute-framework are the provisions on the use of language: These are in part individual rights, formally reserved to the members of the minority-group, a, for instance in art. 100 ASt: "German-speaking residents of the Province [...] are entitled to use their language [...]". The territorial dimension, on the other hand, is expressed in art. 99 ASt, which prescribes the equal standing of both languages. Consequently the enactment decree on the use of language (d.p.r. 574/1988) does not distinguish between members of the minority and other residents, so that everyone has the choice between German and Italian.

80 S. Böckler 1999, 98 f. and F. Palermo 1999, 14 f.

81 This emphasis on functional criteria might already be visible in a more flexible application of the proportional representation-principle, especially in the Public Health Service (doctors in hospitals), and in a reform of the mandatory language test, which stresses communication skills instead of a mere translation. In general, there is increasing public debate on the census (the next is due in October 2001) and the system of ethnic quotas.

Nevertheless, since the beginning of the enactment of the "Package"-compromise, the legal context has changed radically asking for a new orientation and a change of perspective. At local level not only a satisfactory standard of minority protection, but also a high level of self-government has been achieved which continues to develop and is sometimes even seen as a model case for further decentralization or federalization of the Italian State as a whole (thus showing that autonomy is not a concept limited to the protection of minority groups, only). At national level, the process of constitutional and ordinary reforms is under way: Italy's "administrative federalism" (the Italian version of devolution) can hardly be stopped or reversed.[82]

The legal framework has also changed due to the progress of **European integration**. Since 1995 Austria is a member of the Union participating actively in its cross-border initiatives (such as INTERREG and LACE). But there have also been two recent judgments of the European Court of Justice, interfering with the autonomy-system, dealing with the questions of language rights and the obligation of bilingualism. These judgments did not contradict the autonomy-provisions, but declared their conformity with EC-Law by extending their scope of application (by including EU-citizens) or by generous interpretation (not only the certificate of bilingualism released in the province as exclusive proof of a sufficient knowledge of language, but admitting also other language-certificates).[83] Nevertheless, they were intensively discussed and there are certain worries for other instruments which might be in contrast with the free movement of persons and services in the common market. These are also due to the fact that there is no provision in the Treaties expressly protecting minorities.

In a reality changing so quickly and profoundly, even the political and (what is interesting in this paper) legal structures of the South Tyrol autonomy will have to change in order to adapt to the new situation. Government functions are no absolute values, but primarily instruments for satisfying the citizens' needs. In the previous phase of autonomy the distribution of competencies was inextricably linked with minority issues, and the large number of powers granted to the Province meant that a minority had attained more self-government within the Italian State, by that means satisfying their specific needs. Today, given the high standards of minority protection in South Tyrol which are reasonably guaranteed, at least parts of the competencies could be allocated according to functional criteria rather than to minority issues and therefore operate within the principle of subsidiarity.[84] Every function of governance should be judged in terms of its efficacy with regard to citizens' interests and not in the light of historical events under a primarily defensive viewpoint.

The recent changes at local, national and supranational level provide that South Tyrol today is no longer surrounded by "enemies" (the Italian State for the German/Ladin minority, Austria as a threat for the integrity of the Italian nation), but by partners with whom it can cooperate in managing certain governance functions. In this light, it makes sense to think of changing some principles and rules of cohabitation which still express a defensive attitude and substitute them by other, more flexible and functional-oriented principles which do not stress ethnicity any longer. A shift of balances towards the territorial principle is needed in order to succeed in the transformation from a post-conflict situation to a society which does not only accept the presence of different groups on the same territory, but appreciates it as an enriching factor which might even be capitalized by cooperation.

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[82] Cf. for an overview on the reform-process: J. Woelk, "Verwaltungsföderalismus all'italiana", Jahrbuch für Italienisches Recht (13), Heidelberg 2000, 108 ss.

[83] Judgments Bickl/Franz (Toggenburg in ELR), Angonese (Palermo in DPCE).

[84] S. Ortino in book Regione (giornata delle minoranze).

4. The way to an Alpine Euroregion

The experience of cross-border cooperation between Tyrol, South Tyrol and Trentino, including the recent attempts of establishing a Euroregion, can be subdivided into three phases: at its origins stood the "soft" cooperation in the working groups Arge Alp and Alpe Adria, embedded in a greater Alpine regional context. It was followed by the idea of an institutionalized form of CBC across the Brenner, widely known as "Euregio Tyrol", which was controversially discussed because of its high degree of institutionalisation and the clear reference made (even by name) to the historical entity of Tyrol. This experience, and the resistance it created, finally led to a third phase characterized by concrete projects with a functional dimension.

Especially the political management of the project to establish a Euroregion on both sides of the Brenner-pass[85] will be an important indicator in order to understand whether self-government in relatively stable post-conflict situations can develop in the direction of a more functional regional autonomy, reaching even beyond national borders in the framework of necessary co-operation between similar local institutions, or whether the instruments of "ethnic balancing" which characterized (with success) the enactment of the autonomy statute until 1992 will continue to dominate.

4.1. Origins of CBC in the Alps

Alongside with the confirmation of the Austrian and Italian borders after WW II, a first recognition of the close links between the different parts of Tyrol can be found already in 1946 in the Peace Treaty between Italy and Western Allies, which in its annex contained special guarantees in favor of the German-speaking group in South Tyrol (Gruber-De Gasperi Agreement). In its article 3 lit. (d) it provided for "special agreements aimed at facilitating enlarged frontier traffic and local exchanges of certain quantities of characteristic products and goods between Austria and Italy".[86]

Only three years after the Paris Peace Treaty, the so-called *Accordino*, a bilateral treaty between Austria and Italy permitted pragmatic solutions in the fields of cross-border trade and commerce.[87] It can be seen as an attempt of accomodation of the needs of the populations on both sides of the border in order to contribute to the post-war reconstruction and development of these areas.

In their social and economic characteristics Tyrol, South Tyrol and Trentino, all three typical Alpine regions with mountaineous terrain and a low density of population, show more similarities than complementary features. Due to the geoeconomic situation, this is particularly true in the economic field where the service-sector clearly dominates and the industrial sector is not very developed. Agriculture is still playing an important role in the economy, especially in South Tyrol. Situated between the two economically most developed areas of Europe, Northern Italy and Southern Germany, the three regions do not only form the only natural passageway through the Alps, but are also touristic resorts for the surrounding areas. The protection of the unique Alpine environment, the traffic problem and the promotion and development of tourism are therefore natural and interrelated common interests of all three entities. There are, however, also countertendencies in this picture: especially in the fields of tourism, milk and apple-production the three entities, offering similar products, are also acting as competitors.[88]

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[85] See P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997.

[86] Also envisaged were an agreement on the mutual recognition of "certain [sic!] degrees and university diplomas" as well as "a convention for the free passengers and goods transit between Northern and Eastern Tyrol".

[87] A. de Guttry, N. Ronzitti, I rapporti di vicinato tra Italia e Austria, Milano Giuffrè, 1987.

[88] P. Pasi, La cooperazione transfrontaliera nell'area Trentino-Tirolese, in: W. Ferrara/P. Pasi, Come funzionano le euroregioni. Esplorazione in sette casi. I.S.I.G. Gorizia 2000, p. 111 s.

A second step towards CBC followed in the 1970ies in a much broader, regional context when two working communities of Alpine regions, ARGE ALP and ALPE ADRIA, were created which provided *fora* for discussions, exchange etc. This soft cooperation between regions of different kind and legal status covers nearly the whole extension of the Alps, including even Slovenia and Croatia, quite remarkable at that time.[89]

Since its foundation in 1978,[90] the main task of the working community Alps Adriatic is joint informative expert treatment and co-ordination of issues in the interest of the members. Special attention is dedicated to the following areas (article 3 of the Joint Declaration 1978): trans-Alpine traffic links, port traffic, generation and transmission of energy, agriculture, forestry, water management, tourism, environmental protection, nature conservation, landscape care, preservation of cultural and recreational landscape, regional development, settlement development, cultural relations and contacts between scientific facilities.

The working community Alps Adriatic has no legal personality, and no central, administrative body was installed. The annual Plenary Assembly of the Heads of Government of the 19 member regions by common consent adopts resolutions of a fundamental nature. The languages of negotiations are German, Croatian, Italian, Slovene and Hungarian. A commission of executive officers is installed to support the Plenary Assembly in technical matters. The substantial work is carried out by five standing special commissions.[91] Costs are basically borne by each member region/State itself.[92]

The diversity of the member-entities (ranging from large Bavaria to tiny Liechtenstein) and their consequently different interests have certainly been a major obstacle to closer integration between the members. Both working communities, however, contributed to a cooperation-friendly environment by personal contacts, the exchange of information, the creation of networks etc. which slowly set up a useful political-institutional context into which single cross-border initiatives could be embedded.

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89 R. Kicker, The Achievements of the Cross-Border Regional Working Community Alps-Adria and its Future Role in a Europe of the Regions, in: ÖZöRV/AJPIL 49 (1995), p. 347 ss., G. Conetti, Rechtsmittel des Völkerrechts und des Gemeinschaftsrechts zur Schaffung einer zwischenstaatlichen europäischen Region im territorialen Rahmen der Region Trentino-Südtirol, der autonomen Provinz Trient und Bozen und der österreichischen *Länder* Tirol und Vorarlberg in: Autonome Region Trentino-Südtirol (ed.), Die grenzüberschreitende Zusammenarbeit in Trentino-Südtirol, Tirol und Vorarlberg: Vorschläge für ihre Entwicklung, Trento 1993, p. 13 ss.

90 Foundation Meeting of the Working Community of States and Regions of the Eastern Alpine Regions (ALPS ADRIATIC), 20th November 1978, when the basic act, the Joint Declaration of Venice was adopted. K. Rainer in Arge Alp book.

91 The five standing special commissions are: Regional development and environmental protection; Economic affairs, traffic and tourism; Culture and society; Health and social affairs; Agriculture and forestry. These special commissions install permanent "working groups" or temporary "project groups" for specific plans as required. The chair in the commissions and working groups rotates every four years in alphabetical order.
The results are indicated in approx. 150 joint reports and publications concerned with regional development and traffic planning, environmental affairs, household and industrial waste, etc. Furthermore, sports and cultural events for young people, symposiums and exhibitions are held on an annual basis. Joint advertising material for tourism purposes is created. The most important future projects include information promotion for disseminating the idea of regionalism, good neighbourly relations, and mutual respect; co-ordination of disaster control service, creation of a joint digitalized base map, promotion of legislation harmonisation with regard to environmental protection and regional development, collection of data on cross-border regional development projects, joint assessment of pollutant input into the soil, elaboration of a synopsis of the results of forest soil evaluations.

92 Costs of the interpretation service are assumed by the host region. Since 1991, a Joint Budget amounting to 1.5 million Austrian schillings (1.1.1995) is administered by the Records Office in Klagenfurt. Administration of the working community (organisation of the Plenary Assembly and the Meeting of the Commission of Executive Officers) is incumbent on the Alps Adriatic section of the respective chair; all member regions have installed such sections with varying staff capacities charged with co-ordination of neighbourly contacts.

Due to the lack of provisions regarding CBC activities in the constitutional provisions of the participant States and their sub-national entities, the first proposals for closer cooperation in the alpine area were made after a (first) legal base for CBC had been laid by international law in 1980 with the Outline Convention of Madrid which included a number of fields in which CBC was not only tolerated, but (at least in principle) recommended by the ratifying States. However, as shown above, even after the ratification of the Convention,[93] single CBC-activities still had (and have) to pass the constitutional test in each concerned State, i.e. conformity with national provisions and procedures.

The discussions on cross-border activities as a means to overcome the division of the historical Tyrol intensified after 1989,[94] and became more popular after the full implementation of the enactment measures, when the conflict was formally "settled" in 1992. Institutional forms were promoted particularly by those who had opposed the "Package"-compromise in 1969, mixing ethnic and linguistic aspects with political objectives.[95] It was in 1985, that for the expression of a "European Region of Tyrol" was introduced in the political debate, by the "Europa Union Tirol", subsequent to its earlier project of a "European solution for South Tyrol".[96]

The theoretical basis for these and other similar proposals had been provided by a group of "ethnofederalists" who emphasized ethnic and cultural homogeneity as the central means for avoiding conflicts, connecting it with the concept of community (sharing of the same traditional values), in contrast to that of society (understood as politically pluralistic secular system). In the name of a "Europe of Peoples", populations sharing the same language and traditions, i.e. "ethnic communities", should have the right to claim their "own" distinct and autonomous territorial entities.[97]

In order to achieve the reunification of an ethnically homogeneous North and South Tyrol, the above mentioned project of 1979 ("European solution for South Tyrol") even suggested the creation of a sort of Italian territorial enclave in South Tyrol, consisting of the centers of Bozen/Bolzano and Leifers/Laives where 90% of the Italians in South Tyrol lived at that time.[98] In the name of self-determination for the South Tyrolean people even the foundation of a "European Free State of South Tyrol" had been proposed.[99] In the following period, tensions were on the rise again in South Tyrol, and even a new series of bombings contributed to the worsening of the political climate. The Austrian and Italian governments reacted quite harshly.

In the meantime, the process of European integration had made notable progress, the Common Market and the Maastricht-Treaty are the visible signs. The ethnofederalists, in fighting against centralist States, had overlooked that due to supranational integration State-sovereignty had already

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93 By Austria in 1983, BGBl. 1983/52, by Italy in 1984, Law of 19.11.1984, n. 948.

94 See, for example, F. Pahl, Tiroler Einheit – jetzt!, Kiel, Arndt Verlag, 1991, who recommended the "Slovenian way" towards independence.

95 F. Pahl, Una regione di confine per l'Europa, Regione autonoma Trentino-Alto Adige, Bolzano, 1993. deutsch???

96 Europa-Union Tirol (ed.), Süd-Tirol. Weg in die Zukunft, Bruneck, 1985, and E. Stoll/F. Esterbauer, Tirol und Europa, edited by Europa Union Tirol, Bruneck 1979.

97 See above; according to the idea of a sort of "ethnic federalism and regionalism", G. Héraud ???; F. Esterbauer, G. Heraud, P. Pernthaler, Föderalismus als Mittel permanenter Konfliktregelung, Wien 1977. For a critical analysis, see S. Baur/I. von Guggenberg/D. Larcher, Zwischen Herkunft und Zukunft. Südtirol im Spannungsverhältnis zwischen ethnischer und postnationaler Gesellschaftsstruktur. Ein Forschungsbericht, Meran/Merano, AlphaBeta, 1998, p. 272, and B. Luverà, Oltre il confine, Il Mulino, Bologna, 1996.

98 E. Stoll/F. Esterbauer, Tirol und Europa, edited by Europa Union Tirol, Bruneck 1979, p. 36 ss.

99 F. Ermacora, Verfassungsmodell für einen europäischen Freistaat Süd-Tirol, in, Europa-Union Tirol (ed.), Das Selbstbestimmungsrecht des Südtiroler Volkes aufgrund des Völkerrechts/The right of the people of Southern Tyrol to self-determination based on International Law, Bruneck 1987, p. 59 ss.

been eroded to an extent that did not any longer allow for identity of politics and territory.[100] In the emerging model of multilevel-governance the regions became a third level, increasingly recognized also in EC- and EU-Law.

4.2. Attempts of institutionalization: The "Euregio Tyrol" and the Joint Bureau in Brussels

In 1991, a first joint meeting of the assemblies of Vorarlberg, Tyrol, South Tyrol and Trentino took place, only two years later the assemblies decided, again in joint session, to begin with CBC-activities on a larger scale, including institutionalized forms, expressly referring to the positive, but limited experiences on the basis of the so-called *Accordino*.[101] This fit into a larger scheme as, after the South Tyrolean question had been officially settled in 1992, Italy and Austria had stipulated a bilateral treaty on CBC in January 1993,[102] thus enacting the Madrid Convention and specifying matters and (general) procedures as a framework for concrete measures to be taken by the respective entities.[103]

In particular, the Framework-treaty obliges the acting territorial entities to inform the Central authorities about any negotiations and excludes any financial responsibility of the Central State, as well as, quite remarkably, the international liability of the States (art. 5); it also repeats the limitation of CBC to matters within the powers of the entities as regulated by national law (articles 2 and 3). Article 4.1 contains a list of matters which can be subject of cross-border agreements;[104] article 4.2 provides for the future addition of further matters, by agreement of the concluding partners of the treaty (i.e. the Central States). The treaty does not only apply to territories directly bordering with Austrian entities, its application is explicitly extended to the Autonomous Province of Trentino, the Regions Friuli-Venezia Giulia and Veneto as well as to the Region Trentino-South Tyrol, a recognition of the specific interests in cooperation of these areas by the Italian State.[105]

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[100] G. Pallaver, Cooperazione transfrontaliera, in: S. Ortino/F.Palermo (ed.), Manuale scientifico sull'Alto Adige, Cedam, Padova (in corso di stampa).

[101] In Innsbruck, 2nd of June 1993; see Documents in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 221 ss.; cf. W. Hummer, Zukunftsperspektiven des "Accordino", in: Autonome Region Trentino-Südtirol (ed.), Binnenmarkt, Dritt*Länder* und Regionen, Trento 1991, p. 67 ss.
After a joint session in 1992, in which only the Assemblies of North and South Tyrol had participated, this time, also Trentino was included, and the elaboration of a draft-convention for the establishment of a Euroregion, which could be realized within the limits of the actual legal framework, was adopted. See R. Gismann, Die (Vor-)Geschichte des Statut-Entwurfs, in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 53 ss. and P. Pasi, La cooperazione transfrontaliera nell'area Trentino-Tirolese, in: W. Ferrara/P. Pasi, Come funzionano le euroregioni. Esplorazione in sette casi. I.S.I.G. Gorizia 2000, p. 114 s.

[102] 27th January 1993; it entered into force in Italy on 1st August 1995 (Law n. 76, 8th March 1995); see Documents in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 215 ss.

[103] Art. 3.2 of the Madrid Convention provides for bilateral treaties as a precondition for enacting the Convention; Italy has used this clause when ratifying the Convention (ratification by L. n. 948, 19,11,1984), the bilateral Framework-treaty with Austria thus constitutes the third step, R. Toniatti, La bozza di statuto della Regione europea, in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 28 ss. See also G. Conetti, Rechtsmittel des Völkerrechts und des Gemeinschaftsrechts zur Schaffung einer zwischenstaatlichen europäischen Region im territorialen Rahmen der Region Trentino-Südtirol, der autonomen Provinz Trient und Bozen und der österreichischen Länder Tirol und Vorarlberg, in: Autonome Region Trentino-Südtirol (ed.), Die grenzüberschreitende Zusammenarbeit in Trentino-Südtirol, Tirol und Vorarlberg: Vorschläge für ihre Entwicklung, Trento 1993, p. 13 ss.

[104] Traffic, energy, nature and protection of the environment, cross-border parks, crafts and professional education, public health system, culture, sports, civil protection, tourism, issues regarding cross-border commuters, promotion of trade, fairs and markets, improvement of the agricultural structures, social institutions, applied scientific and technological research.

[105] As an exception of the requirement of geographic vicinity to the border (max. 25 km) established by art. 4, L. n. 948, 19,11,1984.

But in the case of Austria and Italy, there were only few parallel competencies of *Länder* and Regions or autonomous Provinces suitable for CBC activities, in particular in the fields protection of the environment, culture, sports, civil disaster-protection and relief, and improvement of the agriucultural structures. Other important fields like transport and telecommunication, crafts, professional education, trade and commerce, fairs and markets are federal competencies in Austria, and therefore basically excluded, even though the Austrian *Länder* have a nearly unlimited capacity of acting in forms of private law.[106]

A next step was the institution of a Round Table of experts in 1995 in order to explore possible ways of institutionalized CBC between the two Italian autonomous provinces and the Austrian Land Tyrol (Vorarlberg had renounced on an active role). The "Euregio Tyrol" Draft-Statute,[107] worked out by the group of experts and presented in 1996, suggested a highly institutionalized form of cross-border cooperation, a so-called "maximum hypothesis", while expressly referring to the respect of the existing international and constitutional law.

The draft-statute suggests the establishment of a "Euroregion" as "a common, permanent organization" in the legal form of a "public law entity" (art. 1). By means of its permanent organs (Council, Assembly, Executive; art. 9) it should function as a common institutional and procedural framework for the enactment of CBC activities, as gradually developed by agreements and programs. Thus, its structure was quite similar to that of an international governmental organization.

The single coordination and programmatic activities were to be implemented by decisions of "enactment-programs" (for single matters) with binding force, in accordance with the framework-treaty of 1993. The legal nature of these "enactment-programs" is generally administrative law (executive agreements); the decisions are taken jointly as – in practice - one common decision (legally, of course, they still remain three distinct decisions, taken at the same moment and in the same place by organs of different entities). If legislative measures were necessary for their implementation, these would have had to be taken by the respective assemblies – in that specific case the decision taken by the executive organs would have been conditioned by their consent and subsequent transformation into an internal law or normative act.

The draft-proposal was very controversially discussed, especially because of fears of revisionist goals: should the reunification of Tyrol be achieved by the "softer" means of a Euroregion? Was a new political-territorial body, a "Statelet" (mini-State) about to be established? Why else did it need legal personality under public law and why a political representation? What about the multicultural and multilingual character of such an entity? The existing ethnic balances could be disturbed by establishing a new political, Euro-regional level, on which the German-speakers (North and South Tyrolese) would form a clear majority.[108] Which democratic guarantees and legal instruments of control would counterbalance the preponderant executive of the three participating entities?

Also the Central Governments of both States reacted quite sharply: in June 1995 the Italian government rejected as unconstitutional two articles of a regional law on cross-border cooperation which provided for funding of CBC activities, but explicitly referred to the establishment of a "European Region of Tyrol", whereas a considerable amount of money (5 billion lire) for the

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[106] Under art. 17 Austrian Constitution.

[107] See Documents in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 233 ss. For a legal analysis of the options for Euregio-projects see I. Rungg, Das rechtliche Konzept einer Europaregion unter besonderer Verücksichtigung einer Europaregion Tirol-Trentino, PhD thesis (not published), University of Innsbruck 1997 P. Hilpold, Die rechtliche Grundlegung der Europaregion Tirol, in S. Mumelter, A. Zingerle (eds.), Europaregion Tirol, Gestaltung unseres Lebensraumes im Europa von morgen, Innsbruck 1994, p. 20 ss. and W. Burtscher in IVAP.

[108] This potential danger is pointed out by B. Luverà, Oltre il confine. Euregio e conflitto etnico: tra regionalismo europeo e nuovi nazionalismi in Trentino-Alto Adige, Il Mulino, Bologna, 1996.

promotion of contacts and other cross-border activities passed the Government control without any difficulty. In the 1995 annual report on security edited by the Italian Ministry of the Interior, the Euregio-project was defined provocative and even subversive ("*eversivo*"). In November 1995 Italian President Scalfaro, on a visit in Trento, not only warned of a "Grand Tyrol", but also declared that times were not yet mature for "interstate-regions".[109]

Also the Austrian Federal Government reacted sharply, by expressing worries and doubts. In internal expert opinions it had been objected that the Austrian Federal Government had not been informed about the beginning of negotiations, as foreseen by article 16 of the Constitution, and that "public law entities" were totally unknown to international law (at least before the Additional Protocol of 1995 which expressly permits the establishment of "transfrontier cooperation bodies"). There was a general "uneasiness" about the statute, because of the autonomous legal system established for the "Euregio" (mechanisms, procedures and legal acts) which did not fit neither into the Austrian nor into the Italian legal system. This "uneasiness" could not be overcome by the reservation-clause that both national legal systems were to be respected. Critically judged were also the means and procedures of judicial control as well as the list of matters which exceeded the powers of the Austrian Land Tyrol.[110]

After long discussions at political and academic level these plans were put in the archives, the "Euroregion Tyrol" would not be realized, at least not in forms of a public law entity.[111] This project had had to much of an ideological construction. It was increasingly felt that instead of ethnic nationalism concrete steps towards a cross-border cooperation between the civil societies of the involved entities should be promoted.[112]

Due to the increasing importance of decisions taken at EU-level (which often are to be implemented at regional level) the three entities, in 1995, decided to open a joint Bureau of representation of their interests in Brussels. Although in a first phase only the Austrian Land Tyrol participated directly, and both Italian autonomous provinces were represented by their respective Chambers of Commerce, the Italian Government interpreted this move as an act of regional foreign policy in violation of the Italian Constitution which consequently led to a claim before the Italian Constitutional Court (against the convention stipulated between the Autonomous Province and the Chamber of Commerce of Bolzano about the office in Brussels). The Government had informed all representatives of State authorities not to participate in the inauguration event. In January 1996 there was even a judicial enquiry concerning the Brussels office.

In the view of the Government, according to articles 80 and 87 of the Italian Constitution (only) the Central State vests the power of external affairs and representation, even though, by ordinary law, also the regions can be enabled to engage in cross-border activities. In the jurisprudence of the Constitutional Court two main categories have been distinguished: acitivities concerning external relations in a broader sense ("*attività di mero rilievo internazionale*") and trans-frontier promotional activities ("*attività promozionali*").[113] The latter ones are measures in the fields of exclusive regional power, aimed at the social, economic and cultural development of the region, and can be taken after

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[109] P. Pasi, La cooperazione transfrontaliera nell'area Trentino-Tirolese, in: W. Ferrara/P. Pasi, Come funzionano le euroregioni. Esplorazione in sette casi. I.S.I.G. Gorizia 2000, p. 114.

[110] See the official comments of the Federal Chancellor's Office and of the Ministry of Foreign Affairs, Documents in P. Pernthaler/S. Ortino (eds.), Europaregion Tirol/Euregio Tirolo, Trento 1997, p. 279 and 289 ss.

[111] Joint Sessions of the Assemblies of Tyrol, South Tyrol and Trentino in Riva del Garda, 1996.

[112] A. Pelinka, Euregio tirolese. Fantasma o chances?, Il Mulino 1996 (4), 787 ss.

[113] Italian Constitutional Court, judgments n. 170/1975, 123/1980, 223/1984, 187/1985, 179/1987 and 564/1988. See S. Bartole, Il potere estero delle Regioni, in: idem (a cura di), L'ordinamento regionale. Materiali di giurisprudenza costituzionale, Bologna 1997, p. 43 ss. and R. Bin, Attività di "mero rilievo internazionale", attività "promozionali" e attività di "rilievo counitario", Le Regioni 1993, 1321 ss.

consent of the Central Government, which has also a coordination-competency in these fields.[114] But also the "external activities in a broader sense", covering a wide range of activities, including visits, meetings and conferences and the participation in cultural, social and economic initiatives, require the prior consent of the Central Government, although presumed. Surprisingly, this principle had not always been observed in the praxis of "soft" cooperation within the context of ARGE ALP and Alps Adriatic, i.e. in the external activities performed by the Regions before they were formally entitled to act outside their jurisdiction (which was provided by means of a decree of 1980, subsequently replaced in 1994).

In the decree of 31st March 1994 the Italian Government had stressed that cooperation between the Central government and the regional authorities constitutes the basis for (all types of) regional "external" activities.[115] These have to be examined by the Central government with regard to their conformity with the national interest and the national foreign policy.[116] This decree led to a number of controversial decisions by the Italian Constitutional Court, in which on one hand the competencies of the regions to perform "external" activities - within the limits of directives set by the Central government - were confirmed by the Court, and, on the other hand, the powers of the Central Government to limit these activities by directives was reduced, at least with regard to the autonomous regions and provinces, to the mere faculty of establishing a set of principles.[117]

Only in 1997 the Court ruled (428/1997) that in the above mentioned case of the Brussels Bureau the necessary cooperation procedure had not been observed, but, making reference to the principles of cooperation and of subsidiarity, also underlined that there was principally no obstacle which could be posed against such initiatives by the State.[118] Thus, the litigation between Province and State had been "politically defused/depoliticized", also because an Italian Law adopted in the meantime (1996) allows all regions to even directly establish and operate such liaison-offices in Brussels;[119] both autonomous Provinces then decided to participate directly in running their joint representation in Brussels.

The long-lasting struggle between the autonomous Provinces (and, to a lesser extent, the other Regions) and the central Government demonstrates the importance of factors like the time-dimension, the attitude to cooperation and the role of an independent judicial body in order to guarantee the respect of the rule of law in pivotally establishing new rules which may go beyond the traditional concepts of State-based sovereignty, following more modern and functional criteria of governance.

4.3. Recent developments: towards a functional-oriented CBC

After the – failed - attempts of establishing a cross-border entity, concrete administrative and political cooperation on a variety of matters instead of institutionalization seem to be the new

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[114] D. Florenzano, Le attivita' promozionali... Trento, 2000.

[115] For details see S. Bartole, Negoziazioni regionali all'estero e assensi o intese statali, Le Regioni 1994, 624 ss.

[116] Two forms of which can be distinguished: the (privileged) "promotional activities" and the "activities with external effects" which are subject to more rigid forms of State-control, see Palermo, Die Außenbeziehungen der italienischen Regionen in rechtsvergleichender Sicht, Peter Lang, Frankfurt a.M 1999, p. 174 ss.

[117] Palermo, Die Außenbeziehungen der italienischen Regionen in rechtsvergleichender Sicht, Peter Lang, Frankfurt a.M 1999, p. 192 ss. and C. De Fiores, Riserva allo Stato dei rapporti internazionali e ruolo delle Regioni. Le nuove prospettive del „potere estero", Giurisprudenza costituzionale 1996, 3010 ss.

[118] Judgment of (16.) 23.12.1997, n. 428, Le Regioni 1998, 406 ss.; Q. Camerlengo, Riflessioni sulle attività internazionali delle Regioni, Le Regioni 1997, 193 ss.; L. Violini, Nuove dimensioni nei rapporti tra enti infrastatali europei: prime note su una giurisprudenza in evoluzione in materia di Euroregioni, rapporti transfrontalieri e uffici regionali di rappresentanza di Bruxelles, Le Regioni 1998, 409 ss.

[119] Legge comunitaria 1996.

guiding-line. This corresponds to the "bottom-up approach" and to the pragmatic character typical for the majority of CBC activities elsewhere and approved by the population.[120]

In 1998 a "Convention about cross-border cooperation in the framework of a Euroregion between the Autonomous Province of Bozen/Bolzano, the Autonomous Province of Trento and the Land Tirol" was signed by the Governments of Tyrol and Trentino and the South Tyrolean Provincial Council (i.e. assembly), thus keeping distance from ideological connotations (like "Euregio Tyrol") and implementing the 1993 bilateral Framework-treaty on CBC between Austria and Italy. In article 1 of the Convention, general reference is made to legal and operative forms of organization which guarantee the cooperation-activities in a binding way. Only a few days later, on 1st April 1998, the Schengen Treaty entered into force between Austria and Italy, practically reducing the significance of the long contested Brenner border from a physical obstacle to a mere administrative one. The vision of the border area as a contact area does not any longer have physical obstacles. In July 1998 the three Governments inaugurated the new "soft-Euroregion", essentially based on a political and functional, instead of institutionalized, cooperation.

The current, functional-oriented CBC-activities include a number of INTERREG-projects (sometimes on a sub-provincial level, sometimes in a wider framework including Carinthia and Veneto as neighboring regions), transplantation, mountain helicopter-rescue (in cooperation with Swiss authorities), culture (e.g. a common exhibition of and in the three entities), the representation as Euroregion at the Hannover World Exposition etc., carried out by different legal means, depending on the single activity to perform.

New opportunities could be ahead after the signing of the additional protocol no. 2 of the Madrid Outline Convention by Italy in December 2000.

5. Concluding remarks

Cooperation across borders basically means the sharing of resources by entities belonging to different States in order to jointly find solutions to common problems and thus contributing to mutual wealth. Among the basic conditions which have to be met for a successful cooperation is not only physical neighborhood, but all and foremost mutual trust between all the partners involved, i.e. both Regions and central States. Of special importance is a supportive attitude in the population, in order to overcome the numerous legal, institutional, political, administrative, financial, social and economic as well as cultural difficulties, usually created by the very border itself, and to develop a "common vision" of the partners.[121]

Especially the legal problems, caused by different legal systems, are still considerable obstacles to CBC, even though much can be (and has been) done in the forms of private law. Apart from the uncertainty in the qualification of cross-border entities (which in most cases still do not have legal personality), often acts and measures adopted within the sphere of CBC are without any legal force and of mere political value, practically reduced to recommendations or declarations of intent. The Additional Protocol of 1995 will certainly change the picture, even though the approval by the Central level will remain a precondition for interregional activities (by means of general regulation in bilateral or multilateral framework treaties, or through instruments of State-control).

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[120] According to a series of enquiries and opinion-polls, the majority of the population in all three entities agrees upon the necessity and the use of a functional approach, whereas, esp. in Trentino and in the Italian population, there are strong resentments against any institutionalised project of "Euregio"; see R. Nick/G. Pallaver, Jenseits von Grenzen. Die Europaregion aus Sicht der Bevölkerung. Tirol-Südtirol-Trentino, Studia-Universitätsverlag, Innsbruck 1998.

[121] W. Ferrara/P. Pasi, Conclusione, in: W. Ferrara/P. Pasi, Come funzionano le euroregioni. Esplorazione in sette casi. I.S.I.G. Gorizia 2000, p. 123 s.

5.1. Functional cross-border cooperation as a means to improve post-conflict situations?

Due to the changing role of the State, cross-border activities of sub-national entities can not any longer be seen as a threat to State-sovereignty, at least in the peaceful and integrated context of Western Europe, but offer opportunities of new, horizontal links between the States. The effects of CBC are closer integration and the transformation of the (former) periphery into a plurality of contact areas.

As these observations are certainly true for most cases of cooperation inside the European Union their application might be more difficult in other regional contexts, e.g. in Eastern Europe, where the role of the nation-State still is of fundamental importance for the young democracies preparing for EU-accession (in part as competitors). The concrete perspective of EU-membership and cooperation across the EU's Eastern border as well as in the context of the PHARE- and TACIS-programs are therefore of extreme importance.

More problematic are the cases of post-conflict situations. Of course, at first hand CBC seems to be a modern and very attractive tool for general reconstruction or economic improvement of a post-conflict situation. Nevertheless, as shown, horizontal forms of cooperation across borders do not only require a favorable regional context (especially by cooperation of the States the entities belong to), but also a cooperative culture within the State, and, even more important, inside the cooperating entity. When mutual trust and cooperation are lacking the cross-border project can easily become dangerous to internal balances.

South Tyrol can serve as an instructive example: trust had to be built up on both sides, with regard to the Italian State through the experience of cooperation (which even included a series of legal controversies before the Italian Constitutional Court). A certain degree and experience in self-government of the sub-national entities can therefore be considered as a necessary condition for CBC. But trust (and cooperation) had also to be created within the autonomous entity itself, by means of specific rules of cohabitation. It had been above all the fear of (radical and unilateral) change of these rules by moving the decision-making level to a cross-border entity that created the opposition against the institutionalized project in the mid 1990ies.

Another example is Northern Ireland, where cross-border cooperation was envisaged as an essential tool in the compromise found in the Good-Friday-Agreement of 1998. Again, a frequent misunderstanding (or misinterpretation) of these forms of cooperation led to the fear of the Unionist community that they might only be a first step on the way to reunification of Ireland.[122] The very difference, even in scope and perception of CBC, between the standard-case of neighboring areas and areas, where the trauma of an ethnic-conflict has to be overcome might be illustrated by the case of Germany: along the Dutch-German border, despite of occupation during WWII, the development of CBC has not only begun very early, but has gone even so far to allow the establishment of institutionalized Euroregions as public-law entities; whereas on the Eastern borders of Germany the confidence-building process is not yet completed, making CBC a very sensitive issue (e.g. along the Czech border, where the mass-deportation of Sudets had taken place).

Some scholars even state that Euroregions are merely an additional tool in a greater strategic game of economic expansion from west to east (especially on Germany's Eastern borders) and highlight the ideological underpinning of many CBC activities in areas where an ethnic conflict had taken place, like, in particular, in (Trentino-)South Tyrol[123]. They argue that institutionalized forms of CBC such as the project of an Euroregio "Tyrol" only create dangers by changing the ethnic

[122] A. Alcock, The Northern-Ireland Peace Process, Quaderni/Arbeitshefte, European Academy Bolzano/Bozen (in print).

[123] Cf. in particular B. Luverà, Oltre il confine, Bologna 1996.

balances and therefore warn that behind a number of Euroregions there is a vision of a Europe based on ethnically homogeneous regions.

A legal analysis can not give answers to this kind of questions. From a strictly legal perspective, the procedures and institutions of CBC are nothing else than empty boxes which have to be filled with concrete policies and cooperation-programs which respond to a certain demand or help to overcome a lack of coordination created by a border in order to transform the periphery into a "contact area", to the advantage of its inhabitants by improving its social and economic system. CBC must thus not be seen as a matter, nor as a policy, but as an instrument providing a (legal) procedure for the more effective solution of problems concerning different issues.

It is for this reason that, from the structural prospective, the box of CBC still is (and will in future remain) made of the domestic constitutional provisions of the States which is also confirmed by the reference made in international treaties on CBC to the national catalogues of competencies. But as it often happens, the material of the box does not only influence, but sometimes even determine its contents. As far as constitutional law of the States is concerned, the guarantee of fundamental rights can be used as an obstacle against unlawful ideological content and objectives of the cooperation. For this reason, it is particularly important to stress, that functional, effective forms of CBC can only work properly in a democratic context, in which the rule of law is established and human rights are effectively protected.

Moreover, a general tendency towards more functional oriented forms of governance seems to be in place. The allocation of powers and functions exclusively along ideological (or ethnic) lines has shown its weakness and is giving way to a system of distribution of powers which is determined by functional streams (economy, efficiency). Moreover, the overall tendency in governance and its organization is the search for (more) efficiency, which can be best achieved by a more flexible and result-oriented cooperation between (already existing) entities. This does not only explain phenomena like cooperative federalism (and regionalism), but also supranational forms of cooperation, e.g. the European Community. In the context of CBC, this supranational cooperation and integration by generating trust and confidence between the States proves to be a guarantee against fears of "revisionist activities" which might endanger sovereignty.

Moreover, CBC, including its institutionalized forms, the Euroregions, does not constitute a new level of governance, but provides – additional - horizontal links by closer interconnecting existing entities according to functional criteria, independently from ideological or ethnic affiliation or homogeneity. Their acceptance depends primarily on the concrete advantages for the citizens: thus effectiveness becomes the main evaluation criterion; their integration in the existing institutional frameworks as complementary elements is in obvious contrast with the (backward-minded) idea of (re-)building institutions exclusively along ethnic lines.

5.2. Mature autonomy-systems as a precondition for CBC

This paper argues that only mature autonomies or sub-national entities can establish modern and developed (functional) forms of CBC, because only stable systems are able and willing to cooperate not only with the neighboring regions, but first and above all with the Central authorities, which is the most important precondition for CBC. Thus, a certain degree of "institutional maturity", a released climate of trust, mutual information and cooperation between the Central State and its entities seem to be a precondition for CBC-activities, given that the issue of borders still remains a quite sensitive one: States that see their sovereignty questioned by secessionist tendencies will hardly promote cooperation that create links across their borders. This is also true in cases where there is no friendly and cooperative relationship on State-level. Thus the importance of an overarching regional framework of State-cooperation in which CBC of sub-national entities can be embedded.

This result is confirmed by the case of South Tyrol and Trentino which offers a proper "history" of autonomy (with decades of experience) and can therefore be considered a mature system. But despite the autonomous system established and decades of peaceful coexistence, ethnicity and symbols still play a major role in South Tyrolean society. Improvements in individual areas are not only possible, they seem almost necessary in view of the growing international standards in this context – after all, the Autonomy Statute is nearly 30 years old.[124] The process of European integration, the transfer of new powers in the prospective of a general decentralization of the Italian State, the recent signs of more flexibility and "openness" in the interpretation and application of some principles, and the new possibilities of cross-border cooperation seem to confirm the vision of autonomy as a dynamic process, not limited to the restoration, defense and preservation of a status quo.

The difficulties on the way to a Euroregion with Tyrol (soft cooperation first, followed by - futile - attempts of institutionalization and an emphasis on functional cooperation - maybe institutionalized in future?) illustrate the chances and the problems of CBC in a post-conflict situation. The experience in this case, but also in other areas, clearly demonstrates the importance of functional rather than ideological approaches to CBC, due to its character of being an instrument rather than an objective by itself. It also underlines the importance of a regional or supranational context of cooperation between the States, in the case of South Tyrol provided by the process of European integration, for the Balkans maybe by the Stability Pact and the perspective of EU-membership, which functions as a kind of international umbrella under which CBC can be actively promoted.

These might be useful lessons to consider when talking about the opportunities of cross-border links for the reconstruction in the Balkans.

[124] Feiler 1997, 35.

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Strategies of Ethnic Conflict Resolution: The Trentino-South Tyrol Case and the Balkans

Provisional Paper by
Paolo Foradori and Riccardo Scartezzini

In this paper, we will look at the possible *exportability* of the successful example of ethnic pacification of Trentino-South Tyrol into the troubled areas of the Balkans, and in particular of the former Yugoslavia. We will try to answer the question whether the model (methods, strategies and policies) that guarantees the peaceful coexistence of three different ethnic groups in Trentino-South Tyrol could be applied to other cases or, alternatively, whether the Northern Italian case proved to be a success only thanks to specific and non-reproducible conditions which could be hardly replicated in different geopolitical and historical circumstances. [1]

Given for granted that the history and the main terms of the Trentino-South Tyrol model are known to the audience, we will first look at the current relevance and *topicality* of this model by arguing that this type of ethnic accommodation is the most effective and therefore preferable for the settling of most ethnic conflicts currently underway in the world. Indeed, it seems that starting from the mid-nineties this model has been, *mutatis mutandis*, already largely applied world-wide and has brought about numerous examples of successful ethnic conflict prevention, containment, management and resolution.

In the second part of the paper, we will maintain that the Trentino-South Tyrol solution may constitute - in theory – a good paradigm of pacification also for the Balkans. However, in the third part, we will argue that - in practise - this desirable *exportability* may turn unworkable and unfeasible due to a set of reasons and circumstances which are attributable both to the peculiarity of the Balkan context and the historical specificity of the Trentino-South Tyrol case.

Although the Trentino-South Tyrol model and the principles and techniques on which is based maintain an indisputable value as an ideal paradigm for further applications, we will conclude that the current state of affairs in the Balkans is not suitable nor ripe for a model of ethnic accommodation so complex, sophisticated and costly. In our view, the ethnic situation of the Balkans and its many intractable issues are doomed to remain problematic and not durably solvable, at least in the foreseeable future.

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Let's start with what we called the *topicality* of the Trentino-South Tyrol model of ethnic conflict settlement. By topicality, we mean that the policies and mechanisms of ethnic pacification - which have been elaborated back in the mid-fourties and then implemented throughout the second half of the century up to now in Trentino-South Tyrol - could be seen as the forerunning successful policies and mechanisms which make up what is the *present new regime of accommodation of ethnic and minority relations in heterogeneous states*.

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[1] From a methodological point of view, it should be noted that: first, our approach to the issue here concerned is a socio-politological one. For instance, we will not enter into matters that pertain the sphere of the jurists. Instead, we will specifically and exclusively look at the circumstances and conditions of socio-political nature that facilitate or constrain the replication of the Trentino-South Tyrol model into other cases. Secondly, it is important to point out that it is extremely difficult to make any work of comparisons within the Balkan context due to its mutability and volatility: what indeed may seem right today, may soon turn utterly wrong in the completely changed circumstances of tomorrow. Thirdly, the Balkans are a vast and varied geopolitical region which include many internal situations that are in many respects hardly comparable: it was therefore inevitable to resort to some generalisations. Fourthly, it is important to note that what we may consider the best policy for a certain ethnic issue may turn into a total *fiasco* due to its wrong implementation. It is not the simple problem of political and ideological wishful thinking of what ought to be versus what actually is. Rather, and more subtly, it is the dilemma between what may be considered the most suitable and legitimate solution from a normative point of view and what, on the other hand, is the most feasible and workable solution in a given specific and concrete context. Within this dilemma, we have striven to strike a fair balance between these two options but we have certainly given preference to considerations that, though may be normatively not the best ones, are however the most "realistic" and politically "practicable" in the Balkans of today.

Contrary to the conventional wisdom that ethnic and nationalistic fighting is still on the rise, a deeper analysis clearly shows that the rash of ethnic warfare peaked in the early 1990s to decline soon after in most of the world. Despite significant exceptions such as Kosovo, East Timor and Rwanda, there seems to be a general shift from ethnic confrontation toward ethnic accommodation, as proves the sharp decline in new ethnic wars, the settlement of many old ones and the proactive efforts by states and international organisations to recognise group rights and channel ethnic disputes into conventional politics.

The studies of Ted Robert Gurr and his Minorities at Risk Project[2] bring evidence of this current global strategy, or regime, to contain ethnic conflict whose essential principles are: a) threats to divide a country should be managed by devolution of state power and granting to national peoples and minorities of rights to exercise some autonomy within the existing state; b) communal fighting about access to the state's power and resources should be restrained by recognising group rights and sharing power; that is, the active protection of minority and group rights in terms of freedom from discrimination based on race, national origin, language and religion.

In essence, this regime consists of minority rights and autonomy, that is the two main pillars on which the Trentino-South Tyrol system is based. That is to say, a system of "internal self-determination" whereby self-government is arranged in such a way to satisfy the legitimate desire of a minority to have its rights protected by concessions of a considerable amount of control over its own administration without challenging the sovereignty and integrity of the state.

Statistical evidence substantiates the coming into existence of this global strategy.[3] For instance, between 1993 and the beginning of 2000, the number of wars of self-determination has been halved. During the 1990s, 16 separatist wars were settled by negotiated peace agreements, and 10 others were checked by cease-fires and ongoing negotiations. Fewer separatist wars are being fought today (around 18) than at any time since the early 1970s. Two-thirds of all new campaigns of protest and rebellion since 1985 began between 1989 and 1993; few have started since. Given the decline in the number of new ethnically based protest campaigns - from a global average of ten per year in the late 1980s to four since 1995 - the chances of potential future rebellions are statistically on the wane. A even more important indicator is the balance between escalation and de-escalation: of the 59 armed ethnic conflicts under way in early 1999, 23 were de-escalating, 29 were remaining constant, and only 7 were escalating. Again, according to Gurr, discrimination eased for more that a third of the groups monitored by the Minorities at Risk Project between 1990 and 1990, mainly because "governments formally recognised and guaranteed their political and cultural rights".[4]

With regard to the right to autonomy and self-governance, the new regime predicates that disputes over self-determination are best settled by negotiation and mutual accommodation that normally end in concessions of forms of autonomy within the existing state. Evidence shows that most recent ethnic confrontations began with demands for complete independence and ended in a compromise for "internal self-determination", that is – again - larger autonomy within the existing state, as in the Trentino-South Tyrol model.

This sort of compromise is now becoming the rule of ethnic resolution for a number of reasons. Firstly, this trend has a lot to do with the democratisation of many authoritarian regimes in Europe,

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[2] T. R. Gurr, *Peoples Versus States: Minority at Risk in the New Century*, United States Institute of Peace Press, 2000. For a summary of these findings, see T .R. Gurr, Ethnic Warfare on the Wane, *Foreign Affairs*, May/June 2000, pp. 52-64.

[3] The following data come from the Minorities at Risk Project which has analysed situations and trends of some 300 politically active ethnic groups over half a century. See Gurr, op. cit.

[4] T. R. Gurr, Ethnic Warfare on the Wane, op. cit, p.54.

Asia and Latin America. Secondly, nationalists determined to fight for the maximalist goal of total independence, such as the Chechen rebels, are more and more rare. Thirdly, there is a growing pressure by the international community - and in particular by the Western countries and the main international organisations such as the UN, OSCE, EU but also the OAU and other regional bodies – not only to promote democratic regimes but also to demand solutions which satisfy both the principle of self-determination and the principle calling for the respect and integrity of existing international borders.[5] Fourthly, many central governments have realised that it is cheaper to sit around a table and negotiate an agreement of power devolution than getting entangled in endless and costly fights with the insurgent forces.

It goes without saying that the above-described regime is not fully developed yet and will never be perfect. There will be always numerous cases that will not fit the pattern as well as actors that will never accept its norms and values. We will always find instances of ethnic conflicts which will remain intractable due to their own specific characteristics. Moreover, there is no guarantee that we will continue moving in this direction. However, the trend is there and the Trentino-South Tyrol model seems to have anticipated its main features and principles.

Given this general overview, in the next section we will explain the reasons why the above pattern of ethnic settling is desirable also in the Balkan context. However, and despite this desirability, in the final part of the paper will then reach the conclusion that the present conditions in the Balkans are so complex and intractable to make it almost impossible for this model to work in that part of the world.

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The first reason of this desirability is banal but not obvious. The reason is that if we exclude, for reasons of moral principles, all the coercive and violent methods of settling an ethnic dispute (from genocide to ethnic cleansing, to forced population transfers)[6], the range of peaceful remedies along the spectrum assimilation-secession become limited. Indeed, as we will see, the circumstances in the Balkans suggest that neither assimilation nor secession/independence are currently viable policies. Therefore, almost by necessity, we have to search for alternatives in terms of "internal self-determination" strategies within the existing states.

In this respect, it is the specific ethno-geography of the Balkans that firstly calls for solution that resembles the Trentino-South Tyrol model. Indeed, given the still highly complex and intermingled character of its ethnic distribution, the region would hardly bear other territorial partitions or population transfers.
After a decade of acute ethnic warfare, further border alterations could disastrously destabilise the entire region by the vicious circle generated by border revisions that, in turn, create new minorities out of the old majorities now become minority within the new political entity. As the history of the

[5] See in particular the standards and guidelines of the Organisation for Security and Cooperation in Europe (and especially the OSCE's 1990 Copenhagen Document and the so-called Lund Recommendations) as well as the Council of Europe's Framework Convention for the Protection of National Minorities of 1994. All these documents prohibit forced assimilation and population transfers, endorse autonomy for minority within the existing states and advocate the treatment of minority rights violations as international matters.

[6] Chaim Kaufmann for instance contemplates the resort to coercive remedies. This author contends that, to save lives threatened by genocide and ethnic cleansing, the international community should in some circumstances facilitate population movements to create genuine ethnic and national homelands (C. Kaufmann, *Possible and Impossible Solutions to Ethnic Civil Wars*, in M. E. Brown, ed., *Nationalism and Ethnic Conflict*, Cambridge, Mass., MIT Press, 1997, pp. 265-305). See also the radical positions put forward by Edward Luttwak who advocates a sort of laissez-faire by international community so that power politics and definitive war outcomes could lead to durable ethnic settlements (E. Luttwak, Give War a Chance, *Foreign Affairs*, July/August 1999, pp.36-45).

Balkans teaches us, attempts to carve mono-ethnic states out of multi-ethnic contexts almost inevitably leads to violence and illiberal regimes. Although we tend not to see any automatism of possible "domino effects" in the Balkans, it is however reasonable to think that such a complex ethno-geography would cause a cascade of infra and inter-regional consequences as a result of any modification to ethnic lines and national boundaries. For instance, it is very likely that if political independence is granted to Kosovo, equal demands for greater autonomy - if not independence or pan-Albanian unification - will soon multiplied in the Albanian minority of Macedonia.

General geopolitical considerations and the pressure by the many international interests at stake in the region are also working in the direction of solutions of "internal self-determination". For example, again in the entangled Macedonia case, the moment the Albanians should obtain independence, soon Bulgarians, Serbs and Greeks will put forward similar demands for further territorial partitions. Similarly, but on another level, other important international actors have interests in not having further "external self-determinations". This is the case for instance of Russia, which disfavours new border revisions both because of its own geopolitical interests and alliance systems in the region, and also because of its determination not to set other precedents that may internationally justify independent claims by its own internal minority groups. By and large, Western countries also dislike "external self-determination" strategies that, in their eyes, may help destabilise the Balkan region, while they are seeking to create the right conditions for its stability.

Further territorial partitions are also complicated by the fact that the Balkan spaces have been already significantly narrowed. In other words, what was "losable" and "dividable" got indeed lost and divided in the course of the last decade. Further modifications would be extremely difficult and costly. To exemplify, there will not be any Serbian leadership that could easily accept the separation of Kosovo. Given the historical highly symbolic value of Kosovo in the Serbian collective imaginary, only forms of autonomy and self-government arrangements within the existing boundaries seem possible and politically realistic to meet the demands of the Albanian minority.
A final element, that seems to discourage solutions other that those similar to the Trentino-South Tyrol model, refers to the doubts as to the "capacity of statehood" – especially in terms of economic and political sustainability - of many of these would-be independent entities. This is for example the case of a possible Albanian Kosovo, of a Muslim state in the Sandjank, and probably the case of Montenegro itself.[7]

To conclude this first part, if further secessions are neither easy nor desirable in the Balkans and assimilation, on the other hand, appears also highly improbable due the continued sense of dividedness, suspicion and distrust, if no hatred, among the different Balkan ethnic groups[8], by necessity we need to seek solutions in the middle ground of the not-so-vast spectrum of possibilities of multi-ethnic diversity coexistence and integration. In this respect, the solution of the Trentino-South Tyrol based on "internal self-determination" may constitute a model for ethnic resolution in the Balkan. In consideration of what has been said so far, this model appears to be a fairly good mechanism to guarantee the effective protection of minority rights and identities and, at the same time, to reconcile claims for self-determination with the vested interests in preserving the territorial integrity of existing states.

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Given this theoretical *exportability*, in the next paragraphs we will assess the actual viability of a possible applicability of the model into the current Balkan state of affairs. The cleavage between

[7] See S. Böckler and R. Grisenti, *Lo Statuto di Autonomia del Trentino-Alto Adige: un modello di pacificazione etnica per l'area centrale danubiana*, Franco Angeli, Milano, 1996, p.76.
[8] This point will be analysed in detail in the next paragraphs.

what is desirable and what is workable appears very wide and many are the problems and concrete obstacles that hindered a possible replication of the Trentino-South Tyrolean experience. Indeed, the Balkan ethnic identities and polarisations have become so hardened that intractable security dilemmas make it almost impossible to restore a workable system of peaceful multiethnic coexistence in those war-torn societies.

Our starting point is that the "internal self-determination" model is the most sophisticated, costly and complex of all possible strategies of ethnic accommodation. Although it is normatively highly desirable – as an optimum synthesis between the principles of self-determination and of state border integrity – and seemingly capable of producing positive outcomes (as in Trentino-South Tyrol), its complexity and "sophistication" make its application difficult to be implemented and preserved.
Such a system is based on a very elaborated (and for this, perhaps, fragile) juridical system which designs a highly intricate "ethnic contract" that specify rights and responsibilities of both ethnic minorities and majorities. To take root and develop safely, this model necessitates of very responsible majority and minority leaderships as well as a propitious climate of mutual (and ideally genuine) trust between the competing ethnic groups. The model's workability is also very much depending on the availability of enough economical resources due to its high costs of start-up and maintenance. Finally, the model is bound to fail unless there is a very favourable international political and economical environment.[9]

Unfortunately, all these conditions and circumstances - which existed and still exist in the Trentino-South Tyrol case - seem to be absent or not enough in the present Balkan context.

To grasp the relevance of the above conditionality for a possible *exportability* of the model, it might be important to start from the definition of what an ethnic conflict is. Given that definition, the reasons of the many constraints to any attempt at duplication will become more evident.

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Of the many definitions, the one we like most is by David Lake and Donald Rothchild[10]. For the two authors, ethnic conflict is most often the result of "collective fears of the future" which are driven by group fears about their safety, security dilemmas, information failures, and the polarizing actions of ethnic activities and political opportunities.
More analytically, "most ethnic groups, most of the time, pursue their interests peacefully through established political channels. But when ethnicity is linked with acute social uncertainty, a history of conflict, and fear of what the future might bring, it emerges as one of the major fault lines along which societies fracture. Vesna Pesic, a professor at the University of Belgrade and peace activist in the former Yugoslavia, says it well: ethnic conflict is caused by the *fear of the future, lived through the past*".[11]

This situation creates problems of credible commitment among the competing ethnic groups; that is, at least one group cannot effectively reassure the other that it will not renege on an agreement and exploit it at some future date. Again, at least one group cannot credibly commit itself to uphold the so called "ethnic contract" which designs formal and informal norms and rules which safeguard the

[9] For a view on the Trentino-South Tyrol international collocation and its relationship with Austria after the Package's closure, see R. Scartezzini, *La collocazione del Trentino-Alto Adige di fronte ai mutamenti e alle prospettive di nuovi scenari internazionali*, in Regione Trentino Alto Adige, *A cinquant'anni dall'Accordo De Gasperi-Gruber*, Atti del Convegno, Castel Mareccio, Bolzano, 11-12 giungo 1993, pp.245-258..
[10] D. Lake and D. Rothchild, *Containing Fear: The Origins and Management of Ethnic Conflict*, in M.E. Brown, ed., op. cit., pp. 97-132. See also D. Lake and D. Rothchild, *The International Spread of Ethnic Conflict*, Princeton University Press, 1998.
[11] D. Lake and D. Rothchild, in M. E. Brown, op. cit., p. 99.

existence of an ethnic group in relation to the others (mutual rights and responsibilities, political privileges and access to resources of each group). Similarly, the above creates "information failures" whereby the reality is oversimplified and distorted through past interpreting mechanisms and each intention of the opposing ethnic group is read in a negative and bad-faith fashion.[12] This almost inevitably leads to what might be called the "inter-ethnic security dilemma", where one group cannot achieve physical security without diminishing the physical security of the other groups; in a spiral of distrust, hostility and arm-racing, one or more disputing parties have incentives to resort to a preemptive use of force and – as in vicious circle – fearful that the other might in turn preempt, a group has further incentives to strike first and negotiate later.[13] In this scenario, and building on these fears and dilemmas, ethnic activists and political entrepreneurs of each group grow stronger and by so doing polarise the society. The incentives to play the "ethnic card" become more attractive as well as the incentives to attack preemptively when one still has competitive advantages over the opposing group.

If the above description of an ethnic conflict rightly reflects the structural causes and psychological mechanisms that lead ethnic groups to fight each other, then it seems rather difficult to create conditions that could bring ethnic pacification in the Balkans. In that ethnic and geopolitical environment, "inter-ethnic security dilemmas" remain irresolvable, commitments to uphold "ethnic contracts" are not credible and fears seem not containable.[14]

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The difficulties in exporting the Trentino-South Tyrol model can be further highlighted by looking at the remote and proximate factors that cause violent ethnic conflicts[15]. In the following paragraphs, this set of factors will be analysed and put in perspective by taking into account the historical contexts and the internal and international constraints to both the Trentino-South Tyrol and Balkan cases.

If we first consider the cultural and perceptual elements[16]of ethnic rivalries (patterns of cultural discrimination and problematic group histories), the Balkan case appears extremely problematic and of difficult resolution. The entire region is living with the heavy burden of a terrible past of crimes and gross violations of human rights, committed by each group against the other (and that each attributes to the other). Conversely, in Trentino-South Tyrol we cannot find cruelties of such magnitude and intensity.[17]

As Stephen Van Evera reminds us in his study of "hypernationalism", the degree of harmony or conflict between intermingled nationalities depends partly on the size of the past sufferings. The rule is: the greater the past crimes, the greater the current conflict and more difficult any attempt at

[12] Ibid., p. 105.
[13] B. R. Posen, The Security Dilemma and Ethnic Conflict, *Survival*, Vol. 35, No. 1, 1993, pp. 27-47.
[14] Nowadays, a partial, artificial and not self-sustainable interethnic peace can be maintained only thanks to international forces.
[15] See Michael E. Brown, *The Causes of Internal Conflict: An Overview*, in M. E. Brown, ed., op. cit. pp. 3-26.
[16] It goes without saying that we reject the simplistic "ancient hatreds" explanation to ethnic unrest. The above cultural and perceptual factors are just some of the many elements that predispose a certain context to violence and whose activation is indeed the result of a mix of causes.
[17] For example, the South-Tyrolean terrorist attacks of the fifties and sixties caused material damages but virtually no casualties.

conflict pacification. In the Balkans, these horrors are still vivid and fresh in the memories of people, with no prospect of easy forgiveness.[18]
Memories of past sufferings complicate conflict pacification by intensifying the diaspora-annexing character of the groups (on a "never again" vow), by creating collective guilt syndromes (in opposition to individual responsibility), by spurring in the past victims equivalent crimes against old tormentors who now happen to live among them as minorities or against these minorities' home countries.

In such a distorted reality, it is impossible to build infra-national loyalties nor credible commitments to uphold mutually beneficial "ethnic contracts" to guarantee minority rights.

In addition, to an extent which is not comparable with the Trentino-South Tyrol case, the Balkans and especially the regions of the former Yugoslavia live on malign ethnic and national mythologies which increase mistrust and hostility. Balkan national mythologies are particularly pernicious because rival groups often have mirror images of each other as well as mutually exclusive and self-justifying perceptions. This is, for instance, the case of Serbs versus Croats and Albanian Kosovars versus Serbs.[19]

This chauvinist and self-glorifying mythmaking, compounded with historical distortions and sheer propaganda, tragically contribute to a climate of mutual suspicion and information/knowledge failure with long term devastating effects on any possible attempt at peaceful coexistence between the various ethnic groups.

If resentment and spirit of revenge are still prevailing in the Balkans, good will towards ethnic pacification dominated among all the concerned parties in the Trentino-South Tyrol case (i.e. the three ethnic groups of the Region and the central governments of Austria and Italy).

Indeed, the history of Trentino-South Tyrol autonomy and ethnic accommodation began at the end of a devastating world war that in those two countries did not leave much room for anything but earnest attempts at peace and ethnic pacification. When De Gasperi and Gruber signed the Paris Agreement of 1946 both Austria and Italy were war's losers with a bad reputation for their past regimes to pay for. They could not possibly refuse to try their best to peacefully solve their ethnic dispute in order to regain international respect and forgiveness. In addition, the first years of the post-World War II period were generally rich in good intensions and ideal dispositions by the new democracies. They were in general keen to perform well and in accordance with the principles of peaceful settlements of disputes as from the freshly signed Charter of the United Nations.
In essence, many internal and international forces pressured all parties to play fair and seek forms of compromise on middle positions.

It is also quite inappropriate any kind of comparison between the symbolic value of South Tyrol in the Italian and Austrian nationalist ideology and, for instance, the extremely high value that the territory of Kosovo has in the Serb collective imaginary. Compromise in ethnic negotiation is much more difficult in a situation where the interests at stake are perceived to be so vital as in the case of

[18] Memories are key, since the dangers of past crimes are also a function of whether these crimes are remembered by the victims and whether the victims can attach responsibility for the crimes to groups that are still present. See S. Van Evera, *Hypotheses on Nationalism and War*, in M. E. Brown, ed., op. cit. p. 45.
[19] Serbs identify themselves as heroic defenders of Europe and Croats as fascist and genociders. On the contrary, Croats see themselves as victims of Serbia's hegemonic aggression.

Kosovo.[20]Contrary to what happened in the Balkans, the absence of religious differences helped also a great deal to ease the tension in Trentino-South Tyrol and avoid escalation into violence.

To sum up, the Balkan ethnic groups are currently too polarised to create a durable system of internal autonomies that could eliminate the perception that any given piece of autonomy will not successively be used by that certain ethnic group to discriminate the others or to aim at total independence.

Moreover, there are reasons to believe that such a polarised society may not positively adapt to a system of large but closed autonomy similar to the one in force in Trentino-South Tyrol. Such a system, based more on duplication and separation than integration, may be conducive to further polarisation and strengths the minority's sense of uniqueness and difference in its relations with the majority.[21] There is also a concrete risk that an increased divisiveness caused by autonomy concessions may in the long run lead to more demanding political platforms towards total independence.[22]

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The literature rightly stresses the role of domestic elites as a major catalytic factor in triggering ethnic conflicts.[23] Elites are also decisive when it comes to ethnic management and resolution. Their role is a variable of their democratic legitimacy and personal political profile. In this respect, the difference between Trentino-South Tyrol and the Balkans is striking. In the former case, negotiations, agreements and implementation of ethnic pacification policies were carried out by statesmen of high calibre and longsighted political visions. De Gasperi and Maniago are just two examples of policy-makers of this sort. Quite to the opposite, many Balkan leaders are politically weak, poorly talented and almost exclusively concentrated on a fierce and short-sighted struggle for political (if not physical) survival within a very limited span of time and within a very limited political horizon.[24]

Moreover, most Balkan leaders have not strong political legitimisation. More specifically, they lack strong and genuine[25]democratic legitimisation. Sooner or later, this weakness will bring on surface their political vulnerability that they might try to compensate by resorting to the so-called "communal card".[26]

Thought the Austrian and Italian democracies of the post WWII period were also young and fragile, they were however strongly backed (and guided) by the Allied Nations and international

[20] Indeed, even for irredentists such as Cesare Battisti the annexation of South Tyrol at the end of the First World War was not only an injustice but also a political error.

[21] This is indeed the major weak point of the Trentino-South Tyrol model that its critics like to point out. Similarly, critics emphasise the lack of flexibility of the model that in the long run may crystallise ethnic and cultural diversities hindering possibilities of contact and exchange.

[22] For example, the vast concessions to the ethnic Albanians of the 1970s did not produce a long term containment of the conflict in Kosovo. Instead they fostered their national conscience and opened wider the distance between them and the Serbs. See S. Böckler and R. Grisenti, op. cit., p. 66.

[23] Donald Horowitz, *Ethnic Groups in Conflict*, Berkley, University of California Press, 1985.

[24] The same normally applies to their respective domestic oppositions. See for instance the inconclusive role of the political oppositions to Milosevic during all the 1990s.

[25] "Genuine" democratic legitimisation stands for not a simply "formal" and "procedural" democratic legitimisation.

[26] With the aim of surviving a legitimacy crisis, elites strive to maintain their political positions by means of propagandistic manipulation of public opinions. The cheapest and easiest way is the appeal to nationalistic sentiments, which infuse the nation (or the ethnic group) with a sense of in-group patriotism and out-group rivalry. See, Human Rights Watch, *Slaughter Among Neighbours: The Political Origins of Communal Violence*, New Haven, Conn.: Yale University Press, 1995

organisations (ONU, CEE, and so on), which strongly helped to protect and strengthen their recently established democratic institutions and codes of conduct.[27]

Everything considered, it is indeed the presence of solid democratic institutions that determines the success of any ethnic conflict resolution policy. By definition, only in democratic regimes all persons - regardless of ethnicity, language and religion – will have equal rights to freely express and pursue their legitimate interests and aspirations.
The democratic deficit in the Balkans is compounded also with an overall institution deficit as a legacy of the communist collapse which has left the country not only ideologically orphan (and as a consequence more easily manipulateble in nationalistic terms) but also without valid institutions and praxes for managing the new conflicting interests of the post communism era.

When state structures weaken and there are no legitimate political institutions to exercise meaningful control over the territory placed under their nominal supervision, power struggles between politicians and would-be leaders intensify. Ethnic groups, which are being oppressed by the centre, become more able to assert themselves politically, while criminal groups become more powerful and contribute to erode the state's legitimate monopoly of violence. Rule of law and state institutions become meaningless. In weak state, individual ethnic groups feel compelled to provide for their own defence in a spiral of suspicion and arms race. Meanwhile, ethnic propagandists and political entrepreneurs get stronger and polarise the society.[28]

Strictly linked to this problem is the issue regarding the different conceptions of nationalism that Trentino-South Tyrol and the Balkans refer to: civic nationalism versus ethnic nationalism. The latter type of nationalism predominates in the Balkans and in East-Central Europe, whereas the former is prevalent in Western countries.
According to Jack Snyder,
"civic nationalism normally appears in well institutionalised democracies. Ethnic nationalism, in contrast, appears spontaneously when an institutional vacuum occurs. By its nature, nationalism based on equal and universal citizenship rights within a territory depends on a supporting framework of laws to guarantee those rights, as well as effective institutions to allow citizens to give voice to their views. Ethnic nationalism, in contrast, depends not on institutions, but on culture. Therefore, ethnic nationalism is the default option: it predominates when institutions collapse, when existing institutions are not fulfilling people's basic needs, and when satisfactory alternative structures are not readily available".[29]

The Eastern European nationalism, which found its foundations in the political culture of philosophers of history such as Herder and von Schlözer, is based on a "biological" concept of nation and citizenship. This approach, in contrast with the "voluntary" character of Western nationalism, magnifies the specificity of the group as a given which cannot accept external contaminations. The malign character of the Eastern European nationalism is intensified by popular ideas of "mission", "personal sacrifice" and political mythologies which have often created destructive and self-destructive ethnic relations. Within this cultural context, it has found deep roots a special and inseparable relationship between the concepts of "nation" and "territory" which has forged the political culture of Balkan ethnic majorities. Minority issues are therefore regarded as perpetual sources of instability in an endless call for self-determination in ethnic homogenous

[27] It should be considered that very often it is precisely in the early years of the process of democratisation that young democratic regimes, without proper backing, are more vulnerable to setbacks, "ethnic card" manipulations and war-proneness. See J. L. Snyder, *From Voting to Violence: Democratisation and Nationalist Conflict*, Princeton University Press, 2000.
[28] M. E. Brown, op. cit., p. 6.
[29] J. L. Snyder, Nationalism and the Crisis of the Post-Soviet State, *Survival*, Vol. 34, No. 1, 19993, p. 26.

nation-states. Nationalism has so turned from a movement of cultural renaissance and emancipation into a form of domination of one state over another and, within the state borders, into the supremacy and exploitation of the ethnic majority over the ethnic minorities.[30]

Considering now some of the structural factors causing ethnic conflictuality, the Balkan ethnic demography appears certainly more problematic that the Trentino-South Tyrolean one. For example, the different birth-rate between Serbs and Albanians in Kosovo makes the "ethnic balance" of that region very unstable. In the same vain, a more marked birth-rate difference between the urban and rural contexts (which tends to reflect a diverse distribution of population along ethnic lines) and the open issue of the return of refugees and internally displaced persons will contribute to limit the possibility of addressing ethnic problems once for all.

An aggravating element concerns the sheer number of minority consistency in proportion to the majority. For example, in the case of Macedonia, the Albanian ethic group constitutes around 25% of the total population in contrast to the 0.5% of the South Tyrolean German minority on the total population of Italy. Given the numerical relevance of the Albanian minority, any policy of "internal self-determination" in Macedonia should be reflected also at the level of state government, with nation-wide ethnic policies of power-sharing and minority rights similar to those implemented at the regional level (i.e. ethnic proportion, use of language, proportional representation, rotation and so on). Of course, the transposition of "internal self-determination" policies from a local level to the central one is a much more complex business and, in this respect, the Trentino-South Tyrol Autonomy Statute cannot be of any advice.[31]

Finally, the importance of favourable economic circumstances should not be underplayed. These economic considerations again shed light on the difference between the two cases. Indeed, there is no doubt that economic prosperity in Trentino-South Tyrol has played a crucial role in containing resentments and softening ethnic animosities. Similarly, there is no doubt that the Trentino-South Tyrol autonomy has considerable costs in order to be preserved. Unfortunately, and despite the efforts of the international community, the Balkan present and future economic situation does not appear rosy at all. This inevitably endangers possible agreements of ethnic accommodation by intensifying the ethnic struggle for scarce resources and aggravating the "inter-ethnic security dilemma".

Conclusion

In the present analysis on the *exportability* of the Trentino-South Tyrol model of ethnic pacification, we have come to mixed results. However, on the balance, problems and constraints largely prevail. Although in the first part we have found many reason why this *exportability* is desirable (and we found the model fit a global trend of similar ethnic accommodation strategies), the current Balkan context does not seem able to adapt to such a complex, costly and sophisticated ethnic settling system. Indeed, there are too many unresolved issues and open wounds that hold the Balkan "ethnic balance" precarious and unstable. Similarly, the Trentino-South Tyrol model was brought into existence and could developed only given certain specific circumstances which cannot be found in the Balkans.

[30] S. Bianchini and G. Schoepflin, *Le minoranze dell'Europa orientale fra storia e politica*, unpublished paper, 1993.
[31] See S. Böckler and R. Grisenti, op. cit., p. 57.

Despite some elements of optimism,[32] the Balkan "inter-ethnic security dilemma" continues and will continue to be irresolvable and problematic, at least in the foreseeable future.
In this context, the role that the international community can play to stabilise the Balkan is fundamental. Of crucial importance is the promotion and support to the political and economic democratisation of the region. Indeed, only within a democratic framework, effective and durable ethnic conflict resolution is possible.

[32] Such as the seemingly strong commitment of the international community in terms of economic assistance, the better profile of the Serb leadership, the end of the Serbian ostracism from the international community and the consequent possibility of a regional and comprehensive approach to the Balkan problems through the Stability Pact.

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SOCIAL STRUCTURE, SOCIAL CAPITAL AND INSTITUTIONAL AGREEMENT: THE TRENTINO ALTO ADIGE MODEL

By Antonio M. Chiesi[1]

1. Introduction

This contribution will discuss the role of social capital in the development of Trentino-Alto Adige, and in the management of political and administrative autonomy.

This is a tentative paper for at least two important reasons: a) the concept of social capital, in spite of its appeal among social scientists and also intellectuals in general, is still too vague and theoretically unstable, so that its application implies a number of difficulties both conceptual and empirical; b) an analysis of the amount and diffusion of social capital among the inhabitants of the Trentino Alto Adige region has not been accomplished yet.

Nevertheless we think that a preliminary discussion of this concept can be of interest because it has been related to the quality of the institutional performance at local level, not only in Italy, but also in other countries (Putnam 1993). Although empirical studies on the amount and role played by social capital still have to be conducted, it is however possible to develop some preliminary considerations.

The first paragraph of the paper will review the different meanings that have been given to the term "social capital", through a brief summary of the theoretical debate and the discussion on the semantic boundaries with other kinds of capital (i.e. economic and cultural) and with other kinds of related concepts.

We then discuss what kind of social capital is useful to analyse the specific development of the Trentino Alto Adige model and what technical tools are more useful to identify and measure social capital. We shall conclude the paper putting foreword some hypothesis on the role of social capital in the development of the Region and confronting a few problems in the application of the concept of social capital in the Balkan area.

2. What is social capital

As it often happens with concepts "in fashion" the literature has sometimes forgotten that concepts very similar to that of "social capital" had already been proposed by the sociological tradition. In this respect at least four fathers of classical sociology have to be mentioned. Tocqueville was the first to point out the importance of associational ties in getting and motivating co-operation. Durkheim has identified the

[1] University of Trento, Department of Sociology and Social Research.

pre-contractual bases of exchange, i.e. shared norms, values and social recognition that are condition for exchange, as well as a very general mechanism of social cohesion that he calls solidarity. The concept of social closure in Weber has to do with the strategies of inclusion and exclusion as well as of reciprocal recognition, which has been recently attributed to social capital by some authors. Simmel's concepts of social circle and intersection of social circles seem immediately related to the structural approach to social capital, that has been developed during the last ten years by authors like Burt (1988), Coleman (1990) and Lin (2000). Both Weber and Simmel point out the centrality of the concept of social relation in sociology.

While the sociological tradition gives ideas pertaining both to the micro and to the macro level, the recent concept of social capital has been related to two different theoretical approaches.

The micro approach which is rooted in rational choice theory (Coleman 1990) and social exchange theory (Homans 1958) permits to conceive social capital as an appropriative resource. In the light of social exchange theory it is possible to distinguish those relations that entail social capital and are based on reputation (Lin 2000), from those that entail money and are anonymous (economic capital), as well as from those that entail power and influence and are typical of hierarchical organisations.

The macro approach is rooted in the classical functional theory and conceives social capital as part of a shared culture. Applied to the economic and political performance of a community (Putnam 1993) or an entire society (Fukuyama 1995), this approach has two serious drawbacks: it tends to origin tautological explanations[2] and identifies social capital as something which is intrinsically good.

Unhappily these two approaches re-propose the traditional contrast between micro and macro sociology.

Social capital has often been defined as an asset of social relations (Bourdieu 1980). This is another very general definition that cannot distinguish any kind of specificity: society itself is a system of relations.

Social capital has also been defined as a resource, like the other two types of capital: economic and cultural. If we are consequent to the implications of this definition we should identify strategies of capital accumulation, both individual and collective, and also processes of social capital destruction, which could be thought for example as result of interpersonal conflicts by which actors lose the likelihood to use personal ties[3]. Moreover, if social capital is a kind of capital *tout court*, relations among the three different types of capital should be studied as well as mechanisms of reciprocal trade off[4].

If we put together the different definitions proposed by the available literature, we can identify at least three dimensions of social capital:

a) The structural dimension, which pertains to the form of the relational structure;
b) The content dimension, which pertains to what flows inside the relational structure;

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[2] Fukuyama for example defines social capital as the propensity to co-operate and to share mutual trust, which is fed by a culture of co-operation.

[3] Family disruption is the most important example of social capital destruction, as it entails not only that conjugal relations are cut but also indirect relations with partner's relatives. The expulsion from an association or guild is another example, which gives evidence that the access of social capital can be used as a mechanism of social control, especially when collective goods are implied.

[4] We know from the classical studies by Blau and Duncan (1967) that human capital and social origin are significantly correlated and that the acquisition of education needs to be funded, while educated people earn higher incomes.

c) The idea of social capital as collective good, more specifically: club goods – those goods that are possessed by a group and from which outsiders are excluded – and/or public goods, which are available to everyone, no matter if the subject has contributed to their production.

Table 1 - Different dimensions of social capital according to available literature

Micro level	Structural dimension:	The pattern of steady relations of ego with others
	Content dimension:	Recognition (Coleman 1990, Lin 2000), cooperation Personal trust (Mutti 1999), solidarity, loyalty Reputation (Lin 2000) Access to sensible information
Meso level	Club good:	Social identity and belonging Inclusion of insiders in a common social circle and exclusion of outsiders Organisations (Coleman 1990)
Macro level	Public good:	Civicness (Putnam 1993), systemic trust, shared norms and values (Fukuyama 1995), "rules of the game"

While the two first dimensions pertain to the micro level, the third operates at meso and macro level. We can develop further these dimensions using table 1.

Let's have a look at the first row of the scheme. While there is consent on the fact that the relevant relation must have stability over time – i.e. it is part of a structure – otherwise the interaction cannot be relevant for the formation of social capital, the debate is open about the nature of relationship. Some scholars prefer not to specify and consider any kind of stable social relation as potentially relevant for one's social capital (Coleman 1990, Piselli 1999). On the contrary others argue that social capital is not a social relation at large, but a specific one. The argument in favour of this position is directly drawn from exchange theory that allows to distinguish between economic transaction, power relation and social exchange (Lin 2000, La Valle 2000). Economic transaction is based on bounded rationality and profit-seeking motivations. Power relation is based on threat or recognised authority and is asymmetric. Social exchange is based on reciprocal recognition, and yields trust and/or loyalty[5].

If we conceive social capital as a resource typical of social exchange, we have to conclude that:

1. not every social relation implies social capital;
2. the relational dimension of social capital implies a specific content of the relation.

In this way we are drawn to the second row of the scheme. Recognition, co-operation, trust, reputation, information, loyalty are the more quoted concepts. Their meaning is very close in some cases (recognition-reputation; trust-loyalty), or one concept can be seen as the effect of another (trust is a condition of co-operation, trust demands loyalty). Therefore we can try to simplify the nomenclature putting into the

[5] Of course these three kinds of relation are ideal typical models. The role of mutual recognition and trust in economic exchange is stressed by the transaction cost theory and by the institutional approach in economics, while in organisational hierarchies power relations are mediated by economic exchanges through salaries.

background those concepts that are consequences of others and choosing only one word among different synonymous.

As far as information is concerned, it is important to stress the fact that, again, it is not a matter of any kind of information. In the society of information people has potentially the same opportunity to get information in anonymous ways through mass media. The information relevant for the formation of social capital are those circulating through personal communication where the reputation of the sender is brought into play with the receiver.

An important feature of these concepts is that they refers to mechanisms that play both at micro and at macro levels[6]. This double level brings us to the third and fourth rows of the scheme.

The problem of identifying social capital at associational level and at system level has been stated mainly at the macro level of analysis. It has been stressed that the micro-macro link could consist of unanticipated consequences or by-products of purposive actions (Bagnasco 1999, Trigilia 1999). In short, the problem of the relation between the two levels of social capital incorporates the still open problem of explaining collective phenomena starting from methodological individualism, to which exchange theory pertains. For this reason social capital at macro level has been identified as an institution (shared norms), whose origin is not explained[7], but whose function is clear. In any case, when applied at macro level, the concept social capital takes the form of a collective good and has been mainly identified at the level of shared culture, therefore as a feature of the system as such.

In the scheme I have identified three levels: micro, meso and macro (Smelser 1995), because I doubt that social capital can work in the same way at meso and macro level. In fact we have to take into account the fact that there are two kinds of collective goods: public goods and club goods. They work very differently. While public goods are at everyone disposal, club goods are a common property of a group. Each member has direct interest to maximise the exploitation of it and to minimise the cost of its production, while the insiders are jointly interested to protect it from outsiders. The specificity of this meso level has not been recognised enough by the current literature and put together with the macro level. In my opinion this distinction is useful in separating different strategies of the actors and the different nature of the outcome of their combined actions. In particular it is easier for rational actors to mobilise collectively in defence of a club good when it is threatened by outsiders' claim, while the outcome of the prisoner's dilemma prevents the same mobilisation in defence of public goods.

In short, social capital as club good allows to highlight its dark side. Social capital has been seen as a virtuous mechanism capable of many good things for human beings such as solidarity at micro level and economic development at macro level. In this line public policies that affect the growth of social capital have been foreseen, especially by economists. More recently some important negative effects of social capital have been identified because of its particularistic and collusive functioning. Portes (1998) for instance identifies four negative consequences of social capital:

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[6] A good example is trust that can be personal (to trust someone belonging to one's personal network) and systemic (to trust in the value of a currency or in the media). As we shall see later, there are mechanisms of reciprocal strengthening between social capital at macro and micro levels.

[7] A clear example of this lack of explicative power is Putnam's explanation of "civicness" in Italian regions: civicness is present because it has been present since the middle age.

encouragement of members' claims, excessive social control on members, encouragement of members' claims, excessive social control on members, levelling down, exclusion of outsiders.

If we distinguish economic exchange and power relations from social capital, the idea of the latter is mainly related to symmetrical informal relations, which are mutual by definition. Nevertheless some studies have shown that the instrumental effectiveness of a personal relation is higher if alter has a higher social status than ego. If asymmetrical relations are concerned, the analytical problem of distinguishing social capital from power and influence relations can be confronted taking into account that exchanges of reciprocal reputation usually occur in hierarchies and function as mechanisms of motivating people beyond their formal duties. In this light an employee can get informal help from his boss, who will exert the influence of his post in favour oh him, in exchange of personal loyalty in the office.

This use of social capital is very similar to clientelism and – together with strategies of social closure, typical of club goods – it works like a mechanism that generates social inequality (Bourdieu 1986).

The above mentioned example is also consistent with the idea that social capital is a by-product, sometimes unintentional, of social or economic activities. The production (destruction) of social capital has therefore to be seen as a process. Network analysis has stressed the importance of considering social relations as multiplex ties, i. e. as relations that convey different functions and carry different meanings for the actors involved. We know that a social tie which has been created mainly for economic reasons often needs fiduciary premises (especially in case of information asymmetry and of incomplete contracts) and can also supply the condition for the creation of other types of relation (information exchanges, social recognition, increased reputation, reciprocal liking, an so on). The same holds true for power or hierarchical relations, that are mainly based on influence and dependence, but can convey other types of relations as well. Of course the transformation of a simple tie in multiple tie needs time, that's the reason why social capital implies in any case a "steady" relation.

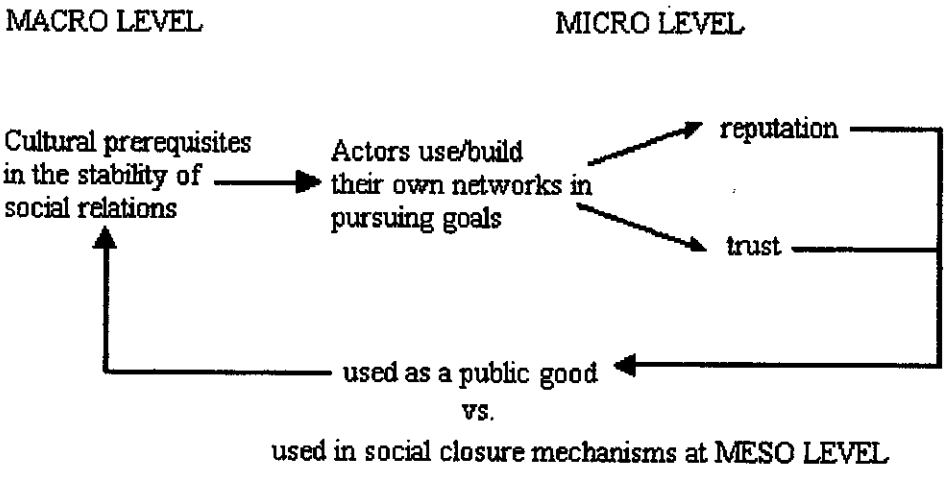
The problem of the analytical relationship between the pattern of relations and the content of relations is clearly evidenced in the case of mutual trust formation. Is trust a consequence of repeated exchanges (repeated games) or it is a pre-condition for them (a non rational attitude which is functional to the creation of networks)?

If we assume that social capital is a resource, associations are an environment in which this kind of resource can be produced and exchanged and of which not only single actors can benefit through personal ties but the group as such, and from which outsiders can be excluded. To identify the association – or even the organisation as Coleman proposes (1990) – as social capital is perhaps a way of confusing the resource with a specific institutional mechanism that allocates it.

Looking at social capital formation as a process has also the advantage of identifying mechanisms that link together the three levels: micro, meso and macro. In scheme n.1, which tries to sum up some ideas of the available literature, it is taken into account that actors are in a better position to use and enlarge their personal networks if they live in a cultural environment that supports stability of social relations and mutual sharing of trust and reputation. Trust and reputation are not simple cultural features which are handed down to posterity, but rather the outcome of actors' strategies at micro level. In turn reputation and trust can be played at all the three levels as well. At individual level it increases one's personal social capital. At group level (meso level) it

can be spent as a club good, it can play a role in social closure strategies, but can also be spoiled by somebody's moral hazard. If there are favourable institutional conditions – which cannot be identified with social capital as such – the production of reputation at micro level can in turn strengthen the macro-cultural prerequisites that make social relations stable.

Scheme 1 – Social capital as a process



Finally, it is interesting to think in terms of a trade off between reputation and trust as public goods and as club goods. If systemic trust is widespread perhaps actors needn't to build exclusive social relations, while its lack can induce them to react to systemic mistrust through the organisation of social circles where mutual social recognition and social control can give assurance both among insiders and to outsiders.

3. Social capital, economic development and social cohesion.

If we try to apply the three levels of social capital to the Region under study, we can draw some conclusions from the use of available data and develop some hypothesis where evidence is not available yet because of a lack of specific research. This is particularly true at the micro level.

As we have sketched before, at macro level, social capital is a public good that allows social and economic co-operation. Indicators of a widespread presence of social capital in the line suggested by Putnam are the high rate of voluntary association among the population and the consent given to the local administrators and politicians. Other indicators of systemic trust are shown in table 2.

Tab.2 – Some indicators of systemic trust in 1999 in the provinces of Trento and Bolzano

Indicators:	Trento	Bolzano	Italy
Voluntary associations per 100.000 inhabitants	46.44	54.91	35.97
Car thefts per 100.000 inhabitants	66.07	51.67	510.97
Credits under protest per inhabitant in lire	14,491	14,120	48,212
Bankruptcies per 1.000 firms	17.67	12.32	35.85
Civil trials before the Courts per 1.000 inhabitants	11.44	20.21	45.87

Source: Sole 24 Ore 11th of December 2000, from different official statistics, and local opinion polls.

A social environment like this allows a steady economic development and a high level of per capita income[8], but of course in this virtuous process it is difficult to state what is the independent and the dependent variable concerning the relation between social environment and economic performance. One is usually backed by the other in a reciprocal relation. Moreover, a routed practice of co-operation and solidarity, in the light of a widely shared catholic tradition, has fostered a vision of social capitalism that is different from the individualistic approach, more common in the rest of North-Estern Italian economic miracle.

At the meso level not only associations are widespread in general, but especially those related to non profit. This means that the outcome of associative activity is more likely to be public goods instead of club goods and inclusion and participation mechanisms prevail on social closure.

At micro level it is more difficult to say something because of a complete lack of information on the quality and frequency of interpersonal relations and personal network structures. Nevertheless we shall try to make conjectures through indirect indicators related specifically to the ethnic cohabitation of two linguistic groups. We can suppose that personal social networks are structured through ethnic cleavages.

Although the available literature is mainly concerning the States and little is known at the European level, research on social capital has pointed out that the structure of personal networks of acquaintance and mutual help is heavily affected by ethnic cleavages, whenever social identity of individuals is built around the coexistence of different ethnic groups, as typical of most American cities. This ethnic structure of social relations, which is originated by spontaneous choices (from endogamous spouse, to friendship, to next door neighbours) is at the origin of a split of personal relations into bipartite networks in which a high intra-group density of culturally homogeneous insiders is confronted with a low density of relations between the groups (i.e. lack of inter ethnic personal relations). In this way personal trust tend to be originated inside the group, while prejudice between the groups is fed by social distance, which in turn is increased by the lack of contacts.

This mechanism is not necessarily an hindrance to economic development and co-operation. A consolidated literature about ethnic entepreneurship (Light and

[8] The per capita value added expected in the province of Bolzano is 46.8 million lire in 2000, while in the province of Trento is 44.0, compared with a country average of 36.9. The unemployment rate in the province of Trento has been 4.4% in 1999 (Source: Agenzia del lavoro della Provincia Autonoma di Trento, 2000). According to Prometeia Agency (2000), the expected unemployment rate in 2000 is 3.3% in Trento and 1.8 in Bolzano.

Karageorgis 1984) has stressed the fact that ethnic homogeneous immigrants find an advantage in solidarity chains in order to establish new economic activities. Moreover the identification of a specific economic activity with an ethnic minority gives a sort of informal brand on which good reputation among consumers and customers can be established. In turn, the fact that a good reputation is shared among entrepreneurs belonging to a specific ethnic group has fostered activities of self organisation that sometimes control the quality of the output, furnish collateral securities, lend money, help to meet demand and supply on the labour market. In this way social capital takes the form of social closure at meso level.

5. Social capital at different levels and the problem of institutional agreement.

We shall conclude the paper putting foreword some hypothesis on the role of social capital in the development of the Region and confronting some problems in the application of the concept of social capital in the Balkan area.

In the case of Trentino Alto Adige the important difference between the two ethnic groups is language. Their specific history and tradition is routed into linguistic difference, while religion is in common. In spite of a period of conflict and violence during the 1960s and mutual distrust that since the end of world war second conducted the case before the United Nations, this has given opportunities to reach institutional agreements that would have been more difficult if also religion was different.

In the case of the Balkan area, it is evident that after the disruption of former Jugoslavia, there has been a destruction of social capital. The feedback mechanisms that interplay at macro and micro levels (see scheme n.1) have reduced public trust, both at political and economic level. The consequent lack of systemic trust has perhaps modified the structure of interpersonal relations inducing individuals to rely mainly on ethnic relations, which are mechanisms of social closure.

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Prof. Dr. Gisela Färber

CENTRALISM AND FISCAL FEDERALISM

Draft version – not to be published!

1. The importance of the financial constitution for an efficient public sector

Intergovernmental financial relations are crucial for the balance of power either in a centralist state or in a federal state. It has recently become also an important concern for supra-national organisations like the EU respectively EMU and other international relations e.g. the international climate negotiations. Independence, interdependence and general rules about intergovernmental tax and non-tax "prices" build the frame in which governments "communicate" with their voters as well as with regional and foreign tax payers and consumers of public goods.

Centralist and federal systems differ strongly concerning intergovernmental financial relations. This paper shows the fundamental concepts of both presenting the respective approaches of the theory of public choice and of fiscal federalism. It starts with the contrast of the two opposing concepts concerning the division of public responsibilities among administrative units and independent jurisdictions on different federal tiers. To be able to determine in a nearly optimal way the volume and structure of the central, regional and local public goods, all jurisdictions need certain rights concerning taxation and public expenditures.

Particularly regional spill-overs, and other imperfections in the intergovernmental relations, but also arguments in favour of an interregional solidarity cause the need of a system of fiscal equalisation. There are different construction principles of fiscal equalisation including horizontal intergovernmental transfer payments among the jurisdictions of the same governments tier on the one hand and – more often – vertical transfers from central government to state governments respectively from state to local governments as well as directly from central to local governments on the other hand. Financial equalisation payments do not only exist in federal states, but also in centralist countries between central and local governments which have a certain autonomy to regulate local concerns.

In a second main part, the paper is concerned with the fiscal constitutions of "real" systems of centralist and federalist countries. Most centralist countries have started to implement

federal elements like regional parliaments including certain autonomous competences into their governmental and administrative structure. All federally constituted countries suffer under long ago established misconstructions and unbalanced taxing and spending powers which actually provide increasing problems for the respective international competitiveness of the national economies. Before this background questions arise as to what are the future functions of fiscal equalisation. How is it to be constructed? How much redistribution among jurisdictions is required? Should more horizontal elements of redistribution be implemented? Or should central government take over more responsibilities of redistribution of tax revenues, and by the way should a more "centrally" directed financial constitution be established?

2. Allocation instruments in centralist and federal states

2.1 Principles of political decision making and supply of public goods in centralist and in federal states

One of the most difficult questions in market economies is which public goods and how much of them are needed. The decisions about an optimal size and structure of *private* goods are coordinated by the market mechanism. But there are certain cases of so-called market failures in which the government sector has to guarantee or regulate a provision of goods or even to produce it by its own public administration or public enterprises because a private market supply will not be sufficient. In theoretic models, all information is available to determine the optimal quantity of public goods including an optimal taxation. In reality however, there is no wise dictator. Instead democratic elections are used to make the citizens' preferences visible. That means that people vote for a certain bundle of public goods, for a certain political program according to their preferences. Politicians who want to be elected or re-elected offer those programs with which they hope to win the elections. Politicians therefore are in that basic public choice model mediators of citizens' preferences for public goods.

Centrally and federally constituted countries differ strongly as concerned with the mechanisms of allocation decisions of public goods. In a centralist state, the central government decides about all public goods and has to guarantee the nearly equal public good provision and administration across the whole territory. That means that only one government is elected and has the right to determine the size and the structure of public goods. Conflicts

among diverging preferences are solved by finding one majority for a certain program. Preferences of public goods which are not offered by the winning party are not satisfied.

In federal states, the legislative responsibility is divided among several government tiers: Each of the many jurisdictions decides about the structure and volume of "their" public goods and has to get the approval of their voters. That way, federal states have the ability to provide different bundles of public goods at state and local levels according to the diverging regional preferences of the respective regional and local voters. Also the problems of ethnic minorities – which is always also connected with different preferences for public goods - can be solved by establishing a federal structure. The overwhelming advantage of a federal structure against a centralist state is the ability to cover diverging preferences for public goods. Therefore the number of "losers", of unsatisfied preferences is much lower in federal states. Usually this advantage of benefits should exceed the additional costs of the higher number of governments and the higher costs of information for political decision making and for the voters.

By a federal governmental constitution, the number of federal tiers and the number of jurisdictions on the different levels of governments is determined. This structure is not to remain unchanged for eternity. Rather changes concerning significant changes of preferences e.g. of ethnic groups can lead to separations or unifications of jurisdictions or even to moving frontiers of jurisdictions. Examples are the establishment of a new Canadian Province, Nunavat, located in the North and containing only 25,000 inhabitants, or the new determination of the frontiers of the Swiss Canton Jura according to the linguistic affiliation of the people. The developments of the last 10 years in the territory of the former Yugoslavia show another more tragic example of the living structure of a multi-ethnic state.

Economists tend to reduce economic transactions to the goal of efficiency. Since Musgrave has published his "Theory of Public Finance"[1] two other fundamental goals of government activities, distribution and stabilisation, have been accepted. Efficiency however is the dominant decision criterion and is used to construct rules how to distribute the potential public goods among the government tiers in a federal state. According to the subsidiarity principle, the responsibility to decide about the structure and the amount of public goods should be allocated as decentralized as possible, particularly if

- people in different regions show diverging preferences for public goods,
- diseconomics of scale exist.

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[1] See Musgrave, Richard A.: The Theory of Public Finance, New York, Toronto, London 1959.

- Additionally, the costs for innovation are lower at the decentralized levels, because only a limited number of citizens is forced to suffer under "administrative experiments". In the positive case there are also strong incentives of imitation of the new procedures so that in general federal systems tend to be more innovative than centralist ones.

A centralisation of responsibilities increases the efficiency of public good production in the cases of

- economics of scale and
- regional spill-overs.

Since the discussions of public choice arguments we additionally know that the necessary political control is more effective at decentralized government levels. It also increases in the cases when direct democratic instruments are provided, and is weaker the less people can influence politicians and the political decision making processes.

Concluding all arguments for a federal structure of responsibilities for public goods, there are as many optimal government tiers as public goods[2] because only occasionally two public goods are covered by identical areas of homogeneous preferences. But special service jurisdictions only exist exceptionally. Normal jurisdictions usually bundle those regional and local public goods with a comparable spatial homogeneity. The efficiency losses due to a not precisely optimal cut of the jurisdiction according to the preferences mostly are more than compensated by the efficiency gains resulting from the fact that a lower number of administrative bodies has to be established and that capacities for public services which necessarily have to be offered are better occupied.

2.2 Division of responsibilities: Two types of federalism

Federal states have been established for various reasons. The Swiss federation was set up as a union against a suppressor. Belgium and the former Yugoslavia took it as a way to solve their multi-ethnicity problem. Many of the former British colonies[3] – the USA, Canada, Australia, but also India and Nigeria – chose federal structures for their independent life in the

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2 From this theoretical point of view, the approach of FOCJ (Functional, Overlapping, and Competing Jurisdictions) has been developed by Bruno S. Frey and Reiner Eichenberger (see their contribution: Jenseits des Gebietsmonopols des Staates; in: Gerken, Lüder; Schick, Gerhard (ed.): Grüne Ordnungsökonomik: Eine Option moderner Wirtschaftspolitik, Marburg 2000, pp. 331).

3 Astonishingly, the former French colonies did not set up federal, but only unitarian or centralist government structures.

frame of the Commonwealth. Germany established the Second German Empire under the hegemony of Prussia which was clever enough not to continue its military strategy to unify the independent German states but to establish a supra-state common government level. Austria's federal system exists since 1922 when after the break down of the Imperial and Royal Monarchy a democratic government system was set up.

Nobody would expect all these federal systems to be constructed identically. But there can be distinguished two basic types of federalism which dominate all variations:

- federal systems where the tiers are in principle independent from each other, and
- the so-called systems of *administrative federalism* with interconnected responsibilities.

The second type is realized in Germany and in Austria and in principle also in the European Union. Here governmental responsibilities as concerned with legislation and with administration are not at the same federal tier: e.g. in Germany, the Länder are according to art. 84 GG responsible for the execution of federal laws. Federal government, precisely: Federal Parliament therefore passes in many fields federal laws which are then executed by state or even local administrations in their proper responsibility. If a federal law regulates details of state administration the approval of the Bundesrat is required. From this point of view it is quite logical that members of the Bundesrat are representatives of state governments and not of state Parliaments or otherwise directly elected representatives as it is regulated for the Senate model which is common for the type of federalism with independent responsibilities.

Which of the two basic types of federalism provides a more efficient public sector is not clear ex ante. Both systems offer certain advantages and suffer from other disadvantages:

- Federal tiers which are widely independent from each other can better follow different regional preferences while administrative federalism tends towards a high degree of centralisation of legislation and highly regulated administrative procedures. From the ideal perspective however, the freedom to decide how to execute a federal law, how to produce or guarantee a public service which is regulated by federal law in general terms should be broad enough to find different regional administrative solutions according to regional preferences.
- Administrative federalism is easily open for changes of public good responsibilities, particularly for centralisation if changes in the tier of responsibility are required according to the above mentioned criteria. Economic and technical development demands a

fundamental revision of federal responsibilities every 30 years. During that period, other more marginal changes may be required. In the federal systems which are not interconnected changes of responsibilities from state to federal government level are difficult to negotiate and tend to be extremely expensive for the central government.

- The large part of federally uniform law in administrative federalism additionally provides advantages concerned with information costs for those citizens who are highly mobile in their economic or private activities. The larger a country is and the less people cross state frontiers the less this perspective becomes important. In small countries a certain harmonization among state regulation is necessary particularly in those cases in which citizens tend to optimize their economic sphere in a way which reduces the same rights of people in other parts of the country.
- Interpersonal (re)distribution is easier in those federal systems which have a high degree of central legislation. In highly decentralised federal countries redistribution of the government sector is limited to that degree which is accepted within a jurisdiction. Therefore a country-wide uniform redistribution is lower in the independent federal constitutions, while it is higher in the types of administrative federalism and – certainly – in centrally constituted countries.

What kind of federal system should be established is before this background depends on the size of a country, the interregional mobility particularly of the labour force and the consumers, the homogeneity of citizens' preferences and their preference for a high degree of interpersonal redistribution.

2.3 Structure of financial constitutions in federal states

The structure of financial constitutions has to be discussed in three parts, firstly the budgetary spending competences, secondly the taxation competences, thirdly the construction of fiscal equalisation.

To enable the jurisdictions of a federal system to fulfil their responsibilities it is necessary to equip them with certain rights and securities. The leading model was established by Samuelson[4] and Lindahl[5] who asked in the 1950s which would be the optimal size of

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4 See Samuelson, Paul A.: Diagrammatic Exposition of a Theory of Public Expenditures; in: Review of Economics and Statistics 1955, pp. 350.

5 See Lindahl, Erik: Die Gerechtigkeit der Besteuerung, Lund 1919, pp. 85.

government sector – in centralist states. According to the ideas of the public finance welfare economics the two economists stated that citizens would have additional benefits from the provision of public goods and would suffer from a respective withdrawal of benefits by the taxes which they had to pay for the provision. Because of different marginal benefits of public goods and tax payments dependent on the size of the public budget – the first marginal benefits of public goods are high while the first units of taxes only have small losses of benefits -, an optimal size of government budgets is in that point where the marginal gains of benefits from public goods and the marginal losses of benefits resulting from tax payments are equal. Although nobody has the exact information at which point the optimal budget is reached, democratic elections expose the voters' preferences in a nearly optimal way. This idea can be enlarged to the construction principles of federal financial constitutions.

To be able to determine in a nearly optimal way the volume and structure of the central, regional and local public goods, all federal jurisdictions need the rights

- to spend their taxpayers' money independently and
- to levy taxes autonomously at least at the margin.

The power to determine both sides of the public budgets is essential for the democratic allocation mechanism in the public sector. For the empirical construction of fiscal constitutions the details of both rights are very important. But because of the fact that the first three different stages of a fiscal constitution – the distribution of responsibilities for public goods, the spending competences and the rights of taxation - never will work perfectly a fiscal equalisation is necessary at the last fourth stage for compensation of the inbuilt deficits.

2.3.1 Budgetary spending competences

Spending competences are narrowly connected with the right to decide about the amount and the way, the quality of public service production. It is obviously rational that the federal tier which is responsible for the determination of a public good should also be responsible to pay for the provision. In all not interconnected federal systems spending rules are constructed according to that principle: All jurisdictions pay for those public goods about which they have taken legislative decisions. Although there are almost always direct and indirect effects of the public goods provision of a jurisdiction to the economy, the production functions of "foreign" public services and the taxation base of other jurisdictions they only scarcely reach a level of importance that the burdened jurisdictions complain about. Exceptions are sometimes

concerned with vertical financial relations particularly when the higher tier affects the budgets of the lower ones by its legislation. The debate about the "unfunded mandates" in the USA[6] is a good example and lead to a reform of the respective intergovernmental relations in the mid-90s.

In general, in federal systems the principle that the responsible legislating jurisdiction has to pay for the production or provision of public goods is fulfilled and is a certain guarantee for an efficient public goods provision. Otherwise the burden of taxation which is a direct result of public spending becomes too high and a government will not be re-elected. It is obvious that the rules of public borrowing are very important for the taxation-spending mechanism. If governments are not able to shift financial burdens to other generations of taxpayers the mechanism is workable.

In the systems of administrative federalism, the spending rights are constructed differently: They are not tied to the legislation right, but to the administration competence. In Germany as well as in Austria and in the European Union, the executing federal tiers have to stand for the expenditures which are "ordered" by the central legislation. Exceptions are valid for certain direct transfer payments. Art. 104a(3) of the German Grundgesetz indicates e.g. so-called "Geldleistungsgesetze" which regulate certain social transfer payments of which federal and state governments share the financial burdens. Among this type of public expenditures count location aids, students' transfers and loans, and young parents aids. Also public expenditures in the context of the European agricultural market are financed, precisely: refunded from the European budget while the member states have to bear the costs for the administration. But in general, state and local governments have to cover the costs for those public goods which are regulated - partly in a very detailed way – by federal laws out of their budgets, out of the tax revenues they burden onto their regional or local taxpayers. It is also obvious that the principle of congruency of legal responsibility and of cost carrying is not fulfilled. Under an isolated perspective it can be expected that huge distortions - an inefficient and too high supply of public services under federal regulation and too few regional and local autonomous public goods - result from that construction mistake. Before that background the question should be kept in mind what are the resulting, the compensating constructions on the two following stages of the fiscal constitution concerning taxation and fiscal equalisation.

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6 See xxx

2.3.2 Taxation competences

If the ideals of optimal taxation could be implemented in reality there would be no problems concerning the distribution of taxation principles. In a centralist state, a lump sum tax would be levied which for its part would not cause any welfare distortion, and the taxation-spending mechanism could work. The sum of welfare distortions might be marginal in the case that all federal tiers have the right to levy a lump sum tax which has to be constructed for the only goal to finance public expenditures. For many economists, it is a sad reality that a lump sum tax is neither accepted as fair nor is it executable. The last example was realized by Margaret Thatcher after the implementation of the poll tax which directly lead to her losing the elections.

Using practicable types of taxes many problems arise. Beside those which are common for all practised tax systems and also exist in centralist countries with only one deciding institution there are special taxation problems in federal systems in which all jurisdictions should have tax sources of their own. Principally, the rights of taxing certain typical tax sources are divided among the federal tiers. But the right of taxation is not a uniform one and can be distinguished into the right of legislation and the right of revenue of the whole tax amount or of shares of it. Further, the rights of tax administration can differ from those of legislation and those of revenues. And additionally some economists and many politicians want to use taxes as instruments to influence private behaviour and economic activities. Income taxes therefore give after several years of validation the picture of a Swiss cheese with many, many loopholes, decreasing revenue capacities and increasing individual tax burdens[7].

But before regarding the problems it is necessary to have an insight into the goals which a division of taxing powers should follow in a federal system:

1. Taxation revenues should be the most important instruments to finance public spending. They therefore have to create revenue capacities which follow the burdens of spending themselves resulting from the division of responsibilities of public services. They should be sensitive to the variation of tax rates in those cases that the jurisdictions of a certain federal tier follow diverging citizens' preferences for public services. If an equal level of regional and local services is desired by the voters then taxes should also spread very

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[7] This fact is often overlooked because of the progressive income tax rates which lead to an automatic increase of income tax revenues exceeding the growth rate of economic activity. The marginal income tax gains are therefore often used by politicians to offer new tax exemptions without being forced to discuss the use of taxpayers money for certain purposes. In truth, the tax burden of the average tax payer increases and increases until the latter is no longer willing to pay and starts diving into the shadow economy.

evenly. They should also have c.p. an equal or better: a rather even revenue capacity if the production costs for public services are similar across the whole country. They should in contrast differ with respect to production cost differences.

2. It has to be guaranteed that the taxation powers are able to fulfil the functions of "regional tax prices". That means that from an ideal point of view taxes should be paid to those jurisdictions where a taxpayer – a private person as a consumer or a member of labour force or an enterprise – uses regionally and locally immobile public infrastructure capital for his or her benefit. According to an international tradition (and for good economic reasons) taxation is tied to the residence of a natural person or the location of an enterprise. But a person can work and consume in other jurisdictions than in his or her residence jurisdiction, and enterprises can produce at several locations. From this perspective it becomes clear that the procedures of corporate income tax cutting according to the amount of wages or value added at the different locations is not an act of arbitrariness rather than of a fair sharing of tax revenues among the jurisdictions which offered infrastructure capital necessary to make the enterprise profit.

3. If the production factors labour and capital were not mobile, there would be no need of a competition among the jurisdictions of the same tier. This assumption has to be left more and more, as the discussion about the models of competing federalism shows. From the functions of "tax prices" and of a fair tax competition can also be concluded that the different economic tax bases are not equally useful for all federal tiers. The lower the federal level the more functional are taxes on immobile factors, starting with land taxes. Meantime, the high international mobility of capital even sets limits for an independent national taxation of capital incomes. Many other taxes are in principle due to be used as tax sources at many federal tiers, but certain construction principles have then to be regarded.

4. For a fair competition among jurisdictions the tax sources should be distributed in a way that the tax capacities do not spread too strongly. If a fiscally strong jurisdiction disposes e.g. about twice the tax base of a fiscally poor one, the first could c.p. easily change the ratio of public services and the necessary spending level on the one hand and/or the tax rate on the other hand to its favour because it needs a lower tax rate to have the same amount of tax revenues. High divergences in tax capacities without compensations by fiscal equalisation measures would lead to an unfair tax competition and a high degree of migration which is inefficient if it is only caused by those differences of the taxation base.

5. Furthermore it has to be guaranteed that all jurisdictions only can tax activities and assets which are in their own area. Unfair tax competition also takes place if some jurisdictions can appropriate parts of the tax base of other jurisdictions.

6. All jurisdictions need at least two broad tax bases to be able for a fair tax competition. If the tax bases are too small the change of tax rate can again lead to inefficient migration of the mobile production factors. With regard to the absolute and relative importance of the personal income tax all over the world it should seriously be reflected if the participation in the personal income tax base - however it is constructed - should not become some sort of "basic right" of all jurisdictions in federal systems. For local governments should additionally be required that aside of an access to a personal income tax base they should also have the right to levy a tax on the economic activity of local enterprises.

7. From the point of view of a rational tax system the number of taxes should be limited. Many small taxes prevent citizens from feeling the burden of taxation and mostly increase the share of administration costs of the tax system.

8. If tax exemptions lead to remarkable losses of tax revenue of other jurisdictions of other federal tiers they have to be avoided, at least to be refunded. This principle becomes more important if the tax exemptions of a jurisdiction at a higher federal level does not lead to even revenue losses, but concerns certain regions more than others.

Many of these principles are realised in many federal fiscal constitutions. There are typical patterns of distribution of tax sources: taxes on land and immovable property are local taxes in most federal states. Progressive income taxes sometimes are centralised to the federal tiers, in other countries several tiers participate in that important tax base. Turnover taxes with deduction of pre-taxes are located at the central government level while state governments often have the right to levy a sales tax. Special excise taxes are located at the federal or at the state level. A central taxation minimizes the administration costs because excises can easily be taxed at the producers. If the taxation technique offers reasonable possibilities to levy the taxes at the wholesale or even retail trade turnover then the taxes are suitable as tax sources of state governments. Motor vehicle taxes and taxes on land acquisition often are state taxes, inheritance taxes at the state level have started to disappear because they – as you can see in Australia and also in the relation between Austria and Germany - are sensitive for a down sizing competition. A sacrifice of tax competition has become the local trade tax which was very common across whole Europe until about 20-25 years ago. The European employment crisis then lead to a distortion to that traditional and a bit old fashioned tax. The poor remains

of that tax on enterprise gains – instead of their value added - are now ready for a German museum after they can be deducted by 100% from the corporate and the personal income tax.

If these facts did not lead to sufficient confusion the above mentioned differences concerning legislation, revenue and administration competences would shortly have to be discussed. In central systems they necessarily fall in one hand, in not interconnected federal systems they generally do. Each jurisdiction decides about the legal tax base, the tax rate and the details of tax administration which is executed by a tax office of the same jurisdiction. In Canada e.g., federal government has offered agreements to provincial governments to levy their income taxes in the case that they chose the same tax base as federal government. With that instrument federal government offered an incentive for a common tax base all over Canada. Most of the Provinces – except Québec – accepted the personal income tax. But concerned with the corporate income tax several agreements were recently cancelled by the rich Provinces which can be interpreted as an indicator of a growing tax competition. Switzerland e.g. has the identical personal income tax base across the whole country and a cantonal right of determining the – in all Cantons except one progressive - tax rates and a local right to determine proportional surplus onto the cantonal tax liability (lokaler Steuerfuß)[8]. There are good economic reasons to limit the right of determination of the tax base: because it is more sensitive to unfair tax competition than the right to determine the tax rate(s). The smaller the country is the more intensive can the mobility of labour be assumed and the more potential and the stronger are the distorting effects of an unfair tax competition by means of the tax base. Therefore a harmonization of tax bases is needed, meanwhile not only in the national federal context, but also in the European context. If the tax bases are broad enough the right to determine the tax rates is sufficient for an efficiency increasing tax competition.

In certain cases, not only the right of determination of the tax base, but also of the tax rate is centralised. Only the right of tax revenue is decentralised. Examples are the Australian Goods and Services Tax (GST) with the legislation competence at the Commonwealth level and the revenue competence at the state level, and the Austrian and the German Personal Income Tax the revenues of which are divided among federal, state and local governments. In the other direction, from below to above, European Union gets a certain share of certain tax

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8 See Dafflon, Bernard: Länderbericht Schweiz; in: von Arnim, Hans Herbert; Färber, Gisela; Fisch, Stefan (ed.): Föderalismus – Hält er noch, was er verspricht? Seine Vergangenheit, Gegenwart und Zukunft, auch im Lichte ausländischer Erfahrungen; Schriftenreihe der Hochschule Speyer Bd. 137, Speyer 2000, pp. 269.

revenues of the member states without the right to determine the tax rates[9]. In Germany, a flexible revenue sharing key is used for the federal and state shares of the Value Added Tax (VAT). The key has to be changed when the needs of the two fiscal tiers – measured by necessary expenditures of both – develop divergently.

It is remarkable that this revenue sharing construction with a uniform tax legislation all over the countries is – with exception of the Australian GST – only used in the systems of administrative federalism. Without discussing all the problems connected with that construction, it should be sufficient for the moment, that this construction is very scarce and probably results from reasons of tax techniques in Australia and from the idea of the necessity of uniform tax laws across the whole country in Germany[10].

If tax legislation and tax revenue competence do not coincide, then no interest stands against the determination of a special tax administration with the first two ones. Neither is it rational to divide the administration of taxes according to the revenue competences, nor are there enforcing causes to combine it with the legislation competence. So in Germany the biggest burden of tax administration lies on the states which execute many federal tax laws with common revenue competences on behalf of federal government. But until today, the Presidents of the Upper Financial Directions are federal and state civil servants at the same time. That is absolutely unique in the history of Germany. But state tax administration also prepares taxation documents for local governments. So they establish e.g. the so called uniform values for real estate which is then used by local governments to put upon the autonomous local multiplier.

2.3.3 Principles of fiscal equalisation

Fiscal equalisation transfers usually are suspected to be instruments of distribution. From the theoretical point of view however, they have many functions concerning allocation. They have to repair mistakes which remain from other previous stages of the fiscal constitution and

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9 The negotiations about determining a common tax base and minimum tax rates for the member states results from aspects of the Common Market competition rules not for governments, but for goods and services, and are independent from the financial needs of the European Commission.

10 See the ideas of Fischer-Menshausen in the documents of the preparation of the Basic Law by the Parliamentarian Council in 1948 at the famous Herrnchiemsee Conference. Until today, the Grundgesetz contains the formulation "uniformity of the legal and economic unity" as a requirement for the centralisation of state competences. The uniformity of tax laws was summarized below that label (see the documentation of Schneider, Hans-Peter (ed.): Das Grundgesetz: Dokumentation seiner Entstehung, Bd. 25, Art. 105 – 107, Frankfurt 1997, Art. 105, p. 6.).

to internalise regional spill-overs, to equalise different marginal productivities of the immobile regional infrastructure, avoidance of inefficient migrations etc.[11].

Regional spill-overs are regional external effects of private or public sector activities which affects citizens of other, neighbouring jurisdictions either by burdening them with external costs or by not compensating external benefits. In both cases, a government is not able to determine the optimal size of a public good. Horizontal compensation payments, or vertical equalisation transfers are intended to equip the respective, e.g. local government by financial means that it is able to offer not only school for its own citizens but also for the pupils of the neighbouring municipalities. The local jurisdictions are by that way all together able to realise economics of scale and not only the city which have enough inhabitants to fulfil the minimum size of a high-school.

But regional spill-over can result from decisions to allocate the responsibility for a certain public service at a comparably decentralised tier in cause of diverging preferences. Suppose there are two neighbouring municipalities A and B, in A the citizens have by majority a preference for a high supply of a certain public goods, in B the preference of the majority is low. The tax burdens in the two municipalities follow the preferences of the decisive majority. If no consumer can be excluded from the consumption of the public good – which is a typical quality of public goods – the defeated minority of B walks or drives to A and consumes in the role of free riders without paying taxes. Citizens from the majority of A could now migrate to B to get the position of free-riders until they build together with the former residents of B a majority in favour of the high provision of the public goods which leads to an increase of tax burdens also in B. Tiebout called that phenomenon "voting by feet"[12]. If the economic world would exist of only a very small number of public goods the internalisation mechanism could be accepted to be efficient. But in reality, there are many public services and also private goods and different equipment with immobile natural equipments of a location, there are costs of migration, which all often lead to the conclusion that it is more efficient to construct internalisation mechanisms by fiscal equalisation instead of migration or instead of a centralisation of the responsibilities.

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[11] See Färber, Gisela: Finanzverfassung, Besteuerungsrechte und Finanzausgleich; in: von Arnim, Hans Herbert; Färber, Gisela; Fisch, Stefan (ed.): Föderalismus – Hält er noch, was er verspricht? Seine Vergangenheit, Gegenwart und Zukunft, auch im Lichte ausländischer Erfahrungen; Schriftenreihe der Hochschule Speyer Bd. 137, Speyer 2000, p. 138 and the overthere cited literature.

[12] Vgl. Tiebout, Charles: A Pure Theory of Public Expenditures; in: Journal of Political Economy 1956, pp. 416.

It is furthermore often forgotten that the correction of "mistakes" concerning the second and the third stage of a fiscal constitution, the principles of cost carrying and the distribution of taxation bases, cover a bigger share of the equalisation transfers than the proper internalisation functions. Here particularly those distortions have to be respected which result from regulations of other higher federal tiers. It is obvious that the systems of administrative federalism show with this respect a higher degree of equalisation than the not interconnected. And if the taxation competences are not distributed in a way that they can fulfil the above mentioned functions a financial equalisation scheme can help to make a fair tax competition workable which is more fundamental for efficiency of the total government sector, for the whole fiscal federalism than some transfer or compensation payments.

It should however not be neglected that fiscal equalisation transfers often are used for distribution goals. They can be proved if a financial constitution requires a minimum ore even an equal equipment with public goods for all jurisdictions of a fiscal tier. Two aspects have to be considered with regard of distribution policies by means of fiscal equalisation: If a central tier legitimately decides to follow the goal of a minimum level of public goods across e.g. the whole country, it is the better, it is the more efficient solution to build up equalisation transfers than to centralise the for this goal necessary responsibilities of public goods supply; the decentralised process of uncovering special regional and local preferences which concerns not only the total amount, but also the combination and the qualities of public good supply, should better be kept intact. And furthermore, also in a market economy goals of direct or indirect income distribution are permitted, are sometimes necessary and unavoidable to fulfil the allocation goals and are – if certain construction principles are regarded – until a certain degree of distribution not hostile against economic welfare optimisation.

The biggest need of correction of the financial equipment of federal jurisdictions results from deficiencies of the distribution of taxation competences. It was already noted that the ideal tax under economic welfare aspects is not practicable. All other – practised - tax bases however show certain, partly huge problems which have to be regarded under their vertical effects as sources of taxation of the different federal tiers and under their horizontal effects among the jurisdictions of the same tier:

- In general, the taxation competences of each federal tier should be sufficient to cover the budgetary expenditures which result from the production or provision of public services of which the jurisdictions are responsible. But it can happen that a certain tax base which might be almost ideal as source of finance for a special federal tier with concern to its

features is too small to cover the financial needs of the tier. This is e.g. to be stated for almost all countries with concern of the taxes on real assets as the only source of local taxation in which form land ever it is taxed: rates, property taxes, taxes on standard values of real estate like they are practised in Germany – these taxes are too small for financing all local services. In Australia, the only country where the rates seem to be sufficient, an very low level of local responsibilities has to be stated. In the United States however, the strong tensions of the property tax rates lead to the strikes of e.g. the Californian taxpayers in 1977, to a limitation of property tax rates and tax bases by the famous Proposition 13, but later to severe financial problems particularly of the counties and school districts in the late 1980s. If the tax base of jurisdiction is too small and no financial grants are afforded either the amount of the jurisdictions public services is too small or the tax rates become so high that the distortions in cause of taxation leads to high welfare losses for the whole economy. In this case, other taxation rights have to be conceded or vertical grants from upper tiers have to equalise the deficient tax base of a fiscal tier.

- Similar results provide taxation competences which highly spread among the jurisdictions of the same fiscal tier. If in jurisdiction A a double as high tax rate is needed to have the same tax revenue (per inhabitant) as in jurisdiction B there is no chance to offer a similar level of public services for the same or comparable tax price. Consumers, labour force and capital then start to migrate only in cause of the uneven financial equipment of the jurisdictions. This federal competition however does not increase the economic welfare of the whole economy. The effects become stronger, if the jurisdictions have to apply a common tax law, the same tax rates, as this is practised in Germany and in Austria[13]. In this case financial equalisation grants – for the moment either vertical or horizontal ones – prevent an inefficient migration and increase the total economic welfare.

- If the tax bases of the jurisdictions of the same federal tier strongly diverge in cause of a country wide and centrally regulated redistribution by taxation means – progressive income tax rates tend to fall under this case - or in cause of an uneven regional distribution of special tax exemptions (which cannot be justified by the systematic rules of taxation, but result from goals of economic or social interventionism) the differences have to be compensated.

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[13] See Müller, Regina: Horizontal und vertikale Transfers zur Durchsetzung eines horizontalen Finanzausgleichs; Frankfurt/M 1995, pp. 149.

- Horizontal equalisation transfers can be accepted and are in reality, the smaller the divergences of the tax bases are and the more centrally regulated, the more uniform the tax laws are in a country. As most tax bases differ nearly with the economic capacity of a jurisdiction – because taxation always is a governmental "grip" onto a certain part of the economic activity or circulation within a jurisdiction and has to follow the principles of a taxpayer's ability to pay – the nearly economic homogeneity is condition for a horizontal fiscal equalisation among jurisdiction. High divergences undermine the willingness of sub-central governments to pay for their poor "neighbours".

- High divergences of the regional and local economic capacity make the instrument of vertical equalisation grants preferable. The grants are then calculated – mostly or ideally by a formula - to equalise the tax capacity of the jurisdictions.

- Vertical grants can furthermore be better used for all the cases in which not only tax divergences have to be equalised, but also differences of the so called "public needs" of jurisdictions. These can result – beside from the different preferences for public goods which are not relevant for fiscal equalisation! - from regionally diverging necessities of public intervention – e.g. in case of unavoidable economic structural change as could be still observed in East Germany and all transformation countries – and diverging production costs for public services for its part resulting from natural conditions and regional factor price differences. Asymmetrical production functions in case of increase and of decrease of the number of regional/local consumers respectively inhabitants are a third case of cause of equalisation. The latter is probably highly relevant for fiscal equalisation, but until now nowhere practised, it is only seriously discussed in Australia. The shrinking and aging populations will bring the discussion to all industrial countries.

The high number of cases for general – horizontal or vertical - fiscal equalisation grants might be astonishing. Yet are the intervention causes for special purpose or matched grants not discussed. Although they can also be used as instruments which have a general function of grants not discussed. Although they can also be used as instruments which have a general function of intergovernmental financial relations, is their function as a "golden rein" so dominant that the inclusion would blast the frame of this paper.

To summarise the arguments: Not only distributional, but particularly arguments in favour of an optimal allocation of resources in the public sector as well in the whole economy between private and public sector justify financial equalisation grants. In practise, it might be difficult to separate the various causes and their instrumental constructions among the many

rules which are all occupied with the distribution of "public money". Obviously, among all good reasons are always mixed up distributional interest of the negotiating parties in a federal system. As a clear result should finally be noted that the more need for vertical equalisation grants exist in a concrete federally constituted country, the higher must be the degree of centralisation of the tax system, precisely: the revenue competence. Otherwise do the upper tiers not dispose about the financial means necessary to spend vertical equalisation grants.

2.4 How much centralisation resp. decentralisation, autonomy and solidarity is needed in a federal constitution?

After all the details finally the questions comes up how to find the optimal balance between centralisation and decentralisation, between autonomy and – I want to call it – solidarity in a federal system. The mainstream of the 1960s and 1970s followed the idea of a rational government sector by using nearly perfect instruments like cost-benefit-analysis, PPBS and many more. Under that label it is not necessary to differentiate among the ideal levels of public decision making, because there one rational solution to solve the problems of society. And the governments sector is big, powerful and costly under this regime.

The more recent ideas tend to emphasise autonomy and decentralisation instead because one enormous advantage of decentralisation lies in the stronger political control. Political decision making processes happen near to the living sphere of the citizens and he/she is able to articulate his/her preferences for local and regional public goods directly. The growing importance of instruments of direct democracy like referenda also shows that many citizens want more decentralisation after a period of a costly and more technical centralised government.

Intergovernmental financial relations must follow this developments. But in the case that responsibilities for public goods are re-decentralised there is no guarantee that e.g. the regional spread of tax capacities also decreases. That means that a decentralisation of responsibilities for public services can – not must - lead to in increasing centralisation of tax revenues because the necessary amount of vertical equalisation transfers grows. This result seems almost to be a paradox.

It is of course not. It shows however that a federal constitution always has to balance autonomy on the one hand and solidarity or equalisation on the other hand. Otherwise it would give up its advantages against centralistic constitutions which mainly lie in the better consideration of citizens' preferences and a more intense political control.

3. Recent developments in empirical centralism and fiscal federalism

Before that background of a principal tension between autonomy and solidarity in federal constitutions, the final chapter of this paper regards some developments in centralist and federalist countries. The question is no longer superiority of one ideal system across the other, but their ability to provide necessary reforms and their flexibility to react onto the future challenges. In cause of their fundamental constructions the systems are supposed to react differently, but they have also the chance to undertake reforms and converge to each other.

Four different, but interdependent developments can be distinguished:

- **World wide competition for capital and labour under the conditions of increasing factor and consumers' mobility:** All federal and all national fiscal constitutions can no longer be isolated against foreign users of national and regional infrastructure. Globalisation has lead to an increasing mobility not only of financial capital and labour force and consumers. Enterprises have started to exploit intensively national and regional divergences of production costs. The increase of inter- and intra-industry trade as well as of direct investment is the direct result of these developments. The low transportation costs not covering the social costs for the environment subsidise the process. The so-called new economy and the decrease of information time and costs have provided further independencies of production places from consumption places.

  This process has put the previously nationally closed tax system under pressure. At least with concern to certain corporate income taxes the international competition has increased to a race not "to the bottom", but to a lower level of enterprise taxation. National tax bases are for all those taxes under competition where the taxation base is comparably mobile which are enterprise profits, interest and other capital incomes and highly skilled labour force incomes. That means that centralist and federal countries both are set under an international tax competition which overlies many other common necessities of reform e.g. in cause of the aging population. Most of the countries have started more or less intense reforms. The reforms have in common to ask for the necessary harmonisation of tax systems or tax bases to avoid an inefficient tax competition. It is remarkable that this discussion can also be observed in Switzerland with regard to the cantonal taxation rights and a resulting need of fiscal equalisation.

- **Process of regionalisation and federalisation:** Since the late 1970s and the early 1980s, at least in Europe a continuing process of regionalisation and federalisation can be observed. The centralist countries have started reforms to give more autonomous rights to

the regional level. Although the processes and constructions differ slightly because of the national and cultural divergences, each member state of the European Community has followed that development[14]. Remarkably the centralist countries only have undertaken a regionalisation, and not a federalisation. Regions in Italy and France e.g. have – compared with states or provinces in federal states - very limited responsibilities and are with regard to financial concerns treated like typical local jurisdictions in federal systems.

The regionalisation process was narrowly connected with an increase of regional cultural identities. The recent discussions about the legal status of Corsica is almost unbelievable with regard to former national positions of the French central government. The Italian debate about the establishment of an independent Padania was observed with interest by experts of federalism as was the break down of the former federal state Yugoslavia with fright. All in common are two dependent developments: The importance of regional ethnical identities is increasing without that – this is my hypothesis – the respective national systems were able to react flexibly upon the political challenges or even had the political will to do so. And regional cultural identities have lead to a general loss of importance of national frontiers and national communities because regions find more common interests with the neighbouring regions across the national frontiers than with far distanced regions in the same national country. The actual conference is an excellent example for the hypothesis.

- **Fiscal equalisation under pressure:** The national intergovernmental relations have come under political pressure. Although centralist countries have by definition no financial equalisation system in the federal sense they have systems and rules how to distribute the national tax revenues which are uniformly collected across the whole country under regional aspects. Furthermore, also centralist states have established local governments which traditionally have certain autonomous competences of self-determination of local public goods and certain autonomous taxation rights. Local governments were traditionally also additionally financed by a fiscal equalisation system which included either local financial needs and local fiscal capacities.

Centralist and federalist countries have in common that the regional distribution and re-distribution of tax revenues has come under suspicion. The interregional flow of

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[14] See e.g. the contributions of the conference reader Färber, Gisela; Forsysth, Murray (ed.): The Regions - Factors of Integration or Disintegration in Europe? Föderalismus-Studien Bd. 8, hrsg. v. Hans-Peter Schneider, Baden-Baden 1996.

purchasing power by central taxation and central public spending decisions are not yet accepted because the rich regions want to use it for their proper economic development and the poor ones are afraid of losing further locational competitiveness by getting rid of public resources. A consensus about an accepted relation between competition and solidarity is not in sight.

- **Supra-national, national and regional cross-border fiscal "federalism":** Instead of national solidarity narrower relations come up among neighbouring jurisdictions for those regards in which the new partners suppose to be stronger together. Not only were competences concerning a Common European foreign and security policy delegated to the supra-national tier by the European member-states. Also in the national context, more trans-border economic regions are established. Some German states negotiate common administrative bodies. The economic region of the metropolitan areas have expanded across all state and local borders since a long time. The explicit establishment of special types of jurisdictions with particularly economic planning competences has begun almost ten years ago. And even local governments have started to offer common industrial areas to attracts bigger enterprises by preventing an unfruitful local competition and to realise economics of scale by common institutions. If these new special jurisdictions and pre-jurisdictions need financial means and do not get sufficient grants from public budgets of the upper tiers they levy contributions from the member which often are calculated according the fiscal capacity of the member jurisdictions. This can be regarded as a starting point of some sort of fiscal equalisation system.

The narrower trans-border relations of European jurisdictions of what federal tier ever show common interests and simple approaches of institution building. This development had to be expected because positive common interests and cooperation gains easily lead to an agreement. All partner win. Economists call it a win-win-situation. Unsolved are many situations with a winning and a losing party which mostly can also be analysed as cases of regional and national borders crossing external costs. The nuclear plant Temelin just after the Austrian frontier in Slovakia and the expected costs of the additional migration after the Eastern enlargement of the European Union are only two examples for contradictory negotiation situations. The problems to find a solution increase by the fact that the partners are not equal with regard to the economic capacities and do therefore not have common or equal preferences of the citizens. The logic of fiscal federalism indicates that establishing special inter- or trans-national financial relations could help to find agreements with situations

of net gains and could smooth the economic development of the future European member-states on their way to integration.

The example of the Common European Agricultural Policy however shows that not special subsidies open the way to win-win- or net-gain-situations. The profiting special rent-seekers can scarcely be "bought out" or only at extremely high budgetary costs. Fiscal federalism win-win or net-win-situations can however be reached by general fiscal transfers or compensation rules and special purpose trans-national cooperation agreements. But they demand a sufficient autonomy of all participating jurisdictions.

4. Summary and conclusion

This paper has developed the fundamental construction principles of fiscal federalism starting with the differences to the fiscal constitutions of centralist countries. The different stages of division of responsibilities, the rules of distribution of costs for the production of public services among the different federal levels, the principles of determination of taxation rights and the goals and equalisation necessities for a more efficient allocation of resources than in centralist countries have been showed. Finally, the international pressure of globalisation has brought up common challenges of countries of both basic types which break up the national frontiers and solidarities and establish new relations among neighbouring jurisdictions across national borders where in doubt the grown up cultural identities are closer than among far distanced regions within nation states.

The construction principles of fiscal federalism offer broad chances to establish flexible instruments and new institutions for the new relations. May be the 21st century will become – as my colleague Hans-Peter Schneider has formulated – the "century of federalism". This might also depend from the successful development of the principles and instruments of fiscal federalism not only for the national intergovernmental relations, but also for international relations and governance. But before we can start doing so the ugly suspicion and bad reputation that fiscal equalisation to be always an instrument of the economic distribution has to be abolished. It should primarily stand and is in many parts an instrument for a better, a more efficient allocation of public resources.

Sustainable local economic development and the reconstruction of community in the Yugoslav successor states: bringing the local state back in

Milford Bateman[1]

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1. Introduction

The disintegration of the former Yugoslavia in mid-1991 was the beginning of a major humanitarian tragedy. It very quickly led to civil war, economic collapse, inter-ethnic hatred on an unimaginable scale, social upheaval, and the creation of major refugee populations. The bitter regional conflicts that took place over the period 1991-1999, including the NATO aerial bombardment of the Federal Republic of Yugoslavia in the first half of 1999, were the worst to be seen in Europe since the Second World War. Moreover, no lasting peaceful solution appears to have been achieved: on the contrary, the region remains poised for further turmoil on account of the clearly temporary nature of the settlement achieved by the NATO intervention into the Kosovo dispute, and also because of the still powerful nationalist currents swirling around many parts.[2] Yet, it was generally not expected that the demise of the former Yugoslavia would be so catastrophic. Many were surprised when the inter-ethnic antagonisms so dramatically combusted. After all, the former Yugoslavia was known as the most liberal, tolerant and economically advanced of all the communist states. Through negotiation and compromise the various incremental movements towards separation could have ultimately led to a Czechoslovakia-style peaceful parting of the ways. However, against a background of economic stagnation, hyper-nationalist propaganda and resentment at the unequal impact of the Federal government's "shock therapy" reform programme (see Woodward, 1995), the country's collective leadership failed, tragically, to agree on a way to peacefully lay to rest the Federation.

The breakdown of previously well-functioning, reasonably prosperous and historically largely harmonious local communities is a problem that requires very urgent attention in the Yugoslav successor states, barring Slovenia.[3]

[1] Enterprise Development Unit, Directorate for Fiscal, Financial and Enterprise Affairs, OECD, 2 rue Andre-Pascal, Paris. The paper is written in a personal capacity. Until February 1999, the author was Senior Research Fellow in Local Economic Development in the Transition Economies at the University of Wolverhampton, UK.

[2] The most recent setback being the election triumphs in Bosnia-Herzegovina in mid-November 2000 of virtually all the nationalist parties – Serbian, Croatian and Bosnian Muslim - that essentially provoked the conflict in the first place.

[3] The argument to follow basically excludes Slovenia on the grounds of its relative wealth, political stability, the fact that it avoided serious conflict and because it had little problem with refugee populations.

Though some progress has been made in reconstructing the region between 1991 and 1999, it has been patchy at best (EBRD, 2000; World Bank, 1999, 2000a). Moreover, the Kosovo conflict in mid-1999 put much of this modest progress into reverse. One over-arching aspect of the reconstruction and development of the region has naturally been the policy framework within which the process was expected to take place. The policy model adopted by the international community to support the reconstruction and development process in the Yugoslav successor states was a derivative of the neo-liberal model introduced into post-communist Central and Eastern Europe after 1989 (Gowan, 1995; Young, 1999; Bateman, 2000a).[4] The neo-liberal model is premised upon the supposedly smooth efficiency of the free market mechanism - the "invisible hand" - and its ability to facilitate a successful development trajectory (Sachs, 1990). This positive scenario is presumed to hold even in a post-war scenario (see, for example, Haughton, 1998). Recovery will be a spontaneous process based upon the rapid response of domestic and international actors (local companies, multinationals, entrepreneurs, investors, banks, etc) to a newly embedded system of market incentives and dynamics. However, the neo-liberal approach was proposed for the Balkans despite the fact that in Central and Eastern Europe it was early on becoming associated with extremely poor results: an immediate and very steep economic decline was followed by major increases in poverty, extensive corruption, double digit unemployment, a rapid rise in social exclusion, a dramatic rise in inequality, and drastically deteriorating public health and social welfare systems (Amsden *et al*, 1994; Gowan, 1995; Andor and Summers, 1998; Milanovic, 1998; Stiglitz, 1999; World Bank, 2000b).[5] Yet, overall, this negative experience seems to have been only marginally factored into the policy design process with regard to the reconstruction and development of the Balkans. The result was that the policies and programmes established for the Balkans, in the wake of both the Dayton Peace Agreement of December 1995 *and* the Kosovo conflict in early 1999, were very similar to those still being implemented with comparatively little success in Central and Eastern Europe (Bateman, 2000b, 2000c).[6]

One of the central functional components that follows from the neo-liberal approach is the requirement to bar state institutions from taking any pro-active role in the restructuring of the economy (Evans *et al*, 1985; Amsden *et al*, 1994). Essentially, all state institutions, policies and activities are considered inefficient and a constraint on the progress that could otherwise be made by the market mechanism alone. Progress will only be made once the state "gets out of the way". This is achieved both through the rapid privatisation of enterprises and public sector functions, and by the closure or "down-sizing" of any government department (e.g., Ministry of Industry) or

[4] Wedell (1998) gives an interesting in-depth account of how governments in Central and Eastern Europe were co-opted over to the neo-liberal view espoused by the western governments and their chief advisors.

[5] It has also been associated with poor results in the countries of its origin - the UK and USA. For example, see Liepitz, 1992; Cowling and Sugden, 1994.

[6] Many neo-liberals have skirted the issue of the real success or otherwise of the reforms in Central and Eastern Europe by restricting their discussion to issues concerning the establishment of *structures* rather than *performance* of those structures. So, for example, the establishment of a functioning Stock Exchange, extent of privatisation, degree of liberalisation in capital markets, movement towards completely free trade, and so on, are seen as important milestones, but the discussion of what impact they have actually made on the economy concerned often ends there (see Gowan, 1995).

state-led body (e.g. development banks) that might wish to engage with the process of industrial restructuring and economic development promotion. In the Balkans, this overall policy approach has been quite faithfully pursued. It has sometimes encountered strong arguments by a number of academics and regional specialists in favour of a more pro-active role for the state (Petrin, 1995; Kozul-Wright, 1996; UNDP-UNDDSMS, 1996. See also the discussion in Liki-Brbori, 1999),[7] but the promise of financial assistance (or threat of withdrawing it) has usually been enough to persuade any doubters in government of the neo-liberal model's suitability. It is interesting, also, that the neo-liberal model has been strongly promoted in spite of a continued stream of references by many international institutions to the need for a "Marshall Plan for the Balkans" (see Cullen, 1996) that would, if faithful to the original version (see Esposito, 1995), involve significant state intervention and investment co-ordination.

However, we argue here that the neo-liberal approach to reconstruction and development has been one of the main factors behind the weak reconstruction and development performance in the Balkans (for a more in-depth treatment of the argument to follow, see Bateman, forthcoming). We contend that it is the enforced inactivity of one of the potentially key institutional vehicles - the local state[8] - that accounts for a significant part of the poor progress to date in community-rebuilding and local economic development. The argument is informed by two sets of experiences.[9] First, there is strong evidence to show that many local and rural communities in the Balkans *have* declined because of the absence of a pro-active local institutional structure capable of co-ordinating and promoting sustainable community and local economic development trajectories, particularly in terms of SME development.[10] Many local communities in the region see themselves as *victims* of the transition, as opposed to being *beneficiaries* (World Bank, 2000a), still less the architects of local recovery.[11] Second, the very successful local economic development, rural industrialisation and community reconstruction role undertaken by the local

[7] Horvat (1999) makes an interesting comparison of the situation in Croatia post-1945 and post-1995. He notes that the institutions of local self-government in Croatia (within the former Yugoslavia) were able to make a major contribution to the rapid recovery of the region after 1945 (see Horvat, 1976). However, in Croatia after 1995 (the signing of the Dayton Peace Agreement) the weak and dismembered institutions of local government were unable to make any substantive contribution to economic development.

[8] By "local" we mean all sub-national levels of government (regional, local, township, village, etc) unless otherwise made clear.

[9] Theorising on the subject is also important, but space limitations preclude any discussion here. For useful contributions, see for example Hudson, 1998; Pickles and Smith, 1998; Chang, 2000.

[10] There are nevertheless many good examples in Central and Eastern Europe of pro-active local state involvement in community and economic development. In Hungary, for example, local governments have become increasingly pro-active and successful in supporting SMEs (PPI, 1993; Dallago, 1999). Further east, Bruno (2000) shows how moribund village and neighbourhood administrations in Kyrgyzstan and Uzbekistan were quite successfully reactivated by local people and turned into pro-active bodies working for the community as a whole.

[11] Though we do not go into them here, we should note that there are also important lessons to be learned from the Middle East, where the institutional vacuum created by the effective withdrawal of the state (central and local) is closely associated with the region's continual break-down into conflict. For example, in the Lebanon, Goglio (1998) describes the situation as one where the "progressive reduction of the state to minimal levels, () far from developing into an organisational Nirvana based on free private bargaining, has proved akin to a 'Hobbesian nightmare' in which closed and authoritarian cultural-religious communities and armed militias have taken over the effective exercise of power" (p236). The standard neo-liberal package of stabilisation, liberalisation and privatisation failed as the, "indiscriminate introduction of market policies and values, without due regard for the constraints imposed by the complex of social co-operation, created the conditions for subsequent collapse" (p 237). One cannot but be drawn to the striking parallel with the situation in Bosnia-Herzegovina.

state in a number of post-war and post-crisis historical episodes is powerful evidence that a pro-active local state can be a critical factor in reconstruction and development. The post-1945 experiences of Japan, the former West Germany and northern Italy, the post-colonial and post-war experiences of Taiwan and South Korea from the 1960s onwards, and the post-Mao period of transition in China since 1980 are all excellent examples where progress has been achieved through the auspices of the local state. The co-ordinating, regulating, stimulating, financing and implementing actions undertaken by the local state were, in many of these examples, pivotal to an ultimately successful national development trajectory.[12]

This paper will suggest some key local policy interventions that relate to community-building and local economic development in the Balkans, with particular emphasis on capacity-building and financial resources for small enterprise development. We first foreground some of the lessons to be learned from local state intervention as part of the reconstruction and development of previously well-functioning and harmonious communities and localities. These examples indicate that, contrary to the received neo-liberal wisdom that denigrates any pro-active role for state institutions, the local state can play an important role in community-building and local economic development. Key aspects of what we term the "local developmental state" approach have, we believe, obvious relevance to the dire situation in the Balkans. We discuss some of the more important ones. Concluding, we suggest that the international community and governments in the region must urgently push for a pro-active local state response to the problems of community and local economic under-development in the Balkans.

2. Background to local economic development and community building in the Yugoslav successor states

Institutions

The former Yugoslavia was noted for the extensive decentralisation of strategic and operational capacity to lower levels of government. Pressure to decentralise was, in fact, a constant theme of relations within the Federation. The Communist Party was essentially forced into relinquishing successively larger areas of responsibility to the constituent Republics in order to keep them wedded to the system, and to each other. The decentralisation movement was mainly fanned by the two northern Republics of Slovenia and Croatia, both of which chafed at the control exercised by the Federal government from the capital Belgrade (in Serbia). There was also resistance to the system of investments, concessions and financial contributions the richer (i.e., northern) Republics had to contribute to help the lesser developed Republics and regions to the south (i.e.,

[12] The local state has been very important to local development elsewhere. For example, in Latin America (see Tendler, 1997; Berdegué *et al*, 2000).

Macedonia, Montenegro and Kosovo Province).[13] As a result of these and other factors (e.g., the desire for cultural autonomy) strong pressure for substantial political autonomy built up in Croatia in the late 1960s. This movement was eventually suppressed by President Tito, but it led to the passing of a new constitution in 1974 that effectively gave quasi-independence to the Republics and autonomy status for two regions in Serbia, Kosovo and Vojvodina. Each Republic and both of the two autonomous provinces were thenceforth able to articulate an almost independent monetary and fiscal policy, each had its own "central bank", and each was able to jealously guard its enterprise sector through financial means and restrictions on trade (Pleština, 1992).

In conjunction with increasing Republican autonomy was the heightened importance of the local municipality.[14] There is a long history of independence and proto-economic development activity at both the municipality and city level in many parts of the former Yugoslavia, particularly in Slovenia (Mencinger, 1996). It was also quite efficient too, in most parts, because work in the local government bureaucracy was prestigious and well paid, and therefore tended to attract the best people (Lampe, 1979). The immediate period of administrative planning that followed the end of the Second World War (1945-50) was then followed by the introduction of worker self-management and extensive decentralisation to the local government level. Local government quickly regained its earlier strength and autonomy (Horvat, 1976). This role was then greatly helped by the 1963 Constitution that assigned the municipal authorities increased power to engage in various community development programmes (Seroka and Smiljkovi, 1986). The municipality, and specifically the economic department, also became very pro-active in supporting community and economic development initiatives, though resources passed down to it from above by the politicians were almost always far less than required (Bateman, 1993). In the 1970s, the municipality was joined by other community bodies, such as the Self-Managed Interest Community (SIC). The SIC was a quasi-governmental body managed by local people and other representatives that had responsibility for employment, health and so on. It attempted to promote community participation in solving local problems and facilitating small-scale development projects.[15]

Finally, there were the institutions of civic society. These also have a long and distinguished history in the Balkans. Prior to 1945 agricultural communities throughout the former Yugoslavia played host to a multitude of local financial, technical and advisory institutions, while small-scale industrialisation was facilitated by small

[13] The main channel for distributing assistance to the lesser-developed Republics was the Federal Fund for the Accelerated Development of the Under-Developed Regions and Kosovo (FFADURK) which became the focus of many arguments between the Republics (Pleština, 1992).

[14] There was also an additional lower level of government administration, in the form of the "communities". These were the equivalent of the UK's Parish Councils, having little financial or operational power. However, they could be used as a mechanism whereby the community could do things themselves and articulate grievances to higher levels of government.

[15] One of the areas where the SIC was active was in paying out unemployment compensation, the finance for which it raised from local enterprises. The SIC's creative circulation of these financial flows within the local community was a reasonably efficient activity within the given local incentive system. For example, by making local enterprises pay all or part of the costs of the unemployment they created, and therefore internalising part of the social cost of unemployment, it was in fact a rather progressive response to the problem of unemployment (see Bateman, 1993).

local savings banks, co-operatives and credit unions, and networks of informal credit providers. In Slovenia, for example, virtually all communities were criss-crossed with networks of credit co-operatives and local savings banks servicing both agriculture and small-scale production requirements (Tomasevich, 1955). Under the period of communism, there was progressively more opportunity to establish community groups and institutions, particularly in the 1960s as the state began to fully divest itself of a planning role in the economy (the period of so-called "market socialism"). Financial co-operatives independent of state control were also increasingly common, particularly in the agricultural sector (Cuješ, 1980).

However, in the aftermath of the collapse of the former Yugoslavia local government capacity has been dramatically reduced. This was partly because of a collapse in resources collected by central government and disbursed to lower levels. Partly also it was because of a series of reforms that broke most municipalities up into much smaller units and reduced their taxation powers in favour of central collection.[16] In some cases, for example in Macedonia, the typical municipality was reduced to a very small body indeed (sometimes with no more than a few hundred constituents) and with no budget of its own.[17] In Slovenia the municipality was also reduced, though many took to re-combining informally in order to retain economies of scale with regard to some community services. Other local state bodies in the successor states were either shrunk, privatised or closed, as the need for fiscal discipline played out. Quasi-state bodies, such as the SICs, were abolished. Independent institutions, such as the co-operatives, also came under threat because of their supposed ideological links with communism.

Local development policy in the Yugoslav successor states

The neo-liberal approach also very much informed the policy design in the Balkans with regard to local economic development and the rebuilding of war-torn communities. Once again, this was in spite of its extremely problematic record of the neo-liberal local economic development approach adopted in Central and Eastern Europe (Hardy and Rainnie, 1996; Bateman, 2000a). Rural communities have suffered particularly badly from the lack of local support (Kowalski and Kaminski, 1999; World Bank, 2000b). One of the key institutional prerequisites of this "local market fundamentalist" approach (Bateman, 1999) is a greatly reduced role for the local state in terms of economic development promotion. As virtually everywhere else (see for example, Rama, 1999, and the papers in the same special edition), the first post-communist politicians in the successor Republics

[16] The first political parties coming to power after the collapse of communism immediately set about consolidating their control by diluting any possible opposition power base at lower levels of government. In Croatia, for example, the HDZ government of President Franjo Tudjman was antagonistic towards the Istrian region on account of its lack of support. The office of Mayor of Zagreb was suspended for some considerable time by the central government when an opposition candidate happened to win in the local elections. In some cases, in Macedonia for example, the motive was overlaid by a desire to reduce the ability of minority populations (ethnic Albanians) to use local government as a mechanism to pursue separation strategies.

[17] The latest moves underway by the current government, however, are to regroup the current 124 municipalities (prior to 1991 there were 34) into something like 60-70 and to allocate some substantive tax raising powers to them (EIU, various).

were urged by their western advisors to quickly down-size their local administrations, particularly with regard to economic development functions.[18] All that mattered was to reduce the remaining bureaucratic obstacles to entrepreneurship, cut taxes if possible and tackle local corruption. Not surprisingly, very little international financial assistance found its way into actually *building up* the pro-active economic development capacities of the local state – into, say, upgrading the capacity of the many local government economic development departments. This cut off the single most important source of support that could have facilitated the upgrading of local state capacity. The end result was the "dumbing down" of the local state (Bateman, 2000b).

The bulk of the international financial assistance for local economic and community development in the Balkans has gone into financing the expansion and operations of the NGO (Non-Governmental Organisation) sector. The successor Republics now have a myriad of local NGO-type bodies promoting local economic and community development, sometimes working alongside their international partners for a period. The increasing "NGO-isation" of the local community was presented as an efficient response to corrupt and inefficient local government politicians and officials. It helped that very many of the best local government people early on jumped across to the more lucrative NGO sector to work, thus providing some of the most dynamic and competent people. At the same time, these root institutions of civic society would ostensibly return the community to its people. However, it is also the case that many NGOs have little depth or reach within the community, are often controlled by small un-elected groups within a newly democratic society, and generally have a limited life-span thanks to their financial reliance upon the international donor community. NGOs often simply replace local state capacity and, as is well known, create a "dependency culture" situation. In short, the NGO sector is a useful adjunct to local economic and community development, but it cannot be conceived as a replacement for the local state. As Oxfam (2000, p 8-9) emphasised in its appeal for more concern for poverty alleviation and social inclusion in South East Europe, "..Civil society institutions cannot substitute for competent and transparent state structures". [19]

Small enterprise development

One of the main mechanisms through which community development objectives were meant to be realised in the former Yugoslavia, particularly from the 1970s onwards, was through the promotion of small socially- and privately-owned enterprises.[20] Unlike most of the other communist states (except possibly Hungary) under the

[18] This also ignored much of the advice accumulated from lesser-developed countries. Killick and Stevens (1992), for example, argued that one of the key lessons was that there is a pressing need not so much to *reduce* the size of the state, but to adjust its modality of operations away from administrative controls and interventions which were meant to *replace* the market, and towards forms of constructive and transparent interventions which *support* the operations of the market and the SME sector.

[19] Castells (1998) also argues that the local state is becoming the main progressive force for genuine democracy and community voice.

[20] The other main mechanism within the former Yugoslavia was to lobby hard for Federal and Republican financial support or new industrial facilities to be located in one's locality. For an excellent discussion of the rent-seeking aspects of this scramble for industrial projects, see Young (1992).

communist period the small enterprise sector had real possibilities to grow under both social ownership and through private initiative (World Bank, 1981). It was also important that the agricultural sector, after a brief attempt to collectivise it between 1948 and 1951, remained overwhelmingly under private ownership and was thus able to provide much of the capital, skills and determination for many small private, non-farm rural enterprises to get started (Sacks, 1978). By the 1970s, the Yugoslav authorities began to emphasise the need to directly promote new small enterprise capacity. Small socially-owned enterprises were increasingly promoted by the economic development units within the municipal administration (Sacks, 1973). And, as greater fiscal autonomy from the Federal government began to be instituted in the 1960s and 1970s, municipal, city, county and Republican administrations also saw the need to permit private initiative. Small private businesses were seen to raise local taxation, utilise new technologies and innovations, and constructively use remittance cash generated by Yugoslavia's substantial guest-worker population working in Western Europe. Although many under-resourced municipal authorities were initially overly ambitious and naïvely imposed onerous taxes on the growing private sector (Bicani, 1973, p34), the connection had at least been made between a thriving local small enterprise sector and community and local economic development objectives.

Thus, by the late 1950s and 1960s, small-scale social sector and private sector initiative was becoming quite common-place once more in Yugoslavia (Waterston, 1962, p 78), and by the early 1970s the sector was recognised by the government as an important aspect of local economic development (World Bank 1981). In the very early 1980s, against a backdrop of an international debt and economic crisis, small enterprise development became the *most* important economic development tool available. A major expansion of the private sector was anticipated. All levels of government administration were told to move rapidly to promote SMEs. New funding sources for SMEs and SME development initiatives were established. The Federal government established its own agency to promote SMEs and to re-structure existing large businesses through spin-offs and divestments. However, the country's collapse into civil war in 1991 curtailed many of these ambitious developments. Notwithstanding, in all of the now-independent Republics an institutional structure to support SMEs was in place that was of some value. One possibility, therefore, would have been for this endowment to receive a very hefty financial and technical assistance boost from the international community, and it could therefore have rapidly improved its performance with regard to SME support. Instead, the potential for building upon the existing support institutions and incipient reform trajectories, particularly at the local level, was not considered (Bateman, 2000b).[21] Put simply, these modest local state-led institutional support structures did not accord with the model of local enterprise development and support favoured by neo-liberals, and so they had to be swept away. As

[21] There was also a serious lack of local knowledge, allied to strong ideological prejudices, on the part of those arriving to assist with the transition. In Slovenia, for instance, the first EU officials arriving after independence in 1991 were very much unaware of the extent of local entrepreneurship, the reasonably efficient institutional support structures already in place, and the dedicated academic and government personnel then very much involved in promoting and researching small enterprise development. One official described the level of local understanding and appreciation of entrepreneurship in 1991 as comparable to "...a desert" (Interview with a member of the EU Delegation, Ljubljana, December, 1998).

Stiglitz caustically notes in relation to Eastern Europe as a whole (1999, p 22), it was a case where the international community and its advisors "..seem to have seen themselves on a mission to level the "evil" institutions of communism and to socially engineer in their place (using the right textbooks this time) the new, clean, and pure "textbook institutions" of a private property market".

The neo-liberal inspired local institutional support structure that *was* implanted in the region - the "local market fundamentalist" model (Bateman, 1999) - is an approach that values non-government, commercially-oriented local support institutions, the principal form being the Business Support Centre (BSC). BSCs were supposed to take the lead in the SME development process in the community by responding to both the immediate needs of local SMEs for help, as well as by facilitating the emergence of new SME sectors and related institutional support structures (e.g., credit lines, private consultants, business incubators). However, as in the rest of Central and Eastern Europe (see Fogel *et al*, 1995; SCR, 2000; Bateman, 2000a), this approach has not been able to ensure the establishment of an appropriate local institutional support structure. Above all else, there is very little expectation that these independent enterprise support structures will be able to achieve a meaningful degree of sustainability. As donor funding has a finite life, most local support structures in the region were very early on forced to move into *any* business area where there was a chance to generate significant commercial income.[22] This requirement has led to most BSCs becoming simply concerned with their own profitability and survival. Most, in fact, wind up becoming *de facto* or *de jure* consultancy bodies serving any clients (e.g., large firms, multinationals, government departments, international donors) and on any subject. Some BSCs have business dealings of their own, such as trading operations. Some BSCs, such as in Slovenia, have been able to convert themselves into Regional Development Agencies (RDAs) in order to survive. The overall result of the above trends is that many of the clients the BSCs were actually specifically designed to target - new starts, the unemployed, rural non-farm entrepreneurs, high risk social groups (e.g., demobilised soldiers), potential high growth but cash-poor SMEs (i.e., "gazelles") - are gradually being abandoned because they are generally not in a position to pay the full cost for any assistance received. Worse, some BSCs have actually collapsed as the international donor funding has begun to dry up, as in Bosnia-Herzegovina. In Macedonia, both the EU Phare and UK government financed Regional BSCs appear to have little chance of remaining in business without substantial donor support (Bateman, 2000b). Thus, the local support institutions that emerged under this model - the BSCs - are overwhelmingly weak, short-termist, of poor quality, prone to failure as donors leave, increasingly unconcerned with SME development, and most simply go from one financial crisis to the next (Bateman, 2000b, forthcoming).

[22]However, a high level of commercialisation was one of the elements of "good practice" highlighted in the major survey of donor experience summarised by Gibson (1997).

The lack of local institutional support capacity in the Balkans is now palpable. The result of this "institutional void" has undoubtedly been the comparatively poor progress in SME development to date. In terms of numbers, there are clearly many more new small enterprises (Bateman, 2000b). However, this "growth" is not quite what it seems. For a start, the statistics significantly over-estimate the actual number of SMEs in operation. Even if we accept that many SMEs prefer to remain hidden within the "grey economy", the fact that nearly 40-50% of registrations are classed as "phantoms" is cause for concern (*ibid*). Of the actual registered *and* functioning SMEs we then find that the overwhelming majority of these are micro-enterprises and the self-employed. There are very few industrially-focused SMEs in the Balkans, and the current stock of such enterprises is probably falling as well (see Bartlett and Franievi, 1999; Bateman, 2000b). Most SMEs are, in fact, involved in simple arbitrage activities ("buying cheap and selling dear"). In terms of size, micro-enterprises (1-10 employees) make up the vast bulk of registered enterprises. These often improve livings standards by generating an income (of sorts) for the owner, but generally they have only a very marginal impact on development as a whole. [23] In fact, micro-enterprises are sometimes a *barrier* to development since they have undermined many potentially profitable and competitive local producers attempting to get back on their feet. Micro-enterprises also underpin the large trade deficit now found in all of the Yugoslav successor states, thus effectively helping to create the new situation of import-dependency. Also, very many SMEs are clearly financially very weak, and are only just hanging on by steadily de-capitalising the business, self-exploitation and offering very poor remuneration to employees. This is often demonstrated by the lack of response to the known longer term requirements for survival and growth, such as the purchase of new equipment, re-training and diversification (for an illustrative example relating to SMEs working in the shipbuilding industry in Croatia, see Bateman *et al*, 1998). Another indication of the situation was that SMEs in both Croatia and Slovenia were becoming seriously illiquid by 1997/8 (Tearney and Vitezi, 1999). Finally, in some Republics, most obviously in Bosnia-Herzegovina, the modest growth of the small enterprise sector is very much related to the presence of the international community (e.g., foreign troops, journalists, NGO workers). A good part of this progress is therefore likely to be reversed in the longer run.

3. An alternative local development approach for the Balkans?

An alternative local developmental model to the above "local market fundamentalist" approach arises from the historical experience of a number of countries and regions that have undergone a successful period of post-war and post-crisis reconstruction and development. Specifically, the post-war experiences of Japan, the former West Germany, Italy, of Taiwan and South Korea from the 1950s onwards, and China since 1980. In Japan, a dense

[23] As one analyst explained, "..most of the money goes into trade. So, instead of buying cigarettes from a shop, you can buy cigarettes from a little fellow sitting out on the street. This is good for the little fellow but does not increase GDP much. We would need a very complex model of how trade builds up, its investments and its reallocation to have any long-term impact on the development process" (discussion point made in Stewart *et al*, 1990, p 287).

tissue of local and prefectural (regional) state-led institutions worked very successfully to promote the community and SME development. Local governments were encouraged to develop a wide array of support programmes and measures to assist small enterprises after 1945 (Kitayama, 1995). Local governments were quick to introduce an extensive array of low-cost financial support policies to help the most vulnerable individuals (particularly de-mobilised soldiers) establish new small enterprises (Kim *et al*, 1995; Kitayama, 1995; MITI, 1995: Lall, 1996). The resources for these measures came partly from central government and partly from local savings mobilisation through local state-owned banks. In addition, large numbers of credit unions, financial co-operatives and other forms of small-scale mutual association were also re-established after 1945. Crucially, these financial institutions were strongly regulated by prefectural and local governments, working alongside the Ministry of Finance, in order to avoid any fraudulent activity that might undermine the fragile social consensus constructed within the community.[24] These local financial institutions became important complimentary community-based providers of funds for new starts and small growing enterprises outside of the state support schemes (Nishiguchi, 1994). The market mechanism provided the background against which the local state was able to promote those SME sectors and foreign technologies it calculated would generate most benefit to the economy in the longer run, yet which the market was unwilling to support because of the high risk and low profitability. Overall, community development policy through small enterprises has been officially cited as one of the "..two major pillars of Japanese economic development policy since the Second World War" (MITI, 1980, p14). [25]

In northern Italy, a raft of very successful small enterprises arose after 1945 in a region that became known as the "Third Italy". The contribution of the local state was important. Pro-active municipal and regional governments, often working with very little support from the central government (see Capecchi, 1990), were determined to reconstruct the region through small enterprises. Great value was placed on promoting small enterprises that would become embedded within an industrial community where local *co-operation* mattered as much as, if not more so, than local *competition*. These factors provided the motivation to build a solidly supportive institutional structure within, and within the orbit of, the local administration (a development that did not, however, take place in the south of Italy). Extensive systems of local financial support were established by both the regional and municipal administrations. Regional state-owned banks and credit institutes were established that could easily channel affordable financial support into local SMEs (Peluffo and Giacche, 1997). A whole host of other local financial institutions were established by the regional and municipal governments (Weiss, 1988). In addition, large chunks of abandoned land and business premises were converted into industrial parks and "cottage industry" incubators in order to encourage a large number of entrepreneurs to try out new

[24] Girardin and Ping (1997) note that the the credit co-operatives and Shinken Banks were overseen by local governments and the central Zenshiren Bank to ensure minimal fraud and speculative activity with depositors money, a feature that was not unconnected to the high savings rates experienced for most of the 1950s and 1960s).
[25] The other was – the more familiar - national export policy.

business ideas with a minimum of fuss and risk (Best, 1990).[26] A critically important factor behind the early post-war success of small enterprise development in the northern regions was the high level of social cohesion, trust and civic tradition. These factors underpinned the multiple layers of inter-enterprise and community co-operation that strongly encouraged local business development and investment (Putnam, 1993: see also North, 1990). One practical indication was seen in the high-trust region of Emilia-Romagna, which also had the highest concentration of co-operatives and co-operative institutions in all of Italy (Birchall, 1997). High levels of local trust and social cohesion also meant that the municipal and regional governments generally had the moral authority to enforce a local inter-class consensus or "social contract". For example, local workers accepted an initial period of wage flexibility during the reconstruction as part of an overall (and guaranteed) fair disbursement of the costs and benefits of local economic success. (Trigilia, 1989; Lazerson, 1997). This encouraged as many people and social groups as possible to "buy in" to the sacrifices required of the reconstruction effort.

In the former West Germany the *Lander* (regional) and local state were important development catalysts. The *Lander* institutions were especially strong and motivated to promote the reconstruction process. As in both Japan and northern Italy, the former West German economy became noteworthy for its very dense and well financed institutional fabric at the local and regional level (Cooke and Morgan, 1998). The *Lander* and local governments were both instrumental in establishing and regulating a wide range of support structures that could promote local economic development. Of particular importance were the strong *Landerbanken* (regional banks) owned by the *Lander* governments, and the publicly-owned *Sparkassen* (savings banks), both of which provided a substantial amount of affordable credit to SMEs. Credit was "affordable" since the banks were aiming for longer term sustainability through developing a solid base of clients, rather than short term profitability through servicing high-profit, but "here today and gone tomorrow", trading and importing ventures. The credit co-operative sector also played an important role in local development in post-war West Germany (Birchall, 1997). After 1945, the urban-based *Volksbanken* and rural-based *Raiffeisenbanken* also became major providers of credit to micro- and small enterprises. Above all, this dense local institutional structure was critical to the re-emergence of the *Mittelstand* (medium enterprise sector). The state's concern to promote the *Mittelstand* came to be known as *Mittelstandpolitik* - the idea that support for the *Mittelstand* could ensure competition in the industrial sector, while also providing a vital social and political pillar in post-war German society, particularly in the rural communities (Braun, 1990). As in Japan and Italy, therefore, the West German state very much based its post-war development upon pro-active regional and local state administrations that were able to develop the capacity

[26] Speculation on land was also strongly prohibited so that entrepreneurs outside of these property-led initiatives could also benefit (Best, 1990).

and generate the local resources to be able to promote recovery and development from the bottom up (Weiss, 1998).[27]

Taiwan and South Korea are somewhat different from the above examples. Superior industrial performance has been largely attributed to the activities of the *central* state, rather than local state institutions (for example, see Amsden, 1989; Wade, 1990, Chang, 1994). However, it is the case that the *initial* development impetus was very much provided by successful rural transformation and small-scale economic development activities facilitated by very pro-active local and village administrations. Local and village state institutions were initially denied strategic autonomy and a democratic mandate but, notwithstanding, in both Taiwan and South Korea they were still able to become very active in promoting community development and local economic initiatives. In South Korea, the local township and village administrations were quick to support local farmers credit unions to get started, establish an extensive out-reach service for farmers and potential rural entrepreneurs, and construct a layer of community services that promoted social cohesion through greater economic security and fairness (Whang, 1981; Wade, 1982). In Taiwan, the townships and village state bodies supported local farmers associations which were able to offer credit, key inputs, technical support, co-operative marketing channels, and so on (Wade, 1982, 1983). The number of agricultural outreach workers in Taiwan provided by local and village administrative units was far and away above that in other East Asian countries. Crucially, in both South Korea and Taiwan, the bottom-up development process was underpinned by the extensive land reform programme that removed the old landlord class and created a very equitable-distribution of land. This initiative ensured that the notion of "community" would be a very inclusive one (Putzel, 2000). For sure, as Watkins (1998, p 25) notes, the vastly more equitable social structure allowed the rural poor the chance "..to produce and invest their way out of poverty". Increased rural wealth across the board fed through into demand for locally produced consumption goods as well as capital goods incorporating some local inputs, which raised productivity and created further wealth (Kuo *et al*, 1981). Importantly, it also helped to heal the wounds between formerly warring communities. Overall, the pro-active role undertaken by township and village administrations led to the efficient and equitable reconstitution of the local community as a rural-industrial entity. This was then the ideal platform for the later large-scale industrial policy interventions in both countries that very much relied on the local availability of large quantities of high quality, technically advanced and cheap small-scale inputs.

Finally, the local state has unequivocally been at the heart of the rural and local industrial transformation that has taken place in China since 1980, a development that has boosted living standards significantly. By allowing extensive autonomy for the local state the Chinese government has been able to encourage a strong rural and

[27] The Germans were reluctant to publicise the very significant role of the state in bringing about their "*Wirtschaftswunder*" (economic miracle) because of the fear that it would give succour to the planned economies of the East (including the former GDR) during the long years of the Cold War, and to their ideological opponents in the western economies. Many neo-liberals were privately uncomfortable with

urban industrial development trajectory that has counter-balanced the reduction of activity in inefficient large-scale state industries. Blecher (1991) charts how a multitude of creative economic development trajectories began to emerge at the local level in the 1980s. Local governments became the key element of a decentralised developmental state willing and able to promote local economic development institutions, mechanisms and trajectories, often in conjunction with higher levels of government where appropriate (see also Oi, 1995; Huang, 1996). The local state was encouraged to engage in a wide range of local economic and social development initiatives that created local wealth, encouraged greater local participation in economic development and, significantly, repaired the damage to the social fabric in most local communities caused by the horrors of the Cultural Revolution. The main instrument for rural industrialisation has been the Township and Village Enterprise (TVE). The TVEs are local government and community-owned, yet profit-seeking, enterprises. Crucially, despite their ownership structure, TVEs operate under hard budget constraints and according to strict performance targets.[28] The profits and taxes generated by the TVEs enabled local governments to finance a range of increasingly sophisticated business infrastructures, such as industrial parks, incubators and modern facilities geared to foreign investors, which in turn helped to deepen and sustain the local growth trajectory well into the 1990s. Strong support was also offered by the local state to social and community development projects that extended the financial benefits of the TVEs to the wider social community, and thereby promoted the wider participation of the local population in the process of change taking place. Rural poverty was greatly reduced in most regions of China and, after many years of passively coping with the results of an inefficient system of central planning, local communities were able to re-emerge once more as strong and self-sufficient entities (Jefferson and Singh, 1999).

Key operational aspects of the "local developmental state" approach

A "local developmental state" (LDS) can be defined as a regional, city, local or village state administration that has developed the competence, long term vision, institutional vehicles, linkages within the community and range of policy interventions that work to continuously promote, adapt and upgrade the local rural and industrial structure in response to emerging internal deficiencies and external opportunities, threats and other environmental parameters.[29] Local resources are sometimes important to support the LDS approach, as in post-war northern Italy, but so too are the technical support and financial resources routinely passed down from the centre to local administrative units, such as in Japan, Taiwan and South Korea. Moreover, while full local

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the significant degree of state intervention in the former West Germany's economic development, but in public they openly espoused the view that the market was mainly responsible for the stunning post-war success the country had experienced. (see Weiss, 1998, Chapter 5).

[28] However, some of the TVEs have undoubtedly been engaged in straight-forward local rent-seeking operations, but this is officially tolerated (if not encouraged) because the profits and local tax revenues thereby generated flow to the local community (for example, see Duckett, 1998).

[29] This definition owes much to the idea of "transformative capacity" developed by Weiss (1998) to describe the activities of the central state in promoting successful upgrading, adaptation and restructuring.

autonomy is preferable to top down control, it is has not always been necessary on the ground. The examples of East Asia indicate that an authoritarian government denying a democratic mandate to the local state must nevertheless *still* allow sufficient autonomy for local state administrative units to function effectively. Non-democratic regimes realise that local economic progress can underpin their survival. Having said that, energetic local state institutions and popular participation in economic development will inevitably precipitate democracy-building measures, as was eventually the case in Taiwan and South Korea, and will surely be so in China in the not too distant future. From these experiences, we can distil some of the key development imperatives of the LDS approach, *viz,*

- The LDS approach is to promote enterprise development through a dense tissue of local state-led institutions - development agencies, local planning bodies, public banks, education and training bodies, business incubators, technology upgrading facilities, etc. Crucially, these bodies should pro-actively participate in the development process through establishing longer run and sustainable development trajectories (e.g., rural industrialisation, exports, clustering and networking), rather than respond to the short run stimuli (e.g., high interest rates, speculative profits) generated in post-war or post-crisis situation.

- The LDS approach is to take comprehensive action to build accretions of local capital (i.e., savings) and to ensure that the disbursement of local capital (and any capital coming in from outside) takes place in a manner that benefits the wider community and local economic development in the longer term. So-called "narrow development"- development that does not address poverty and actually increases inequality – can be a direct outcome of the local financial system if it is structured in a way that benefits local elites, fails to deter fraud or promotes unsustainable forms of business development (see Addison *et al*, 2000).

- The LDS approach is to promote equality and fairness as a central aspect of community development. Equality and fairness ensure higher local consumption and spending leading to higher living standards and, crucially, additional investment resources to use in entrepreneurial activities. Promoting land reform is a pivotal feature here since average farm incomes are raised and *inter alia* this allows many more small-scale farmers the opportunity to accumulate a capital sum in order to move into non-farm activity. Local consumption, and thereby local production, of consumer and capital goods is also strengthened by higher average rural incomes.

- The LDS approach is to promote social cohesion through comprehensive social welfare provision in the community. Exploitative forms of enterprise are encouraged to maintain respectable wage levels and to formalise the labour contract in order to promote competition on the basis of employee commitment, high skills, high investment and innovation. Social cohesion is vital in ensuring an "inclusive" reconstruction and

development trajectory – one that ensures that not just the more able, well-connected and aggressive members of the community stand to benefit.

- The LDS approach is to place a heavy emphasis on rural development and promotion of the agricultural sector, particularly through rural and village administrations. This will involve maximising local resource mobilisation (e.g., through effective rural savings mobilisation) and ensuring higher agricultural productivity translates into non-farm economic activity through timely advice and assistance. Rural non-farm enterprises can then be inserted (as suppliers, sub-contractors, etc) into regional and national strategies promoting industrial development.

- The LDS approach is to ensure that the "rules of the game" are both optimal from the point of view of the local community, and adhered to. Particularly important are strong and comprehensive measures to preclude local fraud (e.g., financial fraud such as pyramid schemes). In addition, it is equally important to minimise the extent of local speculation that conventionally follows a major crisis episode, otherwise temporarily inflated rents and prices ("price spikes") can easily choke off a sustainable local development trajectory.

4. What relevance to the Yugoslav successor states?

The preceding case studies have helped to flesh out the important role that the LDS model appears to have played in a number of post-war and post-crisis reconstruction and development episodes. At the very least, these experiences must be examined for the possible lessons for other regions undergoing similar painful restructuring exercises. Drawing from these examples, however, we can outline some of what we believe are the key components of the LDS model that might be useful in the context of the Yugoslav successor states.

4.1. Strong local state-led institutional vehicles

The key base-line criterion for sustained local economic and community development is an institutionally rich local environment where local state-led institutions (i.e., owned or effectively controlled by the local state) work towards key longer-term local community and development objectives. It is crucially important to underline the fact that it is not impossible to reproduce the key pro-active developmental aspects of state institutions, including *local* state institutions, that lie behind successful economic development trajectories elsewhere. Key aspects of the Japanese state institutional support structure for small enterprise development were indeed successfully adapted by Taiwan in the 1950s and 1960s, and then the Taiwanese experience was in turn copied by the Chinese after 1980 (Akyuz *et al*, 1999).

Urgent local state capacity-building measures are therefore required in the Balkans in order to create an institutional vehicle that can competently and impartially promote local industrial restructuring and community development (Bateman, 1996). The local state must be able to act as an "institutional bridge" that can facilitate the conversion of unsustainable development trajectories (e.g., de-industrialisation, arbitrage-led growth, growing import dependence) into longer run trajectories that are locally sustainable and equitable. Accordingly, training, advice, technologies, resources and legitimacy must be conferred on the local economic development capacity within the local state. One important aspect will to reverse the trend to smaller local government units and to fiscal centralisation that has left many local state units way below a minimum efficient scale of operations. This is finally happening in some parts, (e.g., Macedonia) but in others there is much to be done to reconstruct a local administration commensurate with the ability to act meaningfully to promote the local economy.

4.2. Local financial policies, programmes and structures.

The establishment of sources of local finance was a crucial aspect in all of the above examples of successful community and local economic development. Restructuring and promoting promising local enterprises is not easy, but in the absence of local financial support it is virtually impossible. This financial support was extensive (in comparison to that supplied to the large enterprise sector), affordable (i.e., below market price) and accessible (i.e., no collateral required). The range of financial vehicles involved included local state-owned banks, local private banks, urban and rural co-operatives, credit unions, and local state-led investment funds. In post-war Italy, financial support for small enterprises provided through the regional state banks and state enterprise funds was substantial (Weiss, 1988). Similarly in Japan (Whittaker, 1997). Germany's *Mittelstand* companies were generously served by state-owned regional and local banks providing easily accessible and low cost funds that promoted high investment and re-equipment. Local and village administrations in both Taiwan and South Korea became very competent in establishing rural funds and credit co-operatives to aid savings mobilisation and local investment, thereby to underpin the industrialisation drive in the countryside (Thorbecke, 1979 p 181-2; Whang, 1981). China's municipalities routinely and very efficiently recycled back into new local enterprise projects the taxes and profits generated by the TVEs that they partly or fully owned (Blecher, 1991).[30] Essentially, attractive financial conditions (e.g., low interest rates) encouraged entrepreneurs to enter sectors and markets with obvious longer-term potential, but short-term un-profitability. Without this support many

[30] McKinnon (1995, p 37) notes that "..investment in enterprises owned or sponsored by Chinese township and local governments (but not the central government) is booming..".

entrepreneurs would have remained within the trading sphere, curtailed their investment plans or would have aborted the entry process entirely.[31]

Key financial support initiatives for the Balkans will include:

- Local funds to support key SMEs and key SME sectors (e.g., externality creating, export potential, technology transfer promoting) that have a long term perspective. The most advanced of the Balkan states - Slovenia and Croatia - have some positive experience of local funds established by municipalities. In Slovenia, local funds were established in 48 municipalities and they became an important source of affordable loan capital for small businesses in the community (Grundner and Komar, 1999). Croatia has developed municipal funds as well and has accumulated some good experience under difficult conditions (elinski-Matunec, 2000). Whether managed by competent officials or sub-contracted to outside private bodies is of little importance: what *is* important is that financial support is channelled directly towards community development objectives and that longer run local development trajectories are patiently and judiciously supported.

- Establish a local development banking function. For example, some local state-owned banks can be converted into small-scale development banks using international advice and financial assistance.[32] One promising route, as proposed by Sevi (1999), is to adapt the US-inspired Community Development Bank model for use in the Balkans. Accepting lower rates of return than commercial banks can be fully justified on the grounds that community and local economic development goals are not always commensurate with commercial, usually short-term, goals. Moreover, promising long-term SME infrastructures – such as marketing co-operatives, incubators, cluster development initiatives – often require a source of long term finance to become established. Given that individual and groups of enterprises that might be most interested are currently cash-starved, and so find it hard to address their known longer term survival requirements, an external source of long term financial support and technical advice is crucial (for example, see Bateman *et al*, 1998).

- Credit unions, rural savings associations, financial co-operatives and other forms of local financial institution are also required to underpin local savings mobilisation and meet the investment needs of very small-scale business projects. While ultimately independent and self-financing, these institutions often need

[31] It is well-established in the development economics literature that relying on current interest rates to guide investment decisions, especially if an economy is in serious dis-equilibrium, can lead to sub-optimal development in the longer run (see, for example Pack and Westphal, 1986).

[32] To date the international community has offered little support for development banking in the region, as in the wider Central and Eastern Europe (see Amsden *et al*, 1994).

an appropriate stimulus and concrete help from the local state to get established. Most importantly, they require strong regulation and oversight by the local state to ensure that they are not abused. In low trust environments, such as in the Balkans at present, such financial schemes are often an open invitation for unscrupulous individuals to take advantage of the situation. [33]

- Venture capital funds and long term equity investments are another area where the local state can be usefully involved. Venture capital funding and equity participation by the local state can be used to recycle local rents (e.g., where transport facilitates are disrupted) or benefit from local spending or development (e.g., where government spending increases land values). The Chinese example where local governments used their own capital resources to establish new industrial SMEs is a salutary lesson of what can be achieved at the local level given local commitment and a reasonably competent administration.

4.3. Strong local action to promote equity, education, fairness and social cohesion

Social cohesion is crucially important to the reconstruction and development process and community-building in the Balkans. When some sections of society are seen to benefit more than others from reconstruction and development, the bonds that link communities together are broken. Motivation and commitment collapse and each section of society ends up pushing for the immediate redistribution of the existing wealth and assets (rent-seeking), rather than focusing upon the longer term local wealth creation process.[34] To increase motivation and identification with community objectives inevitably means ensuring high levels of equality, education and social welfare provision.

In the Balkans, the links within the community are not entirely broken, but they are severely strained. Many new programmes need to be established in order that the notion of community can be revitalised, *viz:*

- The retention of the social welfare entitlements of poorer sections of the community is vitally important in ensuring community commitment to local development objectives. Social welfare programmes require local state co-ordination, economies of scale realisable through public provision, and a strong local tax base. Sustainable provision may even require the passing of many social welfare functions from the NGO sector back to the local state, alongside suitable measures to ensure competence, value-for-money and transparency. In Bosnia-Herzegovina the situation is particularly bad, and it is well known that local state capacity to manage social welfare provision has been dangerously run down on account of the activities of the international NGO community (DFID, 1999).

[33] Unfortunately, in the Balkans there have been too many examples of criminal local financial schemes, the worst being the "pyramid" (ponzi) schemes that emerged in Macedonia, Albania and Romania.

- The education system needs to be urgently revived and upgraded. High levels of education are robustly linked to local participation in promoting and achieving community development goals. More immediately, high levels of education are also linked to high levels of entrepreneurship and non-farm rural business activities.

- Access to substantive support for income generating activities is also useful. This support was a key function of the local state in post-war Japan, for example, and it allowed for de-mobilised soldiers to quickly re-enter employment. Support should focus upon high value-added activities that are sustainable, rather than just simple trading or "street retailing" (see section 4.2). Competent advisory bodies are required that can guide potential entrepreneurs into growth sectors using public funding, technical support and property-based resources. The renovation of redundant local public property should be greatly accelerated in order to provide low cost business accommodation, and therefore allow entrepreneurs to channel their scarce financial resources into re-investment rather than commercial rent or property purchase.

4.4. Strong and effective local regulation mechanisms and control of speculation

There is no doubt that weak regulation of the local financial system allows for large-scale fraud and the accumulation of wealth via illegal means. Thus then undermines the vital local savings mobilisation function. An important element in building social cohesion is therefore the willingness of the local state to robustly regulate local business activities and financial systems in order to preclude criminal activity. However, this regulation should include discouraging certain sections of society - such as land and property speculators - from taking full advantage of the rarefied conditions of a post-war or post-crisis setting. Speculation has driven business accommodation prices upwards in the Balkans and this has deterred many entrepreneurs from becoming established or re-investing. It has also been well recognised that effective regulation of the local labour market is one task usefully performed by local government in order to minimise competition based on low-wages and low investment, and maximise competition based on high investment and flexible specialisation techniques (see Piore and Sabel, 1984). The local state can articulate this fair outcome through regulations ensuring fairness at work, support for Trade Unions and through local forms of redistributive taxation.

4.5. Promoting co-operative development

Co-operative development is a business format that underpins community values and social cohesion more than any other. It is robustly associated with high trust local business environments and successful economic

[34] The best example of this is probably Russia since 1991.

development. This was particularly the case in Emilia-Romagna, for example, which has the highest concentration of co-operatives in Italy (Putnam, 1993). Co-operatives were also important in Germany (the first financial co-operatives were established in Germany – see Birchall, 1997) and in East Asia, where co-operatives are routine community responses to poverty and control over the rural economy by local elites.

It was a major ideological blind spot in the international support offered to Yugoslav successor states after 1991 that co-operative ownership and control was deliberately not offered support. Few of the major international assistance agencies showed any real interest in working with co-operative, employee-owned and other forms of community-based enterprise. In fact, some of the international assistance agencies had a record of being willing to go to extraordinary lengths to *deny* support to co-operative forms of enterprise against the wishes of the local population which they were at pains to indicate were their primary clients.[35] Moreover, this was in spite of experiments in Slovenia, and elsewhere in the region, that convincingly demonstrated that rapid new entry was possible through new and spin-off worker-managed, co-operative and Employee-Owned enterprises. This was particularly the case in the industrial sector, where new entry is traditionally more difficult to stimulate (see, for example, Vahi *et al*, 1988; Vahi, 1989).

More emphasis should therefore be placed on promoting genuine co-operative enterprises through new entry and through spin-off development in large enterprises. Marketing and financial co-operatives should be supported in order that they can link other enterprises together and support their collective efficiency. Because of their important externality effects, genuine co-operatives should be offered preferential treatment under law, including easier access to finance.

4.6. *Supporting local clusters, sub-contracting and networks involving SMEs*

The establishment of local clusters, networks and sub-contracting chains involving small enterprises has been important to the success of virtually all of the historical episodes of post-war and post-crisis reconstruction and development. In the Italian experience, this was the "Industrial District" model, while in post-war Japan and Germany we saw the emergence of strong local sub-contracting chains involving SMEs and large enterprises. In East Asia local inter-enterprise linkages have also flourished (Meyanathan, 1994), particularly those based around the extended family (Lee, 2000). Brusco (1986) argues that there are several models of an Industrial

[35] For example, Creed and Wedel (1997) recount how USAID support for agriculture in Bulgaria was directed exclusively towards private ownership, as opposed to forms of co-operative ownership. Even though the aid recipients - farmers, farming families and local agricultural advisors - actually registered a very strong preference for the restoration of genuine co-operatives, financial support was nevertheless made contingent on the acceptance of individual private ownership. This strategy was in order to promote the most anti-communist political party, the UDF, in the belief that widespread co-operative ownership in the rural areas would generate an electoral base opposed to the UDF's core aim of "de-communisation through de-collectivisation".

District, with Mark I arising in the 1970s largely spontaneously, while Mark II sees much more of a role for local government in promoting innovation and coalescing processes.

The local state has an important role to play in promoting new entry into sectors where clusters, networks and local subcontracting chains may well emerge, as well as promoting the growth of spontaneously emerging links. In Slovenia, for example, work is well underway on cluster building in a number of key sectors, such as automotive parts. In Croatia, the largest industries are keen to see a strengthened local cluster of potential sub-contractors, though they (and the SMEs themselves) lack the necessary vision, experience and resource base upon which to do anything about it (Bateman *et al*, 1998). But the city and country Department for Entrepreneurship, long one of Croatia's most innovative authorities, has now stepped in to help with cluster building and sub-contracting initiatives (Grbac and Jardas, 2000).

Supportive policies include:

- Special forms of financial support for inter-enterprise linkage establishment and growth. Since these inter-enterprise structures are rarely effective (i.e., profit-generating) in the short term, special forms of affordable finance are required if they are to be attractive to enterprises struggling to survive on a day-to-day basis.

- Information and "marriage-broking" functions that bring potential partners together. Many potential partners are unaware of what can be achieved and with whom they might be able to achieve it with. Bringing potential partners together, assisting them with problem-solving and promoting a culture of co-operation are all important activities.

- Support for business associations that might lead on to concrete linkages. *Inter alia*, business associations have a track record of being the seed-bed for many inter-enterprise links, and so the should be tapped for the potential they contain.

- Provision of common services and forms of business accommodation (e.g., incubators) to promote cluster development. Bringing potential partners together physically is an important way of nurturing potential links.

5. Conclusion

Community building and local economic development in the Yugoslav successor states are key tasks of the both the current governments and the international community, not least because the continued deterioration of the

economic and social fabric in the region could preclude the chances of reconciliation and an end to conflict. We have argued here that the neo-liberal approach to address these pressing requirements is unlikely to lead to the successful reconstruction of communities in the Balkans, if indeed it is not *inimical* to the process. There is very little evidence to indicate that the institutional vacuum that has effectively been created in the region has created a suitable framework for sustained community and local economic development.

Instead, we have argued the case for greater reliance on local capacity-building and pro-active and democratic local institutions. Our approach has been to foreground the potential developmental role of the local state – what we termed the "local developmental state" model. Regional, local and village government administrations can be *key* channels through which local people can articulate and promote their varied demands for community and local economic development. Previous reconstruction and development episodes abound with positive development trajectories that were articulated at the local level and facilitated through the auspices of the local state. Of course, replicating these examples in the Yugoslav successor states will not be easy: there are historical, cultural, geographical and social specificities that preclude an easy transfer of experience. However, the varied nature of the environments in which the local state has been able to undertake a very positive role in reconstruction and development - from the post-war European states to the East Asian lesser-developed economies - strongly suggests that key aspects of the model *are* broadly generalisable. It is therefore very likely that the "local developmental state" approach can contribute much to the Balkans as well. However, to accomplish anything the local state must be legitimised, reanimated, up-graded, resourced, extensively democratised and assigned a pro-active function in the local economic and community development process. There will be many problems along the way. Corruption, political interference and basic inefficiency have been characteristic of all too many local governments in the Balkans, and this is likely to remain a problem well into the future. Resource constraints are also a significant barrier to those local governments that wish to do more to alleviate local problems. However, now that the populations of the Balkans have finally acquired democratic control over the local state, they are at least much better placed to be able to overcome these problems.

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Address by President Kiro Gligorov
at the International Conference in Trento
25-26 January 2001
Co-habitation and Perspectives of the Balkans

Ladies and Gentlemen:
Dear Friends,

It is indeed my great pleasure to be here with you today, in the friendly country of Italy. At the same time, I would like to express my appreciation to the organizers of this conference for extending their invitation to me to take part in a debate on a subject that is a major concern for all of us in Europe, but particularly for us in South Eastern Europe – namely, what to do with the Balkans.

Our time is short, and there is much to be said about this topic. In fact, there has never been a shortage of words in and about the Balkans. There hasn't been a shortage of action either, but unfortunately, in these last few decades it has been, for the most part, misguided and misdirected. The reasons are mainly, but not solely, of autochthonous, Balkan origin.

In order to speak about perspectives on the Balkans, one has to start from the current situation on the Balkans. This situation, particularly after the wars waged in the regions of the former Yugoslavia, is still very difficult and uneasy. The political and security situation in the region is unstable. This state of controlled instability would certainly not remain so were the international forces to withdraw from Bosnia and Herzegovina and Kosovo. The economic situation, with the exception of Greece and Turkey, in part, is also extremely difficult. This is true for the region as a whole, and in each Balkan country individually. Available data shows the well-fare state of the majority of the population on the threshold of sustainability. Crime and corruption are taking an increasingly greater swing.

This is not just a consequence of the wars, air strikes and destruction that took place in this region. In a way, the wars themselves were a consequence: of the triumph of irrationality of some state leaderships; of unleashed hostile nationalism; of the dangerous reawakened "greater-state" aspirations for great and ethnically homogenous states; of the dismantled system of values and legal order following the downfall of the communism and the open-ended process of so-called transition; of the abrupt redistribution of economic power through the process of privatization of state capital and stratification of the population; of the security vacuum that appeared in the region following the dismantling of the bi-polar structure of world power. The list goes on. But even this list of causes seems sufficient to have made the war inevitable. I personally did not believe that peoples that lived together with decades, peoples that were so inter-mixed, who intermarried regardless of ethnic and religious affiliation and lived in the same apartments buildings would fight wars among themselves and would resort to extermination. Nor did I believe that such a confrontation could be so violent and so ruthless.

The lessons from the past are educational, or at least, they should be. Take the example of World War II and the lessons that the leaders of the western European countries learned in the aftermath of the war. They concluded that if they were to

continue to fight every twenty to thirty years, they would mutually destroy each other. So they found a way out - through cooperation, growth and integration, by building regional security and by creating the European Economic Community. Without bias, without the desire for revenge and vindication of alleged, even real historical injustices. The leaders of the times turned towards the future. They turned towards progress without destroying what had already previous been created in the past.

Can anyone imagine the peoples of the Balkans today, or even in the near future, discarding their biases and stereotypes, the historical burdens that weigh them down and draw them back to times long gone? The specter of biases among all Balkans peoples, without exception, is imposing. Unfortunately, bias in Western Europe about the peoples of the Balkans is not far behind. I will try to address that issue later on.

Many former and even current leaders could not and still cannot understand that nationalism is a reciprocal relationship – that one nationalism fires another; that extreme ethnocentrism, especially in ethnically mixed regions such as the Balkans naturally instigates the resistance/antagonism among the members of other ethnic groups; that the natural allies of nationalism and ethnocentrism are fear and lack of trust.

The Balkans are still fighting wars over territories. National programs that put ethnic affiliation before the state still prevail. The dreams and ghosts of history are still a reality on the Balkans and plans are still being made for redrawing borders. On the Balkans, it is more important to be a member of this or that ethnic group, rather that a citizen of a state. On the Balkans, the past is more important than the present or the future. On the Balkans, living together is still difficult, but so is living next to each other.

Ladies and Gentlemen:

The downfall of the bipolar power structure in world and the dissolution of the former Yugoslavia instigated a number of very complex processes on the Balkans that are virtually without comparison.

First of all, the dissolution of the former Yugoslavia was a very difficult process in itself, accompanied by hatred, war, massive losses and destruction. Even with the recent changes in Serbia, it is difficult to say whether the process of dissolution of the former Yugoslavia has coming to a closure, in light of the considerations of the current leadership in Montenegro. Not to mention Kosovo, although this problem is of a different nature (Kosovo is a province of Serbia).

At the same time, the dissolution of the SFRY and the independence of the majority of the former Yugoslav republic should have established a new balance of forces in the region. This was a difficult process, additionally burdened by unrealistic goals set by the national programs of some states, and accompanied by the indecisiveness of newly emerged and other states in the region in their search of their own foreign policy objectives. Let us recall: up until a decade ago, the Balkans, from a geopolitical point of view, was a miniature picture of the world: Romania and Bulgaria were members of the Warsaw Pact, Greece and Turkey were (and still are) members of NATO, the former Yugoslavia was a non-aligned country and one of the most active ones in the non-aligned movement. Albania was living in a world of its own, in self-isolation. The upset balance on a global level could not but have a direct impact on the situation on the Balkans. The result was a security vacuum. Under the circumstances, the security

vacuum could be replaced with a stronger presence and influence of NATO, but also with a new regional balance. On the Balkans, this was not an easy task.

Third, all states in the region with the exception of Greece, began or should have begun the process of internal democratic transformation, known as the process of transition. This process assumes deep-rooted changes – political, economic and legislative – with all consequences that they entail. The number of existing political parties on the Balkans is extremely large, and the process of their proliferation is not yet finalized. An additional difficulty is that fact that many of these parties are ethnically based. The balance of power between the three branches of state governance is usually tipped in favor of the executive. A professional and efficient public administration is emerging very slowly. It is also difficult to speak of a stable banking system in any of the Balkan states. Perhaps the only area in which substantial progress has been registered is the area of freedom of the press. But even here, there seems to be a lack of responsibility and ethics. In fact, this lack of ethics is the basic characteristic of most political factors. Hence, the volume of corruption and the negative impact on the rule of law. The reason for this is not only that Balkans states have been unsuccessful in building a consistent legal system. The gray economy remains uncontrolled, and crime is constantly rising.

At the same time that these complex processes were taking place, other, long suppressed disputes between the Balkans states and peoples surfaced, additionally aggravated by the historical biases and stereotypes I mentioned earlier. The gravity of the situation was all the greater bearing in mind the ethnic and other heterogeneity of South Eastern European and the fact that there is no Balkans state without a more or less substantial minority on its territory, that is a part of a neighboring nation. The latest wars and the times that followed opened up new problems with full intensity and potential for concern. For example, the Serbian national question was opened, then the Croat national question. The Albanian national question was transformed and became an acute point of interest. The problem of a functioning Bosnia and Herzegovina as a state after Dayton was also opened, as well as the problem of Yugoslavia and the possible independence of Montenegro. Kosovo, however, after NATO's intervention, opened a very dangerous dilemma about changing and redrawing borders by way of force. This dilemma has introduced new uncertainty, with unforeseeable consequences not only for the Balkans states and peoples.

All of these processes and developments have rendered this region highly susceptible to external influence. However, these new circumstances have also been used by global and regional factors that have tried to use the existing security vacuum for their own interests and goals.

The efforts of the international community have put an end to the hostile policy of violence in the region, sometimes with mixed results and success. They have not excluded the use of force for the purpose of creating conditions of peace and stability that are immanent to cooperation and growth and to incorporating the region of the Balkans into contemporary processes of European integration. So that the Balkans may become not only a geographic part of European, but is integral part in the full sense of the word.

Looking back from this time distance, it is my view that the opportunity was missed to act preventively on the Balkans through a variety of mechanisms and instruments available to the United Nations. But in order to make a full assessment, it is

necessary to conduct a comprehensive analysis of all relevant factors, starting from NATO, EU, the individual interests of its members states, including the interests of national military industrial complexes and their influence. In any event however, the assessment stands that the deployment of the UNPREDEP forces in the Republic of Macedonia in a preventive mission proved to be a positive example of successful measures in the given period of time.

Dear friends,

There should not be any doubt about the assessment that as long as there is political instability, i.e. lack of stability in the region as a whole and in each individual country, economic growth and sustainable development will not be possible. At the same time, the grave economic situation continues to create a favorable climate for mobilizing people along ethnic lines. The reason for this is the lack of comprehensive reforms and the lack of a clear perspective for the future of the states and its people.

It was only during NATO's air strikes against FRY, after the Summit of NATO and EAPS in Washington in 1999, that the EU and NATO began to consider and discuss the future of the Balkans more seriously – the need for post-war reconstruction, speedier establishment of democratic institutions and values in the Balkans states, the return of the refugees and displaced persons in Kosovo, as well as the return of all citizens of non-Albanian background in Kosovo, especially those of Serb nationality. Then came about the idea of the Stability Pact for South Eastern Europe.

The air campaign against Yugoslavia is over. Limited objectives have been accomplished. The air strikes did not directly lead to the downfall of Milosevic, but they did accelerate his departure from the political helm of Yugoslavia. This is a change that can be characterized as significant, but it is still not a turning point. In itself this change cannot bring a turnaround of the situation in the region. Other significant changes are still needed. Nonetheless, the changes in Belgrade remain very important because of: the orientation the new authorities in Belgrade have expressed for cooperation with the international community and for bringing Yugoslavia closer to the EU; the expressed readiness of the Belgrade for a negotiated settlement of issues related to the future of the Serb-Montenegrian Federation; the expressed readiness of Belgrade to hold talks with representatives of the Kosovo Albanians for regulating the status of the province; the expressed will and readiness for developing good-neighborly relations with all states in the region. And particularly important, the changes in Belgrade have opened the path for integrating Yugoslavia in the future projects of the Stability Pact for South Eastern Europe. From the very onset of the idea for such a Pact, it was more than clear that it couldn't function as a helpful mechanism without the participation of Yugoslavia.

Allow me a few more comments about NATO's campaign against Yugoslavia.

In all meetings and discussions that I had with foreign officials during the Kosovo crisis, and their number was large indeed, I always underscored my view that greater-state ambitions and possible plans for independence or division of Kosovo are dangerous for the region and for Europe as a whole; that such ambitions will live on, and with them the chronic instability in the region, civil democracy prevails. I tried to instill the point that a continued policy of ethnic cleansing in Kosovo, by any of the sides, would constitute defeat for NATO and the whole democratic world. The same would also be in that case that not all refugees and displaced persons return to their homes in Kosovo -- if

the persecution of the local Serbs and other non-Albanian citizens of Kosovo is not stopped, and if all displaced persons do not return to Kosovo; unless a democratic atmosphere in Kosovo is created and conditions for peaceful, civic based co-habitation. At that time I pointed out the inter-dependence and the links between the situation in Kosovo and the future development of Serbia and Albania, as well as the need for effective influence that would guide the democratic processes in these countries. I also emphasized the need for speedy and effective implementation of the Stability Pact for Southeastern Europe.

In the short run, as I previously mentioned, NATO's intervention in Kosovo did produce limited result. A favorable outcome is that more or less conditions have been created for the return of the majority of the refugees and deported persons back to Kosovo, mainly those citizens of Albanian ethnic background. At the same time however, problems are not being channeled in a controlled manner and moreover, new unfavorable and uncontrolled processes have been initiated: a reversed and rather intensive process of ethnic cleansing, systematically implemented against all Kosovars of non-Albanian background, accompanied by daily incidents of murder and constant threats; Kosovo has become a terrifying and dangerous center of international organized crime, with widespread networks in the region and in Europe. The idea for an independent Kosovo is being constantly rekindled and spread. There is not doubt that all political factors in Kosovo are in agreement and support of this idea, as do the as majority ethnic Albanians wherever they may live. No Kosovo politician would dare propose a different idea. Anyone who might attempt to do so would be considered politically dead. Still, NATO has to show the same decisiveness and to undertake the necessary measures and activities to stop and reverse the negative processes I mentioned earlier. Especially now that the Milosevic regime has fallen.

The fall of Milosevic does not mean a final end of the Serb thirst for revenge. It would be politically naïve to believe that the Serb attachment towards Kosovo as the cradle of Serb statehood and of the Serb Patriarchy would change so easily. This view has been shaped for centuries. The Kosovo myth is not accident.

I would like to point out one problem that is incorporated in the basic approach of the democratic world towards the resolution of the Kosovo and even other Balkan problems. Now more than ever, I am convinced that the democratic countries of Western Europe fell prey to the Balkan syndrome, contrary to their own state and democratic practice where the central position is given to the individual citizen, not the collective. This is confirmed by the examples of Kosovo and Bosnia and Herzegovina. It is difficult to expect a solution to the Bosnian or Kosovo problem through such an approach that has in fact, led to escalation of the problems. Such an approach does not take into consideration the individual citizen, and shows respect only for the collective, i.e. ethnic communities. The sole solution for Kosovo is that it become a civic and democratic society, without forgetting the ethnic, linguistic and cultural difference of its population. In short, Kosovo can be multi-ethnic and multicultural, an ideal that many western politicians support, only if a legal basis for civil equality and civil democracy is laid down first, under conditions of ethnic, linguistic and religious diversity. And only in the case that such a democracy becomes functional. Not only in Kosovo, but also in Albania and in Serbia. And in the Balkans as a whole. If not, it is an illusion to expect induced

divisions into ethnic groups to produce results, especially in view of the multi-ethnic hatred and intolerance that has been created.

For many years ahead, Kosovo will require the presence of international military forces, as will Bosnia and Herzegovina. Especially in view of the recent assessment of the ex-administrator of Kosovo, Bernard Kouchner, who has said that the international forces in Kosovo cannot deal efficiently with the current problems.

The Balkan countries need continuous and comprehensive international assistance, and not only through the Stability Pact for Southeastern Europe. On the other hand, the Stability Pact will only be helpful if it has an efficient organizational structure for the implementation of its projects and a stable source of financing.

Ladies and gentlemen,

The security in Southeastern Europe cannot be viewed separately from the overall European security. The Balkans cannot be isolated and observed from a safe distance. Instead, it is necessary:

- that all relevant international factors state in a clear, principled and no uncertain terms that any attempts and efforts to change the borders in the region will not be tolerated;
- to insist on the respect of established universal principles, particularly refraining from the use of force and the threat of force, inadmissibility of changing of borders by way of force, peaceful settlement of all inter-state and internal disputes, mutual respect of existing states and their equality;
- to install democratic institutions and values, the rule of law, respect and advancement of human rights and the principles of market economy through the process of transition and with adequate international support. Within this framework, it is of vital importance that the civil option is pursued in every Balkans state, (not the "ethnic" one as is the trend at the moment) and to implement the civil concept of society.
- to enhance and implement in a coordinated fashion the international efforts to combat organized crime and corruption in the region.
- to understand that the establishment of new divisions in the region such as a new sub-region of the "western Balkans" can create new obstacles and problems. Instead NATO and EU should be more decisive in opening the perspectives for all countries from Southeastern Europe, as a necessary condition for stimulating the democratic transformation and legal and political compatibility with the European legal system.

In this context, I also have to mention the following: if the rigid regional approach of EU towards the so-called region of "Western Balkans" is the strategy that the EU has chosen to pursue towards this subregion, then one can state with certainty, in advance, that this strategy is doomed to failure. This is because without individual evaluation of the progress made by each individual country in establishing democracy, the mere instance of regional cooperation as a precondition for a closer rapport with the EU can only stimulate a feeling of ghetoization and lack of perspective. The EU has shown that it has the necessary mechanisms and procedures for settling outstanding issues between its member-states and that these mechanisms function efficietnly. Furthermore, the EU

has shown that it can deal efficiently with the problem of its less developed members, such as Greece, Portugal and Ireland. Why should the Balkans be kept on the margins of these favorable opportunities? The EU is facing the problem of its internal reform, but perhaps it is a broader a problem that can be formulated as an "identity crisis of the EU".

Dear friends,

Finally, allow me to say that the citizens of the Republic of Macedonia, and the Macedonian people as a whole are very proud to have achieved our independence from the former Yugoslavia in a peaceful and democratic manner, by way of a referendum, passing a new Constitution, and by securing a peaceful withdrawal of the Yugoslav army from the territory of Macedonia by way of agreement, without war, deaths, senseless destruction and suffering.

After gaining its independence, the Republic of Macedonia was the first to establish friendly relations with all newly emerged states in the region of the former Yugoslavia. Even though the Badinter Commission of the EC had previously determined that the Republic of Macedonia together with Slovenia are the two of the former Yugoslav republics that fulfill the conditions for international recognition, the process of international establishing of the Republic of Macedonia was very difficult. The reasons are well known – I will only remind you in short: the initial refusal of Greece to accept the very existence of an independent Republic of Macedonia on its northern borders that was manifested by unrelenting efforts to prevent the international recognition of the Macedonian state under its constitutional and only name – the Republic of Macedonia. Frequently confronted with extreme external pressures ranging from economic embargoes to direct threats, we went through difficult times and we suffered enormous damages. We feel the serious consequence to this day. But, these difficulties did not dissuade us at any time from launching the political and economic reforms aimed at building a democratic and civic Republic of Macedonia, with a legal basis that guarantees civic equality and peaceful co-habitation to all its citizens, regardless of ethnic, religious, linguistic and other differences. Since the very onset of our independence, we have stood firm in our orientation to become members in the European Community, now European Union and in NATO. We opted for the policy of good-neighborliness and mutually beneficial cooperation with all our neighbors, implementing the concept of equi-distance. This concept was imposed by our vital interest to remain outside of the wars that were waged in the area of the former Yugoslavia, but also by the need to preserve our independence under circumstances when it was under constant attack and threat. We opted for patiently building confidence and good-neighborliness, attempting to resolve all historical disputes and existing misunderstandings and problems with other states in a peaceful manner and with peaceful means, through dialogue, mutual consultations and negotiations.

Thank you for your attention.

OSCE

Organization for Security and Co-operation in Europe

Challenges in Accommodating Diversity

Address to an international conference on
Organizing Cohabitation: the Trentino Alto-Adige Experience
and Perspectives for the Balkans

by

Max van der Stoel

High Commissioner on National Minorities,
Organization for Security and Co-operation in Europe (OSCE)

Trento

26 January 2001

Distinguished Colleagues,
Ladies and Gentlemen,

I am honoured to have been invited to address this "International Conference on Organizing Cohabitation: the Trentino Alto-Adige Experience and Perspective for the Balkans", and I deeply regret not being able to share my remarks in person. Notwithstanding my physical absence, I would like to offer the following thoughts as a contribution to the proceedings.

I

I suspect that the specific situations in Alto-Adige and the Balkans are well-known to participants here. And, I will leave the specific comparative discussion to relevant experts among you.

Permit me instead to address an underlying idea along with the principal conceptual notion raised in the conference title. I am referring to the idea of the "nation-State" and the notion of "cohabitation".

In terms of the basic concepts that you will be discussing over the next two days, one of the major challenges lies in changing our perception of the State. The idea of the nation-State, protecting the so-called "State-forming nation", is losing its relevance in an increasingly inter-dependent world. Attempts peacefully or violently to create ethnically "pure" nation-States usually come at a high price in terms of human suffering and cultural impoverishment of previous multi-ethnic societies. Efforts to create nation-States from multinational ones also often sow the seeds of future inter-ethnic conflicts.

Ethnic diversity is not something that can be solved in the sense of being eradicated - unless one engages in a never-ending process of war, ethnic cleansing, genocide, and expulsion. Not only are those options morally reprehensible, the twentieth century has clearly demonstrated that they are untenable. Surely we do not need any more evidence of the need to strengthen the foundations of democratic, pluralistic civil society, accommodating and integrating diversity and protecting the rights of persons belonging to national minorities. Surely it is time to realize that the pursuit of the mono-ethnic State is wrong-headed.

History also teaches that disregard by a national minority for the principle of territorial integrity of States leading to the creation of a new State is often accompanied by bloodshed and misery. Moreover, in many parts of the world, including much of Europe, it is simply not possible to draw boundaries in such a way to create ethnically homogenous States. Inevitably, the minority of yesterday becomes a majority in the new State, and must face the problem of the minority within its own borders. According to the same logic, these new minorities may pursue their own external self-determination and so there is the prospect for a never-ending

reductionism which is conflict-laden and often cannot be reconciled with the requirements for viability of a State.

For these reasons, we must seek to realize the rights and interests of persons belonging to national minorities through internal alternatives. Experience has shown that integration though participation is an important element in forging links of mutual understanding and loyalty between the majority and minority communities within the State, especially by giving minorities input to processes that directly affect them. It also improves overall governance. If minorities feel that they have a stake in society, if they have input into discussion and decision-making bodies, if they have avenues of appeal, and if they feel that their identities are being protected and promoted, the chances of inter-ethnic tensions arising will be significantly reduced.

This is what I often refer to as integrating diversity. I am not sure that this notion fully coincides with or is captured by the notion of "cohabitation" which seems to imply some linear arrangement between two or more mono-ethnic groups. This would not reflect the complex reality of multicultural society, with overlapping identities and interests. It strikes me that "cohabitation" as a notion is somewhat simplistic, perhaps reductionist, and thus fails to accommodate the real diversity within the contemporary State. But I think that the basic message of cohabitation is one we should all take to heart, namely we have to find the way to live together.

Because most modern States are multicultural, we all have to learn to value and accommodate pluralism. The key is to strike a balance between majority and minority interests - however the groups may be formed and may continually change - that allow for all persons to enjoy their individual identities while realizing and valuing shared interests. At least for me, "integration" accommodates this greater complexity with better flexibility.

II

In my opinion, the contemporary State has a great number of instruments at its disposal to accommodate the diversity of interests and aspirations. Wide and genuine participation in decision-making processes will help reach this goal. Participation in decision-making should be at all levels of government. This could include: special arrangements for minority interests considered within relevant ministries, or special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority. The electoral system should also facilitate minority representation and influence. These are some of the recommendations made by international experts in the so-called "Lund Recommendations on the Effective Participation of National Minorities in Public Life" elaborated pursuant to my request. It should be stressed that these alternatives are not mutually exclusive nor hierarchical: for example, directly elected representation in legislative bodies is not the only, nor necessarily the most effective, means of ensuring that minority interests are taken into account in the decision-making process.

Not all arrangements should be limited to the level of central government. Local problems require local solutions, especially in regions where there is a substantial concentration of persons belonging to national minorities. It is my impression, based on experience and the wisdom of international experts, that self-administration or self-governance can allow minorities both greater say and control over decisions that affect them.

III

When most people think of self-governance, they immediately think of self-determination and then secession. Territorial self-governance should not be equated with secession. It simply means the shifting or decentralization of certain functions and competencies from the centre to regional, community or local level. In such arrangements, the central government may well control national defense, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs, while the minority or territorial administration could assume primary or significant authority over education, culture, forms of public administration (including use of minority language), environment, local planning and so on. Shared functions could include such matters as taxation, administration of justice, tourism and transport.

The division of these competencies is not hard and fast, nor are these types of arrangements applicable in all cases where there are significant minority communities. Furthermore, functions may be allocated asymmetrically to respond to different minority situations within the same State.

There are non-territorial ways in which specific interests of national minorities may be assured. I admit that there are few examples of this in practice, but I am thinking here of what is sometimes called cultural autonomy. For example, individuals and groups have the right to choose their names in the minority languages and obtain official recognition of their names. Minority education institutions should play a role in determining the curricula for teaching of their minority languages and cultures. Minorities should be able to determine and enjoy their own symbols and other forms of cultural expression. The point is to give minorities, especially those that are dispersed throughout a State, ways of maintaining and developing their identities and cultures. Of course, the bottom line is protecting their human rights.

I do not advocate autonomy as a panacea for all minority problems, and I am opposed to secession as the solution to inter-ethnic tensions. Secession is usually based on the myth that the ethnically "pure" nation needs its own State. As I have already argued, attempts to carve mono-ethnic States out of multi-ethnic environments almost invariably leads to violent conflict, human rights abuses and illiberal forms of government.

Nevertheless, I raise the issue of self-government because I believe that there is a vastly unexplored range of possibilities between assimilation on the one hand and secession on the other that has yet to be fully appreciated in many countries of Europe. I believe this Conference can help develop a better appreciation. Certainly, there are ways of finding a synthesis between the claims for self-determination on the one hand and the interest in preserving the territorial integrity of States on the other. In my opinion, a good place to start is to focus more attention on so-called "internal" self-determination whereby self-government is arranged in such a way as to respond to the desire by a significant minority group to have a considerable amount of control over its own administration ... without challenging the sovereignty and integrity of the State. I therefore encourage you to reflect upon the ideas that are contained in the Lund Recommendations.

In my view, the most important ingredient to solving problems in this area is the spirit with which policy-makers address the issues. In the first place, there must be recognition of legitimate interests - recognition of the plurality of communities and interests. This means an official acknowledgement of the existence of minorities, of the fact of diversity within the State. Further, meaningful response to the expression of legitimate interests begins with a genuine dialogue in an atmosphere of mutual respect and understanding. There must be structures for this to take place. Participants must feel that there is some real value to their dialogue - that their views will contribute to some concrete outcome. Powers of advice and consultation must be both exercised and treated seriously. Only on this basis may lasting solutions be found. I would also add that such an open and meaningful dialogue will already contribute to the loyalty of minorities and thereby to the strengthening of bonds with the wider society and, overall, the State.

In these processes one has to bear in mind advantages and disadvantages accompanied with certain forms of arrangements. A possible advantage of autonomy is its potential for conflict resolution. It can enable the different groups to live in peace instead of permanent tension. On the other hand certain minorities may benefit more than other groups from negotiating autonomous arrangements. This outcome may not be unexpected or unreasonable considering that the purpose of these arrangements is to alleviate tensions. Autonomy might also isolate the minority and alienate the different groups, which could eventually lead to segregation. As a minimum the arrangements can not be one-sided. They should be based on established international standards and must certainly not go below or compromise existing obligations or commitments. To this end, they should ensure that when specific institutions are established to ensure effective participation of national minorities, which can include the exercise of authority or responsibility by such institutions, this must not be at the expense of others' rights.

I also believe that it is important to look forward, conscious of our shared values, interests and future. We must work together to make our future better rather than worse. It is from this perspective, and through this approach, that lessons can be learned from the past and applied with benefit elsewhere. I am hopeful that this Conference will move us together forward, conscious of the complex reality we share at the beginning of the 21st Century and, therefore, the need to integrate and ultimately to celebrate our manifold diversity for mutual benefit.

I wish the participants success in their deliberations.

Thank You.

(10)

The Foundation on Inter-Ethnic Relations

THE OSLO RECOMMENDATIONS REGARDING THE LINGUISTIC RIGHTS OF NATIONAL MINORITIES & EXPLANATORY NOTE

February 1998

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Foundation on Inter-Ethnic Relations
Prinsessegracht 22
2514 AP The Hague
Tel: +31 (0) 70 312 5555
Fax: +31 (0) 70 346 5213
E-mail: FIER@Euronet.nl

INTRODUCTION

In its Helsinki Decisions of July 1992, the Organization for Security and Cooperation in Europe (OSCE) established the position of High Commissioner on National Minorities to be "an instrument of conflict prevention at the earliest possible stage". This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

On 1 January 1993, Mr. Max van der Stoel took up his duties as the first OSCE High Commissioner on National Minorities (HCNM). Drawing on his considerable personal experience as a former Member of Parliament and Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. Van der Stoel turned his attention to the many disputes between minorities and central authorities in Europe which had the potential, in his view, to escalate. Acting quietly through diplomatic means, the HCNM has become involved in the following States: Albania, Croatia, Estonia, Hungary, Kazakstan, Kyrgyzstan, Latvia, the Former Yugoslav Republic of Macedonia, Romania, Slovakia and Ukraine. His involvement has focused primarily on those situations involving persons belonging to national/ethnic groups who constitute the numerical majority in one State but the numerical minority in another (usually neighbouring) State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and cooperative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall the commitments undertaken by all

OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed obligations relating to national minorities. It is also important to note that all OSCE States are bound by United Nations obligations relating to human rights, including minority rights, and that the great majority of OSCE States are also bound by the standards of the Council of Europe.

After five years of intense activity, the HCNM has been able to identify certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. The linguistic rights of national minorities, i.e. the right of persons belonging to national minorities to use their language in the private and public spheres, is such an issue. International human rights instruments refer to this right in a number of different contexts. On the one hand, language is a personal matter closely connected with identity. On the other hand, language is an essential tool of social organisation which in many situations becomes a matter of public interest. Certainly, the use of language bears on numerous aspects of a State's functioning. In a democratic State committed to human rights, the accommodation of existing diversity thus becomes an important matter of policy and law. Failure to achieve the appropriate balance may be the source of inter-ethnic tensions.

It is with this in mind that, in the summer of 1996, the HCNM requested the Foundation on Inter-Ethnic Relations to consult a small group of internationally recognised experts with a view to receiving their recommendations on an appropriate and coherent application of the linguistic rights of persons belonging to national minorities in the OSCE region. A similar request from the HCNM had previously resulted in the elaboration of **The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Report.**[1] Insofar as The Hague Recommendations address comprehensively the use of the language or languages of national minorities in the field of education, it was decided

[1] Copies of The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Report (October 1996) are available in several languages from the Foundation on Inter-Ethnic Relations.

to exclude this issue from consideration of the experts.

The Foundation on Inter-Ethnic Relations — a non-governmental organisation established in 1993 to carry out specialised activities in support of the HCNM — facilitated a series of consultations of experts from various pertinent disciplines, including two meetings in Oslo and one in The Hague. Among the experts consulted were jurists specialising in international law, as well as linguists, advocates and policy analysts specialising in the situations and needs of minorities. Specifically, the experts were:

Professor Gudmundur Alfredsson, Co-Director, Raoul Wallenberg Institute (Sweden); Professor Asbjørn Eide, Senior Fellow, Norwegian Institute of Human Rights (Norway); Ms. Angelita Kamenska, Senior Researcher, Latvian Centre for Human Rights and Ethnic Studies (Latvia); Mr. Dónall Ó Riagáin, Secretary General, European Bureau of Lesser Used Languages (Ireland); Ms. Beate Slydal, Advisor, Norwegian Forum for the Freedom of Expression (Norway); Dr. Miquel Strubell, Director, Institute of Catalan Sociolinguistics, Government of Catalonia (Spain); Professor György Szepe, Department of Language Sciences at Janus Panonius University (Hungary); Professor Patrick Thornberry, Department of Law, Keele University (United Kingdom); Dr. Fernand de Varennes, Director of the Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict (Australia); Professor Bruno de Witte, Faculty of Law, University of Maastricht (The Netherlands); Mr. Jean-Marie Woehrling, Institut de droit local alsacien-mosellan (France).

Insofar as existing standards of minority rights are part of human rights, the starting point for the consultations was to presume compliance by States with all other human rights obligations including, in particular, equality and freedom from discrimination, freedom of expression, freedom of assembly and of association, as well as all the rights and freedoms of persons belonging to national minorities.

It was also presumed that the ultimate object of all human rights is the full

and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities. Insofar as the use of language is also a fundamentally communicative matter, the essential social dimension of the human experience was also fully presumed.

The resultant Oslo Recommendations Regarding the Linguistic Rights of National Minorities attempt to clarify, in relatively straight-forward language, the content of minority language rights generally applicable in the situations in which the HCNM is involved. In addition, the standards have been interpreted in such a way as to ensure their coherence in application. The Recommendations are divided into sub-headings which respond to the language related issues which arise in practice. A more detailed explanation of the Recommendations is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is to be found. It is intended that each Recommendation is read in conjunction with the specifically relevant paragraphs of the Explanatory Note.

It is hoped that these Recommendations will provide a useful reference for the development of State policies and laws which will contribute to an effective implementation of the language rights of persons belonging to national minorities, especially in the public sphere.

Although these Recommendations refer to the use of language by persons belonging to national minorities, it is to be noted that the thrust of these Recommendations and the international instruments from which they derive could potentially apply to other types of minorities. The Recommendations which follow below are meant to clarify the existing body of rights. They are not meant to restrict the human rights of any person or groups of persons.

THE OSLO RECOMMENDATIONS REGARDING THE LINGUISTIC RIGHTS OF NATIONAL MINORITIES

NAMES

1) Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems. These shall be given official recognition and be used by the public authorities.

2) Similarly, private entities such as cultural associations and business enterprises established by persons belonging to national minorities shall enjoy the same right with regard to their names.

3) In areas inhabited by significant numbers of persons belonging to a national minority and when there is sufficient demand, public authorities shall make provision for the display, also in the minority language, of local names, street names and other topographical indications intended for the public.

RELIGION

4) In professing and practicing his or her own religion individually or in community with others, every person shall be entitled to use the language(s) of his or her choice.

5) For those religious ceremonies or acts pertaining also to civil status and which have legal effect within the State concerned, the State may require that certificates and documents pertaining to such status be produced also in the official language or languages of the State. The State may require that registers pertaining to civil status be kept by the religious authorities also in the official language or languages of the State.

COMMUNITY LIFE AND NGOs

6) All persons, including persons belonging to national minorities, have the right to establish and manage their own non-governmental organisations, associations and institutions. These entities may use the language(s) of their choosing. The State may not discriminate against these entities on the basis of language nor shall it unduly restrict the right of these entities to seek sources of funding from the State budget, international sources or the private sector.

7) If the State actively supports activities, in, among others, the social, cultural and sports spheres, an equitable share of the total resources made available by the State shall go to support those similar activities undertaken by persons belonging to national minorities. State financial support for activities which take place in the language(s) of persons belonging to national minorities in such spheres shall be granted on a non-discriminatory basis.

THE MEDIA

8) Persons belonging to national minorities have the right to establish and maintain their own minority language media. State regulation of the broadcast media shall be based on objective and non-discriminatory criteria and shall not be used to restrict enjoyment of minority rights.

9) Persons belonging to national minorities should have access to broadcast time in their own language on publicly funded media. At national, regional and local levels the amount and quality of time allocated to broadcasting in the language of a given minority should be commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs.

10) The independent nature of the programming of public and private

media in the language(s) of national minorities shall be safeguarded. Public media editorial boards overseeing the content and orientation of programming should be independent and should include persons belonging to national minorities serving in their independent capacity.

11) Access to media originating from abroad shall not be unduly restricted. Such access should not justify a diminution of broadcast time allocated to the minority in the publicly funded media of the State of residence of the minorities concerned.

ECONOMIC LIFE

12) All persons, including persons belonging to national minorities, have the right to operate private enterprises in the language or languages of their choice. The State may require the additional use of the official language or languages of the State only where a legitimate public interest can be demonstrated, such as interests relating to the protection of workers or consumers, or in dealings between the enterprise and governmental authorities.

ADMINISTRATIVE AUTHORITIES AND PUBLIC SERVICES

13) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this national minority shall have the right to acquire civil documents and certificates both in the official language or languages of the State and in the language of the national minority in question from regional and/or local public institutions. Similarly regional and/or local public institutions shall keep the appropriate civil registers also in the language of the national minority.

14) Persons belonging to national minorities shall have adequate possibilities to use their language in communications with

administrative authorities especially in regions and localities where they have expressed a desire for it and where they are present in significant numbers. Similarly, administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the national minority. To this end, they shall adopt appropriate recruitment and/or training policies and programmes.

15) In regions and localities where persons belonging to a national minority are present in significant numbers, the State shall take measures to ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies.

INDEPENDENT NATIONAL INSTITUTIONS

16) States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions, such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated.

THE JUDICIAL AUTHORITIES

17) All persons, including persons belonging to a national minority, have the right to be informed promptly, in a language they understand, of the reasons for their arrest and/or detention and of the nature and cause of any accusation against them, and to defend themselves in this language, if necessary with the free assistance of an interpreter, before trial, during trial and on appeal.

18) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this minority should have the right to express themselves in their own language

in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator.

19) In those regions and localities in which persons belonging to a national minority live in significant numbers and where the desire for it has been expressed, States should give due consideration to the feasibility of conducting all judicial proceedings affecting such persons in the language of the minority.

DEPRIVATION OF LIBERTY

20) The director of a penal institution and other personnel of the institution shall be able to speak the language or languages of the greatest number of prisoners, or a language understood by the greatest number of them. Recruitment and/or training programmes should be directed towards this end. Whenever necessary, the services of an interpreter shall be used.

21) Detained persons belonging to national minorities shall have the right to use the language of their choice in communications with inmates as well as with others. Authorities shall, wherever possible, adopt measures to enable prisoners to communicate in their own language both orally and in personal correspondence, within the limitations prescribed by law. In this relation, a detained or imprisoned person should, in general, be kept in a place of detention or imprisonment near his or her usual place of residence.

EXPLANATORY NOTE

TO

THE OSLO RECOMMENDATIONS REGARDING THE LINGUISTIC RIGHTS OF NATIONAL MINORITIES

GENERAL INTRODUCTION

Article 1 of the **Universal Declaration of Human Rights** refers to the innate dignity of all human beings as the fundamental concept underlying all human rights standards. Article 1 of the **Declaration** states "All human beings are born free and equal in dignity and rights..." The importance of this article cannot be overestimated. Not only does it relate to human rights generally, it also provides one of the foundations for the linguistic rights of persons belonging to national minorities. Equality in dignity and rights presupposes respect for the individual's identity as a human being. Language is one of the most fundamental components of human identity. Hence, respect for a person's dignity is intimately connected with respect for the person's identity and consequently for the person's language.

In this context, the **International Covenant on Civil and Political Rights** is of considerable importance. Article 2 of the **Covenant** requires States to ensure that the human rights of all individuals within their territory and subject to their jurisdiction will be ensured and respected "without distinction of any kind such as... language..." Article 19 of the **Covenant** guarantees freedom of expression which, as it is formulated in the **Covenant**, not only guarantees the right to impart or receive information and ideas of all sorts, regardless of frontiers, but also guarantees the right to do so in the medium or language of one's choice. The imparting and receiving of information also suggests people acting in community. In this context, Articles 21 and 22 of the **Covenant** guaranteeing the freedoms of peaceful assembly and association may be especially relevant.

Similarly, in Europe the freedom of expression stipulated in Article 10 of the **European Convention for the Protection of Human Rights and**

Fundamental Freedoms shall be, according to Article 14 of the same convention, "secured without discrimination on any ground such as... language..." With expressed reference to both the **Universal Declaration of Human Rights** and the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, the Council of Europe's **Declaration on Freedom of Expression and Information** affirms "that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community". In this connection, the freedoms of peaceful assembly and association as guaranteed by Article 11 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** are important.

Within the context of the Organization for Security and Cooperation in Europe (OSCE), the same fundamental ideas of freedom of expression, assembly and association are enumerated in paragraphs 9.1-9.3 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension.**

In the **Charter of Paris for a New Europe**, the Heads of State and Government of the OSCE participating States "affirm that, without discrimination, every individual has the right to:... freedom of expression, freedom of association and peaceful assembly,..."

Article 27 of the **International Covenant on Civil and Political Rights** is another key provision which has direct bearing on the linguistic rights of national minorities. It affirms that "persons belonging to... minorities shall not be denied the right, in community with the other members of their group, to... use their own language".

Similarly, Article 2(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** proclaims the right of persons belonging to national minorities to "use their own language, in private and in public, freely and without interference or any form of discrimination". Article 10(1) of the Council of Europe's **Framework Convention for the Protection of National Minorities**

stipulates that States will recognise the right of persons belonging to national minorities "to use freely and without interference his or her minority language, in private and in public, orally and in writing."

Although the instruments refer to the use of minority languages in public and in private, these same instruments do not precisely delimit the "public" as opposed to the "private" spheres. Indeed the spheres may overlap. This may well be the case, for example, when individuals acting alone or in community with others seek to establish their own private media or schools. What might begin as a private initiative may become the subject of legitimate public interest. Such an interest may give rise to some public regulation.

The use of minority languages "in public and in private" by persons belonging to national minorities cannot be considered without making reference to education. Education issues as they relate to the languages of national minorities are treated in detail in The Hague Recommendations Regarding the Education Rights of National Minorities which were developed for the benefit of the OSCE High Commissioner on National Minorities by The Foundation on Inter-Ethnic Relations in collaboration with experts of international repute in the fields of both international human rights and education. The Hague Recommendations were developed with a view to facilitating a clearer understanding of the international instruments pertaining to the rights of persons belonging to national minorities in this area which is of such vital importance to the maintenance and development of the identity of persons belonging to national minorities.

International human rights instruments stipulate that human rights are universal and that they must be enjoyed equally and without discrimination. Most human rights, however, are not absolute. The instruments do foresee a limited number of situations in which States would be justified in restricting the application of certain rights. The restrictions permitted by international human rights law can be invoked in life-threatening emergencies and in situations which pose a threat to the rights and freedoms of others, or in situations which threaten public morals, public

health, national security and the general welfare in a democratic society[2]. In human rights law, restrictions on freedoms are to be interpreted restrictively.

The rights of persons belonging to national minorities to use their language(s) in public and in private as set forth and elaborated in The Oslo Recommendations Regarding the Linguistic Rights of National Minorities must be seen in a balanced context of full participation in the wider society. The Recommendations do not propose an isolationist approach, but rather one which encourages a balance between the right of persons belonging to national minorities to maintain and develop their own identity, culture and language and the necessity of ensuring that they are able to integrate into the wider society as full and equal members. From this perspective, such integration is unlikely to take place without a sound knowledge of the official language(s) of the State. The prescription for such education is implied in Articles 13 and 14 of the **International Covenant on Economic, Social and Cultural Rights** and Articles 28 and 29 of the **Convention on the Rights of the Child** which confer a right to education and oblige the State to make education compulsory. At the same time, Article 14(3) of the **Framework Convention for the Protection of National Minorities** provides that the teaching of a minority language "shall be implemented without prejudice to the learning of the official language or the teaching in this language."

NAMES

1) Article 11(1) of the **Framework Convention for the Protection of National Minorities** stipulates that persons belonging to national minorities have the right to use their first name, their

[2] The above mentioned limitations are included, e.g., in the following provisions:
Art. 30 Universal Declaration of Human Rights
Art. 19(3) International Covenant on Civil and Political Rights
Art. 10(2) European Convention for the Protection of Human Rights and Fundamental Freedoms

patronym and their surname in their own language. This right, the enjoyment of which is fundamental to one's personal identity, should be applied in light of the circumstances particular to each State. For example, public authorities would be justified in using the script of the official language or languages of the State to record the names of persons belonging to national minorities in their phonetic form. However this must be done in accordance with the language system and tradition of the national minority in question. In view of this very basic right relating closely to both the language and the identity of individuals, persons who have been forced by public authorities to give up their original or ancestral name(s) or whose name(s) have been changed against their will should be entitled to revert to them without having to incur any expenses.

2) Names are an important element of corporate identity as well, especially in the context of persons belonging to national minorities acting "in community". Article 2(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** proclaims the right of persons belonging to national minorities to "use their own language, in private and in public, freely and without interference or any form of discrimination". Article 10(1) of the **Framework Convention for the Protection of National Minorities** stipulates that States will recognise the right of persons belonging to national minorities to "use freely and without interference his or her minority language, in private and in public, orally and in writing." Article 27 of the **International Covenant on Civil and Political Rights** declares that "persons belonging to... minorities shall not be denied the right, in community with other members of their group... to use their own language". A person's right to use his or her language in public, in community with others and without any interference or any form of discrimination is a strong indication that legal entities such as institutions, associations, organisations or business enterprises established and run by persons belonging to national minorities enjoy the right to adopt the name of their choice in their minority language. Such a

corporate name should be recognised by the public authorities and used in accordance with the given community's language system and traditions.

3) Article 11(3) of the **Framework Convention** states that "in areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour... to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is sufficient demand for such indications". Refusal to recognise the validity of historic denominations of the kind described can constitute an attempt to revise history and to assimilate minorities, thus constituting a serious threat to the identity of persons belonging to minorities.

RELIGION

4) Article 27 of the **International Covenant on Civil and Political Rights** affirms that "In 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 profess and practice their own religion, or to use their own language." Article 3(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** stipulates that "Persons belonging to minorities may exercise their rights... individually as well as in community with other members of their group, without any discrimination."

Religious belief and its practice "in community" is an area of great importance to many persons belonging to national minorities. In this context it is worth noting that the right to one's own religion is unlimited and guaranteed by Article 18(1) of the **International Covenant on Civil and Political Rights** and Article 9(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms.** However, the

freedom to manifest one's religion and beliefs, including public worship, is subject to a number of limitations listed in subsidiary paragraphs of the same articles. These limitations must be prescribed by law and relate to the protection of public safety, order, health, morals and the protection of the fundamental rights and freedoms of others. They must be reasonable and proportional to the end sought, and States may not invoke them with a view to stifling the legitimate spiritual, linguistic or cultural aspirations of persons belonging to national minorities.

In minority contexts, the practice of religion is often especially closely related to the preservation of cultural and linguistic identity. The right to use a minority language in public worship is as inherent as the right to establish religious institutions and the right to public worship itself. Hence, public authorities may not impose any undue restrictions on public worship nor on the use of any language in public worship, be it the mother tongue of the national minority in question or the liturgical language used by that community.

5) Religious acts such as wedding ceremonies or funerals may also constitute legal civil acts determining civil status in certain countries. In such cases, public interest must be taken into consideration. Keeping in mind the principle that administrative considerations should not prevent the enjoyment of human rights, public authorities should not impose any linguistic restrictions on religious communities. This should apply equally to any administrative functions which religious communities assume and which may overlap with civil jurisdiction. The State may, however, require the religious community to record legal civil acts for which it has authority also in the official language or languages of the State so that the State may perform its legitimate regulatory and administrative tasks.

COMMUNITY LIFE AND NGOs

6) The collective life of persons belonging to national minorities, their acting "in community" as stated by the international instruments, finds its expression in numerous activities and areas of endeavour. Not least of these is the life of their non-governmental organisations, associations and institutions whose existence is usually vital for the maintenance and development of their identity and is generally seen as beneficial and conducive to the development of civil society and democratic values within States.

Articles 21 and 22 of the **International Covenant on Civil and Political Rights** and Article 11 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee the right of persons to peaceful assembly and the freedom of association. The right of persons to act "in community" with other members of their group - their right to establish and manage their own non-governmental organisations, associations and institutions - is one of the hallmarks of an open and democratic society. Article 27 of that same **Covenant** affirms that "Persons belonging to... minorities shall not be denied the right, in community with the other members of their group, to... use their own language". As a rule, therefore, public authorities should not be involved in the internal affairs of such entities "acting in community", nor may they impose any limits on them, other than those permitted under international law. Article 17(2) of the **Framework Convention for the Protection of National Minorities** similarly engages States "not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels".

Article 2(1) of the **International Covenant on Civil and Political Rights** stipulates that each State undertakes "to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present **Covenant**, without distinction of

any kind such as.... language". In line with this standard, States may not discriminate against NGOs on the basis of language nor impose any undue language requirements on them. This having been said, public authorities may require that such organisations, associations and institutions conform to the requirements of domestic law on the basis of a legitimate public interest, including the use of the official language(s) of the State in situations requiring interface with public bodies.

With regard to resources, paragraph 32.2 of the **Copenhagen Document** states that persons belonging to national minorities have the right "to establish and maintain their own educational, cultural and religious institutions, organisations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation." Accordingly, States should not prevent these entities from seeking financial resources from the State budget and from public international sources as well as from the private sector.

7) With regard to State financing of non-governmental activities in, among others, the social, cultural or sports fields, application of the principles of equality and non-discrimination requires that the public authorities provide an appropriate share of funding to similar activities taking place in the language of the national minorities living within their borders. In this context, Article 2(1) of the **International Covenant on Civil and Political Rights** stresses not only that there will be no distinction based on language in the treatment of individuals, but stipulates in Article 2(2) that States are required to "take the necessary steps... to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the... Covenant". Furthermore, Article 2(2) of the **International Covenant on the Elimination of Racial Discrimination,** (which seeks to eliminate any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin) stipulates that "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete

measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms..." Insofar as language is often a defining criterion of ethnicity as protected by the aforementioned convention, minority language communities may also be entitled to the benefits of such "special and concrete measures".

At the European level, paragraph 31 of the **Copenhagen Document** stipulates that "States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms". Paragraph 2 of Article 4 of the **Framework Convention for the Protection of National Minorities** obligates the States Parties "to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority"; paragraph 3 of the same Article further specifies that such "measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination." Moreover, Article 7(2) of the **European Charter for Regional or Minority Languages** stipulates that "the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of the languages and the rest of the population or which take account of their specific conditions is not considered to be an act of discrimination against the users of more widely used languages." In this context, therefore, public authorities should provide an equitable share of resources from the State budget to the activities of persons belonging to national minorities in, among others, the social, cultural and sports related fields. Such support can be made available through subsidies, public benefits and tax exemptions.

THE MEDIA

8) Article 19 of the **International Covenant on Civil and Political Rights**, which guarantees the right to hold opinions as well as the right to express them, is a fundamental point of reference regarding the role and place of media in democratic societies. While Article 19(1) provides that "everyone shall have the right to hold opinions without interference", Article 19(2) proceeds to guarantee to everyone the freedom "to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through the media of his choice." Article 10 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantees the right to freedom of expression in a similar way. The member States of the Council of Europe reiterated in Article I of the **Declaration on the Freedom of Expression and Information** "their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralist society". On this basis, States declared in the same instrument that "in the field of information and mass media they seek to achieve... d. The existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions".

Article 9(1) of the **Framework Convention for the Protection of National Minorities** states clearly that persons belonging to national minorities are free "to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers..." Further on, the same provision engages States to "ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media." Article 9(3) of the **Framework Convention** stipulates that States "shall not hinder the creation and the use of printed media by persons belonging to national minorities." The same provision requires that "in the legal framework of sound radio and television broadcasting, [States] shall ensure, as far as possible...

that persons belonging to national minorities are granted the possibility of creating and using their own media." It is also to be noted that media may constitute entities of the kind foreseen in *inter alia*, paragraph 32.2 of the **Copenhagen Document** which provides for the right of persons belonging to national minorities to "establish and maintain their own educational, cultural and religious institutions, organisations or associations..." Even though the media are not cited expressly in this standard, the media often plays a fundamental role in the promotion and preservation of language, culture and identity.

Although there can be no doubt that persons belonging to national minorities have the right to establish and maintain private media, it is also true that this right is subject to the limitations provided by international law as well as such legitimate requirements of the State regarding the regulation of the media. Article 9(2) of the **Framework Convention** makes this very clear by underlining that the freedom of expression referred to in article 9(1) of the **Convention** "shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises." Regulatory requirements, where justified and necessary, may not be used to undermine the enjoyment of the right.

9) The issue of access to publicly funded media is closely linked with the concept of freedom of expression. Article 9(1) of the **Framework Convention** stipulates that the freedom of expression of persons belonging to national minorities includes the freedom to impart information and ideas in the minority language, without interference by public authorities, and goes on to say that "members of minorities shall not be discriminated against in their access to the media." Article 9(4) of the **Framework Convention** stipulates that "Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities." This implies that a national minority consisting of a substantial number of members should be given access to its fair share of broadcast time, on public radio and/or television, with the

numerical size of the minority in question having a bearing on its share of broadcast time.

Numerical strength and concentration, however, cannot be seen as the only criteria when judging the amount of broadcast time to be allocated to any given national minority. In the case of smaller communities, consideration must be given to the viable minimum of time and resources without which a smaller minority would not meaningfully be able to avail itself of the media.

Moreover, the quality of the time allotted to minority programming is an issue that needs to be approached in a reasonable, non-discriminatory manner. The time-slots allotted to minority language programming should be such as to ensure that persons belonging to a national minority can enjoy programming in their language in a meaningful way. Hence, public authorities should ensure that this programming is transmitted at reasonable times of the day.

10) In an open and democratic society the content of media programming should not be unduly censored by the public authorities. The freedom of expression as guaranteed by Article 19(1) of the **International Covenant on Civil and Political Rights** and Article 10(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** is important in this regard. Any restrictions which might be imposed by the public authorities must be in line with Article 19(3) of the **Covenant** which stipulates that these restrictions "shall only be such as are provided by law and are necessary a) For the respect of the rights and reputations of others, b) For the protection of national security or of public order (*ordre public*), or of public health and morals." Article 10(2) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** stipulates almost identical restrictions on any interference by public authorities with the enjoyment of freedom of expression.

Mechanisms should be put in place to ensure that the public media programming developed by or on behalf of national minorities reflects the interests and desires of the community's members and is seen by them as independent. In this context, the participation of persons belonging to national minorities (acting in their private capacity) in the editorial process would go a long way in ensuring that the independent nature of the media would be preserved and that it would be responsive to the needs of the communities to be served.

In line with the principle of equality and non-discrimination, the composition of public institutions should be reflective of the populations they are designed to serve. This also applies to public media. Article 15 of the **Framework Convention** engages States to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." Article 2 of **International Labour Organisation Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation** is more explicit in committing States to "pursue a national policy designed to promote... equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof." The non-discriminatory hiring of persons belonging to national minorities to work in the media will contribute to the representativity and objectivity of the media.

11) In keeping with the spirit of Articles 19(2) of the **International Covenant on Civil and Political Rights** and Article 9(1) of the **Framework Convention for the Protection of National Minorities** and of the principle of non-discrimination, access to programming in the language of persons belonging to a national minority, transmitted from another State or from the "kin-State", should not justify a diminution of programme time allotted to the minority on the public media of the State in which its members live.

Transfrontier access to information and media networks is a fundamental element of the right to information which, in the context of accelerated technological progress, is of growing importance. Consequently, when cable licensing is involved, for example, it is not legitimate for a State to refuse to license television or radio stations based in a kin-State when the desire for access to these stations has been clearly expressed by the national minority concerned. This right applies not only to cable media but also to electronic information networks in the language of the national minority.

As a general matter, the member States of the Council of Europe resolved in Article III(c) of the **Declaration on the Freedom of Expression and Information** "to promote the free flow of information, thus contributing to international understanding, a better knowledge of convictions and traditions, respect for the diversity of opinions and the mutual enrichment of cultures". In relation to media contacts across frontiers, States should conform their policies to the spirit of this provision.

ECONOMIC LIFE

12) International instruments make little reference to the rights of persons belonging to national minorities in the field of economic activity. International instruments do, however, refer to the right of persons belonging to national minorities to use their language in public and in private, freely and without any form of discrimination, orally and in writing, individually and with others. Article 19(2) of the **International Covenant on Civil and Political Rights** and Article 10(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee freedom of expression with respect not only to ideas and opinions which may be transmitted to others (i.e. the content of communications), but also to language as a medium of communication. These rights, coupled with the right to equality and non-discrimination, imply the right of persons belonging to

national minorities to run their businesses in the language of their choice. In view of the importance to private entrepreneurs to be able to communicate effectively with their clientele and to pursue their initiatives in fair conditions, there should be no undue restrictions on their free choice of language.

Article 11(2) of the **Framework Convention** stipulates that "every person belonging to a national minority has the right to display in his or her minority language, signs, inscriptions and other information of a private nature visible to the public." In the **Framework Convention** the expression "of a private nature" refers to all that is not official. Hence, the State may not impose any restrictions on the choice of language in the administration of private business enterprises.

Notwithstanding the above, the State may require that the official language or languages of the State be accommodated in those sectors of economic activity which affect the enjoyment of the rights of others or require exchange and communication with public bodies. This follows from the permissible restrictions on freedom of expression as stipulated in Article 19(3) of the **International Covenant on Civil and Political Rights** and Article 10(2) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms.** While the limited permissible restrictions expressed in the aforementioned articles could justify restrictions on the content of communications, they would never justify restrictions on the use of a language as a medium of communication. However, protection of the rights and freedoms of others and the limited requirements of public administration may well justify specific prescriptions for the additional use of the official language or languages of the State. This would apply to sectors of activity such as workplace health and safety, consumer protection, labour relations, taxation, financial reporting, State health and unemployment insurance and transportation, depending on the circumstances. On the basis of a legitimate public interest, the State could, in addition to the use of any other language, also require that the official language or

languages of the State be accommodated in such business activities as public signage and labelling — as expressly stated in paragraph 60 of the **Explanatory Report to the Framework Convention for the Protection of National Minorities**. In sum, the State could never prohibit the use of a language, but it could, on the basis of a legitimate public interest, prescribe the additional use of the official language or languages of the State.

In keeping with the logic of legitimate public interest, any requirement(s) for the use of language which may be prescribed by the State must be proportional to the public interest to be served. The proportionality of any requirement is to be determined by the extent to which it is necessary. Accordingly, for example, in the public interest of workplace health and safety, the State could require private factories to post safety notices in the official language or languages of the State in addition to the chosen language(s) of the enterprise. Similarly, in the interest of accurate public administration in relation to taxation, the State could require that administrative forms be submitted in the official language or languages of the State and that, in the case of an audit by the public authorities, relevant records be made available also in the official language or languages of the State; the latter eventuality would not require that private enterprise maintain all records in the official language or languages of the State, but only that the burden of possible translation rests with the private enterprise. This is without prejudice to the possible entitlement of persons belonging to national minorities to use their language(s) in communications with administrative authorities as foreseen in Article 10(2) of the **Framework Convention for the Protection of National Minorities**.

ADMINISTRATIVE AUTHORITIES AND PUBLIC SERVICES

13/14/15) OSCE Participating States are committed to taking measures which will contribute to creating a dynamic environment, conducive not only to the maintenance of the identity of persons

belonging to national minorities (including their language) but also to their development and promotion. As a consequence, these States have undertaken to respect "the right of persons belonging to national minorities to effective participation in public affairs" as outlined in paragraph 35 of the **Copenhagen Document**. Article 10(2) of the **Framework Convention for the Protection of National Minorities** expressly requires States to "make possible the use of minority languages in communications with administrative authorities." Paragraph 35 of the **Copenhagen Document** also makes reference to the possibility of creating an environment that would be conducive to the participation of national minorities in public affairs, in their own language, by establishing "appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of minorities in accordance with the policies of the State concerned". Article 15 of the **Framework Convention** engages States to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." These provisions engage public authorities to enable persons belonging to national minorities to deal with local authorities in their language or to receive civil certificates and attestations in their own language. In line with the principles of equality and non-discrimination, these provisions also imply a dynamic participatory relationship wherein the language of the minority may be a full-fledged vehicle of communication in local political life and in the interface between citizens and public authorities including in the provision of public services.

The ethnic representativity of administrative institutions and agencies designed to serve the population is usually reflective of a pluralistic, open and non-discriminatory society. In order to counter the effects of past or existing discrimination within the system, Article 2 of **International Labour Organisation Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation** requires States to "pursue a national policy designed to promote... equality of opportunity and

implemented and protected. As a complement to judicial procedures, independent national institutions usually provide quicker and less expensive recourses and are as such more accessible.

Discrimination as referred to in the **Convention on the Elimination of Racial Discrimination** is not defined according to criteria relating strictly to race. Article 1(1) of the **Convention** stipulates that the concept of racial discrimination shall mean "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." Article 6 of the **Convention** declares that "State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention..." In this context, the establishment by States of independent national institutions that can act as mechanisms of redress and compensation, such as the institution of ombudsperson or a human rights commission is a measure of a given State's democratic and pluralistic nature. Accordingly, and with reference to **United Nations resolution 48/134 of 20 December 1993**, the Council of Europe has encouraged, in **Committee of Ministers Recommendation No. R(97)14 of 30 September 1997**, the establishment of "national human rights institutions, in particular human rights commissions which are pluralist in their membership, ombudsmen or comparable institutions." Such mechanisms of redress should be made available also to persons belonging to national minorities who consider that their linguistic and other rights have been violated.

JUDICIAL AUTHORITIES

17/18) International law requires public authorities, to ensure that all persons who are arrested, accused and tried be informed of the charges against them and of all other proceedings in a language they understand. If need be, an interpreter must be made available to them free of charge. This standard of due process of law is universal in its application and does not relate to the linguistic rights of national minorities as such. Rather, the underlying principles are those of equality and non-discrimination before the law. Respect for these principles is particularly vital in relation to criminal charges and proceedings. As a consequence, Article 14(3)(a) of the **International Covenant on Civil and Political Rights** requires that everyone charged with a criminal offense shall "be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him". Article 6(3)(a) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** stipulates the same requirement in almost identical language. In addition, Article 5(2) of the aforementioned convention stipulates the same requirement in relation to arrest. Furthermore, Article 14(3) of the **International Covenant on Civil and Political Rights** stipulates the entitlement of everyone "in full equality"... "(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him". In this connection, Article 14(3)(f) of the **International Covenant on Civil and Political Rights** and Article 6(3)(e) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee the right of everyone "to have the free assistance of an interpreter if he cannot understand or speak the language used in court." While these guarantees concerning expressly the use of language are prescribed specifically in relation to criminal procedures, it follows from the fundamental guarantee of equality before courts and tribunals, as stipulated in the first sentence of Article 14(1) of the **International Covenant on Civil and Political Rights**, that legal proceedings of all kinds

are to be considered more perfectly fair to the extent that the conditions are more strictly equal. This determination, which applies equally with respect to the choice of language for proceedings as a whole, should guide States in the development of their policies concerning the equal and effective administration of justice.

More generally, Article 7(1) of the **European Charter for Regional or Minority Languages** declares that States shall base their policies, legislation and practice on such objectives and principles as "the recognition of the regional or minority languages as an expression of cultural wealth..." and "the need for resolute action to promote regional or minority languages in order to safeguard them". Article 7(4) of the **European Charter** stipulates that "in determining their policy with regard to regional and minority languages,... Parties shall take into consideration the needs and wishes expressed by the groups which use such languages." Moreover, Article 15 of the **Framework Convention** engages States to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." If one considers the above-mentioned standards while taking into consideration the importance, in democratic societies, of effective access to justice, it is reasonable to expect that States should, so far as possible, ensure the right of persons belonging to national minorities to express themselves in their language in all stages of judicial proceedings (whether criminal, civil or administrative) while respecting the rights of others and maintaining the integrity of the processes, including through instances of appeal.

19) Insofar as access to justice is vital to the enjoyment of human rights, the degree to which one may participate directly and easily in available procedures is an important measure of such access. The availability of judicial procedures functioning in the language(s) of persons belonging to national minorities, therefore, renders access to justice more direct and easy for such persons.

On this basis, Article 9 of the **European Charter for Regional or Minority Languages** provides that, to the extent feasible and pursuant to the request of one of the affected parties, all judicial proceedings should be conducted in the regional or minority language. The Parliamentary Assembly of the Council of Europe, has come to the same conclusion in Article 7(3) of its **Recommendation 1201** which provides that "In regions in which substantial numbers of a national minority are settled, the persons belonging to a national minority shall have the right to use their mother tongue in their contacts with the administrative authorities and in proceedings before the courts and legal authorities." Accordingly, States should adopt appropriate recruitment and training policies for the judiciary.

DEPRIVATION OF LIBERTY

20) Rule 51, paragraphs 1 and 2, of the **United Nations Standard Minimum Rules for the Treatment of Prisoners** as well as Rule 60, paragraphs 1 and 2 of the **European Prison Rules of the Council of Europe** stress the importance of the right of the incarcerated to be understood by the prison administration as well as the importance for the prison administration to be understood by the inmate population. These provisions do not relate to minority rights as such. However, taken into consideration along with the expressed desire of affected populations, their numerical strength and the principle of equality and non-discrimination, the aforementioned provisions are even more compelling in regions or localities where persons belonging to national minorities are present in significant numbers.

21) Rule 37 of the **United Nations Standard Minimum Rules for the Treatment of Prisoners** as well as Article 43(1) of the **European Prison Rules of the Council of Europe** uphold the right of prisoners to communicate with their families, reputable friends and persons or representatives of outside organisations. In view of the importance of such human rights as freedom of

expression and the right to use one's language in public and in private, it is incumbent upon authorities to respect these rights within the limitations prescribed by law even in penitentiary institutions. As a rule, prisoners should be able to communicate in their own language both orally with other inmates and with visitors and also in personal correspondence. Nevertheless, certain human rights and freedoms of persons detained for criminal acts may legitimately be restricted or suspended for reasons of public security in conformity with the limitations prescribed by the international instruments. As a practical matter, enjoyment of the linguistic rights of detained persons may be best facilitated by their detention in a place where their language is usually spoken.

Prinsessegracht 22
2514 AP The Hague
Tel.: +31 70 31 25 555
Fax: +31 70 34 65 213

Raccomandazioni di Lund su un'Effettiva Partecipazione delle Minoranze Nazionali alla Vita Pubblica e Nota Esplicativa

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Project Unit
Office of the High Commissioner on National Minorities
Prinsessegracht 22
2514 AP l'Aia
Telefono: +31 (0)70 312 5500
Telefax: +31 (0)70 346 5213
E-mail: hcnm@hcnm.org

INDICE

INTRODUZIONE

Nelle Decisioni di Helsinki del luglio 1992 l'Organizzazione per la Sicurezza e la Cooperazione in Europa (CSCE) istituiva la carica di Alto Commissario per le Minoranze Nazionali quale "strumento per prevenire i conflitti per quanto possibile nella fase iniziale". Tale mandato venne adottato soprattutto quale risposta alla situazione creatasi nell'ex Jugoslavia e nel timore che essa potesse ripetersi altrove in Europa, in particolare nei paesi in via di transizione democratica, vanificando le promesse di pace e prosperità previste dalla Carta di Parigi per una nuova Europa, adottata dai Capi di Stato e di Governo nel novembre 1990.

L'1 gennaio 1993 Max van der Stoel ha assunto l'incarico di primo Alto Commissario OSCE per le Minoranze Nazionali (ACMN). Avvalendosi della sua considerevole esperienza personale quale ex membro del Parlamento, Ministro degli Esteri dei Paesi Bassi, Rappresentante permanente alle Nazioni Unite e sostenitore da lungo tempo dei diritti dell'uomo, Max van der Stoel ha rivolto la sua attenzione alle numerose controversie tra minoranze e autorità centrali in Europa che, a suo parere, potevano essere suscettibili di intensificazione. Con pacata diplomazia l'ACMN ha operato in numerosi Stati, tra cui l'Albania, la Croazia, l'Estonia, l'Ungheria, il Kazakistan, il Kirghistan, la Lettonia, l'ex Repubblica jugoslava di Macedonia, la Romania, la Slovacchia e l'Ucraina. Il suo interesse si è concentrato principalmente sulle situazioni in cui persone appartenenti a gruppi nazionali/etnici costituiscono la maggioranza numerica in uno Stato ma la minoranza numerica in un altro Stato, destando così l'interesse delle autorità governative dei due Stati e costituendo fonte tensioni potenziali, se non di conflitti interstatali. Tali tensioni hanno in effetti caratterizzato gran parte della storia europea.

Trattando a fondo le tensioni che coinvolgono le minoranze nazionali, l'ACMN adotta un approccio ai problemi indipendente, imparziale e cooperativo. Pur non essendo un'istanza di supervisione, l'ACMN utilizza le norme internazionali recepite da ogni Stato quale quadro principale di analisi e fondamento delle sue specifiche raccomandazioni. È' importante ricordare a tale riguardo gli impegni assunti da tutti gli Stati partecipanti all'OSCE e in particolare quelli contenuti nel Documento di Copenhagen 1990 della Conferenza sulla dimensione umana, nella cui Parte IV vengono delineate dettagliate disposizioni relative alle minoranze nazionali. Tutti gli Stati

appartenenti all'OSCE sono altresì vincolati, nel quadro delle Nazioni Unite, da obblighi concernenti i diritti dell'uomo, inclusi i diritti delle minoranze, e la maggioranza degli Stati dell'OSCE sono ulteriormente vincolati dalle norme del Consiglio d'Europa.

In oltre sei anni di intensa attività, l'ACMN ha individuato talune questioni e tematiche ricorrenti che hanno formato oggetto della sua attenzione in alcuni degli Stati in cui è intervenuto. Tali questioni includono, fra l'altro, i problemi dell'istruzione e dell'uso delle lingue delle minoranze, questioni particolarmente importanti per il mantenimento e lo sviluppo dell'identità delle persone appartenenti a minoranze nazionali. Al fine di assicurare l'appropriata e sistematica attuazione dei pertinenti diritti delle minoranze nell'area OSCE, l'ACMN ha invitato la Fondazione per le Relazioni interetniche - un'organizzazione non governativa istituita nel 1993 per svolgere attività specializzate di supporto all'ACMN - di riunire due gruppi di esperti indipendenti riconosciuti a livello internazionale per elaborare una serie di raccomandazioni: *le Raccomandazioni dell'Aia sui diritti all'istruzione delle minoranze nazionali* (1996) e le *Raccomandazioni di Oslo sui diritti linguistici delle minoranze nazionali* (1998). Legislatori e politici in alcuni Stati si sono avvalsi in seguito delle due serie di raccomandazioni come termini di riferimento. Le raccomandazioni (in diverse lingue) possono essere richieste gratuitamente alla Fondazione per le relazioni interetniche.

Un terzo tema ricorrente, evidenziato in alcuni contesti in cui l'ACMN è stato coinvolto, riguarda le forme di un'effettiva partecipazione delle minoranze nazionali al governo degli Stati. L'ACMN e l'Ufficio per le istituzioni democratiche e i diritti dell'uomo dell'OSCE, al fine di fare un quadro delle opinioni e delle esperienze degli Stati partecipanti all'OSCE su tale questione e di consentire lo scambio di tali esperienze, hanno convocato la conferenza "Governo e partecipazione: integrazione della diversità", ospitata dalla Confederazione svizzera a Locarno, dal 18 al 20 ottobre 1998, con la partecipazione di tutti gli Stati OSCE e delle organizzazioni internazionali interessate. La dichiarazione del Presidente, rilasciata alla conclusione della conferenza, ha sintetizzato le tematiche della riunione e ha posto in rilievo "l'opportunità di susseguenti attività concrete, tra cui l'ulteriore elaborazione dei vari concetti e meccanismi di buon governo che prevedano l'effettiva partecipazione delle minoranze nazionali per l'integrazione della diversità all'interno dello Stato". A tal fine l'ACMN ha invitato la Fondazione per le relazioni interetniche, in collaborazione con l'Istituto Raoul Wallenberg per i

diritti dell'uomo e il diritto umanitario, a riunire un gruppo di esperti indipendenti riconosciuti a livello internazionale per elaborare raccomandazioni e delineare alternative in linea con le pertinenti norme internazionali.

La suddetta Conferenza ha elaborato le *Raccomandazioni di Lund su un'effettiva partecipazione delle minoranze nazionali alla vita pubblica* – dal nome dalla città svedese ove gli esperti si sono riuniti e hanno messo a punto le raccomandazioni. Fra i partecipanti figuravano esperti in diritto internazionale, politologi esperti in ordinamenti costituzionali e sistemi elettorali e sociologi specializzati in questioni concernenti le minoranze. Hanno partecipato i seguenti esperti sotto la presidenza del Direttore dell'Istituto Raoul Wallenberg, Prof. Gudmundur Alfredsson:

> Prof. Gudmundur Alfredsson (Islanda), Direttore dell'Istituto Raoul Wallenberg per i diritti dell'uomo e il diritto umanitario, Università di Lund; Prof. Vernon Bogdanor (Inghilterra), politologo, Università di Oxford; Prof. Vojin Dimitrijević (Jugoslavia), Direttore del Centro per i diritti dell'uomo di Belgrado; Dr. Asbjørn Eide (Norvegia), docente presso l'Istituto norvegese per i diritti dell'uomo; Prof. Yash Ghai (Kenyan), Sir YK Pao, professore di diritto pubblico, Università di Hong Kong; Prof. Hurst Hannum (USA), professore di diritto internazionale, Istituto Fletcher per il diritto e la diplomazia, Università di Tufts; Peter Harris (Sudafrica), Dirigente principale dell'Istituto internazionale per la democrazia e l'assistenza elettorale; Dr. Hans-Joachim Heintze (Germania), Direttore dell'Istituto per il diritto alla sicurezza della pace e il diritto umanitario internazionale, Università Ruhr Bochum; Prof. Ruth Lapidoth (Israele), professoressa di diritto internazionale e Presidente del Comitato accademico dell'Istituto per gli studi europei, Università israelitica di Gerusalemme; Prof. Rein Müllerson (Estonia), Decano di diritto internazionale, King's College, Università di Londra; Dr. Sarlotta Pufflerova (Slovacchia), Direttrice, Fondazione per i cittadini e le minoranze/diritti delle minoranze; Prof. Steven Ratner (USA), professore di diritto internazionale, Università del Texas; Dr. Andrew Reynolds (Inghilterra), professore associato di politologia, Università di Notre Dame; Miquel Strubell (Spagna e Inghilterra), Direttore dell'Istituto di socio-linguistica catalana, Generalitat de Catalunya; Prof. Markku Suksi (Finlandia), professore di diritto pubblico, Università Åbo Akademi; Prof. Danilo Türk (Slovenia), professore di diritto internazionale, Università di Liubiana; Dr. Fernand de Varennes (Canada), professore di diritto e

Direttore del Centro Asia-Pacifico per i diritti dell'uomo e la prevenzione dei conflitti etnici, Università Murdoch; Prof. Roman Wieruszewski (Polonia), Direttore del Centro Poznan per i diritti dell'uomo, Accademia polacca delle scienze.

Considerato che le attuali norme concernenti i diritti delle minoranze sono parte dei diritti dell'uomo, le consultazioni fra gli esperti si sono basate sulla premessa del rispetto, da parte degli Stati, di tutti gli altri obblighi inerenti ai diritti dell'uomo tra cui, in particolare, la non discriminazione. Si è anche presunto che il fine ultimo di tutti i diritti dell'uomo è il pieno e libero sviluppo della personalità umana individuale in condizioni di eguaglianza. Di conseguenza, la società civile dovrebbe essere aperta e fluida e quindi integrare tutte le persone, incluse quelle appartenenti a minoranze nazionali. Inoltre, considerato che l'obiettivo del buon governo democratico è servire i bisogni e gli interessi dell'intera popolazione, si è supposto che tutti i governi cerchino di offrire la massima opportunità ai contributi di coloro che sono interessati al processo decisionale pubblico.

Scopo delle Raccomandazioni di Lund, come delle precedenti Raccomandazioni dell'Aia e di Oslo, è incoraggiare e facilitare l'adozione da parte degli Stati di specifiche misure volte a diminuire le tensioni connesse con le minoranze nazionali e servire pertanto il fine ultimo di prevenzione dei conflitti dell'ACMN. Le Raccomandazioni di Lund sull'effettiva partecipazione delle minoranze nazionali alla vita pubblica intendono chiarire con un linguaggio relativamente diretto ed elaborare i contenuti dei diritti delle minoranze e di norme applicabili in generale alle situazioni che rientrano nella sfera di interesse dell'ACMN. Le norme sono state espressamente interpretate per assicurarne una coerente applicazione negli Stati aperti e democratici. Le Raccomandazioni sono suddivise in quattro sezioni che raggruppano le ventiquattro raccomandazioni in: principi generali, partecipazione al processo decisionale, autogoverno e metodi per garantire l'effettiva partecipazione alla vita pubblica. La suddivisione concettuale di base delle Raccomandazioni di Lund è duplice: la partecipazione al governo dello Stato nel suo complesso e l'autogoverno per talune questioni locali o interne. Sono possibili e sono stati riconosciuti molteplici sistemi. In diverse raccomandazioni vengono suggerite possibili alternative. Tutte le raccomandazioni vanno interpretate sulla base dei Principi generali enunciati nella Sezione I. Una spiegazione più dettagliata di ciascuna raccomandazione viene riportata nella relativa nota esplicativa dove viene fatto specifico riferimento alle pertinenti norme internazionali.

RACCOMANDAZIONI DI LUND SU UN'EFFETTIVA PARTECIPAZIONE DELLE MINORANZE NAZIONALI ALLA VITA PUBBLICA

I. PRINCIPI GENERALI

1) L'effettiva partecipazione delle minoranze nazionali alla vita pubblica è una componente essenziale di una società pacifica e democratica. In Europa e altrove l'esperienza ha mostrato che per promuovere tale partecipazione i governi devono spesso adottare specifiche disposizioni per le minoranze nazionali. Le presenti Raccomandazioni intendono facilitare l'inserimento delle minoranze nel quadro dello Stato e consentire loro di mantenere la propria identità e le proprie specificità, promuovendo in tal modo il buon governo e l'integrità dello Stato.

2) Le presenti Raccomandazioni si basano sui principi e sulle norme fondanti del diritto internazionale, quali il rispetto della dignità umana, l'uguaglianza dei diritti e la non discriminazione, in quanto elementi che influiscono sul diritto delle minoranze nazionali di partecipare alla vita pubblica e godere degli altri diritti politici. Gli Stati hanno il dovere di rispettare i diritti dell'uomo e lo stato di diritto riconosciuti internazionalmente per promuovere il pieno sviluppo della società civile in condizioni di tolleranza, pace e prosperità.

3) Specifiche istituzioni create per garantire un'effettiva partecipazione delle minoranze alla vita pubblica e per le quali sia previsto l'esercizio di poteri e l'assunzione di responsabilità devono rispettare i diritti umani di tutti gli interessati.

4) Le persone si identificano in diversi modi oltre che le loro identità come membri di una minoranza nazionale. La decisione di appartenere ad una minoranza, alla maggioranza o a nessuna delle due spetta unicamente all'individuo, e tale decisione non deve essergli imposta. Inoltre tale scelta o il rifiuto di effettuarla non devono comportare svantaggi per alcuna persona.

5) Quando si creano istituzioni e procedure conformi alle presenti Raccomandazioni, sia la sostanza che la procedura sono importanti. Le

autorità governative e le minoranze dovrebbero perseguire una procedura di consultazioni globale, trasparente, rispondendone agli interessati, al fine di mantenere un clima di fiducia. Lo Stato dovrebbe incoraggiare i mezzi di informazione pubblici a favorire la comprensione interculturale e trattare i problemi relativi alle minoranze nazionali.

II. PARTECIPAZIONE AL PROCESSO DECISIONALE

A. Disposizioni del governo centrale

6) Gli Stati dovrebbero garantire alle minoranze nazionali l'opportunità di avere voce effettiva a livello di governo centrale, anche a mezzo di disposizioni speciali ove necessario. A secondo delle circostanze, ciò può comprendere:

- una rappresentanza speciale delle minoranze nazionali, ad esempio attraverso un numero di seggi riservato in una o in entrambe le camere del parlamento o in commissioni parlamentari, e altre forme di partecipazione garantita dal processo legislativo;

- intese ufficiali o informali per l'assegnazione a membri di minoranze nazionali di incarichi di gabinetto, seggi alla Corte costituzionale e alla Corte suprema o in altri organi giudiziari e incarichi in organi consultivi designati o in altri organi ad alto livello;

- meccanismi che assicurino che gli interessi delle minoranze nazionali siano presi in considerazione dai ministeri competenti, ad esempio mediante personale responsabile delle questioni delle minoranze o l'emanazione di direttive permanenti; e

- misure speciali per la partecipazione delle minoranze all'amministrazione pubblica, nonché la disponibilità di servizi pubblici nella lingua della minoranza nazionale.

B. Elezioni

7) L'esperienza in Europa e altrove ha dimostrato l'importanza del processo elettorale nella promozione della partecipazione delle minoranze nazionali

alla vita politica. Gli Stati devono garantire il diritto delle persone appartenenti a minoranze nazionali di partecipare alla gestione degli affari pubblici, anche attraverso il diritto di voto, e di candidarsi senza subire discriminazioni.

8) Le norme per la costituzione e l'attività dei partiti politici devono essere conformi al principio sancito dal diritto internazionale della libertà di associazione. Tale principio comprende la libertà di costituire partiti politici fondati sull'identità di una comunità, nonché partiti che non si identificano esclusivamente con gli interessi di una specifica comunità.

9) Il sistema elettorale dovrebbe favorire la rappresentanza e l'influenza delle minoranze.

- Laddove le minoranze sono concentrate territorialmente, i collegi uninominali possono permettere una sufficiente rappresentanza delle minoranze.

- I sistemi elettorali proporzionali, dove la percentuale di un partito politico ottenuta nel voto nazionale si riflette nella quota dei suoi seggi, possono favorire la rappresentanza delle minoranze.

- Alcune forme di votazione preferenziale in cui gli elettori votano i candidati in ordine di preferenza possono facilitare la rappresentanza delle minoranze e promuovere la cooperazione fra le comunità.

- Una soglia di sbarramento più bassa per la rappresentanza nell'assemblea legislativa può favorire l'accesso al governo di minoranze nazionali.

10) I confini territoriali dei collegi elettorali dovrebbero facilitare una rappresentanza equa delle minoranze nazionali.

C. Organismi regionali e locali

11) Gli Stati dovrebbero adottare misure per promuovere la partecipazione delle minoranze nazionali a livello regionale e locale analoghe a quelle menzionate precedentemente (paragrafi 6-10). Le strutture e i processi

decisionali delle autorità regionali e locali dovrebbero essere trasparenti e accessibili al fine di favorire la partecipazione delle minoranze.

D. Organi consultivi

12) Gli Stati dovrebbero istituire organi consultivi nell'ambito di appropriati quadri istituzionali che fungano da canali per il dialogo fra le autorità governative e le minoranze nazionali. Tali organi potrebbero anche comprendere commissioni *ad hoc* per la trattazione di questioni quali le abitazioni, i terreni, l'istruzione, la lingua e la cultura. La composizione di tali organi dovrebbe rispecchiarne le finalità e contribuire ad una comunicazione più efficace e alla promozione degli interessi delle minoranze.

13) Tali organi dovrebbero essere in grado di sottoporre problemi agli organi decisionali, elaborare raccomandazioni, formulare proposte legislative e di altro genere, verificare gli sviluppi e fornire pareri su decisioni avanzate dal governo che possano influire direttamente o indirettamente sulle minoranze. Le autorità governative dovrebbero consultare con regolarità tali organismi su questioni riguardanti la legislazione e le misure amministrative concernenti le minoranze nazionali al fine di contribuire alla soluzione delle questioni delle minoranze e al rafforzamento della fiducia. L'efficace funzionamento di tali organi richiederà che questi dispongano di risorse adeguate.

III. AUTOGOVERNO

14) L'effettiva partecipazione delle minoranze nazionali alla vita pubblica potrà richiedere organismi di autogoverno territoriali o non territoriali o una loro combinazione. Gli Stati dovrebbero mettere a disposizione adeguate risorse per tali organismi.

15) Affinché tali organismi abbiano successo è indispensabile che le autorità governative e le minoranze riconoscano la necessità che vengano adottate dal governo centrale decisioni uniformi e diversificate in alcune sfere dell'amministrazione.

- Le funzioni esercitate generalmente dalle autorità centrali includono la difesa, gli affari esteri, l'immigrazione e la dogana, la politica macroeconomica e la politica monetaria.

- Altre funzioni, come quelle individuate in seguito, potranno essere gestite dalle minoranze nazionali o dalle amministrazioni territoriali o svolte congiuntamente con le autorità centrali.

- Alcune funzioni potranno essere assegnate asimmetricamente per rispondere alle diverse situazioni relative delle minoranze all'interno di uno stesso Stato.

16) Le istituzioni di autogoverno, siano esse territoriali o meno, devono basarsi su principi democratici affinché rispecchino realmente le opinioni della popolazione interessata.

A. Forme di governo non territoriali

17) Gli organismi di governo non territoriali sono utili per il mantenimento e lo sviluppo della identità e della cultura delle minoranze nazionali.

18) I settori più suscettibili di regolamentazione da parte di tali organismi comprendono l'istruzione, la cultura, l'uso della lingua della minoranza, la religione e altri aspetti essenziali dell'identità e dello stile di vita delle minoranze nazionali.

- Le persone e i gruppi hanno il diritto di scegliere le proprie denominazioni nella lingua della minoranza e di ottenerne il riconoscimento ufficiale.

- Tenendo presente la responsabilità delle autorità governative di istituire norme educative, le istituzioni delle minoranze possono definire programmi per l'insegnamento della lingua o della cultura di minoranza o di entrambe.

- Le minoranze possono definire e servirsi dei propri simboli e altre forme di espressione culturale.

B. Forme di governo territoriali

19) Tutte le democrazie dispongono di organismi di governo a diversi livelli territoriali. L'esperienza in Europa e altrove dimostra il valore del trasferimento di talune funzioni legislative ed esecutive dal livello centrale a quello regionale, oltre il puro e semplice decentramento dell'amministrazione del governo centrale dagli uffici della capitale a quelli regionali o locali. In base al principio della sussidiarietà, gli Stati dovrebbero considerare positivamente tali trasferimenti di potere, comprese le funzioni specifiche di autogoverno, particolarmente laddove ciò migliorerebbe le opportunità offerte alle minoranze di esercitare poteri su questioni che le riguardino direttamente.

20) Adeguate amministrazioni locali, regionali o autonome, che corrispondano a specifiche circostanze storiche e territoriali delle minoranze nazionali, possono svolgere diverse funzioni per risolvere più efficacemente i problemi di tali minoranze.

- Le funzioni per le quali queste amministrazioni hanno assunto con successo un potere primario o rilevante comprendono l'istruzione, la cultura, l'uso della lingua della minoranza, l'ambiente, la pianificazione locale, le risorse naturali, lo sviluppo economico, la politica locale, le abitazioni, la salute ed altri servizi sociali.

- Le funzioni svolte congiuntamente dalle autorità centrali e da quelle regionali comprendono l'imposizione fiscale, l'amministrazione della giustizia, il turismo e i trasporti.

21) Le autorità locali, regionali e autonome devono rispettare e tutelare i diritti di tutte le persone, compresi quelli di tutte le minoranze sotto la loro giurisdizione.

IV. GARANZIE

A. Salvaguardie costituzionali e giuridiche

22) Le forme di autogoverno dovrebbero essere stabilite per legge e non essere soggette a modifica secondo la stessa procedura prevista per la legislazione

ordinaria. Le misure per la promozione della partecipazione delle minoranze al processo decisionale possono essere definite per legge o mediante altri mezzi appropriati.

- Le misure adottate nel quadro di disposizioni costituzionali sono generalmente soggette ad una soglia più elevata di consenso legislativo o popolare per la loro adozione o il loro emendamento.

- Modifiche alle misure di autogoverno stabilite per legge richiedono spesso il consenso di una maggioranza qualificata dell'assemblea legislativa, degli organi autonomi o degli organi che rappresentano minoranze nazionali, o entrambi.

- L'esame periodico delle misure gli accordi di autogoverno e di partecipazione delle minoranze al processo decisionale può fornire utili opportunità per stabilire se necessitino di emendamenti alla luce dell'esperienza o per effetto di mutate circostanze.

23) Si può considerare la possibilità di misure provvisorie o graduali che permettano la verifica e lo sviluppo di nuove forme di partecipazione. Tali misure possono essere adottate per via legislativa o con modalità informali per un periodo di tempo determinato, prolungabile, modificabile o revocabile a seconda dei successi conseguiti.

B. Rimedi

24) L'effettiva partecipazione delle minoranze nazionali alla vita pubblica richiede canali di consultazione per la prevenzione dei conflitti e la composizione delle controversie, nonché la possibilità di meccanismi *ad hoc* o alternativi, se necessario. Tali metodi includono:

- soluzione giuridica dei conflitti, quale l'esame giuridico degli atti legislativi e amministrativi, che richiedono che lo Stato disponga di una magistratura indipendente, accessibile e imparziale le cui decisioni vengano rispettate; e

- meccanismi supplementari di soluzione delle controversie, quali il negoziato, l'inchiesta, la mediazione, l'arbitrato, il difensore civico per le minoranze nazionali e commissioni speciali che possano

fungere da centri e meccanismi per la trattazione dei ricorsi su questioni concernenti l'attività del governo.

NOTA ESPLICATIVA ALLE RACCOMANDAZIONI DI LUND SU UN' EFFETTIVA PARTECIPAZIONE DELLE MINORANZE NAZIONALI ALLA VITA PUBBLICA

I. PRINCIPI GENERALI

1) L'intento sia dello Statuto delle Nazioni Unite (qui di seguito denominato Statuto dell'ONU) che dei documenti fondamentali della CSCE/OSCE è quello di mantenere e rafforzare la pace e la sicurezza internazionali mediante lo sviluppo di relazioni amichevoli e cooperative fra Stati di pari sovranità, rispettando i diritti dell'uomo, inclusi i diritti delle persone appartenenti a minoranze nazionali. In effetti la storia ci insegna che il fallimento del rispetto dei diritti dell'uomo, inclusi i diritti delle minoranze nazionali, può minare la stabilità interna degli Stati e influire negativamente sulle relazioni inter-statali pregiudicando così la pace e la sicurezza internazionali.

In base al Principio VII del decalogo dell'Atto Finale di Helsinki del 1975, gli Stati partecipanti all'OSCE hanno sottolineato il legame essenziale fra il rispetto dei legittimi interessi delle persone appartenenti a minoranze nazionali e il mantenimento della pace e della stabilità. Tale legame è stato ribadito in successivi documenti fondamentali quali il Documento Conclusivo di Madrid del 1983 (Principio 15), il Documento Conclusivo di Vienna del 1989 (principi 18 e 19) e la Carta di Parigi per una nuova Europa del 1990 nonché i successivi documenti di incontri al vertice, quali il Documento di Helsinki del 1992 (Parte IV, paragrafo 24) e il Documento di Lisbona del 1996 (Dichiarazione di Lisbona su un Modello di sicurezza comune e globale per l'Europa del ventunesimo secolo, paragrafo 2). A livello dell'ONU il legame fra la tutela e promozione dei diritti delle minoranze e mantenimento della pace e della stabilità viene espresso, fra l'altro nel preambolo della Dichiarazione dell'ONU del 1992 sui diritti delle persone appartenenti a minoranze nazionali, etniche, religiose e linguistiche (qui di seguito denominata "Dichiarazione dell'ONU sulle minoranze"). Inoltre, dopo l'adozione della Carta di Parigi per una nuova Europa, tutti gli Stati partecipanti all'OSCE si sono impegnati a governare democraticamente.

Una piena opportunità per il godimento dei diritti umani delle persone appartenenti a minoranze nazionali ne comporta un'effettiva partecipazione al processo decisionale, in particolare per quanto riguarda le decisioni di interesse comune che le concernono direttamente. Anche se le situazioni variano notevolmente, e i processi democratici ordinari possono rispondere adeguatamente alle aspirazioni delle minoranze, l'esperienza dimostra che sono spesso necessarie misure speciali per facilitare l'effettiva partecipazione delle minoranze al processo decisionale. Le seguenti norme internazionali impegnano gli Stati a intervenire nelle situazioni qui di seguito menzionate: ai sensi del paragrafo 35 del 'Documento della Riunione di Copenhagen della Conferenza sulla Dimensione umana' del 1990 (qui di seguito denominato Documento di Copenhagen), gli Stati partecipanti all'OSCE "rispettano il diritto delle persone appartenenti a minoranze nazionali di partecipare effettivamente agli affari pubblici, ivi compresa la partecipazione alle questioni relative alla tutela e alla promozione dell'identità di tali minoranze"; ai sensi dell'Articolo 2, paragrafo 2 e 3 della Dichiarazione dell'ONU sulle minoranze "le persone appartenenti a minoranze hanno il diritto di partecipare effettivamente alla [....] vita pubblica" e "il diritto di partecipare effettivamente a livello nazionale e, ove appropriato, regionale, alle decisioni concernenti la minoranza a cui appartengono o le regioni in cui vivono" e, ai sensi dell'Articolo 15 della Convenzione quadro per la tutela delle minoranze nazionali del 1994 del Consiglio d'Europa (qui di seguito denominata "Convenzione quadro"), gli Stati "creeranno le condizioni necessarie per l'effettiva partecipazione delle persone appartenenti a minoranze nazionali alla vita culturale, sociale ed economica e agli affari pubblici, in particolare a quelli di loro interesse."

La creazione di opportunità per una effettiva partecipazione da' per scontato che tale partecipazione sia volontaria. In effetti la nozione implicita di integrazione sociale e politica si differenzia da processi ed esiti che costituiscono un'assimilazione coatta, come è evidenziato nell'Articolo 5 della Convenzione quadro. Soltanto attraverso processi volontari il perseguimento dei legittimi interessi delle persone appartenenti a minoranze nazionali potrà essere un processo pacifico che offre prospettive di risultati ottimali per le politiche pubbliche e l'opera dei legislatori. Tale processo globale di partecipazione permetterà di raggiungere l'obiettivo di un buon governo rispondendo agli interessi dell'intera popolazione inserendo tutti gli interessi nel tessuto della vita pubblica e in ultima analisi

rafforzando l'integrità dello Stato. Nelle norme internazionali che richiamano l'effettiva partecipazione delle minoranze alla vita pubblica viene sottolineato il fatto che esse non implicano alcun diritto a svolgere attività contrarie agli scopi e ai principi delle Nazioni Unite, dell'OSCE o del Consiglio d'Europa, inclusi i principi dell'uguaglianza sovrana, dell'integrità territoriale e dell'indipendenza politica degli Stati (vedere paragrafo 37 del Documento di Copenhagen, l'Articolo 8(4) della Dichiarazione dell'ONU sulle minoranze, e il preambolo della Convenzione quadro).

2) Nello spirito del paragrafo 25 del Capitolo VI del Documento di Helsinki 1992, queste raccomandazioni si basano sui pertinenti impegni in quanto offrono agli Stati partecipanti all'OSCE "nuove vie per una più efficace attuazione dei loro pertinenti impegni CSCE, inclusi quelli relativi alla tutela e alla creazione di condizioni atte a promuovere l'identità etnica, culturale, linguistica e religiosa delle minoranze nazionali".

   L'Articolo 1(3) dello Statuto dell'ONU specifica che uno degli scopi dell'organizzazione è "Conseguire la cooperazione internazionale nella soluzione dei problemi di carattere economico, sociale, culturale o umanitario, e nel promuovere e incoraggiare il rispetto dei diritti dell'uomo e delle libertà fondamentali per tutti senza distinzione di razza, di sesso, di lingua o di religione" e nell'Articolo 55(c) è ulteriormente specificato che ciò include "il rispetto universale e l'osservanza dei diritti dell'uomo e delle libertà fondamentali per tutti senza distinzione di razza, di sesso di lingua o di religione". Lo Statuto si basa sulla stretta relazione fra rispetto dei diritti dell'uomo e la pace e la sicurezza internazionali e il valore fondamentale della dignità umana è ulteriormente espresso nell'Articolo 1 della Dichiarazione universale dei diritti dell'uomo del 1948 e nei preamboli della Convenzione internazionale sui diritti civili e politici del 1966, nonché della Convenzione internazionale sull'eliminazione di tutte le forme di discriminazione razziale del 1965. Tale dignità è egualmente inerente a tutti gli esseri umani ed è associata a pari ed inalienabili diritti.

   Dal presupposto della pari dignità e dei diritti inalienabili deriva il principio di non discriminazione espresso virtualmente in tutti gli strumenti internazionali in materia di diritti dell'uomo, inclusi, in particolare l'Articolo 2 della Dichiarazione universale dei diritti dell'uomo, gli articoli 2 e 26 della Convenzione internazionale sui diritti civili e politici e

l'Articolo 2 della Convenzione internazionale sui diritti economici, sociali e culturali. L'Articolo 1 della Convenzione Internazionale sull'eliminazione di tutte le forme di discriminazione razziale chiarisce che questo strumento vieta la discriminazione anche sulla base della "discendenza o dell'origine nazionale ed etnica". Anche l'Articolo 14 della Convenzione europea per la tutela dei diritti dell'uomo e delle libertà fondamentali del 1950 (qui di seguito denominata "Convenzione europea sui diritti dell'uomo") estende espressamente l'applicazione del principio della non discriminazione a motivazioni connesse con "l'origine nazionale o sociale, [oppure] l'associazione con una minoranza nazionale", ogni qualvolta siano in gioco i diritti e le libertà garantiti dalla convenzione. In effetti le costituzioni della maggior parte degli Stati partecipanti all'OSCE reiterano tali affermazioni e principi.

Tenendo conto che le persone appartenenti a minoranze nazionali hanno diritto a un'effettiva partecipazione alla vita pubblica è necessario che godano di tale diritto senza discriminazioni, come viene espresso nel paragrafo 31 del Documento di Copenhagen, nell'Articolo 4 della Convenzione quadro, e nell'Articolo 4(1) della Dichiarazione dell'ONU sulle minoranze. Tuttavia, ai sensi dell'Articolo 4(2) della Convenzione quadro l'interesse per la pari dignità va oltre il principio della non discriminazione contemplando "una piena ed effettiva parità fra le persone appartenenti a minoranze nazionali e quelle appartenenti alla maggioranza" per le quali gli Stati dovrebbero "adottare, ove necessario, adeguate misure...in tutti i settori della vita...politica", rispetto a cui "terranno in debito conto le condizioni specifiche delle persone appartenenti a minoranze nazionali".

La relazione stabilita nella raccomandazione fra il rispetto dei diritti dell'uomo e lo sviluppo di una società civile rispecchia l'invito ad una "effettiva democrazia politica" che secondo il Preambolo della Convenzione europea sui diritti dell'uomo è strettamente connessa con la giustizia e la pace nel mondo. Gli Stati partecipanti all'OSCE nella Carta di Parigi per una nuova Europa hanno ribadito che base della prosperità è governare democraticamente e rispettare i diritti dell'uomo.

3) Qualora vengano create specifiche istituzioni per garantire l'effettiva partecipazione delle minoranze nazionali alla vita pubblica, ciò non deve avvenire a scapito dei diritti di terzi. Tutti i diritti dell'uomo devono essere

sempre rispettati anche da parte delle istituzioni a cui lo Stato possa delegare poteri. Ai sensi del paragrafo 33 del Documento di Copenhagen quando gli Stati partecipanti adottano le misure necessarie alla tutela dell'identità delle persone appartenenti a minoranze nazionali, "Tali misure saranno conformi ai principi di eguaglianza e non discriminazione nei confronti degli altri cittadini dello Stato partecipante interessato". Inoltre il Documento di Copenhagen sancisce al paragrafo 38 che "Gli Stati partecipanti, nei loro sforzi volti a tutelare e promuovere i diritti delle persone appartenenti a minoranze nazionali, rispetteranno pienamente i propri impegni in base alle convenzioni esistenti sui diritti dell'uomo e agli altri strumenti internazionali". Nella Convenzione quadro esiste un'analoga disposizione nell'Articolo 20; "Nell'esercizio dei diritti e delle libertà derivanti dal principio consacrato nella presente Convenzione quadro, qualsiasi persona appartenente a minoranze nazionali dovrà rispettare la legislazione nazionale e diritti di terzi, in particolare quelli delle persone appartenenti alla maggioranza o ad altre minoranze nazionali". Tale disposizione riguarda in particolare il caso di "minoranze all'interno di minoranze" specialmente in contesto territoriale (vedere le raccomandazioni 16 e 21 in seguito) Tale punto includerebbe anche il rispetto dei diritti umani della donna, inclusa la non discriminazione in relazione alla "vita pubblica e politica del paese", come sancito nell'Articolo 7 della Convenzione sull'eliminazione di tutte le forme di discriminazione contro la donna.

4) Il principio di autoidentificazione delle persone appartenenti a minoranze nazionali si basa su numerosi impegni fondamentali. Il paragrafo 32 del Documento di Copenhagen specifica che "L'appartenenza a una minoranza nazionale costituisce una scelta propria di ciascuna persona e l'esercizio di tale scelta non deve comportare alcun svantaggio". L'Articolo 3 (1) della Convenzione quadro prevede analogamente che "Ogni persona appartenente a una minoranza nazionale avrà diritto di scegliere liberamente di essere trattata o meno come tale e nessuno svantaggio dovrà derivare da tale scelta o dall'esercizio dei diritti ad essa connessi". L'Articolo 3(2) della Dichiarazione ONU sulle minoranze nazionali include lo stesso divieto contro qualsiasi svantaggio derivante "a qualsiasi persona appartenente a una minoranza come conseguenza dell'esercizio dei diritti sanciti nella presente Dichiarazione."

La libertà di una persona di identificarsi secondo una propria scelta è necessaria per assicurare il rispetto dell'autonomia e della libertà individuali. Una persona può possedere più identità rilevanti non soltanto nella vita privata, ma anche nella sfera pubblica. In effetti nelle società aperte con crescenti movimenti di persone e idee, molte persone hanno più identità concorrenti, coesistenti o stratificate (in modo gerarchico o non gerarchico) che rispecchiano le loro varie associazioni. Certamente le identità non sono basate soltanto sull'etnia, né sono uniformi nell'ambito di una stessa comunità; possono essere possedute da differenti membri in varie sfumature e gradi. A secondo delle specifiche questioni in gioco differenti identità possono essere più o meno rilevanti. Conseguentemente la stessa persona può identificarsi in diversi modi per differenti scopi, a seconda dell'importanza dell'identificazione e delle sue alternative. Ad esempio in alcuni Stati una persona può scegliere una determinata lingua per la dichiarazione dei redditi, identificandosi in maniera diversa per altre finalità in una comunità locale.

5) In ambito democratico il processo decisionale è importante quanto il contenuto della decisione adottata. Considerato che non deve esservi soltanto un buon governo del popolo, ma anche per il popolo, il relativo processo decisionale deve contemplare tutti gli interessati ed essere trasparente affinché tutti lo possano conoscere e giudicare. Inoltre deve comportare la responsabilità degli organi decisionali verso coloro che ne siano direttamente interessati. Le decisioni derivanti da tale processo dovrebbero essere tali da indurre gli interessati ad osservarle volontariamente. In situazioni in cui i pareri delle autorità pubbliche e della comunità interessata differiscano sostanzialmente il buon governo può suggerire l'impiego di servizi di una parte terza che contribuisca a reperire la soluzione più soddisfacente.

In relazione specifica alle minoranze nazionali, il paragrafo 33 del Documento di Copenhagen impegna gli Stati partecipanti all'OSCE ad adottare misure che "tuteleranno l'identità etnica, culturale, linguistica e religiosa delle minoranze nazionali sul loro territorio e creeranno condizioni per promuovere tali identità. ... una volta effettuate le debite consultazioni, ivi compresi i contatti con organizzazioni o associazioni di tali minoranze". Nel Capitolo VI, paragrafo 26 del Documento di Helsinki, gli Stati partecipanti alla CSCE si assumono inoltre l'impegno che "affronteranno le questioni relative alle minoranze nazionali in maniera

costruttiva, con mezzi pacifici e tramite il dialogo fra tutte le parti interessate sulla base dei principi e degli impegni della CSCE". In relazione all'espressione "tutte le parti interessate", il paragrafo 30 del Documento di Copenhagen riconosce "l'importante ruolo delle organizzazioni non governative, ivi compresi i partiti politici, i sindacati, le organizzazioni che si occupano dei diritti dell'uomo e i gruppi religiosi, per la promozione della tolleranza, delle diversità culturali, e per la soluzione delle questioni relative alle minoranze nazionali.

I processi riguardanti tutta la comunità richiedono condizioni di tolleranza. Un clima sociale e politico di rispetto e uguaglianza reciproci deve essere assicurato dalla legge e anche divulgato come etica sociale condivisa dall'intera popolazione. I mass-media hanno un ruolo speciale a tale riguardo. L'Articolo 6(1) della Convenzione quadro prevede che "le Parti incoraggeranno uno spirito di tolleranza e di dialogo interculturale e adotteranno misure efficaci per promuovere il rispetto e la comprensione reciproci nonché la cooperazione fra le persone abitanti nello stesso territorio, prescindendo dall'identità etnica, culturale, linguistica di tali persone, soprattutto nei campi dell'istruzione, della cultura e dei mezzi di informazione." In particolare gli Stati dovrebbero adoperarsi per porre fine all'uso pubblico di nomi e termini spregevoli e peggiorativi, adottando misure per contrastare l'uso di stereotipi negativi. Idealmente i rappresentanti delle comunità interessate dovrebbero partecipare alla scelta e all'elaborazione delle misure adottate per risolvere tali problemi.

II. PARTECIPAZIONE AL PROCESSO DECISIONALE

A. Forme di governo centrali

6) In base al paragrafo 35 del Documento di Copenhagen, il paragrafo 1 della Parte III del Rapporto della Riunione di esperti della CSCE sulle minoranze nazionali del 1991(Ginevra) sottolinea che "quando nei loro paesi vengono discusse questioni relative alla situazione delle minoranze nazionali, queste ultime dovrebbero avere l'effettiva opportunità di esservi coinvolte...[e]che [tale] partecipazione democratica delle persone appartenenti a minoranze nazionali o di loro rappresentanti ad organi decisionali o consultivi costituisce un elemento importante per la partecipazione effettiva agli affari pubblici." Il paragrafo 24 del Capitolo

VI del Documento di Helsinki sancisce l'impegno che gli Stati partecipanti alla CSCE "intensificheranno i loro sforzi in tale contesto per assicurare il libero esercizio, da parte delle persone appartenenti a minoranze nazionali, individualmente o in comunità con altri, dei loro diritti umani e libertà fondamentali, incluso il diritto di partecipare pienamente, conformemente alle procedure democratiche decisionali di ciascuno Stato, alla vita politica, economica, sociale e culturale dei loro paesi, anche mediante la partecipazione democratica agli organi decisionali e consultivi a livello nazionale, regionale e locale, fra l'altro, tramite partiti politici e associazioni".

La partecipazione si basa sul coinvolgimento sia per quanto riguarda l'opportunità di apportare contributi sostanziali ai processi decisionali che in termini di effetto di tali contributi. La nozione di buon governo si basa sul presupposto che non sempre è sufficiente un atto decisionale della maggioranza. In termini di struttura dello Stato, possono essere adeguate varie forme di decentramento per assicurare la massima rilevanza e responsabilità degli organi decisionali verso coloro che possono essere direttamente interessati, sia a livello statale che regionale. Ciò può essere attuato in vari modi in uno Stato unitario e in sistemi federali e confederativi. La rappresentanza di una minoranza negli organi decisionali può essere assicurata con una riserva di seggi (tramite quote, promozioni o altre misure), mentre altre forme di partecipazione comprendono una partecipazione garantita nelle competenti commissioni, con o senza diritto di voto. La rappresentanza in organi del potere esecutivo giudiziario, amministrativo o in altri organi può essere assicurata con mezzi analoghi sia tramite norme di legge che prassi consuetudinarie. Possono essere istituiti anche organi speciali per rispondere agli interessi delle minoranze. Valide opportunità per l'esercizio dei diritti delle minoranze richiedono l'adozione di specifiche misure nella pubblica amministrazione, compresa la garanzia di un "pari accesso ai relativi organi" come specificato nell'Articolo 5(c) della Convenzione Internazionale sull'eliminazione di tutte le forme di discriminazione razziale.

B. Elezioni

7) La democrazia contemporanea si fonda su sistemi rappresentativi garantite da elezioni libere, periodiche e giuste. L'obiettivo fondamentale ai sensi dell'Articolo 21(3) della Dichiarazione universale dei diritti dell'uomo è

che "la volontà popolare costituirà la base del potere del governo". Tale norma fondamentale è sancita da convenzioni e trattati universali ed europei, precisamente dall'Articolo 25 della Convenzione internazionale sui diritti civili e politici e dall'Articolo 3 del Protocollo aggiuntivo I della Convenzione europea sui diritti dell'uomo. Per gli Stati partecipanti all'OSCE, i paragrafi 5 e 6 del Documento di Copenhagen specificano che, "fra gli elementi di giustizia, essenziali per la piena affermazione della dignità inerente alla persona umana e dei diritti paritari e inalienabili di tutti gli uomini", "la volontà del popolo, liberamente e correttamente espressa mediante elezioni periodiche e oneste, costituisce la base dell'autorità e della legittimità di ogni governo".

Gli Stati, pur avendo ampia discrezionalità nella scelta delle specifiche modalità con cui ottemperare a questi obblighi, devono farlo senza discriminazione mirando a conseguire la massima rappresentanza possibile. In effetti nel contesto delle Nazioni Unite, il Comitato per i diritti dell'uomo ha chiarito nel paragrafo 12 del Commento generale 25 sull'Articolo 25 (57a Sessione, 1996) che la "libertà di espressione, riunione e associazione è una condizione essenziale per l'effettivo esercizio del diritto di voto e deve essere pienamente tutelata. [...] Le informazioni e i materiali concernenti le votazioni dovrebbero essere disponibili nelle lingue delle minoranze." Inoltre il paragrafo 5 del Commento generale 25 chiarisce che "la condotta degli affari pubblici [...] è un ampio concetto che si riferisce all'esercizio del potere politico, e in particolare all'esercizio del potere legislativo, esecutivo e amministrativo. Esso riguarda tutti gli aspetti della pubblica amministrazione, inclusa la formulazione e attuazione della politica a livello internazionale, nazionale, regionale e locale".

Considerando che nessun sistema elettorale è neutrale dal punto di vista di diversi pareri ed interessi, gli Stati dovrebbero adottare sistemi che diano luogo a governi che abbiano la massima rappresentatività nella loro specifica situazione. Ciò è particolarmente importante per le persone appartenenti a minoranze nazionali che altrimenti potrebbero non avere un'adeguata rappresentanza.

8) In linea di principio le democrazie non dovrebbero interferire con i modi in cui il popolo si organizza politicamente - purché i suoi mezzi siano pacifici e rispettino i diritti dei terzi. Sostanzialmente si tratta della libertà di associazione come viene specificata in numerosi strumenti internazionali

inclusi: l'Articolo 20 della Dichiarazione universale dei diritti dell'uomo; l'Articolo 22 della Convenzione internazionale sui diritti civili e politici; l'Articolo 11 della Convenzione europea sui diritti dell'uomo e il paragrafo 6 del Documento di Copenhagen. La libertà di associazione è anche espressamente garantita per le persone appartenenti a minoranze nazionali ai sensi del paragrafo 32.6 del Documento di Copenhagen e dall'Articolo 7 della Convenzione quadro. Più specificatamente, il paragrafo 24 del Capitolo VI del Documento di Helsinki impegna gli Stati partecipanti alla CSCE ad "assicurare il libero esercizio, da parte delle persone appartenenti a minoranze nazionali, individualmente o in comunità con altri, dei loro diritti umani e delle libertà fondamentali, incluso il diritto di partecipare pienamente, [...], alla vita politica [...] dei loro paesi, anche [...] tramite i partiti politici e le associazioni".

Mentre il pieno rispetto della parità dei diritti e della non discriminazione ridurrà o eliminerà la necessità di partiti politici a base etnica, in talune situazioni tali partiti comunitari possono rappresentare l'unica speranza per la rappresentanza di specifici interessi e quindi di un'effettiva partecipazione. Ovviamente i partiti possono essere costituiti in altri modi, ad esempio in base ad interessi regionali. Idealmente i partiti dovrebbero avere un atteggiamento aperto e recepire problemi etnici come parte di problemi più ampli; pertanto i partiti tradizionali dovrebbero cercare di accogliere membri delle minoranze per ridurre la necessità o il desiderio di costituire partiti etnici: La scelta del sistema elettorale può essere rilevante a tal riguardo. In ogni caso nessun partito politico o altra associazione politica può istigare l'odio razziale, in quanto vietato dall'Articolo 20 della Convenzione internazionale sui diritti civili e politici e dall'Articolo 4 della Convenzione sull'eliminazione di tutte le forme di discriminazione razziale.

9) Il sistema elettorale può prevedere l'elezione sia dell'assemblea legislativa che di altri organi e istituzioni, inclusi i singoli funzionari. Mentre un sistema elettorale con collegio uninominale può offrire una sufficiente rappresentanza per le minoranze, a seconda di come siano strutturati i collegi elettorali e della concentrazione delle comunità minoritarie, la rappresentanza proporzionale potrebbe contribuire a garantire la partecipazione minoritaria: Varie forme di rappresentanza minoritaria sono attuate dagli Stati partecipanti all'OSCE, inclusi fra l'altro il sistema con "voto preferenziale" con cui gli elettori votano una lista di candidati in

ordine di preferenza; i sistemi a "liste aperte" con cui gli elettori possono esprimere una preferenza per un candidato di lista di un partito e votare anche per il partito; il sistema a "panachage", con cui gli elettori possono sostituire qualsiasi candidato in una lista con altri candidati scelti in liste diverse; e il sistema a "cumulation" con cui gli elettori possono esprimere più di un voto per un candidato preferito. Le soglie di votazione non sono tanto rigorose da impedire la rappresentanza delle minoranze.

10) Nel delineare i confini dei collegi elettorali, si dovrebbe tenere conto delle preoccupazioni e degli interessi delle minoranze nazionali al fine di assicurare la loro rappresentanza in seno agli organi decisionali. Per "equità" si intende che il sistema prescelto non debba arrecare pregiudizio a nessuno e che si debbano prendere in considerazione in maniera equa tutte le preoccupazioni e tutti gli interessi. Idealmente i confini devono essere determinati da un organo indipendente e imparziale per garantire, fra l'altro, il rispetto delle minoranze nazionali: tale garanzia spesso viene attuata negli Stati partecipanti all'OSCE a mezzo di commissioni elettorali permanenti.

    In ogni caso gli Stati non dovrebbero modificare i confini dei collegi elettorali, né in altro modo alterare le proporzioni della popolazione di un collegio al fine di ridurre o escludere la rappresentanza delle minoranze: Ciò è espressamente vietato dall'Articolo 16 della Convenzione quadro, mentre l'Articolo 5 della Carta europea sull'autogoverno sancisce che "Non verranno effettuate modifiche ai confini delle autorità locali senza consultare preventivamente le comunità interessate, possibilmente a mezzo di referendum quando ciò sia permesso dallo statuto" (vedere la raccomandazione 19 relativa all'organizzazione territoriale).

C. Strutture regionali e locali

11) Questa raccomandazione si applica a tutti i livelli di governo sottostanti alle autorità centrali (come province, regioni, prefetture, comuni, città, paesi, sia in collegi di uno Stato unitario che in collegi di uno Stato federale, incluse le regioni autonome ed altre autorità). Il godimento congruo di tutti i diritti dell'uomo da parte di ognuno significa parimenti che i diritti goduti a livello di governo centrale debbano essere goduti in tutte le strutture sottostanti. Tuttavia i criteri usati per la creazione di strutture a livello regionale e locale possono differire da quelli usati a

livello di governo centrale. Si possono anche creare strutture asimmetriche con variazioni dipendenti dalle differenti esigenze.

D. Organi consultivi

12) Il paragrafo 24 del Capitolo VI del Documento di Helsinki impegna gli Stati partecipanti alla CSCE ad "assicurare il libero esercizio, da parte delle persone appartenenti a minoranze nazionali, individualmente o in comunità con altri, dei loro diritti umani e delle libertà fondamentali, incluso il diritto di partecipare pienamente, alla vita [...] politica dei loro paesi, anche mediante la partecipazione democratica agli organi [...] e consultivi a livello nazionale, regionale e locale". Tali organi possono essere permanenti o *ad hoc*, parti del potere legislativo o esecutivo o aggregati a tali poteri, o da questi indipendenti. È noto che in numerosi Stati partecipanti all'OSCE sono previste Commissioni aggregate ad organi parlamentari, quali le tavole rotonde di minoranze. Tali commissioni possono funzionare, e in effetti funzionano, a tutti i livelli di governo incluse le amministrazioni autonome. Per essere efficaci tali organi dovrebbero essere composti da rappresentanti delle minoranze e da altri rappresentanti che abbiano particolari competenze. Essi dovrebbero anche disporre di adeguate risorse ed essere presi in considerazione dalle istanze decisionali. Oltre ad avere una funzione consultiva tali organi possono fungere da istituzioni intermediarie fra gli organi decisionali e i gruppi di minoranza. Questi organi possono anche stimolare iniziative al livello di governo e da parte delle comunità minoritarie, svolgendo compiti specifici connessi all'attuazione di programmi (ad esempio nel campo dell'istruzione). Inoltre commissioni *ad hoc* possono rivestire una particolare importanza per talune minoranze che dovrebbero esservi rappresentate.

13) La possibilità di un uso costruttivo di tali organi varia a seconda delle situazioni. Tuttavia, in ogni caso, il buon governo richiede iniziative positive da parte delle autorità per avvalersi degli organi consultivi costituiti, rivolgersi loro quando se ne presenti la necessità e invitarli a presentare i loro contributi: Un approccio aperto e globale da parte delle autorità rispetto a tali organi e ai loro membri contribuirà all'adozione di decisioni migliori, creando maggiore fiducia nella società nel suo insieme.

III. AUTOGOVERNO

14) Il termine "autogoverno" implica una misura di controllo da parte di una comunità su questioni che la riguardano. La scelta del termine "governo" non implica necessariamente una giurisdizione esclusiva, potendo comprendere anche incarichi amministrativi, gestione e specifiche giurisdizioni legislative e giudiziarie. Lo Stato può realizzare forme di autogoverno tramite delega o trasferimento di poteri o, nel caso di uno Stato federale, tramite una divisione iniziale dei poteri costituenti. Nell'ambito degli Stati partecipanti all'OSCE si fa riferimento in vario modo alle forme di "autogoverno." In nessun caso sono inclusi criteri etnici per le amministrazioni di autogoverno territoriali.

Nel paragrafo 35 del Documento di Copenhagen gli Stati partecipanti all'OSCE hanno rilevato "gli sforzi intrapresi per tutelare e creare condizioni idonee alla promozione dell'identità etnica, culturale, linguistica e religiosa di determinate minoranze nazionali mediante la costituzione, come uno dei possibili mezzi atti a conseguire tali finalità, di amministrazioni locali o autonome adeguate, rispondenti ai fattori specifici storici e territoriali relativi a tali minoranze e conformi alle politiche dello Stato in questione". Facendo seguito a tale enunciazione, il Rapporto della Riunione CSCE (di Ginevra) di esperti sulle minoranze nazionali rileva nel paragrafo 7 della Parte IV "che alcuni [degli Stati partecipanti] hanno ottenuto risultati positivi in un modo democratico appropriato, fra l'altro, mediante: [...] amministrazioni locali ed autonome, nonché l'autonomia su base territoriale, inclusa l'istituzione di organi consultivi, legislativi ed esecutivi scelti mediante elezioni libere e periodiche; l'amministrazione autonoma da parte di una minoranza nazionale degli aspetti concernenti la propria identità in situazioni in cui non si applichi l'autonomia su una base territoriale; forme di governo decentralizzate o locali; [...] fornitura di assistenza finanziaria e tecnica alle persone appartenenti a minoranze nazionali che lo desiderino per consentire loro di esercitare il proprio diritto di creare e preservare le proprie istituzioni, organizzazioni e associazioni educative, culturali e religiose [...]". Di natura più generale, il Preambolo della Carta Europea sulle autonomie locali rileva che "i principi di democrazia e decentramento dei poteri" costituiscono un contributo alla "salvaguardia e al rafforzamento delle amministrazioni autonome locali nei diversi paesi europei". In relazione a quest'ultimo punto la Carta Europea

sulle autonomie locali prevede nell'articolo 9 il diritto ad adeguate risorse finanziarie per l'esercizio di tali poteri decentrati.

15) La responsabilità in alcuni settori di interesse nazionale spetta allo Stato che deve assicurarne la regolamentazione tramite le proprie autorità centrali. Tali settori includono in particolare la difesa, essenziale per il mantenimento dell'integrità territoriale dello Stato; e la politica macroeconomica, importante in quanto il governo centrale funge da elemento equilibratore delle regioni con disparità economiche ; inoltre le classiche questioni diplomatiche. Considerato che altri settori possono avere importanti implicazioni nazionali, sarà necessario che anche questi siano regolamentati dalle autorità centrali entro una certa misura. La regolamentazione di tali settori può essere anche attuata congiuntamente con le unità territoriali o i gruppi minoritari specificamente coinvolti (vedere le raccomandazioni 18 e 20). Una tale condivisione di poteri normativi deve essere comunque compatibile con le norme relative ai diritti dell'uomo ed essere attuata in modo concreto e coordinato.

Un settore notoriamente di gestione comune, sia a livella territoriale che non territoriale, di particolare importanza per lo Stato nel suo complesso e per i gruppi minoritari, è quello dell'educazione. L'articolo 5.1 della Convenzione dell'UNESCO contro le discriminazioni nell'educazione menziona nei dettagli le modalità con cui tale gestione comune dovrebbe essere conseguita: "Gli Stati Parte della presente Convenzione concordano che: [...]

(b) È essenziale rispettare la libertà dei genitori e, ove applicabile, dei tutori legali, in primo luogo nello scegliere per i propri figli istituzioni diverse da quelle pubbliche, purché conformi agli standard educativi minimi fissati o approvati dalle competenti autorità e, in secondo luogo, di assicurare, compatibilmente con le procedure seguite dallo Stato nell'applicazione della propria legislazione, l'istruzione religiosa e morale dei figli conformemente alle proprie convinzioni; e nessun individuo o gruppo di persone dovrebbe essere obbligato a ricevere un'istruzione religiosa incompatibile con le proprie convinzioni;

(c) È essenziale riconoscere il diritto delle persone appartenenti a minoranze nazionali di esercitare le proprie attività educative, incluso il mantenimento delle proprie scuole e, a seconda della politica

educativa di ciascuno Stato, di usare o insegnare la propria lingua, purché: (i) tale diritto non sia esercitato in modo da impedire ai membri di tali minoranze la comprensione della cultura e della lingua dell'intera comunità e la partecipazione alle attività di quest'ultima, o in modo da pregiudicarne la sovranità nazionale; (ii) il livello di istruzione non sia inferiore al livello generale sancito o approvato dalle autorità competenti; e (iii) la frequenza in tali scuole sia facoltativa".

16) Il principio del governo democratico, enunciato nell'articolo 21 della Dichiarazione universale dei diritti dell'uomo, nell'articolo 25 della Convenzione internazionale sui diritti civili e politici, nell'articolo 3 della Convenzione europea sui diritti dell'uomo e nelle disposizioni dell'OSCE, è applicabile a tutti i livelli e a tutti gli organi di governo. Quando siano necessarie o auspicabili istituzioni di autogoverno, il godimento paritario dei diritti da parte di ognuno richiede l'applicazione del principio democratico a tali istituzioni.

A. Organismi non territoriali

17) La presente sezione tratta l'autonomia non territoriale, cui spesso si fa riferimento come autonomia "personale" o "culturale", che verosimilmente è per lo più utile quando viene applicata a gruppi geograficamente dispersi. Tale divisione di poteri, incluso il controllo su questioni specifiche, può avere luogo a livello statale o nell'ambito di organismi territoriali. In tutti i casi deve essere garantito il rispetto dei diritti umani di terzi. Inoltre, a tali organismi, che dovrebbero essere istituiti con processi concernenti l'intera comunità (vedi Raccomandazione 5) sarebbe necessario assicurare adeguate risorse finanziarie che permettano l'esercizio delle loro funzioni pubbliche.

18) Il presente paragrafo non intende riportare un elenco esaustivo delle possibili funzioni. Molto dipenderà dalla situazione, e in particolare dalle necessità e dai desideri della minoranza. A seconda delle situazioni, diverse tematiche rivestiranno maggiore o minore interesse per le minoranze e le decisioni in tali campi le riguarderanno in varia misura. Alcune funzioni possono essere condivise. Un'area di particolare interesse per le minoranze è il controllo sulle proprie denominazioni sia delle istituzioni rappresentative che dei singoli membri, come enunciato

nell'articolo 11(1) della Convenzione Quadro. Per quanto riguarda la religione, la Raccomandazione non sostiene l'ingerenza del governo nelle questioni religiose se non in relazione ai poteri delegati alle autorità religiose (come quelli che concernono, ad esempio, lo stato civile delle persone). La Raccomandazione inoltre non intende stabilire che le istituzioni delle minoranze debbano avere il controllo dei mezzi di informazione, sebbene le persone appartenenti a minoranze nazionali dovrebbero avere la possibilità di istituire e usufruire di propri mezzi di informazione, come garantisce l'articolo 9(3) della Convenzione Quadro. La cultura, ovviamente, ha molteplici aspetti che interessano campi quali lo stato sociale, l'abitazione e l'assistenza all'infanzia; lo Stato dovrebbe tener conto degli interessi delle minoranze nell'attività di governo in tali campi.

B. Organismi territoriali

19) Negli Stati europei esiste una tendenza generale verso il trasferimento dei poteri e l'applicazione del principio di sussidiarietà che implica che vengano prese decisioni quanto più direttamente possibile rivolte agli interessati e da questi ultimi adottate. L'articolo 4(3) della Carta europea sulle autonomie locali esprime tale finalità nel modo seguente: "Le pubbliche responsabilità saranno in generale esercitate di preferenza dalle autorità più vicine ai cittadini. Nell'assegnazione di responsabilità ad un altra autorità si dovrebbe valutare la portata e la natura del compito e dei requisiti di efficienza e economicità". L'autonomia territoriale può contribuire a preservare l'unità degli Stati pur incrementando il livello di partecipazione e di coinvolgimento delle minoranze affidando loro un ruolo più importante a un livello di governo che rifletta la concentrazione della loro popolazione. Anche le federazioni possono conseguire questo obiettivo, così come lo possono speciali organismi autonomi nell'ambito di Stati unitari o federali. E' anche possibile prevedere amministrazioni miste. Come è rilevato nella Raccomandazione 15, gli organismi non devono essere uniformi in tutto lo Stato, ma possono variare a seconda delle necessità e delle esigenze manifestate.

20) Le autorità autonome devono godere di un potere reale per adottare decisioni a livello legislativo, esecutivo e giudiziario. I poteri possono essere divisi all'interno dello Stato fra autorità centrali, regionali e locali e anche fra funzioni. Il paragrafo 35 del Documento di Copenhagen enuncia

le alternative "di amministrazioni locali o autonome appropriate, rispondenti a circostanze specifiche storiche e territoriali". Ciò chiarisce il fatto che non sia necessaria un'uniformità all'interno dello Stato. L'esperienza mostra che i poteri possono essere divisi anche secondo sfere di poteri pubblici esercitati tradizionalmente dal governo centrale, incluso il trasferimento di poteri della giustizia (sia sostanziale che procedurale) e i poteri sulle economie tradizionali. Le popolazioni interessate dovrebbero almeno partecipare sistematicamente all'esercizio di tale potere. Nel contempo il governo centrale deve mantenere i poteri per garantire giustizia e pari opportunità in tutto lo Stato.

21) I poteri laddove possono essere trasferiti su base territoriale per accrescere l'effettiva partecipazione delle minoranze, devono essere esercitati tenendo debito conto delle minoranze sotto tali giurisdizioni. Le autorità amministrative ed esecutive sono responsabili delle proprie attività nei confronti dell'intera popolazione del territorio. È quanto consegue dal paragrafo 5.2 del Documento di Copenhagen che impegna gli Stati partecipanti all'OSCE a garantire a tutti i livelli e a tutte le persone "una forma di governo a carattere rappresentativo, in base alla quale l'esecutivo sia responsabile di fronte al potere legislativo eletto o all'elettorato".

IV. GARANZIE

A. Salvaguardie costituzionali e giuridiche

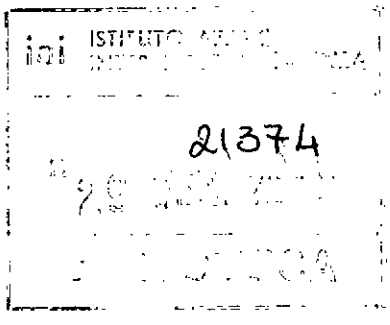
22) La presente sezione riguarda la procedura intesa a recepire norme nella legislazione. Norme giuridiche molto dettagliate possono essere utili in alcuni casi, mentre in altri possono essere sufficienti leggi quadro. In tutti i casi, come rilevato nella Raccomandazione 5, le norme dovrebbero derivare da iter aperti. Tuttavia, una volta adottate, è necessaria la stabilità per garantire sicurezza agli interessati, specialmente alle persone appartenenti a minoranze nazionali. Gli articoli 2 e 4 della Carta europea sulle autonomie locali danno preferenza alle norme costituzionali. Per conseguire l'equilibrio desiderato fra stabilità e flessibilità, può essere utile stabilire riesami ad intervalli fissi, depoliticizzando così anticipatamente il processo di emendamento e rendendo il processo di riesame meno controverso.

23) La presente Raccomandazione differisce dalla Raccomandazione 22 in quanto promuove l'esame di regimi nuovi e innovativi, piuttosto che specificare i termini di emendamento delle norme esistenti. Le autorità responsabili potrebbero adottare differenti approcci in situazioni diverse fra le autorità centrali e i rappresentanti delle minoranze. Senza compromettere le posizioni finali, un approccio del genere potrà dar luogo a esperienze positive, anche attraverso processi di innovazione e attuazione.

B. Rimedi

24) Nel paragrafo 30 del Documento di Copenhagen, gli Stati partecipanti all'OSCE "riconoscono che le questioni relative alle minoranze nazionali possono essere risolte in maniera soddisfacente solo in un quadro politico democratico basato sullo stato di diritto, con un sistema giudiziario indipendente e funzionante." L'idea di rimedi efficaci è contenuta anche nell'articolo 2(3) della Convenzione internazionale sui diritti civili e politici, mentre nell'articolo 11 della Carta europea sulle autonomie locali viene specificato "un rimedio giudiziario".

Il riesame giuridico può essere eseguito da corti costituzionali e da competenti organi internazionali per i diritti dell'uomo. Anche i meccanismi e le istituzioni non giudiziarie, come le commissioni nazionali, i difensori civici, i comitati per le questioni interetniche o razziali, ecc., possono svolgere un ruolo importante, come contemplato dal paragrafo 27 del Documento di Copenhagen, dall'articolo 14(2) della Convenzione Internazionale sull'eliminazione di tutte le forme di discriminazione razziale e dal paragrafo 36 della Dichiarazione di Vienna e del Programma di azione adottato dalla Conferenza mondiale sui diritti dell'uomo nel 1993.



12

Professor Yoram Dinstein

AUTONOMY

The various models of creating a legal foundation for an autonomous regime:

1. BY A MULTILATERAL TREATY ALONE

This happens when, as a result of a major war, borders are redrawn. The victors decide to grant sovereignty over a certain region subject to an autonomy arrangement. The treaty lies at the root of the arrangement.

Example: Memel

An autonomy regime (in the period between the two World Wars) was based on:

(i) Pursuant to Article 99 of the 1919 Peace Treaty of Versailles, Germany renounced title to Memel in favour of the Principal Allied and Associated Powers.

(ii) In 1924, the Paris Convention Concerning the Territory of Memel was concluded by Britain, France, Italy, Japan and Lithuania. The four Principal Allied Powers transferred to Lithuania title to Memel, subject to the Convention's stipulations. The Convention provided that "The Memel Territory shall constitute, under the sovereignty of Lithuania, a unit enjoying legislative, judicial, administrative and financial autonomy".

2. BY A BILATERAL AGREEMENT ALONE

This happens when a certain region is on its way to statehood. As a State *in statu nascendi*, it concludes an agreement of autonomy (as a transitory stage) with the administering country. The agreement is the *font et origo* of the autonomy regime.

Example: Palestinian Authority (Council)

(i) An autonomy regime was created by an international agreement between Israel and the PLO (the legal status of the agreement is not entirely clear, since one of the parties is not a State, yet it is treated by both parties as a treaty). This was done in the 1994 Cairo Agreement on the Gaza Strip and the Jericho Area, superseded by the 1995 Washington Interim Agreement on the West Bank and the Gaza Strip.

(ii) The agreements of 1994 and 1995 are bilateral. Yet, they were "witnessed" by

the USA, the Russian Federation and Egypt (both agreements), as well as by the European Union and Norway (only the Interim Agreement). The legal meaning of the process of witnessing is not clear.

3. BY LOCAL LEGISLATION ALONE

This happens when a certain region constitutes incontestably a part of an existing State, which chooses of its own free will (at least, without pressure from the outside) to bestow on the region a special autonomous regime.

Example: Greenland

An autonomy regime was created by the Denmark in the Greenland Home Rule Act of 1978 (in force since 1979, following a referendum).

4. BY LOCAL LEGISLATION BASED ON BOTH BILATERAL AND MULTILATERAL TREATIES

This happens when a State confers autonomy on a region (usually a border region) as a result of pressure from the outside. Domestically, the autonomy arrangements are derived from the local legislation and/or constitution. Internationally, the arrangements flow from – and follow – a bilateral and/or multilateral treaty.

Example: Alto Adige

The autonomy regime is based on:

(i) Italian Constitution of 1948 (together with 4 other regions: Sicily, Sardinia, Friuli-Venetia Julia, and Valle d'Aosta).

(ii) Italian legislation: 1948 Law replaced by 1972 New Autonomy Law.

(iii) Bilateral treaty: Italy-Austria (De Gasperi-Gruber agreement), Paris, 1946. Plus a "Gentlemen's Agreement" (the so-called "Package" and Operational Calendar) of 1969.

(iv) Multilateral treaty: the Paris Peace Treaty, 1947, incorporates the text of the bilateral agreement of 1946 in Annex IV. Article 10(2) of the Peace Treaty sets forth: "The Allied and Associated Powers have taken note of the Provisions (the text of which is contained in Annex IV) agreed upon by the Austrian and Italian Governments on September 5, 1946". It is not clear what this taking of note signify legally. The Settlements of Dispute clause in the Peace Treaty (Article 83, providing for the establishment of a Conciliation Commission) does not apply to disputes arising re Article 10 or Annex IV.

5. BY LOCAL LEGISLATION BASED ON A GENERAL ASSEMBLY RESOLUTION

This happens when a State desires to extend its sovereignty over a region beyond its control. It can only do so with the cooperation of the United Nations (either the Security Council or the General Assembly, depending on which organ is seized with the matter). The price of sovereignty is autonomy.

Example: Eritrea

The autonomy regime (which was in force until 1962, when Eritrea was fully annexed by Ethiopia [of course, subsequently Eritrea has gained independence]) was based on:

(i) Ethiopian Federal Act of 1952.

(ii) Detailed recommendations - predicated on the premise that "Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian crown" – were laid down in UN General Assembly Resolution 390(V), adopted in December 1950. At the time, Eritrea was under British administration. Power was handed over by Britain, in 1952, upon the implementation of Resolution 390(V). Thus, the assumption of control of Eritrea by Ethiopia and the establishment of autonomy there occurred simultaneously (after the necessary legal arrangements had been worked out by UN legal experts).

6. BY LOCAL LEGISLATION BASED ON A BILATERAL TREATY AS WELL AS A RESOLUTION OF THE COUNCIL OF THE LEAGUE OF NATIONS

This is the same scenario, except that another State is contesting the extension of sovereignty. The sovereignty-subject-to-autonomy arrangement may then be contingent on a bilateral agreement with that other State.

Example: Aaland Islands

An autonomy regime is based on:

(i) Finnish legislation: Aaland Autonomy Act of 1922 (renewed with major amendments in 1951 and 1991).

(ii) The Finnish domestic legislation was engendered by a bilateral agreement between Sweden and Finland, 1921.

(iii) The bilateral agreement was instigated and approved by the Council of the League of Nations in 1921. After the conclusion of the agreement, the Council guaranteed it (27 June 1921).

(iv) The League's Council was seized with the entire issue of sovereignty over the Aaland Islands. The Council considered itself competent to resolve the matter because Finland was a new State and its borders were not yet deemed stabilized. Ultimately, the Council recognized that sovereignty belonged to Finland. However, that sovereignty was restricted in two respects: protection of the separate *Swedish) ethnic character of the islands and demilitarization. Both Sweden and Finland accepted the Council's decision.

(v) [The United Nations did not endorse the League of Nations' guarantee (which is no longer necessary in the relations between Finland and Sweden)].

(vi) [The Finnish-Swedish bilateral agreement is not to be confused with the multilateral Geneva Convention of 20 October 1921 on the Non-Fortification and Neutralisation of the Aaland Islands, which is an outgrowth of the same Council decision but does not deal with the issue of autonomy].

Allegato 2

Ministero degli Affari Esteri

23 aprile 1992

Norma di linguaggio per la Stampa

La nota con cui il "Pacchetto" è stato trasmesso il 22 aprile all'Austria contiene un preciso riferimento all'accordo italo-austriaco raggiunto a Parigi nel 1946, il quale, essendo un trattato internazionale, può essere oggetto in alcuni casi di ricorso alla Corte internazionale dell'Aja. La nota che accompagna il "Pacchetto" può essere interpretata in modo massimale o minimale; non c'è dubbio in ogni caso che il riferimento all'accordo di Parigi possa permettere una tutela di grande cornice della minoranza tedesca, al contrario è esclusa una microconflittualità internazionale sulle singole norme del pacchetto.

Nella nota trasmessa all'Ambasciatore austriaco a Roma si ricorda tra l'altro che lo Statuto speciale del Trentino-Alto Adige "ha inteso realizzare il più alto soddisfacimento dell'autonomia e delle finalità di tutela della minoranza tedesca indicate dall'accordo di Parigi". Si sottolinea inoltre come l'Italia intenda allargare questo processo, avendo espresso all'Austria la volontà di collocare la tutela "nell'ambito europeo e nel quadro dei meccanismi CSCE", come ha evidenziato anche da Vienna il Cancelliere Vranitzky commentando la nota italiana.

La volontà italiana di portare la normativa per l'Alto Adige sotto l'ombrello della CSCE è rilevata anche nella nota che accompagna il "Pacchetto": "il Governo italiano considera il risultato raggiunto nell'attuazione dell'autonomia per la provincia di Bolzano come un punto di riferimento importante – si legge nella nota – per la tutela delle minoranze che si sta elaborando anche nel quadro della CSCE, i cui specifici meccanismi di verifica potranno essere utilizzati pure essi per garantire la conformità del trattamento di tale minoranza ai principi che verranno codificati ai fini di una pacifica e serena convivenza nel quadro della nuova Europa".

Una forma di ricorso internazionale rientra quindi nella logica delle cose, soprattutto per questo tipo di tutela di una minoranza etnica che potrebbe divenire un esempio europeo di tutela delle minoranze.

[redacted]

Allegato 3

Bundesministerium für auswärtige Angelegenheiten
GZ. 605.02.00/87-II.2/92

Verbalnote

Das Bundesministerium für auswärtige Angelegenhei-ten entbietet der Italienischen Botschaft seine Empfehlungen und beehrt sich Nachstehendes mitzuteilen:

1. Die österreichische Regierung hat die Note des italienischen Außenministeriums vom 22. April 1992 und insbesondere den darin zum Ausdruck kommenden zukunftsweisenden und konstruktiven Geist mit Befriedigung zur Kenntnis genommen.

In seiner Verbalnote vom 22. April 1992 hat sich das Bundesministerium für auswärtige Angelegenheiten in Entsprechung der Entschließungen des österreichischen Nationalrats vom 9. Juni sowie vom 1. Dezember 1988 eine weitere Außerung in angemessener Zeit hinsichtlich der Frage vorbehalten, inwieweit die im ersten Absatz der obgenannten italienischen Note beschriebene Liste von Bestimmungen den "Maßnahmen" entspricht, welche die italienische Regierung in ihrer Erklärung vom 3. Dezember 1969 angekündigt hat. Diese Überprüfung steht im Zusammenhang mit Punkt 13 des Operationskalenders, welcher im Zuge der im Lichte der Resolutionen der UN-Generalversammlung 1497 (XV) und 1661 (XVI) geführten Verhandlungen von den Außenministern Österreichs und Italiens am 30. November 1969 in Kopenhagen festgelegt wurde.

An die Italienische Botschaft
Rennweg 27
1030 Wien

Italia e Austria per le minoranze dell'Alto Adige-Südtirol: un modello?

Giorgio Conetti
Università dell'Insubria, Como

I PROBLEMI, IL CONTESTO E LO SVILUPPO DEL CASO ALTO ADIGE-SÜDTIROL

La questione della condizione della minoranza di lingua tedesca nell'Alto Adige è stata risolta giuridicamente, ma anche, e fortunatamente, nella soddisfacente applicazione delle norme giuridiche di fonte nazionale e soprattutto di fonte interna che hanno provveduto alla soluzione. Naturalmente non basta una disciplina normativa ma occorre che di questa si faccia materiale di completa applicazione.

Facile, quindi, è il compito di chi oramai non è coinvolto in una polemica aperta e al contempo difficile per la vastità della questione, su cui a tutti è noto esservi una bibliografia sterminata che fortunatamente in questi ultimi anni non si accresce perché non vi è più ragione di farlo.

È evidente che nemmeno un'ombra della vastità di elaborazione su questo tema, né del poco che vi ho portato io, potrà profilarsi oggi in questa occasione perché la limitazione dello spazio impone che io usi poche decine di minuti.

Accentuerò, per artificio retorico più che per convinzione, una tesi che può avere qualche minimo elemento di originalità e perciò presentarsi in questa sede come motivo eventuale di discussione ed approfondimento, per quel tanto di provocatorio che ogni tesi contiene.

In sintesi ciò che mi pare di potervi dire in termini di tesi da discutere è che, a mio parere, la questione della controversia per la condizione della popolazione di lingua tedesca nell'Alto Adige, ha avuto due momenti diversi e distinti e ha potuto essere affrontata e risolta nel secondo momento o fase, contraddistinta dal venir meno, o dal perdere di progressiva rilevanza della controversia internazionale di tipo implicitamente politico, divenendo invece una questione da trattarsi prevalentemente con la popolazione interessata per il raggiungimento di un regime sostanziale di tutela che fosse ritenuto ed accettato come adeguato e soddisfacente.

La questione ha trovato soluzione nel momento in cui l'interlocutore principale, anche agli occhi del governo austriaco, è stato il gruppo minoritario e largamente maggioritario nell'area interessata attraverso le sue espressioni politiche organizzative. Laddove invece, nella prima fase a carattere politico internazionale, il permanere di un dubbio dell'esistenza di una *rien à penser* dell'implicita possibilità che una questione di tipo territoriale o politica che si presentasse nei termini di esercizio del diritto dell'auto-determinazione dei popoli, creava gravi problemi e impediva che si rendesse possibile l'impresa sul regime sostanziale.

La prima fase contraddistinta da questi elementi di politica internazionale può situarsi tra il 1938 ed il 1960-61. La questione sorge storicamente nel momento in cui il confine tra lo stato italiano e la neo nata Repubblica d'Austria viene spostato al Brennero. E tuttavia la questione sorge in termini politici internazionali nel 1938, a seguito dell'Anschluss che porta l'Austria a perdere la sua indipendenza e ad essere ricompresa nel Reich tedesco, dominato dal dittatore nazista che persegue un palese e programmato disegno politico pan-germanico di riunire in un'unica forma nazionale tutto il popolo tedesco.

Progetto e programma che si concretizzano immediatamente, a seguito dell'annessione dell'Austria, nel rivendicare all'unità del popolo tedesco territori che erano già stati austriaci. Nella successione storica austriaca a capo del Reich ciò implicava rivendicare territori, ed i primi rivendicati e tosto ottenuti nello stesso anno a settembre, a seguito degli accordi di Monaco, furono i territori abitati dalla popolazione di lingua tedesca dei Sudeti nella Cecoslovacchia.

[redacted]

Era evidente la conseguenza di tutto ciò. Si poneva in termini politici il problema della popolazione di lingua tedesca dell'Alto Adige, già popolazione austriaca.

Il problema trova la nota soluzione negli accordi del 1939 tra i due dittatori: quella dell'esodo, delle opzioni, alcune vincolate, altre apparentemente libere. La soluzione politica non del trasferimento del territorio ma della popolazione.

Noi la giudichiamo aberrante, ed invece riteniamo essere stata un'opera di grande saggezza politica quella compiuta nell'accordo De Gasperi-Gruber che ha cancellato ogni traccia di ciò. Conseguenza delle sistemazioni territoriali derivanti dal Primo conflitto, lo scambio di popolazioni è stato un meccanismo più volte ripetuto, e lunga sarebbe la citazione della serie dei trattati che lo prevedono. Analogamente è avvenuto anche dopo la Seconda guerra mondiale proprio su questi confini, anche pochi anni fa, con gli accordi di Osimo che pure di opzioni parlavano; e connesso a tali opzioni era il vincolato trasferimento della residenza, la sistemazione residua del territorio di Trieste.

Subito dopo il Secondo conflitto mondiale, la questione in termini di politica internazionale e di questione di sovranità territoriale si ripropone, perché la risorta Repubblica austriaca la ripresenta alla conferenza di pace. Non trova, per una serie di ragioni note, esito favorevole e la conferenza si orienta per il mantenimento del confine del Brennero.

Quando ciò avviene, si trova una soluzione che consisteva in quella consolidata dalla pratica immediatamente successiva al Primo conflitto mondiale. Anche qui c'era un modello da seguire, già usato dalla politica internazionale. Il programma wilsoniano disponeva che si formassero, a seguito della Prima guerra mondiale, stati coincidenti con le nazioni, secondo linee etniche definite, e che dove questo non poteva avvenire e il confine si distaccasse dalla linea etnica. La minoranza che in questo modo veniva ad essere compresa in un determinato stato doveva ottenere delle garanzie internazionali fissate in un trattato.

Così avvenne in una numerosa serie di trattati imposti dalle potenze vittoriose agli stati che si accrescevano con minoranze. Ciò non riguardava ovviamente gli stati vincitori, e lo stato italiano, che all'epoca si era accresciuto con i territori popolati da gruppi consistenti di lingua tedesca o slava, non si era visto vincolato da questi trattati. Cosa che avviene nella proposta dell'Austria che sfocia nell'accordo De Gasperi-Gruber e che corrisponde ad un modello di trattati successivi alla Prima guerra mondiale, i quali contemperavano la sistemazione territoriale insoddisfacente dal punto di vista etnico con una garanzia di fonte internazionale per la minoranza.

Nella proposta austriaca questa norma doveva essere l'art. 10 del trattato di pace, incluso e parte integrante del trattato di pace non diversamente da come avvenne per quelli successivi alla Prima guerra mondiale.

Si trattava di una copertura multilaterale in quanto coinvolgeva le potenze alleate associate che concludevano il trattato di pace. Invece per una resistenza da parte italiana, questo accordo diventa a sé stante, non viene incluso nel trattato di pace ma allegato allo stesso e di cui il trattato prende atto.

La soluzione all'epoca non è gradita dalla parte austriaca; però è "felice" perché in questo modo l'accordo De Gasperi-Gruber nasce, vive e continua a vivere come accordo liberamente sottoscritto dalle due parti interessate e non come parte di un trattato di pace sentito come imposizione che ne avrebbe forse compromesso la vitalità.

Questo accordo non è stato attuato in modo soddisfacente nella sua prima fase di attuazione. Lo stato austriaco appena acquisisce piena soggettività e capacità di agire internazionale, dopo il trattato di pace che ne restaura a pieno l'indipendenza, fa valere ciò. Non trova, in una prima fase, sufficiente attenzione da parte italiana. Non trovandola, la controversia che ne sorge si trasforma e si configura nuovamente non di tipo giuridico-applicativo di un trattato ma di tipo politico, concernente la condizione di quella che non veniva più chiamata minoranza di lingua tedesca, ma austriaca in Italia e come tale pone il problema della condizione futura della minoranza austriaca in Italia. La questione è proposta nel 1960 alle Nazioni Unite.

Era implicito un problema politico di rivendicazione dell'autodeterminazione quando si parla di popolo austriaco. L'Assemblea delle Nazioni Unite non segue questa impostazione, riconduce il punto all'ordine del giorno all'applicazione del trattato. È così avviene. Attraverso una tecnica estremamente complessa per cui lo stato italiano, attraverso i suoi organi, in questo caso una ben nota commissione di studio e i contatti con la rappresentanza politica della popolazione di lingua tedesca, raggiunge un insieme di misure compresa la modifica con legge costituzionale dello statuto della regione Trentino-Alto Adige. È una soluzione interna che la popolazione di lingua tedesca ritiene soddisfacente. L'attuazione di questa soluzione interna non fa parte di un nuovo accordo internazionale, ma è la precondizione perché di fatto poi lo stato austriaco riconosca che l'accordo è attuato in modo soddisfacente.

Non è questa la sede di dibattere se il collegamento tra la dichiarazione austriaca, rilasciata nel 1992, con cui si assumeva compiuta e soddisfacente l'attuazione del trattato e quindi chiusa la controversia internazionale, sia un *propter-hoc* o un *post-hoc* e se vi era un nesso causale oggetto di un'intesa politica tra i due stati o se solo una successione temporale che nei fatti dava garanzia alla parte austriaca.

A me interessa rilevare che la quietanza liberatoria nasce su una base sostanziale: lo stato italiano, autonomamente, con un suo ordinamento e nel rispetto dei suoi valori (democrazia, pluralismo e rappresentatività), giunge ad una soluzione che oggi in Europa è considerata avanzata, e tale soluzione, prima che essere oggetto di gradimento da parte dell'amico stato austriaco, è oggetto di un accordo politico con la parte della popolazione italiana di lingua tedesca che accetta e apprezza questo come un risultato ottenuto entro l'ordinamento dello stato italiano.

La questione non è più di auto-determinazione dei popoli, ma di pieno soddisfacimento di un ordinamento democratico che tuteli in maniera adeguata, e con il coinvolgimento dei gruppi interessati, una minoranza.

Franz Matscher
Università di Salisburgo
Österreichisches Institut für Menschenrechte

LA VERTENZA SUD-TIROLESE FRA L'AUSTRIA E L'ITALIA: DALL'INIZIO ALLA CONCLUSIONE

Introduzione: i precedenti

Dopo trent'anni di lotta politica, di attentati dinamitardi e di dura repressione, di interventi di organi internazionali, ma anzitutto di pazienti negoziati condotti con alto senso di responsabilità dalle parti interessate, la vertenza sud-tirolese trovò una soluzione verso la fine del 1991.

Vorrei tracciare le grandi linee dell'*iter* percorso, mettendo in particolare rilievo il metodo seguito. Infatti, secondo me, fu in primo luogo grazie ad esso che si è potuto raggiungere una soluzione. Per poi concludere la mia relazione vorrei porre la questione di vedere in quale misura il metodo seguito per risolvere la vertenza in esame possa servire da modello per la soluzione di problemi analoghi presenti in altri paesi europei.

Ma per rendere comprensibile l'origine e lo sviluppo della controversia, conviene menzionare in breve gli antecedenti storici. A questo riguardo, la Corte costituzionale italiana, in una sentenza recente, ha detto in sostanza che, per pienamente apprezzare il problema giuridico concreto riguardante la situazione alto-atesina, si deve tener conto dei ben noti precedenti storici che sono a monte della soluzione raggiunta e della sua complessa e travagliata attuazione."

Vorrei aggiungere che questo vale per tutti i problemi delle minoranze.

Se preferisco parlare del Sud-Tirolo e non dell'Alto Adige, è perché non apprezzo denominazioni geografiche artificiali, inventate dalla politica e imposte, dall'amministrazione, in sostituzione alle denominazioni tradizionali e storiche.

Nella seconda metà del secolo scorso l'Italia aveva più o meno raggiunto l'unità nazionale per opera di solidi movimenti nazionali i quali, nel corso di pochi anni, spazzarono via regimi superati e marci (Stato Pontificio, Regno delle Due Sicilie, i vari ducati e granducati nel centro Italia) e, approfittando delle correnti della politica internazionale, aveva respinto - meno con la forza delle armi e più per via di una intelligente e ammirevole diplomazia (Cavour) - l'occupazione straniera, rappresentata in primo luogo dall'Impero austro-ungarico.

Arriviamo all'inizio del secolo presente: l'unità nazionale dell'Italia era quasi raggiunta; dei territori a popolazione italiana rimasero fuori dal Regno: il Trentino, il territorio di Trieste e l'Istria, questi ultimi con popolazione mista italiana e slovena. I territori suddetti restarono annessi all'Austria.

In quel tempo, il Regno d'Italia aveva formato con l'Impero germanico e con l'Impero austro-ungarico la Triplice; era cioè alleata, benché con poco fervore, alla Germania e all'Austria, restando ferme le aspirazioni nazionali per Trento e Trieste - territori a popolazione di maggioranza italiana.

Solo un nazionalismo ad oltranza, del resto combattuto da spiriti illuminati (come Turati, Salvemini e Bissolati), che vi videro una falsificazione degli ideali del Risorgimento (Mazzini, Garibaldi, Mancini), rivendicò pure la frontiera del Brennero, comprendendo dunque anche il Sud-Tirolo dove, all'epoca, vi erano pochissimi italiani. Infatti secondo il censimento del 1910, l'ultimo prima della Prima guerra mondiale, essi costituivano il 3%, ossia circa settemila persone, contro il 97%, ossia poco meno del totale dei 280.000 abitanti sud-tirolesi e ladini; nella città di Bolzano, con circa trentamila abitanti, vi erano quattromila italiani, in prevalenza immigrati trentini.

Nell'estate del 1914 scoppiò la Prima guerra mondiale. All'inizio, l'Italia rimase neutrale ma poi, in seguito al trattato segreto di Londra del 26 aprile 1915 - nel quale essa si era fatta promettere Trieste, Trento e Bolzano, al prezzo di ritirarsi dalla Triplice e di passare dalla parte degli alleati occidentali - l'Italia entrò in guerra con l'Austria e con la Germania il 24 maggio 1915.

Le vicende della Prima guerra mondiale sono conosciute: si combatté con eroismo esemplare da ambedue le parti, la guerra sul fronte italo-austriaco costò centinaia di migliaia di morti e feriti in particolare sull'Isonzo e sul Carso; le potenze centrali, l'Austria e la Germania, furono sconfitte nel 1918.

Il trattato di pace di Saint-Germain del 10 settembre 1919 confermò la già di fatto avvenuta dissoluzione dell'Impero austro-ungarico e accordò all'Italia Trieste e Trento, chiamate la "Venezia Giulia" e la "Venezia Tridentina", compreso il Sud-Tirolo, nonostante l'opposizione ferma della popolazione interessata e malgrado le proteste austriache, non accolte dagli alleati vincitori.

Vorrei notare che, in contrasto con quanto certi hanno poi affermato, nessun metro quadrato di territorio sud-tirolese era stato conquistato militarmente dall'Italia nel corso della guerra; esso fu occupato solo in seguito all'armistizio di Villa Giusti del 3 novembre 1918.

Fu in particolare la storiografia dell'epoca mussoliniana che professò la tesi totalmente falsa di una conquista militare del Sud-Tirolo, tesi che fu poi rafforzata con la costruzione in territorio sud-tirolese di ossari di caduti italiani, che vi furono portati da altre parti del fronte.

In uno schema analogo si inserisce la politica del senatore nazionalista italiano Ettore Tolomei, poi amico di Mussolini, il quale inventò circa duemila nomi italiani artificiali per villaggi, borgate, montagne e ruscelli sud-tirolesi al fine di "provare" l'italianità del territorio. Tipico il nome, pure da lui inventato, di "Vetta d'Italia", nome ignoto nella cartografia italiana dell'epoca precedente, che egli dette a una montagna di confine delle Alpi Noriche (Dreiherrenspitze) e che poi giocò un ruolo importante a Saint-Germain per ingannare gli alleati occidentali.

Infatti, a dispetto dei principi enunciati dal presidente americano Wilson, che avrebbero dovuto servire da programma per i trattati di pace, principi che per quanto riguarda l'Austria e l'Italia prevedevano il tracciato della frontiera secondo confini etnici chiaramente stabiliti ("along clearly recognisable lines of nationality"- il n. 9 dei quattordici punti, sviluppati nel suo discorso dinanzi al Congresso, dichiarazione dell'8 gennaio 1918) - furono soddisfatte le richieste nazionaliste e strategiche italiane di portare il confine statale, in parte al di là dello spartiacque delle Alpi, includendo così nel territorio italiano un gruppo massiccio di circa 280.000 allogeni di lingua non italiana.

L'Italia democratica dei primi anni Venti introdusse altresì l'amministrazione italiana, gestita da funzionari italiani, ma rispettò almeno in parte le autonomie locali e la lingua degli abitanti.

Pertanto, questo regime durò poco, infatti esso fu sconvolto ben presto dal fascismo, il quale, dall'inizio, si era proposto di italianizzare il territorio al 100%, introducendo la scuola d'obbligo di lingua italiana, eliminando l'uso di quella tedesca dalla vita pubblica, cercando di limitarlo anche nella vita privata, sostituendo i funzionari autoctoni con amministratori fatti venire dalle vecchie province, e, in particolare, forzando l'immigrazione in massa dal Sud. Così, verso la fine degli anni Trenta, la popolazione della provincia era salita a 350.000, di cui circa centomila di lingua italiana. La città di Bolzano era cresciuta a ottantamila abitanti, di cui cinquantamila italiani.

A partire dal 1936, Hitler e Mussolini si erano progressivamente avvicinati, nell'interesse delle rispettive imprese imperialistiche, quelle del Duce in Africa, quelle del *Führer* tedesco in centro-Europa, e i due dittatori - forse meno per concordanza ideologica e consonanza d'animo, ma più per fini politico-strategici - divennero alleati.

Essi si proposero di eliminare l'unico ostacolo, che li separava, la questione sud-tirolese, obbligando con l'accordo Ribbentrop-Ciano del 23 giugno 1939 i sud-tirolesi a votare sia per la Germania, dovendo in seguito lasciare la terra e emigrare verso quel paese, sia per l'Italia, con la prospettiva di essere trasferiti nelle vecchie province. Così il Sud-Tirolo, terra a maggioranza di lingua tedesca, avrebbe cessato di esistere. Si era trattato dunque di una specie di epurazione etnica.

L'80% dei sud-tirolesi votò per la Germania, ma a causa della guerra solo circa ottantamila emigrarono verso la Germania e verso l'Austria, che nel marzo 1938 era stata occupata da Hitler.

ACCORDO DE GASPERI-GRUBER DEL 5 SETTEMBRE 1946.

ART. 1

Gli abitanti di lingua tedesca della provincia di Bolzano e quelli dei vicini comuni bilingui della provincia di Trento, godranno di completa uguaglianza di diritti rispetto agli abitanti di lingua italiana, nel quadro delle disposizioni speciali destinate a salvaguardare il carattere etnico e lo sviluppo culturale ed economico del gruppo di lingua tedesca.

In conformità dei provvedimenti legislativi già emanati o emanandi, ai cittadini di lingua tedesca sarà specialmente concesso:

A) l'insegnamento primario e secondario nella loro lingua materna;
B) l'uso, su di una base di parità, della lingua tedesca e della lingua italiana nelle pubbliche amministrazioni, nei documenti ufficiali, come pure nella nomenclatura topografica bilingue;
C) il diritto di ristabilire i nomi di famiglia tedeschi che siano stati italianizzati nel corso degli ultimi anni;
D) l'uguaglianza di diritti per l'ammissione a pubblici uffici, allo scopo di attuare una più soddisfacente distribuzione degli impieghi tra i due gruppi etnici.

ART. 2

Alle popolazioni delle zone sopraddette sarà concesso l'esercizio di un potere legislativo ed esecutivo autonomo, nell'ambito delle zone stesse. Il quadro nel quale detta autonomia sarà applicato sarà determinato, consultando anche elementi locali rappresentanti la popolazione di lingua tedesca.

ART. 3

Il Governo italiano, allo scopo di stabilire relazioni di buon vicinato tra l'Austria e l'Italia, s'impegna dopo essersi consultato con il Governo austriaco, ed entro un anno dalla firma del presente Trattato:

A) a rivedere, in uno spirito di equità e di comprensione, il regime delle opzioni di cittadinanza, quale risulta dagli Accordi Hitler-Mussolini del 1939;
B) a concludere un accordo per il reciproco riconoscimento della validità di alcuni titoli di studio e diplomi universitari;
C) ad approntare una convenzione per il libero transito dei passeggeri e delle merci tra il Tirolo settentrionale e il Tirolo orientale, sia per ferrovia che, nella misura più larga possibile, per strada;
D) a concludere accordi speciali tendenti a facilitare un più esteso traffico di frontiera e scambi locali di determinati quantitativi di prodotti e di merci tipiche tra l'Austria e l'Italia.

1. I primi tentativi di soluzione dopo il 1945

Arriviamo dunque al 1945, alla fine della Seconda guerra mondiale. La Germania e l'Italia furono ambedue sconfitte, un movimento generale per l'auto-determinazione del Sud-Tirolo, conforme alla Carta delle Nazioni Unite (art. 1, n. 2), appoggiato dalla risorta Austria, non fu accolto dagli alleati, i quali, per varie ragioni, decisero di lasciare il Sud-Tirolo all'Italia, pure raccomandando ai due paesi di adoperarsi per una composizione amichevole della controversia.

Quest'ultimo fu l'accordo di Parigi o accordo De Gasperi-Gruber del 5 settembre 1946, nel quale l'Italia accordò alla popolazione di lingua tedesca della provincia di Bolzano una vaga e non ben definita autonomia legislativa ed esecutiva. L'accordo di Parigi fu inserito, come annesso IV, nel trattato di pace fra l'Italia e gli alleati del 10 febbraio 1947.

Le disposizioni generiche dell'accordo di Parigi furono poi tradotte in legge costituzionale italiana con lo Statuto di autonomia del 1948, il quale però estese l'autonomia alla regione Trentino-Alto Adige di nuova creazione, lasciando alla provincia di Bolzano una sub-autonomia di poca sostanza. Così, la popolazione sud-tirolese, quantunque maggioritaria nella provincia di Bolzano, rimase minoritaria nell'entità autonoma che era la regione.

Nelle discussioni politiche degli ultimi decenni fu spesso sollevato il perché dell'inserzione della formula vaga per quanto riguarda l'area geografica, alla quale si dovrebbe applicare il regime d'autonomia.

Gruber, in vari incontri privati mi dette la seguente spiegazione: una definizione chiara dell'area di autonomia che vi includesse pure il Trentino non sarebbe stata per lui accettabile. D'altra parte, una limitazione dell'autonomia alla sola provincia di Bolzano, cioè al Sud-Tirolo, non sarebbe stata accettabile per De Gasperi, perché non sarebbe stata approvata da Roma.

Dunque, per tacito consenso, i due protagonisti optarono per la formula vaga, sperando che, in futuro, una volta concluso l'accordo, si sarebbe trovata una soluzione accettabile per ambedue le parti. Ora, in realtà, questo non avvenne che più di venticinque anni dopo con il nuovo Statuto d'autonomia del 1971.

Allo stesso tempo, De Gasperi memore del valore delle autonomie regionali che aveva conosciuto quale ex-deputato del Parlamento di Vienna e della Dieta regionale di Innsbruck, vi intravide la possibilità di procurare un'autonomia pure ai suoi trentini, alla quale essi non avrebbero avuto diritto al di fuori dell'accordo italo-austriaco.

La situazione era dunque rimasta insoddisfacente. Lo Statuto di autonomia del 1948 non aveva concesso ai sud-tirolesi un'autonomia effettiva, alla quale - se trascuriamo la parentesi del regime fascista degli anni Venti e Trenta - il territorio era abituato da secoli. Ma nemmeno l'autonomia limitata della provincia di Bolzano, prevista dallo Statuto, era stata realizzata integralmente. Continuò pure l'afflusso in massa di immigrati dal Sud, favorita dal governo centrale, anche mediante la costruzione massiccia di case popolari, riservate quasi esclusivamente agli immigrati, che alimentò il malcontento della popolazione residente.

L'Austria, ancora occupata dai quattro alleati, e perciò con una limitata capacità di agire, non poté reagire che con deboli proteste diplomatiche, non prese in considerazione dal governo italiano.

Dopo aver riottenuto la libertà e l'indipendenza con il trattato di Vienna del 15 maggio 1955, l'Austria prese l'iniziativa, con note diplomatiche, a partire dal 1956, sollecitando trattative bilaterali con l'Italia al fine di ottenere l'adempimento dell'accordo di Parigi, il quale, secondo le concezioni austriache e sud-tirolesi, era stato falsificato dallo Statuto del 1948.

L'Italia, secondo cui l'accordo di Parigi era stato adempiuto, rifiutò negoziati formali e si dichiarò disposta solo a colloqui non impegnativi.

Per innescare la discussione, l'Austria accettò la proposta italiana, ma vari incontri e corrispondenze diplomatiche non portarono ad un avvicinamento delle posizioni controverse fra i due stati.

Nel frattempo, la situazione nel Sud-Tirolo era diventata sempre più bollente, con dimostrazioni di massa, condotte sotto l'insegna del "Via da Trento", a partire dal 1957, e con vari incidenti con le autorità italiane. ➔

RISOLUZIONE DELL'ASSEMBLEA GENERALE DELLE NAZIONI UNITE N. 1497 (XV) DEL 31 OTTOBRE 1960

L'Assemblea Generale,

avendo considerato il punto 68 del suo ordine del giorno,

considerando che lo status dell'elemento di lingua tedesca in Provincia di Bolzano (Bozen) è stato disciplinato da un accordo internazionale tra l'Austria e l'Italia, firmato a Parigi in data 5 settembre 1946,

considerando che il detto accordo stabilisce un sistema destinato a garantire agli abitanti di lingua tedesca di questa provincia completa uguaglianza di diritti rispetto agli abitanti di lingua italiana, nel quadro di disposizioni speciali destinate a salvaguardare il carattere etnico e lo sviluppo culturale ed economico dell'elemento di lingua tedesca,

consapevoli che tra l'Austria e l'Italia è sorta una vertenza rispetto all'attuazione del detto accordo,

desiderosi di prevenire che la situazione creatasi a causa della vertenza pregiudichi le relazioni amichevoli tra i due Paesi,

1. Urge le due parti interessate di riassumere i negoziati con l'obiettivo di trovare una soluzione di tutte le controversie concernenti l'attuazione dell'accordo di Parigi del 5 settembre 1946,
2. Raccomanda che in caso che i negoziati di cui al paragrafo uno non conducessero a risultati soddisfacenti entro un periodo di tempo ragionevole, le due parti dovrebbero prendere in favorevole considerazione la possibilità di cercare una soluzione delle loro controversie mediante qualsiasi mezzo previsto dalla Carta delle Nazioni Unite, compreso il ricorso alla Corte Internazionale di Giustizia, o ogni altro mezzo pacifico di loro propria scelta,
3. Raccomanda ugualmente che i Paesi in questione si astengano da ogni azione che potesse pregiudicare le loro relazioni amichevoli.

2. Le trattative fra l'Austria e l'Italia e i negoziati a livello nazionale a partire dal 1960

L'Austria, non avendo ottenuto ragione con i mezzi diplomatici bilaterali, portò la controversia davanti alle Nazioni Unite nell'estate del 1960.

Allo stesso tempo, cominciò una serie di attentati dinamitardi nel Sud-Tirolo, diretti contro impianti delle FS, dell'Enel e contro alcuni monumenti fascisti.

Nella sola notte tra l'11 e il 12 giugno 1961 saltarono circa cento tralicci nei dintorni di Bolzano e di Merano con danni materiali considerevoli, ma vi fu una sola vittima, morta incidentalmente.

Il tutto aveva spaventato l'Italia: l'iniziativa austriaca presso le Nazioni Unite aveva condotto a internazionalizzare la controversia sud-tirolese; gli attentati dinamitardi continuarono, nonostante la massiccia repressione da parte delle forze dell'ordine italiane e l'arresto di centinaia di sud-tirolesi.

Ripeto che vi fu un solo morto, un ferroviere italiano che aveva tentato di propria iniziativa di disinnescare una carica esplosiva presso Salorno. Infatti, i dinamitardi, diciamo "della prima serie", intorno al 1960-1961, semplice gente del paese (contadini, artigiani) idealista, si erano adoperati ad evitare al massimo vittime umane, avendo gli attentati solo un fine dimostrativo e di risveglio della coscienza.

Solo nell'epoca successiva, a partire dal 1964, vi si inserirono elementi nazisti, venuti d'oltreconfine e vi si immischiarono anche servizi segreti di varie potenze (sovietici, della Germania orientale e pure italiani), mirando i primi alla destabilizzazione di un paese della Nato, gli ultimi alla provocazione, per giustificare una repressione più che severa. Questi attentati della seconda serie furono diretti deliberatamente contro appartenenti alle forze dell'ordine e produssero una ventina di vittime.

Il 18 giugno 1961, l'allora ministro degli interni, Mario Scelba, si recò a Bolzano e propose ai dirigenti politici sud-tirolesi negoziati sulla questione dell'autonomia, nel quadro di una commissione mista (la Commissione dei 19, presieduta dall'on. Paolo Rossi).

Lo scopo politico era evidente: stroncare un possibile movimento di auto-determinazione, ricondurre il paese alla calma e, anzitutto, de-internazionalizzare la controversia mediante la ricerca di soluzioni sul piano interno.

Nel frattempo, l'Assemblea generale delle Nazioni Unite aveva emesso la risoluzione 1497 (XV) del 31 ottobre 1960, invitando l'Italia e l'Austria a raggiungere una soluzione con mezzi pacifici, in primo luogo mediante negoziati bilaterali.

In questo senso, le Nazioni Unite avevano sposato, in linea di massima, la tesi austriaca, riconoscendo che vi esisteva una controversia internazionale, affermando il diritto dell'Austria ad intervenire sulla base dell'accordo di Parigi e il corrispettivo obbligo dell'Italia a prestarsi a negoziati.

In seguito, negoziati a livello dei ministri degli affari esteri ebbero luogo a Milano (27-28 gennaio 1961), a Klagenfurt (24 maggio 1961) e a Zurigo (24 giugno 1961), ma nella sostanza (cioè riguardo al *quantum* dell'autonomia richiesta), le rispettive posizioni restarono assai distanti. Così l'Austria ricorse di nuovo alle Nazioni Unite, le quali, con la risoluzione dell'Assemblea generale 1661 (XVI) del 28 novembre 1961 riconfermò quella dell'anno precedente.

In ulteriori incontri a livello governativo (Venezia 31 luglio 1962, Ginevra 8 settembre 1962) l'Austria e l'Italia si misero tacitamente d'accordo su una sorta di tregua diplomatica, aspettando l'esito del lavoro della Commissione dei 19, la quale poi presentò il suo rapporto finale nell'aprile del 1964.

Ma anche qui, il risultato rimase insoddisfacente.

Si optò dunque per una via pragmatica: negoziati al livello di alti funzionari e di esperti dei due paesi e, contemporaneamente, negoziati diretti fra l'oggi leggendario presidente della provincia e capo del Partito popolare sud-tirolese (Svp), Sjlvius Magnago, e i vari presidenti del Consiglio del governo italiano, che si succedettero a vicenda, in particolare gli on. Moro, Colombo e Andreotti.

La meta da conseguire era duplice: da una parte, un arricchimento delle competenze autonome per dare soddisfazione alle principali richieste sud-tirolesi (il cosiddetto "Pacchetto"), dall'altra la ricerca di un metodo che desse garanzie sia al Sud-Tirolo, all'Austria che all'Italia affinché le nuove forme di autonomia concesse venissero assicurate, dopo che tutte le misure di attuazione del Pacchetto fossero state realizzate ed anche l'Austria considerasse la vertenza risolta (il cosiddetto "Calendario Operativo", una sorte di *gentlemens' agreement* procedurale, chiamato anche "ancoraggio" o "spago", che avrebbe dovuto legare insieme il Pacchetto, per evitarne il frantumarsi).

Il Pacchetto conteneva 137 provvedimenti, dei quali 97 potevano essere attuati per mezzo di una modifica dello Statuto di autonomia del 1948 (dunque con Legge costituzionale), 8 con apposite norme di attuazione, 15 con leggi statali ordinarie, 9 con decreti, gli 8 restanti con atti amministrativi. Il tutto è stato completato da "Precisazioni" ("misure sub"), frutto di contatti diretti, condotti in parte anche per via telefonica, fra Magnago e Moro.

L'insieme era una formula ingegnosa: un'autonomia sostanziale per il Sud-Tirolo nel quadro di un nuovo Statuto di autonomia (quello del 1971) e la garanzia della soluzione raggiunta mediante il suo inserimento nell'ordinamento giuridico italiano, restando salvo il diritto dell'Austria di controllare la messa in marcia del nuovo sistema e di intervenire in caso di necessità.

Formalmente, la posizione giuridica dell'Italia:

"Il Pacchetto è una concessione interna, nel quadro dell'ordinamento giuridico italiano e serve al di più a una migliore esecuzione dell'accordo di Parigi"

e quella dell'Austria:

"Il Pacchetto rappresenta atti necessari per l'adempimento dell'accordo di Parigi, l'Italia essendo internazionalmente obbligata a eseguire e a mantenere le misure pattuite del Pacchetto"

restarono riservate.

Il tutto era dunque un compromesso sia nella sostanza che nella forma, basato sulla buona fede di ambedue le parti.

Pacchetto e Calendario Operativo furono ultimati in una riunione dei due allora ministri degli affari esteri, Aldo Moro e Kurt Waldheim, a Copenhagen, il 29 e 30 novembre 1969 e successivamente approvati da un'assemblea straordinaria della Svp a Merano il 22 novembre 1969, nonché dal Parlamento italiano il 4 dicembre 1969 e da quello austriaco il 16 dicembre 1969.

Era stata prospettata un'esecuzione delle misure del Pacchetto, da preparare da commissioni miste entro quattro anni. In definitiva, il tutto richiedette più di vent'anni.

Nel corso del processo dell'adozione dei provvedimenti previsti, ci furono ancora delle aggiunte e delle sottrazioni.

RISOLUZIONE DELL'ASSEMBLEA GENERALE DELLE NAZIONI UNITE N. 1661 (XVI) DEL 30 NOVEMBRE 1961

L'Assemblea Generale:

richiamandosi alla sua risoluzione dell'anno precedente;

avendo preso nota con soddisfazione delle trattative in corso fra le due parti;

avendo preso nota del fatto che la controversia non era stata risolta;

invita le due parti a proseguire nei loro sforzi al fine di conseguire una soluzione in conformità ai paragrafi 1, 2 e 3 del dispositivo della risoluzione sovramenzionata.

Allo stesso tempo, l'Austria eseguì i vari passi, che, secondo il Calendario Operativo, gli spettavano, tendenti a preparare la chiusura della controversia.

3. L'avvio alla chiusura della vertenza. Il risultato sostanziale e formale della soluzione raggiunta

Arriviamo dunque al 1992.

Le misure da prendere da parte dell'Italia e dell'Austria sono state più o meno realizzate. Restò l'approvazione del risultato da parte del Sud-Tirolo, dei governi e dei parlamenti dei due paesi, ed essa fu ottenuta alla fine del 1991 e all'inizio del 1992.

Ulteriori discussioni portarono sulla formula di chiusura della vertenza. Esse furono rese complicate dall'intento di ambedue le parti di salvaguardare la propria posizione giuridica, forse anche di rafforzarla, a ogni modo di non indebolirla.

Il 22 aprile 1992 l'Italia trasmise all'Austria in via ufficiale i testi relativi all'esecuzione del Pacchetto e l'11 giugno 1992 ottenne la cosiddetta "quietanza liberatoria". Per dire la verità - e nessuno sarà stupito di ciò - un gruppo di esperti austriaci, in stretto contatto con gli amici sud-tirolesi, aveva esaminato in dettaglio già dall'88 - e dunque prima della trasmissione ufficiale da parte del governo italiano dei relativi documenti - la conformità delle misure di esecuzione a quanto pattuito nel Pacchetto, arrivando in gran parte, ma non *in toto*, a conclusioni positive.

Il 19 giugno 1992 i due stati notificarono al Segretario generale delle Nazioni Unite la composizione della controversia, oggetto delle Risoluzioni dell'Assemblea generale del 1960 e del 1961, nonché al Segretario generale del Consiglio d'Europa e al Cancelliere della Corte internazionale di giustizia dell'Aja la ratifica di un trattato che prevedeva la competenza di quella Corte per dirimere eventuali nuove controversie relative all'accordo di Parigi, sulla base della Convenzione europea del 1957 per la soluzione pacifica delle controversie.

Si potrebbe dissertare a lungo sulla qualifica giuridica della soluzione raggiunta, cioè sulla misura, in cui l'Italia è internazionalmente obbligata non solo dal testo dell'accordo di Parigi, ma anche da quello del Pacchetto. Se ne occuperanno in caso di bisogno gli internazionalisti dei due paesi.

Ho al riguardo le mie idee, ma in questa sede preferisco fare una sintesi della sostanza di quanto accordato:

1. Il nuovo Statuto di autonomia del 1971 rappresenta un arricchimento considerevole dell'autonomia del Sud-Tirolo; infatti gli vengono conferite la competenza legislativa primaria (esclusiva) o secondaria (concorrente) e la competenza amministrativa in vari settori di notevole importanza per la Provincia. Menziono a titolo d'esempio di nuove competenze autonome, introdotte nello Statuto del 1971: miniere e cave, comprese le acque minerali e termali; caccia e pesca; alpicultura e parchi nazionali; agricoltura e foreste; turismo e industria alberghiera; lavori pubblici, trasporti e comunicazioni d'interesse provinciale; opere idrauliche della terza, quarta e quinta categoria; assistenza e beneficenza pubblica; scuole materne; assistenza scolastica; edilizia scolastica. In parte, queste competenze corrispondono a quelle delle regioni a statuto ordinario, in parte ne vanno al di là.
2. Considerevole pure l'autonomia finanziaria.
3. Creazione a Bolzano di una sezione distaccata della Corte d'appello di Trento e creazione a Bolzano di un Tar.
4. Istruzione primaria e secondaria nella lingua materna, con corsi di lingua italiana nelle scuole sud-tirolesi e di lingua tedesca nelle scuole italiane (in verità, queste scuole bilingui esistono già dal 1943; qui, in linea di massima, il Pacchetto si era limitato a estendere i poteri di gestione autonoma della Provincia relativa alle scuole).
5. Riconoscimento ufficiale del nome di "Sud-Tirolo" nella denominazione tedesca della Regione e della Provincia.
6. Bilinguità della pubblica amministrazione statale, parastatale, provinciale e comunale e degli enti giudiziari statali nella Provincia.
7. Proporzionale etnica e esami di bilinguismo (due/terzi per i sud-tirolesi e i ladini, un/terzo per gli italiani), per l'accesso al pubblico impiego presso tutti gli enti pubblici statali, parastatali, provinciali e comunali, esistenti nel territorio della Provincia, con certe garanzie di non-trasferimento in altre province per i funzionari.

Questa proporzionale etnica discende dal diritto elementare di ogni popolo di farsi amministrare da proprio personale, diritto che nel Sud-Tirolo, in passato, e particolarmente nel periodo fascista, era stato gravemente violato.

La proporzionale etnica aveva bensì condotto allo smantellamento della posizione di privilegio della quale per mezzo secolo aveva goduto la popolazione di lingua italiana, ma a torto è stata tacciata di discriminazione da quest'ultima. Ed è esattamente su questo argomento che si era appoggiata in primo luogo la politica prima del Msi e poi di An, con il risultato che, nella città di Bolzano, il centro di gravitazione della popolazione di lingua italiana nella Provincia, da alcuni anni il partito neofascista è diventato il più forte.

In verità, la proporzionale etnica non è una discriminazione, ma elimina quella preesistente, pure dovendo ammettere che l'esecuzione del sistema della proporzionale etnica avrebbe potuto essere condotta con maggiore flessibilità. E infine dei conti, essa non protegge soltanto i gruppi etnici tedesco e ladino, ma pure quello italiano, minoritario nella Provincia.

8. Garanzie per i gruppi etnici viventi nella Provincia, in particolare per quanto riguarda l'approvazione del bilancio provinciale e la rappresentazione nei vari organi politici.

4. Conclusioni e prospettive

Si potrebbe pensare che la soluzione raggiunta fosse ideale. Ma, l'ideale, che cos'è?

Secondo me dipende dal punto di vista. Io vorrei qualificarla "accettabile" e pure "buona", benché fosse una soluzione di compromesso nella sostanza e nella forma (per quanto riguarda quest'ultima mi riferisco alla precarietà del sistema di garanzie previsto).

Con questa valutazione, in linea di massima positiva, mi trovo d'accordo con i sentimenti della maggioranza dei miei conterranei sud-tirolesi, ma credo pure con il governo austriaco e italiano.

Un punto debole della soluzione raggiunta risiede nel potere di indirizzo e coordinamento che il legislatore ed il governo italiano, appoggiati dalla Corte costituzionale, riconoscono al potere centrale, abilitandolo ad intervenire in materie, anche di competenza legislativa esclusiva della Provincia, quando, a suo parere, si presenti la necessità di intervenire e di adottare soluzioni uniformi a livello nazionale.

L'istituzione come tale è problematica per ogni regime federalistico. In particolare, per quanto riguarda il Sud-Tirolo contiene il germe di un annacquamento e di uno svuotamento dell'autonomia provinciale, e potrebbe condurre ad una falsificazione di fatto della soluzione accordata.

Si è fatto uso di questo potere varie volte nel corso degli ultimi anni (a Bolzano sono stati registrati una cinquantina di casi) e c'è da temere che vi si ricorrerà anche in futuro.

È ben vero che il Decreto legislativo del 16 marzo 1992, n. 266, la cui adozione era *conditio sine qua non* della chiusura della vertenza, prevede certe garanzie procedurali contro l'abuso di tale potere, ma non le elimina in assoluto.

Altre iniziative del potere centrale dello stato italiano, anche se non dirette contro il Sud-Tirolo, ebbero per risultato la menomazione di fatto dell'autonomia sud-tirolese in senso lato.

Così, per esempio, la privatizzazione delle FS e di altri settori parastatali minaccia di togliere una parte importante del contenuto della proporzionale etnica, perché in questa maniera i settori privatizzati verrebbero sottratti a tale regime. Qui il problema poté essere risolto grazie all'intervento della Corte costituzionale la quale, nella sua sentenza n. 768 del 22 giugno 1988, affermò che una privatizzazione di servizi pubblici non può condurre a non rendere più applicabili le norme sulla proporzionale.

In ossequio a ciò, il Consiglio dei ministri ha deciso che anche le poste ed i telegrafi, anch'essi in fase di privatizzazione, continueranno ad essere sottoposti al regime della proporzionale etnica per i servizi insediati nella provincia di Bolzano.

La legge elettorale (4 agosto 1993, n. 277) che regge le elezioni nazionali prevede che il 75% dei seggi debba essere distribuito secondo il principio maggioritario, il 25% secondo il principio proporzionale, ma riservato ai gruppi politici che raggiungono il 4% a livello nazionale.

In linea di massima, questo sistema, che tende a produrre forti maggioranze parlamentari non è anti-democratico, anche se sfavorisce gruppi minoritari di ogni tipo.

Per i gruppi etnici minoritari costituisce uno svantaggio manifesto, perché essi difficilmente possono raggiungere il 4% a livello nazionale.

La Corte costituzionale, alla quale la Provincia si era rivolta, confermò, con sentenza del 13 dicembre 1993, n. 438, per evidenti motivi di politica interna italiana (anche se non diretti contro il Sud-Tirolo) la costituzionalità della legge, pure dando, nella sostanza, ragione agli argomenti sud-tirolesi. Speriamo dunque che anche questo problema possa essere risolto senza dare origine a una nuova controversia a livello internazionale. Un disegno di legge, il quale per il Sud-Tirolo prevedeva il 4% in riferimento alla Provincia è caduto in seguito allo scioglimento delle Camere. Attualmente, nuovi progetti di riforma del regime delle elezioni nazionali sono oggetto di discussioni in sede politica.

Ma non vorrei omettere di menzionare anche gli sviluppi positivi concernenti l'autonomia. Così, ad esempio, di comune accordo fra lo Stato e la Provincia, sono stati trasferiti a quest'ultima il regime scolastico e l'amministrazione delle strade statali.

D'altra parte, nuovi problemi per l'autonomia potrebbero nascere anche nel corso del processo d'integrazione europea il quale, benché da una parte minimizzi il fenomeno delle frontiere statali e, secondo gli accordi di Maastricht del 7 febbraio 1992, debba condurre a un rafforzamento dell'idea federalistica nella nuova Europa, d'altra parte accentua le tendenze eurocentralistiche a danno non solamente delle competenze statali ma anche di quelle autonome.

Di grande utilità per risolvere controversie del genere ed anche nuovi possibili problemi che potrebbero insorgere nel futuro, sarebbe la conclusione del trattato di amicizia fra l'Italia e l'Austria, menzionato come ultimo punto (n. 18) nel Calendario Operativo, con l'istituzione di un meccanismo permanente di consultazione fra i due paesi, nel caso dell'insorgere di una nuova controversia. Allo stesso fine servirebbe la messa in moto di un meccanismo istituzionale di consultazioni a livello interno, previsto dall'ultimo punto (n. 137) del Pacchetto.

Conclusioni

- La convivenza fra vari gruppi etnici non è mai priva di frizioni.
- Nel Sud-Tirolo si sta avviando una buona convivenza, facilitata anche dalla prosperità economica che vi regna.

[redacted]

Da parecchi anni, grazie al cessare del movimento di immigrazione dal Sud, favorita dal governo centrale, la relazione numerica fra i gruppi etnici resta stabile: su una popolazione totale di 440.000 persone, circa 310.000, ossia poco più di due terzi (72.35%), sono sud-tirolesi, tedeschi e ladini e circa 130.000, ossia poco meno di un terzo (27.65%) sono sud-tirolesi italiani (censimento del 1991).

Ho parlato a proposito di sud-tirolesi italiani, perché una buona parte della nuova generazione dei figli di immigrati che vivono nella Provincia da anni e pure da decenni o da generazioni, comincia a considerarsi sud-tirolese pure essa, imparando la lingua, inserendosi nella vita pubblica e privata della Provincia e apprezzando il valore della prosperità economica, della stabilità politica e giuridica e dell'ordine che vi regna, grazie anche ad un'amministrazione autonoma efficace e corretta.

Anche le relazioni umane fra gli appartenenti ai vari gruppi etnici sono, in linea di massima, civili e anche amichevoli. Il tutto dovrebbe condurre ad una buona convivenza.

Leggi e regolamenti - e ciò vale anche per leggi di autonomia e di protezione delle minoranze - non possono offrire altro che un quadro giuridico per facilitare la convivenza fra gruppi etnici, ma questo quadro deve essere riempito dagli esseri umani, siano essi uomini politici o semplici cittadini.

E il problema delle minoranze - e questa è un'esperienza che ho acquistato occupandomi di esso da quattro decenni, in varie funzioni e sedi - è anzitutto un problema di mutua comprensione e fiducia. Finché la maggioranza pensa che per la minoranza ogni concessione non è che un passo, per rivendicarne poi un altro, e fintantoché la minoranza è convinta che la maggioranza vuol concedere il meno possibile, il più tardi possibile e forse anche ritirare ciò che era stato concesso in precedenza, non si avrà mai una soluzione stabile.

Penso che, nel Sud-Tirolo, in Austria e in Italia, questa fiducia sia stata acquisita e che anche avvenimenti negativi, sempre possibili, non potranno più farla vacillare.

La soluzione raggiunta fra l'Italia e l'Austria - e tengo a sottolinearlo - è il frutto di pazienti negoziati e dell'accettazione di una realtà storica, che ha due facce:

- l'una che dice che il Sud-Tirolo è terra storicamente austriaca, che i sud-tirolesi si sentono tali e che vogliono conservare la propria lingua, i propri costumi e che, per vecchia tradizione, sono abituati a vivere in autonomia;
- l'altra che dice che ora risiedono nella Provincia da più di due generazioni 130.000 italiani e che sarebbe oggi anacronistico pensare ad uno spostamento dei confini statali.

Per convivere in pace bisogna sempre cercare di mettersi d'accordo, mirando a compromessi accettabili, senza che l'una parte chieda all'altra più di quanto la seconda possa concedere, e senza che la seconda voglia imporre alla prima più di quanto essa possa sopportare.

Può, la soluzione raggiunta fra l'Austria e l'Italia, essere considerata come un modello utilizzabile per la soluzione di altri problemi di minoranze esistenti in Europa, o è solo un esempio interessante, ma non suscettibile di generalizzazione? Non esito a chiamarlo un *modello*, per quanto riguarda il metodo utilizzato e, in particolare per quanto riguarda lo spirito dal quale furono guidati i dirigenti politici responsabili dell'Italia e dell'Austria, nonché quelli della popolazione interessata.

In questo senso, l'autonomia, impregnata di una mutua fiducia, è forse il modello chiave per risolvere i problemi delle minoranze, un modello di realizzazione più facile per uno stato già di per sé propenso all'idea del federalismo.

Dicendo questo, non vorrei non riconoscere che l'Italia, di per sé tradizionalmente di concezione piuttosto centralistica, ha avuto - e ha tuttora - certe difficoltà di comprensione. Ma il processo di decentralizzazione e di regionalizzazione, avviandosi verso una federalizzazione, ha preso il via anche nell'Italia moderna.

È questo un processo da seguire con cautela e con un forte senso di equilibrio, per evitare che la decentralizzazione degeneri in secessione.

Ma anche l'autonomia è un concetto a contenuto variabile e bisognoso di essere adottato alle circostanze storiche, geografiche e politiche; a ragione, l'on. Andreotti, in un'intervista, aveva parlato del carattere dinamico dell'autonomia. In definitiva, ogni problema di gruppi etnici - detti anche popoli o nazionalità (che si pensi alla ex-Unione Sovietica, all'ex-Jugoslavia, all'Irlanda, al Paese basco, alla Catalogna, alla Corsica, ai kurdi, ai palestinesi) esige una soluzione adattata alla situazione e alle circostanze vigenti.

E qui, il modello o l'esempio della soluzione trovata per il Sud-Tirolo, vale la pena di essere studiato, per riprenderne gli elementi validi anche per la soluzione di situazioni simili o analoghe.

[redacted]

Antonio Scaglia
Università di Trento

APPLICABILITÀ DEL MODELLO DI AUTONOMIA TRENTINO-ALTO ADIGE/SÜDTIROL

Il tema proposto, indubbiamente di rilievo, intende verificare l'applicabilità di un modello politico ed amministrativo di convivenza fra una maggioranza di lingua italiana ed una consistente minoranza di lingua tedesca nella regione Trentino-Alto Adige ad altre situazioni da considerarsi consimili.

Ciò significa, non affrontare la valutazione del modello stesso. In realtà, si dà così per scontato che esso abbia avuto un suo esito generalmente positivo, anche se, per molti specifici aspetti, problematico.

In primo luogo, di fronte all'interrogativo se questo modello possa essere applicato in altre situazioni, va detto che nessuna situazione presenta le stesse caratteristiche. Le diversità che fanno effettivamente la differenza non sono di carattere quantitativo ma hanno a che fare con gli aspetti che potremmo genericamente definire "culturali". Pertanto, una prima e lapidaria risposta è quella secondo cui nessun modello è trasferibile *tout court* da una società e soprattutto da una cultura all'altra.

Pur tuttavia, le esemplificazioni sono di grande utilità per chi è chiamato a lavorare all'approntamento di modelli politici, regolamentari ed organizzativi volti a rendere possibile la convivenza fra gruppi di maggioranza e di minoranza. Se l'affermazione secondo cui la dimensione socio-culturale rappresenta l'elemento centrale e irrinunciabile di queste dinamiche, allora la regola alla quale è fondamentale attenersi nella comparabilità fra le situazioni, e soprattutto per verificare l'applicabilità degli elementi di un modello, rimane quella che potremmo definire come "analogia e trasferibilità culturale o di senso" degli elementi stessi.

Un elemento, giuridico, organizzativo, politico, associativo, ecc., è tanto più trasferibile da un modello all'altro quanto più è ipotizzabile che esso rivesta nelle due società e nelle due culture una collocazione simile o analoga soprattutto nella scala simbolica e particolarmente su quella dei valori. La comparazione non è ovviamente né semplice né facile, ma mi sembra essere l'unica che dia garanzie di comparabilità e soprattutto di applicabilità in termini di analogia dell'efficacia dei risultati che si intendono ottenere con il trasferimento di elementi del modello preso in considerazione.

Per alcuni aspetti, questa affermazione può essere esemplificata agevolmente. Si pensi alla diversità *simbolica* e *di significato* che possono avere forme, siti, edifici o riti religiosi presso due società e culture di religione o confessione diversa. Un diverso significato simbolico o valoriale può comunque, avere molti altri aspetti (tutti, in realtà) in società diverse: la famiglia, il lavoro, il legame con il territorio, la nascita, la salute, la malattia, la morte, la vita quotidiana, i momenti rituali e quelli ordinari, la vita di comunità e la politica, la scienza teorica e quella pratica, ecc. È, ovviamente, necessario riuscire a tracciare una gerarchia d'importanza degli elementi che costituiscono una cultura (della minoranza e della maggioranza), nonché della "cultura della convivenza" al fine di progettare un trasferimento di elementi, un trasferimento che abbia un senso efficace e compiuto.

QUIETANZA LIBERATORIA

Considerato che è sorta una controversia tra l'Austria e l'Italia circa l'attuazione dell'Accordo di Parigi del 5 settembre 1946 e,

Considerato che questa controversia è stata oggetto delle Risoluzioni 1497 (XV) e 1661 (XVI) dell'Assemblea Generale delle Nazioni Unite,

Tenuto conto che l'Assemblea Generale delle Nazioni Unite nelle predette Risoluzioni ha raccomandato all'Austria e all'Italia di riprendere le trattative allo scopo di trovare una soluzione di tutte le divergenze concernenti l'attuazione dell'Accordo predetto,

Tenuto conto che la ripresa delle trattative ha avuto luogo e ha portato all'adozione di un metodo di consultazione idoneo a promuovere il superamento della controversia senza pregiudizio delle rispettive posizioni giuridiche delle Parti,

Tenuto conto che il Governo italiano, nella sua dichiarazione governativa del ..., ha annunciato ed ha specificamente indicato misure, destinate ad assicurare in modo durevole la convivenza pacifica e lo sviluppo delle popolazioni altoatesine,

Visto che il Governo italiano ha ora realizzato queste misure annunciate nella dichiarazione governativa del ...,

il Governo Federale austriaco dichiara di considerare chiusa la controversia esistente tra Austria e Italia, che ha formato oggetto delle anzidette Risoluzioni dell'Assemblea Generale delle Nazioni Unite e riguardante lo status dell'elemento di lingua tedesca nella Provincia di Bolzano (Bozen) - esecuzione dell'Accordo di Parigi del 5 settembre 1946.

Vorrei fare alcune considerazioni brevi, a partire dal lavoro di ricerca condotto recentemente presso l'università di Trento in collaborazione con altri studiosi.

Un gruppo di studio delle università di Trento e di Innsbruck ha condotto una ricerca proprio sul tema dell'applicabilità del modello di autonomia Trentino-Alto Adige/Südtirol alla situazione delle minoranze nell'area danubiana. I risultati della ricerca sono stati pubblicati in una monografia dell'Associazione italo-tedesca di sociologia/Italienische-Deutsche Gesellschaft für Soziologie a cura di Stephen Böckler e Rita Grisenti (1996). L'area presa in considerazione dalla ricerca ricomprendeva, oltre, ovviamente al Trentino-Alto Adige, il gruppo etnico albanese della Macedonia-Skopje, il gruppo etnico albanese del Kossovo, il gruppo dei musulmani del Sandjak, il gruppo degli ungheresi in Vojvodina, il gruppo degli ungheresi in Slovacchia, i gruppi etnici della Bosnia-Erzegovina.

Ne è risultato:

- in primo luogo, pur partendo dalla percorribilità dell'ipotesi che alcuni aspetti del modello siano trasferibili, si evidenzia la centralità dell'unicità delle realtà socio-culturali considerate;
- in secondo luogo, e questo ha un significato di carattere strategico, il modello trentino/sud-tirolese si presenta comunque come innovativo in quanto propone lo strumento della mediazione a fronte della reciproca rigidità nazionalistica dei gruppi (*ibidem*: 165); ora questo contenuto e questo metodo dello Statuto in questione sono assai poco conosciuti dagli interessati alla ricerca (*ibidem*);
- la ricerca ha messo in rilievo come una simile ipotesi di mediazione richieda un quadro politico nazionale ed internazionale stabile, cosa di cui il modello di riferimento ha goduto e gode, mentre le situazioni analizzate si collocano entro un quadro incerto ed alle volte sbilanciato verso una delle parti; ove questo si è, almeno parzialmente realizzato (come in Bosnia-Erzegovina), questa mediazione ha iniziato a verificarsi ma in misura forse ancora troppo limitata, poiché in misura limitata si è avverata una stabilizzazione del quadro politico generale;
- ciò che la ricerca aveva messo in evidenza rispetto alla situazione in Kossovo sembra essere emblematico circa l'utilità della ricerca sociologica. Si auspicava che la disponibilità della Serbia andasse verso una concreta possibilità, offerta al gruppo albanese di vedere rafforzata la propria autonomia, a partire dall'esempio del Trentino-Alto Adige (*ibidem*: 166). Le cose sono andate nel senso opposto, con le conseguenze drammatiche che conosciamo.

La ricerca sull'applicabilità del modello in questione abbisogna di ulteriori passi: quelli propri ad una ricerca scientifica che affronti l'analisi e la comprensione di una serie di aspetti concreti di tale applicabilità e quindi un'operazione di carattere politico pratico con la quale avviare un dibattito politico esteso e pubblico per verificare l'estensione ed i limiti dell'applicabilità del modello.

Abbiamo tratto la conclusione che i modelli possono essere di stimolo per una lettura delle condizioni del rapporto maggioranza-minoranza in situazioni diverse, ma che "l'unicità" di tali situazioni richieda un'attenzione, una vera e propria "lettura comprendente", che focalizzi le specificità etnico-linguistiche. storiche, socio-culturali e socio-politiche sia delle conflittualità, sia del progetto di convivenza.

I progetti di convivenza non solo sono "unici" nella loro singolare specificità (possono comunque essere fonte di stimolazione e di utile comparazione), ma essi debbono evitare di essere prigionieri di statuti e norme inamovibili. Le società, la cultura, l'economia e la politica camminano. Per alcuni aspetti, anche gli statuti riusciti sono "ambivalenti", nel senso che:

a) garantiscono la minoranza, e la tutelano, frenando e contenendo gli spazi delle maggioranze;
b) ma allo stesso tempo rischiano, inevitabilmente, di imbrigliare, entro la rete del garantismo, le iniziative di convivenza positiva, è a dire quelle iniziative nelle quali le due culture si incontrano, si confrontano, si apprezzano all'insegna del principio che "la diversità è ricchezza e non '*in primis*' causa di conflitto".

Quest'ultima considerazione porta a due conclusioni:

- la politica delle autonomie deve puntare decisamente sulla *riflessione culturale a carattere comparativo e critico*;
- la politica delle autonomie, pur puntando sullo sviluppo economico e sullo stato di benessere, ha il *dovere primario* di costruire il modello di convivenza, evitando la tentazione di utilizzare la divisione etnico-linguistica per garantire stabilità alle singole formazioni politiche; questo fattore genera, ovviamente, radicalismi di opposizione.

Il mio personale parere, sulla situazione Trentino-Alto Adige/Südtirol, è che la trasformazione socio-culturale e politica ha camminato molto in fretta in quest'ultimo periodo e sta rendendo obsolete molte parti e norme del quadro statutario. Inoltre, è mia opinione che occorra grande saggezza, ma anche grande coraggio per rimettere mano alle regole istituzionali, politiche e culturali di un progetto di convivenza che certamente è stato positivo, ma che abbisogna di essere adeguato a nuove modalità di positiva convivenza.

Un'apertura è offerta da una diversa concezione dello stato rispetto all'Unione Europea e, per altri ambiti, a comunità continentali o alla Comunità internazionale. Occorre, per questo, iniziare un nuovo passaggio politico-culturale.

Ripeto, in conclusione, che la crescita politica dell'Unione Europea è una crescita non scontata, una crescita che deve essere complessiva: culturale, sociale, economica, per essere un'autentica crescita politica e civile. È per una simile crescita complessiva per cui devono impegnarsi gli stati, le nazioni, le patrie. e dentro tale crescita, in un quadro di stabilità politica (non solo economica, di ordine garantito e delle sanzioni del diritto), ma, e soprattutto, della solidarietà e della sussidiarietà, che debbono trovare senso e collocazione la convivenza fra maggioranze e minoranze. Si sta profilando, vista la dimensione globale dei fenomeni migratori (ciò tocca anche il Trentino-Alto Adige/Südtirol), la necessità di una cultura politica e di una cultura di base dell'immigrazione con modelli di convivenza all'interno di ognuno dei paesi dell'Unione Europea, sul piano politico, culturale, di coscienza e di cittadinanza, un modello che affianchi le esigenze di tante e radicate identità, locali e in arrivo a quelle della necessaria convivenza.

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Max Haller
Università di Graz

VALIDITÀ DELLE SOLUZIONI RIVELATESI POSITIVE IN AREE GEOGRAFICHE CARATTERIZZATE DA SITUAZIONI ANALOGHE

Ci sono due serie di fattori che determinano lo sviluppo di relazioni pacifiche tra maggioranze e minoranze etniche e che consentono la salvaguardia dei diritti delle minoranze:

1) fattori strutturali,
2) aspetti del processo di applicazione dei diritti delle minoranze e loro salvaguardia.

Nel mio contributo prenderò in esame prima di tutto questi due aspetti. Nella parte finale illustrerò alcuni problemi legati alla soluzione messa in atto in Alto Adige.

1. Fattori strutturali che concorrono ad ottenere soluzioni positive

Osservando la relazione tra maggioranze e minoranze, così come lo *status* e l'autonomia delle minoranze, bisogna dire che il successo delle minoranze non è dovuto soltanto (o, se non altro, non in prima istanza) a prescrizioni legali né alla difesa costituzionale e legale della loro autonomia e dei loro diritti. Tale successo è anche in larga misura la conseguenza di tre fattori strutturali:

a) *La prosperità economica di una minoranza*

Più una minoranza è forte economicamente, così come la regione in cui essa si trova, più è in grado di battersi per i propri diritti anche in ambito culturale e politico. Un'economia forte implica che i membri della minoranza abbiano lavoro sufficiente per i giovani. Non è necessario emigrare, è probabile che aumenti la popolazione.

È questo il caso dell'Alto Adige a partire dagli anni Settanta. La sua grande prosperità economica, dovuta a diverse circostanze (turismo invernale ed estivo, ubicazione ideale tra regioni ricche e densamente popolate a nord e a sud; cospicui trasferimenti finanziari dallo stato centrale alla provincia), ha sicuramente contribuito a una soluzione positiva del conflitto etnico.

b) *Mancanza di differenze sostanziali nel sistema dei valori di base*

Ad impedire il pericolo dell'*escalation* del conflitto c'è anche la fondamentale affinità culturale tra alto-atesini di lingua tedesca e italiana, come dimostra la loro comune appartenenza alla chiesa cattolica.

c) *Un sistema di autonomia locale forte, piuttosto ben definito e a base costituzionale*

Questo fattore contribuisce oggi fortemente alla convivenza pacifica di entrambi i gruppi linguistici in Alto Adige. Anche molti alto-atesini di lingua italiana tengono oggi in grande considerazione l'autonomia, poiché essa offre anche a loro un grado di autonomia locale maggiore rispetto alle altre province italiane.

2. L'attuazione di soluzioni come processo

La mia principale argomentazione è, tuttavia, che la soluzione di un conflitto etnico debba basarsi su certi tipi di processi, in grado di stabilire e mantenere l'autonomia. Qui prenderò in considerazione tre aspetti molto importanti.

(1) *Il ruolo delle élite politiche e culturali*

Credo che la determinazione con la quale i *leader* politici agiscono nel processo di lotta per l'autonomia e la sua costituzione sia di importanza decisiva. Quei *leader* politici di una minoranza, che, al di là della lotta per l'autonomia, sappiano guadagnarsi e mantenere la sostanziale fiducia delle *élite* politiche, si trovano a rivestire un ruolo fondamentale. Il loro comportamento permette ai *leader* dello stato centrale di ottenere concessioni sostanziali in termini di autonomia politica per la minoranza, scongiurando il rischio di una secessione. Sjlvius Magnago, *Landeshauptmann* dell'Alto Adige negli anni Sessanta e Settanta, svolse un ruolo molto positivo a questo riguardo.

Anche il ruolo degli intellettuali - storici, scrittori, scienziati - può rivelarsi decisivo. Se si tratta di persone con idee radicali che promuovono agitazioni contro lo stato centrale, il loro atteggiamento indebolisce sensibilmente rispetto e fiducia reciproci (come accadde, ad esempio, in Jugoslavia prima dello scoppio della guerra: a quel tempo il ruolo degli intellettuali serbi si rivelò dubbio).

(2) *Il ruolo degli eventi storici*

Gli eventi storici che creano fiducia tra maggioranza e minoranza etniche o, viceversa, quelli che sono causa di una sostanziale diffidenza, risultano di grande importanza. A questo proposito, credo che a determinare una soluzione di pacifica convivenza in Alto Adige sia stata la mancanza di conflitti sanguinosi, di azioni terroristiche e di altri avvenimenti del genere. (È importante ricordare che le azioni terroristiche dei primi anni Sessanta in Alto Adige sono state compiute solo ai danni di cose e non di persone).

(3) *L'appoggio di un altro stato e della Comunità internazionale*

Nel caso dell'Alto Adige, l'appoggio decisivo dell'Austria (che portò il caso di questa zona davanti alle Nazioni Unite) fu di grande aiuto nel trovare una soluzione positiva al problema. Nel mondo odierno, un gruppo etnico di considerevoli dimensioni che non possiede alcun appoggio in tal senso è costituito dai curdi. Credo che il trattamento loro riservato rappresenti una vergogna, anche per l'Europa e l'America.

3. Alcuni aspetti critici e/o problematici della soluzione in Alto Adige oggi

La mia argomentazione finale è la seguente: è necessario anche prendere atto che non tutti gli aspetti della soluzione attuale alle relazioni etniche in Alto Adige sono ideali. Vorrei menzionare a tale proposito tre aspetti.

1. La forte autonomia politica, così come la prosperità economica e il successo, potrebbero in qualche modo deteriorare alcuni aspetti positivi dei tradizionali modelli di vita. Nell'Alto Adige oggi è osservabile un aumento di certi problemi sociali, come il divorzio, la tossicodipendenza, il suicidio, così come la diffusione di riviste di massa di scarsa qualità, provenienti specialmente dalla Germania. (Queste tendenze vengono rafforzate se lo scopo dei politici è visto esclusivamente nell'ottica di assicurare una crescita economica ed il benessere materiale dei cittadini!).

2. L'applicazione rigida dei diritti costituzionali dei diversi gruppi etnici potrebbe essere fonte di nuove ingiustizie. È quindi comprensibile un certo risentimento da parte dei laureati alto-atesini di lingua italiana che non trovano lavoro nella sanità, sebbene allo stesso tempo siano a conoscenza di posti disponibili riservati però ad altri gruppi linguistici. Allo stesso modo anche il gruppo linguistico ladino, una "minoranza entro la maggioranza" tedesca, vive parecchi svantaggi: alcuni lavori (ad esempio, l'insegnamento) gli sono preclusi al di fuori delle strette vallate in cui vive.

3. Un ultimo aspetto critico - secondo la mia visione il più importante - è una certa mancanza, nell'Alto Adige odierno, di una discussione e di una partecipazione aperta e vivace. Il fatto di essere una piccola minoranza all'interno di uno stato-nazione omogeneo, può essere sfruttato dai *leader* del partito dominante della minoranza per accumulare un immenso potere e per screditare i movimenti di opposizione facendo pensare che essi agiscano contro gli interessi e la compattezza dell'organizzazione politica della minoranza.

A tale proposito, anche la situazione dei mezzi di comunicazione è critica nell'Alto Adige oggi: esiste un solo quotidiano in lingua tedesca, il quale praticamente determina in larga misura l'opinione pubblica. Il giornale è strettamente legato al partito dominante.

Vorrei concludere queste mie osservazioni con una considerazione: oggi l'Alto Adige è senza dubbio da considerare un modello di soluzione pacifica e di successo ai conflitti etnici. Altre minoranze nell'Europa orientale potrebbero imparare da questo caso. È tuttavia decisivo, da una parte, il modo in cui i *leader* e la gente di queste minoranze combattono per i loro diritti e, dall'altra, la reazione della popolazione e dei politici delle nazioni dominanti.

TAVOLA ROTONDA
su
"Validità della soluzione Alto Adige-Südtirol per situazioni analoghe in altre aree"

Moderatore: *Demetrio Volcic*,senatore
del Parlamento italiano e attuale deputato europeo

Intervengono:
Alcide Berloffa (già deputato al Parlamento italiano, Bolzano), *Alessandro Grafini* (già negoziatore italiano per Alto Adige-Südtirol), *Max Haller* (Università di Graz), *Antonio Scaglia* (Università di Trento), *Ludwig Steiner* (già segretario di stato, Repubblica d'Austria)

Volcic: Vorrei spendere due parole sui problemi della minoranza, della città in cui ci troviamo, perché gli organizzatori mi hanno chiesto di accennare brevemente alla Legge a tutela delle minoranze in discussione alla Commissione esteri della Camera. Non abbiamo incluso il problema della minoranza locale nei lavori del Simposio in quanto stiamo esaminando due situazioni già stabilizzate, mentre quella che ci riguarda è una situazione per la quale, proprio in questo momento, comincia il suo *iter*, la disamina della legge sulla tutela generale.

Quanto il problema sia complesso è dimostrato dal fatto che se ne parla da vent'anni, che i testi precedenti sono decaduti in quanto i periodi legislativi sono stati troppo brevi per portare al voto la legge sulla minoranza. Gli ultimi tre progetti sono stati firmati dai deputati Di Bisceglie e Caveri, e ora è all'esame la proposta elaborata dall'on. Maselli.

Come detto, il progetto di legge si trova alla Commissione esteri della Camera, andrà in aula e poi in Senato dove verrà esaminato da un Comitato ristretto della Commissione istituzionale e quindi alla Commissione e poi in aula anche al Senato. Se passa senza cambiamenti, diventerà legge dello stato, ma tutta la vicenda potrebbe prendere più tempo del previsto.

Chi è l'autore della legge? Il deputato Maselli, un pastore valdese del gruppo cristiano sociale che in questo momento sta trattando anche un'altra legge riguardante la questione generale dei gruppi etnici in Italia.

Per vedere quanto questa problematica delle minoranze sia complessa, basti dire che i gruppi linguistici in Italia si sono ridotti di un'unità, e cioè dei rom, in quanto nessuno era in grado di stabilire quali fossero le caratteristiche della minoranza, fino a che punto esista, quanto sia numerosa, quanto resta in Italia, da dove viene, ecc.

Gli sloveni pensano che la loro legge sulla tutela delle minoranze potrebbe essere accelerata se passasse velocemente questa legge generale sui gruppi linguistici, presentata al Parlamento al fine di adeguare la nostra legislatura a quella dell'Unione Europea, e dunque sono stati recepiti i santi e sacri principi che riguardano i diritti delle minoranze che non sempre e non in tutti i paesi vengono rispettati.

Presso la presidenza delle due Camere vi sono altre varianti del testo, qualcuno parla di un migliaio di emendamenti e questo vi indica quanto l'*iter* sia complicato, lungo e carico di emotività. Il problema centrale sul quale si dividono la maggioranza e l'opposizione consiste nel definire l'ambito geografico di applicazione. I progetti chiamati per semplicità "di destra" sono estremamente tolleranti nei confronti degli sloveni, soltanto chiedono l'esatta definizione dell'ambito di applicazione, in altre parole un censimento diretto o indiretto per definire a chi si applicano questi dettami della nuova legge.

A sua volta, la minoranza non accetta di farsi censire, le minoranze accettano di essere censite solo quando sono maggioranza nel proprio ambito territoriale e quando hanno una posizione economica predominante.

Non c'è dubbio che esiste il problema giuridico. Maselli aggira la questione affermando che la legge viene applicata nel territorio in cui la minoranza è tradizionalmente presente, questo è un concetto piuttosto vago che si presta a emendamenti, a discussioni interminabili. Sarebbero inclusi i comuni o le frazioni dei comuni indicati in una tabella predisposta una volta sentite le comunità interessate, le regioni e lo stato.

Siamo già ad una seconda legge; la prima legge fissa i principi e la seconda afferma che i suddetti principi vengono realizzati nei territori che verranno fissati da una Commissione formata da esperti, rappresentanti della maggioranza e dell'opposizione, della minoranza, professori di emerita fama. Però, c'è un piccolo trucco nel senso che se entro centoventi giorni questa Commissione non giungesse ad alcun risultato, sarà il governo a decidere l'ambito in cui i dettami a favore della minoranza andranno applicati.

Ricordiamo poi un'altra particolarità: la minoranza slovena della provincia di Trieste è garantita da alcuni accordi internazionali. Gli sloveni di Gorizia hanno una diversa copertura internazionale, gli slavi e non a caso dico "slavi", coloro cioè che vivono nelle vallate del Natisone (si discute ancora la loro appartenenza alla nazione slava), sembra che fossero discesi dalle montagne nell'VIII sec. d.C. e poi, per mancanza di collegamenti hanno vissuto la vita e la cultura, trasmessa dal parroco e hanno vissuto la storia italiana. Si sono pronunciati nell'Ottocento anche per l'Italia con un referendum.

Sono sloveni o non sono sloveni? Uno storico russo scoprì improvvisamente che si tratta di una tribù russa che non si sa come mai si fosse spinta fino qua. Tesi che molti ancora oggi sostengono. Se le ultime ricerche etnografiche e linguistiche confermano questa anticipata partenza di una tribù slovena da uno spazio che tradizionalmente è della nazione slovena verso la pianura friulana, nell'VIII o IX secolo, le montagne hanno reso i contatti così precari e pertanto hanno sviluppato più dei

Demetrio Volcic

dialetti che una lingua, la quale si è sviluppata dal XIII secolo in poi. Hanno coltivato questo loro dialetto come quelli usati nelle Valli del Natisone tuttavia, secondo alcune ricerche linguistiche, di ceppo slavo occidentale. Ho ascoltato una commedia tradotta in questi dialetti locali, ho capito tutto, quindi è difficile che io lo scambi per un dialetto russo. Se la legge dovesse passare, e anche questo è interessante, anche loro sarebbero inclusi nell'ambito della nazione slovena.

Fatta questa premessa, entriamo nel tema della Tavola rotonda. Prego l'ambasciatore Grafini di intervenire.

Grafini: Siamo agli inizi degli anni Novanta, il Muro è caduto, l'Italia e l'Austria vogliono impostare una politica comune in Europa centrale. Nasce nel novembre dell' '89 la Quadrangolare per opera sostanzialmente di Mocher e De Michelis, Italia ed Austria, cui si aggiunsero poi Ungheria ed Jugoslavia. L'Austria sta facendo degli ampi passi verso l'Unione Europea e a questo punto tra Roma e Vienna ci si rende conto che l'Alto Adige è una controversia, in qualche modo anacronistica che si deve chiudere. Questo è il punto che ispira un po' le due capitali agli inizi degli anni Novanta.

In particolare, il presidente del Consiglio Andreotti fece - tra il '91 e il '92 - un grande *"forcing"* in tutta una serie di misure, sul tipo di quelle segnalate nella sessione speciale della Corte d'appello. In pratica, all'inizio del '92, si era pronti a chiudere la controversia e ciò prima che il governo Andreotti cadesse. E fu molto saggio, perché se non si fosse concluso alla metà del '92, sappiamo le instabilità e le discordanze politiche successive nel nostro paese. Anche i miei amici austriaci me lo hanno confermato varie volte, temevano un grave ritardo, e quindi un nuovo deterioramento.

Vi dirò brevemente come abbiamo cercato, forzando i tempi, di superare gli ultimi nodi. Ero stato nominato dal ministro De Michelis suo incaricato speciale per seguire la vicenda, e gli italiani e gli alto-atesini erano animati dalla consapevolezza di dover chiudere subito. Si è sentito dire, ed è esatto, che in almeno l'ultima fase della controversia, dal Sessanta in poi, quando l'Austria andò all'Onu, le posizioni giuridiche dei due paesi erano e rimasero distanti, cioè l'Austria riteneva che non avessimo aderito al trattato De Gasperi-Gruber. Dal canto nostro, dicevamo che con le iniziative prese unilateralmente si realizzava, cito testualmente, "il più ampio soddisfacimento dell'autonomia", quindi era come se noi dessimo di più. Queste due posizioni rimasero congelate, non si fece alcun accordo ma si siglò il Calendario Operativo che, in qualche modo, dava l'idea della successione, che era il filo conduttore che univa tutte le trentasette misure che l'Italia doveva dare.

Alla fine del Calendario Operativo, c'erano le modalità per chiudere e, all'inizio del '92, Andreotti dichiarò che il Pacchetto era concluso, bisognava consegnarlo all'Austria e questa è la nota ufficiale con cui fu trasmessa. E qui risiedeva il problema, cioè nella nota vi era il fulcro delle due contrapposizioni. In un primo tempo, la nota diceva: si trasmettono i provvedimenti e, per intelligenza del testo, si trasmette altresì lo statuto speciale collegato a Parigi. La parte austriaca non accettò il concetto "per la pura intelligenza del testo" della nota, e allora trovai un'altra formula che trattai con l'allora segretario di stato. A questo punto si apriva la possibilità per quella che si definisce "la norma di linguaggio per la stampa"; di una tutela di larga misura data la connessione di materia: se fosse stata violata tutta una serie di norme del Pacchetto, veniva automaticamente violato il trattato De Gasperi-Gruber. Quindi si trovò questa formula di compromesso.

Il 22 aprile avvenne la nota di trasmissione. A questo punto l'Austria aveva cinquanta giorni per reagire, e la nostra nota di

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trasmissione forniva in realtà, nell'ultimo paragrafo, anche un'idea di quello che ci interessa oggi, diceva cioè che il governo italiano considerava il risultato raggiunto nell'attuazione dell'economia come un punto di riferimento importante per la tutela delle minoranze che si stava elaborando anche nel quadro degli altri paesi Csce. Nello stesso momento in cui veniva consegnato il Pacchetto, si forniva anche un'apertura sul futuro. Questa nota del 22 aprile fu accettata nel congresso del Sud-Tirolo Volkspartei del 30 maggio e qualcuno disse che tale gesto equivaleva all'ancoraggio internazionale.

Un altro mio modesto intervento fu che, a quel punto, qualcuno alla Farnesina era intenzionato a fare delle precisazioni, a tirare fuori il discorso della micro-conflittualità (sì o no, ecc.), ed io sconsigliai ciò al ministro De Michelis, anche perché eravamo a dieci giorni dalla quietanza liberatoria: tornare a discutere sul sì o sul no sarebbe stato alquanto inopportuno.

La breve polemica che nacque attorno alle dichiarazioni di Ritz si spense e gli austriaci ci dettero la quietanza liberatoria in cui si dichiarava all'inizio il loro completo apprezzamento nello spirito della nostra nota di trasmissione, in quanto essa collocava la soluzione dell'Alto Adige nello spirito della Csce e della risoluzione di tutti gli altri problemi delle minoranze in Europa, di cui questa nota indicava in qualche modo la via."

Volcic: Se in quel momento non ci fossero state delle *équipes* intelligenti, la vicenda avrebbe potuto durare ulteriormente?

Grafini: Sì. L'insidia di due posizioni contrapposte era sempre presente. Tale insidia fu superata con gli accorgimenti di cui ho parlato e concludo dicendo che se vogliamo ravvisarvi un insegnamento per i problemi delle minoranze, bisogna soffermarsi non solo sulla parte sostanziale ma anche sulla tecnica diplomatica. In certi casi, quando ci sono politiche giuridiche contrapposte ma c'è una comune volontà politica di superarle, bisogna metterle tra parentesi: compito dei diplomatici è di evitare che queste due posizioni confliggano. E come si vede, se c'è intelligenza e buonafede, si può risolvere il problema. Ritengo che sia nella sostanza che nel metodo, quella dell'Alto Adige rimanga un'ottima cosa, tuttavia "la storia insegna continuamente ma non trova alunni!"

Volcic: A quanto servono i modelli, ad esempio, per risolvere questioni ancora aperte con problemi diversi? E le chiedo anche un giudizio sul fatto se un privilegio smantellato, i cinquant'anni italiani, siano visti come una discriminazione nei confronti della popolazione tedesca.

Berloffa: Vorrei fornire alcune informazioni in maniera tale che dell'Alto Adige, oltre al fatto storico, rimanga anche il suo essere considerato come modello.

Stiamo praticamente parlando di una provincia e di un territorio che nel 1991 era popolato da 281.000 cittadini di madrelingua tedesca, 113.000 di lingua italiana, 17-18.000 ladini. Essi vivono cercando di andare d'accordo, e per la verità, con tutte le infinite azioni condotte per chiudere la controversia con l'Austria, ma anche per dare un minimo di tranquillità in ambito locale, siamo passati attraverso norme che non sono solo di tutela delle minoranze: quando si dice che la scuola è concepita in maniera distinta per tre gruppi linguistici, si intende che si è riconosciuto per ciascun gruppo la possibilità di un'istruzione primaria nella propria lingua anche se poi si affianca, come è opportuno, l'insegnamento della seconda lingua, l'italiano nella scuola tedesca e viceversa.

Ci sono diverse altre norme che hanno il significato di una tutela della minoranza, come, ad esempio, la possibilità di applicare il rapporto proporzionale nelle assunzioni pubbliche, che serve agli uni e agli altri. C'è chi è d'accordo, c'è chi contesta tale principio, ma comunque in questi ultimi venti anni abbiamo cercato di portare pace anche attraverso questo tipo di rapporto di assunzioni.

Volcic: Le relazioni sono civili ed amichevoli?

Berloffa: Naturalmente il rapporto è migliorato, ma non è facile emarginare i contrasti ed emarginare, diciamolo pure, i nazionalismi. ➡

Quando parliamo di Europa ammettiamo di andare verso un'unità che impegna tutti, e credo di poter dire che se tutti insieme non riusciamo a supportare le regioni ed i territori dove ci sono problemi di questo genere con una sollecitazione continua, con la testimonianza, con interventi culturali che possano facilitare il superamento dei pregiudizi, sarà sempre difficile arrivare a tanto. Una volta, invitato a parlare di questi temi ad una scolaresca molto attenta, mi è stato chiesto: "Insomma, il nostro è un modello esportabile, sì o no?". Ho risposto che non è assolutamente possibile esportarlo, le situazioni sono diverse, sia per numerosità di persone interessate che per fatti storici precedenti. Non si supera un pregiudizio nemmeno buttando via tutti i libri di storia, non si riesce a cominciare daccapo, senza rifare il Risorgimento della patria, senza rifarsi ai tradimenti del '15 da una parte e dall'altra.

Non è un modello esportabile, magari lo fosse, almeno quel modello di convivenza che si è determinato in termini di mentalità, di buona volontà, di reciproco rispetto, di tolleranza reciproca, senza disturbare gli amori fraterni, senza disturbare i fatti ideali. Magari riuscissimo ad essere oltre che buoni cittadini, anche dei buoni europei, testimoniando una convivenza civile che oggi non è completa, perché ci sono ancora arroganze ed incomprensioni: è un'evoluzione che ha bisogno di molta pazienza.

Volcic: Cosa dice il professor Haller?

Haller: In regioni come l'Alto Adige, regione di lingua mista, la gente vive nel proprio gruppo; e questo è anche, come lo vedo io, il problema dell'autonomia dell'Alto Adige, dove l'autonomia conferma che ci sono scuole di lingua tedesca, italiana e ladina, e ci potrebbero essere dei punti di incontro, come succede all'università di Bolzano. Non direi che ci sono tanti pregiudizi ma differenti modi di vivere.

Volcic: Lei non vede pregiudizi, non vede quasi un'antipatia fisica?

Haller: Vedo più un processo di segregazione, una situazione di *apartheid* (come dicono la sinistra o i verdi), ci sono due o tre società che convivono.

Volcic: Secondo Lei è come una insalatiera? Esiste almeno un olio comune? Perché mi sembra che il suo quadro sia più pessimista, rispetto a quelli più istituzionali degli altri.

Haller: I fattori strutturali sono già stati affrontati, la prosperità economica resta un fattore molto importante, cioè la prosperità del Sud-Tirolo.

Volcic: Se la prosperità economica dovuta ai flussi turistici, o qualcosa del genere, dovesse cambiare, la convivenza peggiorerebbe?

Haller: Sarebbe più difficile. "Prosperità economica" significa che non c'è immigrazione, che ci sono posti di lavoro, e che tutti possono godere di questo.

Volcic: L'Alto Adige in Austria starebbe peggio?

Haller: Non credo. C'è un'altra ragione per la prosperità: il fatto che massicci flussi finanziari provengono dallo stato centrale in Alto Adige, ed è per questo che io credo che molti cittadini italiani del Sud-Tirolo abbiano un atteggiamento assai positivo.

Un secondo fattore strutturale, già menzionato dal professor Gasparini, è l'assenza di differenza fondamentale di valori, il fatto che tutti i tedeschi, ladini e italiani siano cattolici è importante, se si guarda all'Irlanda del Nord dove la religione è un motivo di dissenso.

Volcic: Lei mette la religione fra i valori?

Haller: Sì, certo, è una base fondamentale di valori. In Irlanda ci sono due gruppi con religioni differenti: protestanti e cattolici, anche se questa non è la causa del conflitto, lo approfondisce. Un terzo fattore è la chiarezza di un sistema di autonomia giuridica.

Per me i fattori del processo sono molto importanti. Il ruolo delle *élites* politiche ed intellettuali è molto importante, *élites* responsabili che vogliono questo tipo di autonomia e basta. Ciò crea un clima fondamentale di fiducia.

Volcic: Cioè quanto si è detto prima: basta abbandonare, e questo è molto importante anche per il luogo dove ci troviamo, la concezione che ogni passo, ogni risultato ottenuto serva per richiedere un secondo punto. Non si crede alla buona volontà del prossimo ma si pensa sempre che il prossimo sia qui per raggirarti. Questo deve sparire affinché le *élite* etniche possano in qualche modo incontrarsi?

Haller: Penso che tutti i politici dell'Alto Adige che hanno contribuito a questo processo abbiano un grande merito, siano essi italiani od austriaci.

Volcic: Che cosa sono i bavaresi?

Haller: I bavaresi sono amici, ma non il padre o la madre del Sud-Tirolo, solo l'Austria è in grado di essere il rappresentante della minoranza dell'Alto Adige, perché il Sud-Tirolo faceva parte dell'Austria, non della Germania.

Volcic: Abbiamo iniziato con un diplomatico, concludiamo questa Tavola rotonda con un diplomatico. Lei, ambasciatore Steiner, ha visto un bel pezzo di storia.

Steiner: Cinquantadue anni in politica e in diplomazia. Credo che quando si parla di modello, bisogna anche pensare di definirlo. Bisogna sapere che dietro tutta questa diplomazia e studi teoretici ci sono personalità che hanno accettato la responsabilità da ambo le parti perché il punto di partenza non era facile.

Quarant'anni fa ho discusso con un amico italiano sul da farsi, ho pensato che bisogna pensare "molto semplice", non possiamo cacciarvi da questa terra e non potete cacciarci, tutti devono vivere qui, e ciò indipendentemente da dove passa il confine.

Bisogna essere pronti a fare compromessi. Una volta un arcivescovo, monsignor Makarios, mi ha chiesto: "Lei parla sempre della soluzione di Cipro con un compromesso, ma come posso avvallare un compromesso quando la ragione è completamente dalla mia parte". Non c'era soluzione.

Noi abbiamo la soluzione che presenta questi elementi:
- una trattativa internazionale;
- una risoluzione dell'Onu;
- un'informazione del contenuto del Pacchetto.

C'è sempre il diritto dei popoli all'auto-determinazione, ma bisogna trovare un'altra formula per la convivenza. I sud-tirolesi hanno sempre cercato una soluzione democratica nelle loro istituzioni.

Nella nostra situazione era necessario avere rappresentanti dotati di capacità, elemento importante negli ultimi decenni. Quando si parla di democrazia, la popolazione ha votato chiaramente. Tutto lo sviluppo del problema mi ha reso ottimista per il futuro, vedo che, al centro dell'Europa, abbiamo trovato una via percorribile.

Romania e Ungheria per le minoranze della Transilvania: un modello?

Vasile Puscas
Università di Cluj-Napoca

IL TRATTATO ROMENO UNGHERESE (1996) E LA QUESTIONE DELLE MINORANZE NAZIONALI

Introduzione

Il problema delle relazioni romeno-ungheresi è molto importante per la pace nella regione del centro-Europa e per la sicurezza dell'Europa. Durante i secoli ci furono molti esempi di cooperazione e di conflitto tra questi due popoli. La storia delle relazioni romeno-ungheresi del XX secolo dimostra che il problema del presente e del futuro non può essere risolto attraverso conflitti pressanti, ma solo attraverso l'incoraggiamento della cooperazione fra questi due fieri popoli. Nonostante le difficoltà che si sono presentate alle nostre nazioni, dobbiamo restare ottimisti perché, come ha mostrato il famoso storico romeno Nicolae Iorga, "l'odio del quale abbiamo discusso si trova solo tra le classi alte, alimentato dai giornali, i libri e coltivato nelle scuole. Ma la gente comune, quelli che lavorano insieme, si trovano bene insieme. L'artigianato, lo scambio ed il commercio legano il popolo insieme, a dispetto del fatto che parlino lingue diverse". E le parole di Iorga suonano oggi molto moderne (il saggio *Contro l'odio tra i popoli* - pubblicato nel 1932 - fu stampato in Ungheria nel 1940, ed un'edizione bilingue è stata pubblicata a Budapest nel 1992 ed in Romania nel 1994). Gli ultimi anni hanno offerto sia alla Romania che all'Ungheria, sia ai romeni che agli ungheresi, la possibilità di una valutazione razionale del saggio di Iorga: "Svegliarsi dal buio della loro ostinazione passata è essenziale per queste due nazioni che, nell'interesse del mondo, non devono distruggere l'una l'altra, a causa del loro dovere verso l'umanità, ma anche per ragioni di autopreservazione".

1. Breve storia delle relazioni romeno-ungheresi (1918-1989)

Alla fine del 1918, la vittoria del principio di nazionalità e di quello dell'auto-determinazione dei popoli è stata resa possibile dalla volontà e dalla lotta delle nazioni sulla base di circostanze politiche nonché militari favorevoli. Questa era la realtà oggettiva e la conferenza di Parigi non poteva cambiare le decisioni dei popoli e le realtà tangibili.

Dopo il trattato di Trianon, l'Ungheria ha perso quasi due terzi del territorio austro-ungherese amministrato a beneficio degli stati successori. La Romania ha perfezionato la sua unità statale, unificando la Transilvania, la Bucovina e la Bessarabia con il vecchio Regno romeno.

Tra le due guerre mondiali, la filosofia politica ungherese è stata dominata dal principio del revisionismo totale ("rivogliamo tutto"). L'essenza di questa strategia era di trovare quelle alleanze con i paesi che potrebbero meglio sostenere le rivendicazioni territoriali dell'Ungheria. Le relazioni tra la Romania e l'Ungheria nel periodo tra le due guerre erano ridotte, e con tensioni causate dalla politica aggressiva di revisionismo realizzata dai governi ungheresi.

D'altro canto, nella politica dello stato romeno dopo il 1918 appare un nuovo campo che si riferisce allo *status* delle minoranze nazionali. La Costituzione, votata nel 1923 dall'Assemblea romena, dichiarava che la Romania era uno "stato nazionale, unito ed indivisibile" (art. 1) e stabiliva i diritti politici basilari in accordo con il principio dell'uguaglianza civica. Così, troviamo nell'art. 5 della Costituzione: "I Romeni, senza differenze etniche, di linguaggio o di religione godono della libertà di stampa, di associazione e di tutte le libertà e dei diritti stabiliti dalla legge" ; e l'art. 7 sottolinea: "la diversità delle credenze religiose e delle confessioni, delle origini etniche e di lingua non rappresentano in Romania un modo per ottenere dei diritti civili e politici nonché per sfruttare questi diritti". Lo stesso principio di base era stabilito nell'articolo, che diceva: "tutti i Romeni, senza differenze etniche, di lingua o di religione sono uguali di fronte alla legge".

Allo stesso tempo, la Costituzione del 1938 adottava "l'uguaglianza dei diritti", principio che si riferisce al trattamento delle minoranze etniche. Lo *Status delle minoranze* supera i principi stabiliti dal Trattato per la protezione delle minoranze e contiene delle indicazioni precise per la gestione dei conflitti.

Il 30 agosto 1940, la Germania e l'Italia hanno "arbitrato" le relazioni tra la Romania e l'Ungheria, spingendo Bucarest a cedere una grande parte della Transilvania all'Ungheria, con una superficie di 43.492 kmq. e una popolazione di 2,6 milioni di abitanti, dei quali il 50,2% di romeni, il 37,1% di ungheresi e szekler, nonché di tedeschi, ebrei ed altre minoranze etniche. Il fatto che, durante la Seconda guerra mondiale, la Romania e l'Ungheria furono dalla stessa parte della barricata non abolì i problemi, giacché la Romania perdette una grande parte del suo territorio a favore dell'Ungheria. La crisi tra i due stati diventò più intensa.

Il trattato di pace concluso il 10 febbraio 1947 a Parigi stabiliva che i *Diktat* di Vienna - del 10 novembre 1938, e del 30 agosto del 1940 - erano nulli nonché privi di significato, essendo l'Ungheria obbligata a restituire tutti i territori presi tra il 1938 ed il 1940. Così, i confini dell'Ungheria ritorneranno ad essere quelli che erano il 1° gennaio del 1938.

L'insediamento del comunismo è stato un cambiamento ancora più complesso ed il ruolo che ha giocato la "questione delle minoranze" in questo processo ha influenzato il trattamento del problema. Tra il 1945 ed il 1946, i *leader* della minoranza ungherese consideravano il marxismo come il garante principale per il futuro della comunità etnica e concentravano le loro forze nel sostegno del comunismo. Così, sotto la sorveglianza dei commissari sovietici, si stabilì lo "stato della democrazia popolare" e si considerò "risolto" il problema nazionale in Romania.

Dopo il 1960, la situazione della minoranza ungherese in Romania ha creato pochi problemi, ed il regime di Budapest dichiarò di accettare questo come un problema interno della Romania. Sempre dopo il 1960, il governo ungherese guidato da Janos Kadar si è opposto alla politica di lealtà totale verso l'Urss, adottando una liberalizzazione interna graduale, politica ed economica (chiamata *comunismo al goulash*). Al contrario, la Romania si è allontanata dall'Urss (essendo contro l'invasione della Cecoslovacchia da parte dell'Urss), ma ha dimostrato una grande resistenza per qualsiasi cambiamento nella politica interna.

La Romania e l'Ungheria rinnovarono il Trattato di amicizia, cooperazione e mutua assistenza (del 1948) per altri vent'anni nel febbraio del 1972. In più, verso la metà del 1977,