



Volume 56 | Issue 3

Article 3

2011

Autonomy Regimes and International Law

Yoram Dinstein

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>

 Part of the [International Law Commons](#)

Recommended Citation

Yoram Dinstein, *Autonomy Regimes and International Law*, 56 Vill. L. Rev. 437 (2011).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol56/iss3/3>

This Symposia is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

2011]

AUTONOMY REGIMES AND INTERNATIONAL LAW

YORAM DINSTEIN*

I.

1. What is an autonomy regime? Linguistically, the term is derived from Greek: *auto* means self and *nomos* is law. Autonomy, in the legal-political vocabulary, denotes self-rule or self-government. Obviously, this is a broad concept, which is applicable in manifold unrelated contexts. It is therefore necessary to clarify that in the present paper an autonomy regime will denote a system of self-government—within the borders of a sovereign country—set up in a specified region (or several regions). In other words:

Autonomous areas are regions of a State, usually possessing some ethnic or cultural distinctiveness, which have been granted separate powers of internal administration, to whatever degree, without being detached from the State of which they are part.¹

2. An autonomy regime is not to be confused with a federal system of government.² Like federalism, an autonomy regime is predicated on the principle of integration of separate entities within the single political fabric of a State. However, federalism conveys a general decentralization of powers within a State, dividing the entire—or almost the entire—country into cantons (whatever semantic designation is used to call the cantons: provinces, territories, or even “states”), all of which enjoy a prescribed measure of self-government. Equality (or at least parallelism) in the degree of self-government, with which all the cantons are vested, is the hallmark of a federal State. In an autonomy regime, an extraordinary measure of self-government is conferred on a chosen region (or regions), while similar powers are not enjoyed by other parts of the country. An autonomy regime is thus an exception to the rule: it is based on a preferential, non-homogenous treatment of a selected area (or areas).

3. The texture of autonomy varies from one regime to another, there being no hard and fast rules defining the dimensions of self-government to be exercised. Differently put, there is no “minimum level of independence” required for the status of autonomy to exist.³ All that can be said is that an autonomy regime has an intermediate status between “a non-self-

* Professor Emeritus of International Law, Tel Aviv University (Israel); Member, Institut de Droit International.

1. JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 323 (Oxford Univ. Press 2d ed. 2006).

2. See Rudolf Bernhardt, *Federalism and Autonomy*, in *MODELS OF AUTONOMY* 23, 23 (Yoram Dinstein ed., 1981).

3. Hurst Hannum & Richard B. Lillich, *The Concept of Autonomy in International Law*, 74 *AM. J. INT'L L.* 858, 885 (1980).

governing territory and an independent State.”⁴ Absent a universal formula of autonomy, it is necessary to scrutinize—in each instance—not only the latitude given a regional authority in running local affairs, but also the quantum of influence that the autonomous region wields on the three branches (executive, judicial, and legislative) of the central government of the State as a whole.

II.

4. General international law does not impose an obligation on any State to create an autonomy regime anywhere within its territory. The establishment of an autonomy regime—like that of federalism—is derived from the internal constitution or legislation of the State concerned. If the provisions of the constitution/legislation with respect to autonomy are breached, remedies must consequently be sought through domestic channels.

5. Nevertheless, in certain cases, an autonomy regime is spawned either by a treaty (whether multilateral or bilateral) or by a recommendation of an organ of an international organization (notably, the United Nations General Assembly or Security Council). The existence of a binding treaty alters the legal landscape, inasmuch as disputes relating to its application or interpretation may trigger international adjudication (thus, a singularly important judicial decision was rendered by the Permanent Court of International Justice in the case of the Memel autonomy, addressed *infra* 32).⁵ Clearly, a breach of any treaty gives rise to State responsibility on the international plane.

6. A multilateral treaty laying the foundations of an autonomy regime will usually follow a major war, when borders are redrawn and sovereignty over a certain region is allocated to a State (frequently, a new State) subject to certain conditions. Of course, for the autonomy to be binding, the treaty must be in force. Thus, “a scheme of local autonomy” for Kurdistan (with undefined borders) was envisaged by the Principal Allied Powers in Article 62 of the 1920 Sèvres Treaty of Peace with Turkey.⁶ In the event, this instrument never came into force and plans for Kurdish autonomy in Turkey were shelved, although “[t]he Kurds have never accepted their fate quietly.”⁷ By contrast, the autonomy regime in the Memel Territory was

4. Thilo Marauhn, *Financing Autonomy Through Financial Autonomy? Fiscal and Monetary Aspects of the Israeli-Palestinian Agreements from a Public International Law Perspective*, in *NEW POLITICAL ENTITIES IN PUBLIC AND PRIVATE INTERNATIONAL LAW: WITH SPECIAL REFERENCE TO THE PALESTINIAN ENTITY* 291, 296 (Amos Shapira & Mala Tabory eds., 1999).

5. See Interpretation of Statute of Memel Territory (U.K. v. Lith.), 1932 P.C.I.J. (ser. A/B) No. 49, at 294 (Aug. 11).

6. Sèvres Treaty of Peace with Turkey, Aug. 20, 1920, reprinted in 3 *MAJOR PEACE TREATIES OF MODERN HISTORY 1648-1967*, at 2055, 2077 (Fred L. Israel ed., 1967).

7. See MARGARET MACMILLAN, *PARIS 1919: SIX MONTHS THAT CHANGED THE WORLD* 454 (2002).

successfully shaped by the same Principal Allied Powers in another multilateral treaty (see *infra* 32).

7. The treaty on which an autonomy regime is based may also be bilateral, for instance an agreement concluded between Finland and Sweden regarding an autonomy regime in the Aaland Islands (see *infra* 33). There is also the possibility of a combination of a bilateral and a multilateral treaty (see the example of South Tyrol *infra* 34). The difference naturally is that in a bilateral treaty only one country (the other contracting party) may take action if the implementation of the autonomy regime engenders disputes, whereas in a multilateral treaty the circle of the States directly involved is wider.

8. The question whether a State introducing an autonomy regime acts exclusively on its own initiative or pursuant to binding treaty obligations is of cardinal import from the viewpoint of international law. This is preeminently true should the central government desire to amend the autonomy regime or revoke it altogether, contrary to the wishes of those benefiting from the arrangement. As will be seen (*infra* 27), an attempt to abolish unilaterally an autonomy regime (notwithstanding protests emanating from its beneficiaries) is bound to have grave political reverberations (perhaps kindling a fire that will grow into a conflagration). But, legally speaking, if the foundation of the autonomy regime is solely domestic, the State is only required to observe the strictures of its own legal system as regards constitutional or legislative amendments (it being understood that a constitutional amendment is more complex than the revision of ordinary legislation). Conversely, if an autonomy regime is grounded—in whole or in part—in a binding treaty, the State cannot do as it pleases: it must act in compliance with its international undertakings.

9. An autonomy regime is linked to international law whether or not it is introduced pursuant to a binding treaty (or recommendation by an organ of an international organization). Even when autonomy is put in place by free will of the local State (there being no external legal constraints in play), the regime is ordinarily hammered out for the benefit of a minority the rights of which are protected by international law (see *infra* 11).

10. Once an autonomy regime springs to life—and, again, whether or not this is done as a result of a treaty obligation—the autonomous region may be allowed to conduct some direct international contacts with foreign countries. It may also be authorized to make decisions which have considerable repercussions in the international arena, e.g., in terms of membership in international organizations (see the illustration of Greenland withdrawing from the European Union, *infra* 30).

III.

11. The *raison d'être* of an autonomy regime is usually a response to the needs of a minority living within the boundaries of a State. Although—as indicated (*supra* 4)—there is no obligation under general international

law to create an autonomy regime, international law does bestow protection on certain minorities. The gist of this protection is expressed in Article 27 of the 1966 International Covenant on Civil and Political Rights (CP Covenant):

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 practise their own religion, or to use their own language.⁸

The language of Article 27 of the CP Covenant is repeated verbatim (with an addition) in Article 30 of the 1989 Convention on the Rights of the Child.⁹ In the opinion of the present writer, the essence of Article 27 of the CP Covenant is declaratory of contemporary customary international law.

12. As aptly summarized by Rüdiger Wolfrum, “Article 27 has to be understood as providing a minimum of protection against enforced integration or assimilation.”¹⁰ That is to say, what contemporary international law rejects is the construct of an enforced national melting pot, which would deny protected minorities the right to be different from the majority of the population of the State in which they live. However, the practical dimensions of this right to be different are often intensely debated (e.g., as regards the right of Moslem women to cover their faces in public in Western countries).

13. In 1992, the United Nations General Assembly adopted a (non-binding) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration).¹¹ The Declaration states that it is “[i]nspired” by Article 27 of the CP Covenant.¹² Yet, the text introduces the new phrase of “national minorities.” No explanation is offered for the addition, although the use of the conjunction “or” suggests that it is limited to “ethnic, religious and linguistic” minorities.¹³ The expression “national minorities” has caught on, as is evident from a (binding) 1995 European Framework Convention for the Protection of

8. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 1966 U.S.T. 521, 999 U.N.T.S. 171.

9. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3, 54.

10. Rüdiger Wolfrum, *The Emergence of “New Minorities” as a Result of Migration*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 153, 164 (Catherine Brölmann et al. eds., 1993).

11. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, Annex, U.N. GAOR, 47th Sess. Supp. No. 49 (Vol. I), U.N. Doc. A/47/49 (Vol. 1), at 210 (Dec. 18, 1992).

12. *See id.*

13. *See* Natan Lerner, *Group Rights and Discrimination in International Law*, 15 INT’L STUD. HUM. RTS. 16 (1991).

National Minorities (the European Convention).¹⁴ The European Convention does not define the term “national minorities.” Although the expression has several possible meanings in the abstract,¹⁵ it has to be interpreted—like all other treaty phrases—in its proper context. The Preamble of the European Convention refers to the “ethnic, cultural, linguistic and religious identity” of persons belonging to a national minority.¹⁶ These are the same categories of minorities benefiting from international legal protection pursuant to Article 27 of the CP Covenant. The adjectives “ethnic, religious and linguistic” are mentioned up front in the text of Article 27, and the right “to enjoy their own culture” is specifically mentioned later on. Patently, minorities that do not have an ethnic, cultural, linguistic, and religious identity are excluded from the range of international legal protection (although such minorities may benefit from protection under domestic law).

14. The lack of definition goes beyond the term “national minority.” There is no consensus as to the circumstances in which a particular group qualifies as a religious minority (the issue of “sects” is particularly riven with tensions), a linguistic minority (are local dialects to be considered languages for this purpose?), or, above all, an ethnic or cultural minority. In 2004, the European Court declined to intervene in a Polish decision not to recognize the existence of a “Silesian” national minority.¹⁷

15. The rights spelt out in the European Convention are guaranteed to “persons belonging to national minorities.”¹⁸ Article 27 of the CP Covenant also affords its protection to “persons belonging to . . . minorities.” It is therefore frequently argued that the rights predicated on international law are confined to individuals (persons) and do not appertain to any minority group as such.¹⁹ But, in the opinion of the present writer, the correct approach is that Article 27 of the CP Covenant (if not the European Convention) confers collective human rights on minorities as groups and not merely on the individuals belonging to such minorities.²⁰

16. A corollary of the absence of a general international legal obligation for States to set up autonomy regimes is that national minorities do not

14. Framework Convention for the Protection of National Minorities, *opened for signature* Feb. 1, 1995, 2151 U.N.T.S. 243 [hereinafter *European Framework Convention*].

15. See Geoff Gilbert, *Minority Rights Under the Council of Europe*, in *MINORITY RIGHTS IN THE ‘NEW’ EUROPE* 53, 55-56 (Peter Cumper & Steven Wheatley eds., 1999).

16. *European Framework Convention*, *supra* note 14, at 246.

17. *INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY* 300-03 (Olivier de Schutter ed., 2010) (discussing *Gorzelik v. Poland*, 2004-I Eur. Ct. H.R. 107).

18. See *European Framework Convention*, *supra* note 14, at 247-50.

19. See, e.g., A.H. ROBERTSON & J.G. MERRILLS, *HUMAN RIGHTS IN THE WORLD: AN INTRODUCTION TO THE STUDY OF INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 151-54 (4th ed. 1996).

20. See Yoram Dinstein, *Collective Human Rights of Peoples and Minorities*, 25 *INT’L & COMP. L.Q.* 102, 118 (1976).

have a right to gain autonomy under general international law.²¹ Still, there is no doubt that one effective way of ensuring the protection of ethnic, religious, linguistic, and cultural minorities is to grant them self-government in regions where they are concentrated demographically and where they constitute a majority of the (local) population. Autonomy enhances the opportunities for a national minority to secure the development of its own separate culture, religion, or language in its place of habitation.

17. It is well worth quoting the 1990 Copenhagen Document on the Human Dimensions of the Conference on Security and Co-operation in Europe (CSCE):

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, 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.²²

It follows from this passage that obtaining autonomy by any national minority within a particular region (i) depends on the policies of the State concerned; (ii) is linked to “historical and territorial circumstances”; and, above all, (iii) is only one of several options to ensure the protection of minorities. It is striking that the text does not even include a “clear recommendation to establish autonomy.”²³

18. The common rationale of setting up an autonomy regime within a particular region is that a national minority living there will become a regional majority. However, an autonomy regime is not attuned to the needs of every national minority group. If the minority is dispersed all over the territory of a State—in such a manner that it does not form a demographic majority in any geographic portion of the country—the grant of autonomy to any particular region would still leave the national minority in the position of a minority even regionally.

IV.

19. It must be appreciated that, insofar as purely religious and linguistic minorities are concerned, the establishment of an autonomy regime in their favour is the optimal solution: such minorities cannot possibly ask for

21. See Patrick Thornberry, *The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism*, in 16 DEVELOPMENTS IN INTERNATIONAL LAW: MODERN LAW OF SELF-DETERMINATION 101, 134 (Christian Tomuschat ed., 1993).

22. Document of the Copenhagen Meeting of the Conference on the Human Dimensions of the CSCE, June 29, 1990, 29 I.L.M. 1306, 1319, ¶ 35.

23. See Ruth Lapidoth, *Autonomy: Potential and Limitations*, 1 INT'L J. ON MINORITY & GRP. RTS. 269, 272-73 (1994).

more. But that is not necessarily the case with a national minority based on ethnic and cultural kinship (which may evidently encompass religious and linguistic elements). Such a minority may be considered to be a people or a part of a people. When a people constitutes a majority in a defined region of a State, it is entitled to self-determination. As proclaimed by common Article 1(1) of both the CP Covenant and the twin Covenant on Economic, Social and Cultural Rights:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.²⁴

20. The International Court of Justice pronounced, in the *East Timor* case of 1995, that the assertion that the right of peoples to self-determination has an *erga omnes* character “is irreproachable.”²⁵ This was confirmed in the 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.²⁶ In the exceptional circumstances of *erga omnes* obligations (a phrase first employed by the Court in the 1970 *Barcelona Traction* case²⁷), each and every State in the world is vested with rights corresponding to these obligations, thus obtaining a *jus standi* in the matter.²⁸

21. The right of self-determination is guaranteed to all peoples wherever they are, and it is not confined (as is sometimes contended) to colonial territories.²⁹ Moreover, the exercise of the right of self-determination is not contingent on the group suffering from oppression. Even if a people enjoys the full spectrum of protection as an ethnic minority pursuant to Article 27 of the CP Covenant—and notwithstanding the fact that it may already benefit from an autonomy regime—it is entitled to freely determine its political future. That means that a people concentrated in a specific geographic region (where it forms a majority) has a choice. On the one hand, it may accept an offer of *internal* self-determination within the borders of a “multinational” State through an autonomy regime. On the other hand, it can invoke the right of *external* self-determination: namely, insist on secession and the formation of a new sovereign State.³⁰ The

24. International Covenant on Civil and Political Rights, *supra* note 8, at 179; International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3.

25. *East Timor* (Port. v. Austl.), 1995 I.C.J. 90, 102 (June 30).

26. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, 172 (July 9).

27. *Barcelona Traction, Light and Power Co. (Belg. v. Spain)*, 1970 I.C.J. 3, 32 (Feb. 5).

28. See Yoram Dinstein, *The Erga Omnes Applicability of Human Rights*, 30 ARCHIV DES VÖLKERRECHTS 16, 18-19 (1992).

29. See PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES 214-15 (1991).

30. On the right to secession, see Yoram Dinstein, *Self-Determination Revisited*, in INTERNATIONAL LAW IN AN EVOLVING WORLD 241 (Manuel Rama-Montaldo ed., 1994).

question whether the right of self-determination embraces the right to secession was raised—but not dealt with—by the International Court of Justice in its Advisory Opinion of 2010 on *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*.³¹ The Supreme Court of Canada, in reference to Quebec, held in 1998 that international law does not grant a right of unilateral secession to component parts of sovereign States (subject to exceptional circumstances that are inapplicable to Quebec).³² All the same, the empirical evidence—epitomized by the break-up of the Soviet Union, Yugoslavia, and Czechoslovakia—does not bolster this decision.

V.

22. When a people aspires to attain full-fledged statehood (external self-determination)—but is realistically barred from attaining that objective—it may conclude that the alternative of an autonomy regime within the boundaries of a multinational State (internal self-determination) is the only workable political compromise. In such a scenario, autonomy may be reluctantly offered and resentfully received.³³ The trouble is that, in time, built-in tensions are liable to flare up in violence. Autonomy may then become a mere stepping stone to independence.

23. Furthermore, the establishment of an autonomy regime in salutary circumstances—in which it is generously offered and gratefully accepted by a beneficiary national minority—does not mean that the historical clock necessarily stops ticking. Experience shows that autonomous territories “seem to be constantly striving to extend their particular form of local government.”³⁴ Notwithstanding the fact that the prospect of independence may not loom on the horizon when an autonomy regime is set up, the very exercise of self-government may build up a momentum that may eventually raise the banner of moving from autonomy (i.e., limited self-government) to full-fledged sovereignty. Greenland is the clearest illustration (see *infra* 30).

24. An autonomy regime may also be perceived from the word “go” as a stop-gap measure—a temporary stage—prior to transition to full-fledged statehood. The prime example today is that of the Palestinian autonomy (see *infra* 36). Everybody knows that a sovereign State of Palestine will emerge sooner or later, however long and arduous the road to statehood

31. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. 141, ¶¶ 82-83 (July 22).

32. INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY, *supra* note 17, at 688, 689-92 (discussing Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Can.)).

33. See Robert A. Friedlander, *Autonomy and the Thirteen Colonies: Was the American Revolution Really Necessary?*, in MODELS OF AUTONOMY, *supra* note 2, at 135, 136.

34. Bengt Broms, *Autonomous Territories*, in 1 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 308, 311 (Rudolph Bernhardt ed., 1992).

might be. The sporadic violence characterizing the region is due to the inability to reach a negotiated settlement about specifics, not least borders. Nevertheless, the objective is not in doubt. That being said, it must be underscored that the issue of Palestine is different from the others discussed in the present paper, inasmuch as it relates to territories under belligerent occupation,³⁵ rather than constituting integral parts of a State.

25. Despite the abundant historical illustrations suggesting that autonomy regimes are ephemeral in nature, it must not be presupposed that autonomy is inherently doomed to failure. Indeed, some autonomy regimes have flourished for long durations, without necessarily leading to profound disputes and ultimately to rupture. The best example is that of the Aaland Islands (see *supra* 7 and *infra* 33).

26. Even when largely successful, the creation of an autonomy regime cannot remove or resolve all problems characterizing cohabitation of majority and minority groups in a multinational country. In fact, the very concession of self-government to a national minority (forming a regional majority) might mean that—within that region—the national majority (which is a regional minority) would need protection from the local (autonomous) authorities. Besides, assuming that there are several minorities in the country, the creation of regional autonomy for one of them would not affect the status of the others (who would remain minorities both nationally and regionally and whose relations with the regional authorities may be no less—perhaps more—strained than with the central government). Additionally, the solution of the problem of members of a national minority living in the region subject to an autonomy regime does not address (and perhaps even complicates) the predicament of members of the same national minority living elsewhere in the country without access to the benefits of autonomy.

VI.

27. On the whole, it is impossible to answer the question why a certain people is satisfied with (or at least reconciled to) the status of internal self-determination—living in an autonomous region—whereas another demands external self-determination. Sometimes this can be due to economic, social, and political incentives offered with a view to maintaining the territorial integrity of a multinational State. But on other occasions, a people would rather have sovereignty even at the expense of economic prosperity. Improved living conditions per se provide no assurance of a stable autonomy regime. It is very difficult to explain why in the same country—Spain—autonomy is relatively successful in Catalonia but, not-

35. See YORAM DINSTEIN, *THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION* 14-19 (2009).

withstanding the grant of autonomy and economic progress, terrorism has been rampant in the Basque region.³⁶

28. An autonomy regime may disappear as a result of tectonic changes brought about by a major war. This is what happened to the Memel autonomy (*infra* 32) in the wake of World War II. However, as a rule, once an autonomy regime takes root, there is no way back. Absent tectonic changes, the introduction of self-government is practically an irreversible step. A unilateral abolition of an autonomous regime by the State that set it up is bound to backfire. The two leading examples are Eritrea (see *infra* 35) and Kosovo (see *infra* 31). In both instances, an autonomy regime was largely accepted by the ethnic minority affected until arbitrarily revoked by the State (Ethiopia and Serbia, respectively). The abolition of the autonomy regime only radicalized the situation and fuelled the fire of secession.

VII.

29. To better understand the workings of autonomy regimes, it is proposed to sketch here a brief outline of some paradigmatic instances in different parts of the world, each marked by its own distinct characteristics. As will be shown, all autonomy regimes have at least some effects that cross international frontiers. The pivotal question, however, is whether the autonomy regime is embedded in domestic or international law.

30. The emergence of an autonomy regime may be due exclusively to a domestic process, there being no pressure from the outside to proceed in that direction. Greenland is the conspicuous model. The autonomy regime was created by Denmark—on its own initiative—in the Greenland Home Rule Act of 1979 (which entered into force the same year, following a referendum).³⁷ Two important points must be stressed:

(i) As a result of another referendum, held in 1982, Greenland withdrew in 1985 from the European Economic Community (the present-day European Union), which Denmark had joined in 1973; Greenland was accorded “overseas countries and territories” status in the EEC.³⁸

(ii) Thirty years after the Home Rule Act, in 2009, following again a referendum, numerous additional powers were transferred to the local government of Greenland. Future independence is openly bruited about as a viable option at the time of writing.

36. See HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS* 275-79 (1990).

37. See Isi Foighel, *A Framework for Local Autonomy: The Greenland Case*, in *MODELS OF AUTONOMY*, *supra* note 2, at 31-52. The text of the Greenland Home Rule Act of 1978 is reproduced in *DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS* 212, 213-218 (Hurst Hannum ed., 1993).

38. See HANNUM, *supra* note 36, at 343.

31. If Greenland illustrates a domestic autonomy regime developing (and growing) without rancour, the diametric opposite is Kosovo. The Constitution of the former Yugoslavia defined Kosovo as an Autonomous Province, a constituent part of Serbia.³⁹ However, Kosovo's autonomy was abolished by Serbia unilaterally in March 1989, and subsequent efforts to bring about its restoration failed.⁴⁰ After violence had erupted in Kosovo, the Security Council—in Resolution 1160 (1998), acting under Chapter VII of the United Nations Charter—expressed support for “an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration.”⁴¹ In Resolution 1199 (1998), also acting under Chapter VII of the Charter, the Council affirmed that the deterioration of the situation there “constitutes a threat to peace and security in the region.”⁴² When no negotiated agreement was arrived at, NATO conducted an air campaign against Serbia in order to compel it to accept a settlement of the issue of Kosovo. By using inter-State force without getting a prior authorization of the Security Council for such enforcement action, NATO acted in breach of the United Nations Charter,⁴³ but militarily it prevailed and Serbia gave ground. In the wake of the hostilities, in June 1999, the Security Council adopted Resolution 1244 (1999), which—determining that “the situation in the region continues to constitute a threat to international peace and security” and again acting under Chapter VII—decided “on the deployment in Kosovo, under United Nations auspices, of international civil and security presences,” one of the main responsibilities of which would be “[p]romoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo,” within Serbia.⁴⁴ After several years of United Nations administration, in February 2008, Kosovo declared independence: the declaration was rejected by Serbia and the international community has been divided over the issue of recognition of Kosovo's independence.⁴⁵ In October 2008, upon the request of Serbia, the General Assembly asked the International Court of Justice for an Advisory Opinion on the legality of Kosovo's declaration of independence. In July 2010, the Court—on the narrowest possible ground (and without addressing the issue of the right

39. *Yugoslavia*, in DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS, *supra* note 37, at 761, 763.

40. See Richard Caplan, *International Diplomacy and the Crisis in Kosovo*, 74 INT'L AFF. 745, 748-50 (1998).

41. S.C. Res. 1160, ¶ 5, U.N. Doc. S/RES/1160, at 2 (Mar. 31, 1998).

42. S.C. Res. 1199, U.N. Doc. S/RES/1199, at 2 (Sept. 23, 1998).

43. See YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 313-15 (4th ed. 2005).

44. S.C. Res. 1244, ¶¶ 5, 11, U.N. Doc. S/RES/1244 (June 10, 1999).

45. See MALCOLM N. SHAW, INTERNATIONAL LAW 452-53 (6th ed. 2008).

to secession)—gave its opinion that Kosovo’s declaration of independence “did not violate general international law.”⁴⁶

32. A completely different mode of setting up an autonomy regime is in pursuit of a treaty. The prototype is Memel. The autonomy regime here—for the benefit of the largely German population—was based on two interlinked multilateral treaties. First off, in Article 99 of the 1919 Peace Treaty of Versailles, Germany renounced title to Memel in favour of the Principal Allied and Associated Powers.⁴⁷ Then, in the Paris Convention Concerning the Territory of Memel, concluded in 1924 by Britain, France, Italy, Japan, and Lithuania, the four Principal Allied Powers transferred to Lithuania title to Memel, subject to the convention’s stipulations.⁴⁸ The convention provided: “The Memel Territory shall constitute, under the sovereignty of Lithuania, a unit enjoying legislative, judicial, administrative, and financial autonomy within the limits prescribed by the Statute set out in Annex I.”⁴⁹ As noted (*supra* 27), the Memel autonomous regime (like the Free City of Danzig) was washed away by the political and demographic seismic changes inflicted on that part of the world by World War II. The German population moved westward, and Memel (under the name of Klaipėda) is fully integrated in Lithuania.

33. The treaty leading to the creation of an autonomy regime may be bilateral, rather than multilateral. The leading scenario is that of Finland’s Aaland Islands. The autonomy of the Aaland Islands was engendered by a bilateral agreement between Finland and Sweden, concluded in 1921⁵⁰ (not to be confused with a multilateral Convention of the same year on the Non-Fortification and Neutralisation of the Aaland Islands).⁵¹ The terms of the bilateral agreement were approved by the Council of the League of Nations in 1921, and the application of its provisions was put under its supervision.⁵² Finnish domestic legislation for the implementation of the autonomy of the Aaland Islands was adopted already in 1922 and later updated.⁵³ In the post-World War II period, the seminal Finnish

46. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 141, ¶¶ 82-84 (July 22).

47. Treaty of Peace with Germany, June 28, 1919, S. Doc. No. 66-51, at 483-85 (1919), *reprinted in* 2 MAJOR PEACE TREATIES OF MODERN HISTORY 1648-1967, *supra* note 6, at 1265, 1338.

48. Convention Concerning the Territory of Memel, May 8, 1924, 29 L.N.T.S. 85, 87-89.

49. *Id.* at 89.

50. *See* DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS, *supra* note 37, at 142-43 (reproducing text of agreement).

51. Convention on the Non-Fortification and Neutralisation of the Aaland Islands, Oct. 20, 1921, 9 L.N.T.S. 211, *reprinted in* 1 INTERNATIONAL LEGISLATION 744 (Manley O. Hudson ed., 1931).

52. *See* DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS, *supra* note 37, at 143 (reproducing text of agreement).

53. On the legislative history, see RUTH LAPIDOTH, AUTONOMY: FLEXIBLE SOLUTIONS TO ETHNIC CONFLICTS 71-77 (1996).

domestic legislation was the Aaland Autonomy Act, enacted in 1951; it has since been replaced by a new Autonomy Act of 1991.⁵⁴ Amendment of the Autonomy Act is possible by congruent decisions of both the Finnish Parliament and the Aaland Legislative Assembly.⁵⁵ It is noteworthy that, generally speaking, current Finnish legislation confers on the Aaland Islands an even greater measure of autonomy compared to the original arrangement.⁵⁶ In 1994, the autonomy arrangement for the Aaland Islands was anchored in Finland's Constitutional Acts.⁵⁷ Interestingly, unlike Greenland, the Aaland Islands' Legislative Assembly opted in 1994—following an advisory referendum—to join the European Economic Community (together with Finland).⁵⁸ The question whether the Aaland Islands can—at some future time—withdraw unilaterally from the European Union is a matter of scholarly debate.⁵⁹

34. An autonomy arrangement may be based on both a bilateral and a multilateral treaty. This is the case of South Tyrol. The autonomy regime here is based on Article 116 of the Italian Constitution, promulgated in 1947 (in force since 1948), according autonomy—the forms and conditions of which were to be detailed by statute—to Trentino-Alto Adige (as well as to four other regions: Sicily, Sardinia, Friuli-Venetia Giulia, and the Valle d'Aosta).⁶⁰ The projected statute (adopted by ordinary legislation) was originally enacted in 1948 and then replaced by a new Autonomy Statute of 1972.⁶¹ All these domestic measures came about as a result of two tiers of treaty law: first, a bilateral treaty between Italy and Austria (the so-called De Gasperi-Gruber agreement), concluded in Paris in 1946; and then, the 1947 Paris Treaty of Peace between the Allied and Associated Powers and Italy, which incorporates in Annex IV the text of the bilateral agreement of 1946.⁶² Article 10(2) of the Peace Treaty sets forth: "The

54. Act on the Autonomy of Åland, Aug. 16, 1991, *reprinted in* DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS, *supra* note 37, at 117.

55. *Id.* at 138.

56. See Lauri Hannikainen, *The International Legal Basis of the Autonomy and Swedish Character of the Åland Islands*, in AUTONOMY AND DEMILITARISATION IN INTERNATIONAL LAW: THE ÅLAND ISLANDS IN A CHANGING EUROPE 57, 63-65 (Lauri Hannikainen & Frank Horn eds., 1997).

57. See Markku Suksi, *On the Entrenchment of Autonomy*, in AUTONOMY: APPLICATIONS AND IMPLICATIONS 151, 156 (Markku Suksi ed., 1998).

58. See *id.* at 167-68.

59. See Niklas Fagerlund, *The Special Status of the Åland Islands in the European Union*, in AUTONOMY AND DEMILITARISATION IN INTERNATIONAL LAW: THE ÅLAND ISLANDS IN A CHANGING EUROPE, *supra* note 56, at 189, 237-38.

60. Art. 116 Costituzione [Cost.] (It.), *reprinted in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1, 26 (Rüdiger Wolfrum et al. eds., Supp. 2006).

61. See Christopher Schreuer, *Autonomy in South Tyrol*, in MODELS OF AUTONOMY, *supra* note 2, at 53, 55, 65; see also Autonomy Statute for the South Tyrol 10 Novembre 1971, n.670, *reprinted in* DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS, *supra* note 37, at 460, 462-95.

62. Treaty of Peace with Italy, Feb. 10, 1947, 61 Stat. 1245, 49 U.N.T.S. 3, *reprinted in* IV MAJOR PEACE TREATIES OF MODERN HISTORY 1648-1967, *supra* note 6, at 2421, 2477-78.

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, 1946.⁶³ This clause appears to vest each of the Allied and Associated Powers with a *jus standi* should there be a dispute concerning the implementation of the bilateral Austrian-Italian agreement. But it is noteworthy that the Settlements of Dispute stipulation in the Peace Treaty (Article 83,⁶⁴ providing for the establishment of a Conciliation Commission) does not apply to disputes which may arise in giving effect to Article 10 or Annex IV. Although, initially, a lot of friction was generated by the autonomous regime in South Tyrol, eventually an informal agreement between Austria and Italy (known as the “Package Deal”) was arrived at in 1969.⁶⁵ The Package Deal seems to have resolved all outstanding issues between the two countries. Furthermore, since both Italy (from the beginning) and Austria (since 1995) are members of the European Union—and since they are both signatories to the Schengen arrangement and are members of the Euro Zone—the borders between the two countries are open, the currency is the same, and many previous reasons for friction have simply disappeared.

35. At times, the fundamental role of a (binding) treaty in an autonomy regime is replaced by a (non-binding) resolution of an organ of an international organization. This is the case of Eritrea. Eritrea was an Italian colony occupied by the British in World War II (1941). British administration went on after the end of the war pending negotiations as to the future of the territory. In December 1950, the United Nations General Assembly, in Resolution 390(V), recommended that “Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown.”⁶⁶ It took a while for United Nations legal experts to work out the necessary legal details, but in 1952 power was handed over by Britain to Ethiopia and an autonomy regime in Eritrea was established simultaneously.⁶⁷ The autonomy regime was set out in an Ethiopian Federal Act, adopted in 1952, incorporating a Constitution of Eritrea.⁶⁸ The Eritrean autonomy was in force until 1962, when Eritrea was fully annexed by Ethiopia in a unilateral act.⁶⁹ An armed struggle seeking Eritrean inde-

63. *Id.* art. 10(2).

64. *Id.* art. 83.

65. See Frances Pinter, *Changes in the South Tyrol Issue*, 1977 Y.B. OF WORLD AFF. 64, 69-74.

66. G.A. Res. 390(V), U.N. GAOR, 5th Sess., Supp. No. 20, U.N. Doc. A/1561, at 20 (Dec. 2, 1950), reprinted in 3 UNITED NATIONS RESOLUTIONS, SERIES I: RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY 94 (Dusan J. Djonovich ed., 1973).

67. See *The Question of Eritrea*, 1952 Y.B. OF THE U.N. 262, 262-66.

68. See Theodor Meron & Anna M. Pappas, *The Eritrean Autonomy: A Case Study of a Failure*, in MODELS OF AUTONOMY, *supra* note 2, at 183, 187-88. The text of the Constitution of Eritrea is reproduced in DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS, *supra* note 37, at 628, 633-61.

69. On the liquidation of the Eritrean autonomy, see Haggai Erlich, *The Eritrean Autonomy 1952-1962: Its Failure and Its Contribution to Further Escalation*, in MODELS OF AUTONOMY, *supra* note 2, at 171, 179-80.

pendence was soon started against Ethiopia. By 1991, this struggle culminated with complete success. Eritrea declared its formal independence (following a referendum) in 1993. Independence did not necessarily mark the end of the tensions with Ethiopia. A border dispute between Eritrea and Ethiopia triggered a full-scale war in 1998-2000 and reignited further hostilities in 2003. Since 2003, an Eritrea-Ethiopia Claims Commission has issued multiple dispute-settling awards; but at the time of writing it is by no means clear that the conflict is completely over.⁷⁰

36. An exceptional case in many respects is that of the Palestinian autonomy. The autonomy regime in the West Bank and the Gaza Strip was created by a series of international agreements between Israel and the Palestine Liberation Organization (PLO) representing the Palestinians. The salient features of the autonomy regime are enunciated in the 1994 Cairo Agreement on the Gaza Strip and the Jericho Area,⁷¹ superseded by the 1995 Interim Agreement on the West Bank and the Gaza Strip.⁷² The Interim Agreement speaks chiefly about “transfer of powers and responsibilities,” but also about “self-government arrangements.”⁷³ The self-government is supposed to be exercised by an Executive Authority subject to an elected Council.⁷⁴ The term “autonomy” as such is not used in the Interim Agreement, although “full autonomy to the inhabitants” of the West Bank and Gaza was envisaged already in the 1978 Camp David Framework for Peace in the Middle East, concluded between Israel and Egypt.⁷⁵ The legal status of the Interim Agreement between Israel and the Palestinians is not entirely clear. Strictly speaking, the instrument is not a treaty, since one of the Contracting Parties is not a State.⁷⁶ Still, the Interim Agreement is looked upon by both parties as assimilated to an international treaty (thus, Israel has published it in its treaty series *Kitvei Amana*), inasmuch as Palestine is viewed as a State *in statu nascendi*. The Interim Agreement is bilateral. Yet, it was formally “witnessed” by the United States, the Russian Federation, Egypt, Jordan, Norway, and the European Union.⁷⁷ The legal repercussions of the act of witnessing are obscure.⁷⁸

70. See generally THE 1998-2000 WAR BETWEEN ERITREA AND ETHIOPIA: AN INTERNATIONAL LEGAL PERSPECTIVE (Andrea De Guttry et al. eds., 2009).

71. Agreement on the Gaza Strip and the Jericho Area, Isr.-PLO, May 4, 1994, 33 I.L.M. 622.

72. Interim Agreement on the West Bank and the Gaza Strip, Israel-PLO, Sept. 28, 1995, 36 I.L.M. 551.

73. *Id.* at 558-59.

74. *Id.* at 559-60. For the roles of the Council and the Executive Authority, see Joel Singer, *The Emerging Palestinian Democracy Under the West Bank and Gaza Strip Self-Government Arrangements*, 26 ISR. Y.B. ON HUM. RTS. 313, 334-43 (1996).

75. Agreement on the Framework for Peace in the Middle East, Egypt-Isr., Sept. 17, 1978, 17 I.L.M. 1466, 1467.

76. See ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 62 (2d ed. 2007).

77. See Interim Agreement on the West Bank and the Gaza Strip, *supra* note 72, at 568.

78. See AUST, *supra* note 76, at 101-02.

37. The degree of practical exercise of autonomy by the Palestinian Authority has ebbed and flowed since the 1995 Interim Agreement.⁷⁹ The reasons are diverse:

(i) The “Second Intifada” of 2000-2004 brought about an Israeli reoccupation of the more heavily populated areas in the West Bank, so that autonomy—for a while—was largely suspended de facto.

(ii) In 2005, Israel unilaterally withdrew from the Gaza Strip.

(iii) Due to *Hamas’s* violent takeover of the Gaza Strip in 2007, the Palestinian Authority has lost its power there.

(iv) Hostilities between Israel and Hamas have flared up—in varying degrees of intensity—on several occasions (especially in the winter of 2008–2009). In fact, the Gaza Strip has been subjected by Israel to a state of siege, which has created controversies regarding access of humanitarian assistance.

(v) In 2010, the Palestinian Authority is exercising growing autonomy in the West Bank. But the Gaza Strip, although de facto autonomous, is not subject to the Authority’s writ.

(vi) Direct negotiations between Israel and the Palestinians—as regards a permanent status agreement—have been suspended and not yet started by the time of writing.

It is necessary to recall that, as stated (see *supra* 24), the Palestinian autonomy is different from the other regimes discussed in the present paper, since it relates to territories under belligerent occupation.

VIII.

38. In conclusion, there is no set formula of a successful autonomy regime that can be imitated or transplanted elsewhere. As pointed out, it is impossible to answer the question why a certain minority-people is reconciled to the status of internal self-determination—living in an autonomous region—whereas another insists on external self-determination. Sometimes, this can be due to economic, social, and political incentives offered with a view to maintaining the territorial integrity of a multinational State. But, on other occasions, a people would rather have sovereignty even at the expense of economic prosperity; improved living conditions per se provide no assurance of a stable autonomy regime.

39. If the record of success of two enduring autonomous regimes—Aaland Islands (*supra* 33) and South Tyrol (*supra* 34)—is to serve as a model, one may deduce that, for an autonomy regime to succeed, (i) it is advanta-

79. For the legal position in 1998, see Yoram Dinstein, *The International Legal Status of the West Bank and the Gaza Strip—1998*, 28 ISR. Y.B. ON HUM. RTS. 37 (1998).

geous to set it up on an island (geographically isolated from cross-border interference by neighboring States), or, short of that, (ii) the neighboring State (in which the majority has the same ethnic composition as most of the inhabitants of the autonomous region) must not adopt an irredentist policy and should encourage the local population to reconcile itself to internal self-determination; and (iii) it is useful for the two neighboring countries in such a situation to belong to a regional organization like the European Union. But Greenland (*supra* 30) shows that being an island is not an ironclad guarantee of the status quo and even membership in the European Union may not be appreciated. The moral of the story, perhaps, is that no two cases are alike and the preservation of the status quo can never be guaranteed.

