IDIOSYNCRASY OR FORESIGHT? PRE-1990 CASES OF TERRITORIAL AUTONOMY IN EUROPE

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1. Introduction

Territorial autonomy as a mechanism to resolve self-determination disputes is not an entirely new approach to dealing with such conflicts, but its application has become far more widespread since the end of the Cold War. Prior to that, it was mostly cases in Europe (or of overseas territories related to European states, such as the Netherlands Antilles) that benefited, with some success, from the application of territorial autonomy as a conflict resolution mechanism. This is not to say that there are no examples of territorial autonomy elsewhere in the world that pre-date the end of the Cold War, but few of them proved viable conflict settlements. Eritrea was granted autonomy within a federal Ethiopia in 1952 on the basis of a UN General Assembly Resolution, but within ten years this arrangement had failed, leading to Eritrea's annexation by Ethiopia in 1962 and the imposition of direct (military) rule five years later, triggering a long civil war that ended with Eritrea gaining independent statehood in 1993 (Hannum 1996, 337-341; Joireman 2004; Benedikter 2007, 29). In Asia, a prominent example of failed autonomy is that of Iraqi Kurdistan. An agreement between the Kurdish Democratic Party and Saddam Hussein's Ba'th party in 1970 initially appeared to provide an acceptable arrangement, but the 1974 implementation law saw the government in Baghdad retract on a number of issues and delimit the territorial reach of autonomy to those areas in which the Kurds formed a majority of the population according to the 1957 census, which, almost two decades later, was clearly outdated and its use for demarcating the boundaries of the autonomous entity rejected by the Kurds as it would not have included quite a number of areas considered Kurdish by the Kurds. Moreover, not unlike the situation in Iraq today, the 1974 implementation legislation failed to resolve the status of Kirkuk and ownership over its natural resources (cf. Hannum 1996, 190-194; Bengio 2005, 174). In all these cases, the governance arrangements established were symmetrical in the sense defined by Weller in the introduction. Within their own limitations, Eritrea and Iraqi Kurdistan both had a status akin to a federacy arrangement, as did Northern Ireland until 1972, and again for a short period of time in 1974. In Italy (after 1948) and in Spain (after 1979) arrangements emerged in which there was overall devolution, but it was asymmetric in the sense that different, and different levels of, powers were devolved to the two states' constituent regions.

Going further back in history, what we consider territorial autonomy today has some forerunners in the way empires managed their vast territories, partly in view also of avoiding dissent from peoples and communities subjugated to the ruling, or dominant, nation/ethnic group. Examples here include a number of provinces of the Ottoman Empire, most prominently in the Balkans, but extending further to Egypt and Lebanon as well, the Austrian *Kronländer* and, after the 1867 compromise, Hungary, in the Habsburg Empire, and the status of Finland in the Russian Empire for most of the 19th century. These, too, were essentially asymmetric arrangements. In the German Empire, after 1871, the *Reichsland* of Alsace Lorraine is another instructive example of an asymmetry arrangement. Ceded by France to Germany at the end of the Franco-Prussian war that led to the creation of the German Empire, Alsace Lorraine was not made a federal entity as were all the other German kingdoms, principalities, city states, etc., that formed the Wilhelmine *Reich*, but was placed under the direct rule of the emperor. Over time, this arrangement developed into a form of autonomy more limited than that of 'proper' federal entities, but nonetheless with some substantial powers of self-governance (cf. Wolff 2002, Ch. 4).[1]

As a tool of statecraft, autonomy has thus been a familiar, albeit not excessively implemented, mechanism for the past two centuries at least, and one that always resulted in asymmetrical state designs. Yet, its significance as a conflict-preventing and resolving arrangement increased only over the course of the 20th century. This is arguably related to the rise of nationalism as an ever more powerful political ideology and the realization that related aspirations for self-determination need to be taken seriously, and given institutional expression, if violent conflict, and the redrawing of international boundaries, are to be avoided in ethnically plural states. While territorial autonomy is not automatically linked to forms of democratic governance, its success as a conflict settlement strategy has become increasingly connected with the management of ethnic or other forms of cultural diversity in democratic polities and is frequently prescribed as a governance model to countries struggling with diversity management. More often than not, the optimism to resolve self-determination conflicts qua autonomy is derived from two European 'model' autonomies—South Tyrol and the Aaland Islands.[2] These two cases are therefore at the centre of this chapter and are analyzed extensively in Section 3 below. Prior to these case studies, the next section deals with some more general conceptual and empirical issues related to asymmetric territorial autonomy arrangements in pre-1990 Europe to set the stage for the more detailed discussion of South Tyrol and the Aaland Islands. The chapter concludes with a brief exploration of the continued relevance of these historical cases of asymmetric territorial autonomy.

2. Defining autonomy in pre-1990 Europe: conceptual and empirical issues

There are considerable conceptual and empirical problems with the definition of autonomy.[3] While Marc Weller's introduction in this volume is a very useful way out of the conceptual difficulties that exist, it is nonetheless useful to trace the 'academic' history of the concept through both the disciplines of international law and political science as this illustrates how autonomy as a tool of statecraft and autonomy as a tool of conflict resolution, especially in self-determination conflicts, have become more and more intertwined and enabled a definition such as Weller's to be based on empirical observation, yet with significant analytical power as well.

Tim Potier (2001, 54) has noted some time ago that "…international lawyers have failed to come to any agreement on a 'stable' workable definition for autonomy. … it escapes definition because it is impossible to concretise its scope. It is a loose and disparate concept that contains many threads, but no single strand." In political science, too, the difficulty to pin down and conceptualize autonomy has been recognized. Two of the most eminent scholars in the field, Brendan O'Leary and John McGarry, observed in 1993:

> Overlapping cantonisation and federalisation there exists a grey area of territorial management of ethnic differences which is often found in conjunction with external arbitration. International agreements between states can entrench the territorial autonomy of certain ethnic communities, even though the "host state" does not generally organise itself along either cantonist or federalist principles. (McGarry and O'Leary 1993, 32)

Despite this appreciation of the difficulty to define clearly what autonomy is, political scientists and international lawyers have not hesitated to propose a variety of definitions. Michael Hechter (2000, 114) describes political autonomy as "a state of affairs falling short of sovereignty". In Ted Robert Gurr's (1993, 292) understanding "autonomy means that a minority has a collective power base, usually a regional one, in a plural society". Hurst Hannum and Richard Lillich (1980, 859) stated in their influential essay on the concept of autonomy in international law that "'autonomy is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defence normally are in the hands of the central or national government, but occasionally

power to conclude international agreements concerning cultural or economic matters also may reside with the autonomous entity". In her extensive study on autonomy, Ruth Lapidoth draws a clear distinction between territorial political autonomy and personal autonomy.[4] To her, "[t]erritorial autonomy is an arrangement aimed at granting a certain degree of self-identification to a group that differs from the majority of the population in the state, and yet constitutes the majority in a specific region. Autonomy involves a division of powers between the central authorities and the autonomous entity" (Lapidoth 1997, 174-175). In contrast to this territorial conception, "[p]ersonal autonomy applies to all members of a certain group within the state, irrespective of their place of residence. It is the right to preserve and promote the religious, linguistic, and cultural character of the group through institutions established by itself" (Lapidoth 1997, 175).

Regardless of the scope and detail of the above definitions, the one common feature they all share, directly or indirectly, is the transfer of certain powers from a central government to that of the (thereby created) autonomous entity. In practice, autonomy arrangements incorporate executive, legislative, and judicial powers to varying degrees. In cases where it is used as an instrument for ethnic conflict prevention and settlement, autonomy ideally includes a mix of the three that enables the ethnic group in question to regulate independently the affairs central to the concerns of its members, which are normally easily identifiable as they manifest themselves in concrete claims. However, as autonomy falls short of full sovereignty, this often happens within the broader constitutional and legislative framework of the minority's host country and under the supervision of a central government or similar agencies ensuring the compliance of all actions of the autonomous institutions with the regulations set up for the execution of the autonomy. However, as Daftary (2000, 5) rightly asserts, autonomy means that "powers are not merely delegated but transferred; they may thus not be revoked without consulting with the autonomous entity. … the central government may only interfere with the acts of the autonomous entity in extreme cases (for example when national security is threatened or its powers have been exceeded)." In similar terms, Wolff and Weller (2005, 13) define autonomy "as the legally entrenched power of ethnic or territorial communities to exercise public policy functions (legislative, executive and adjudicative independently of other sources of authority in the state, but subject to the overall legal order of the state".

As a consequence of this wide range of definitions, there is little consensus over what forms of state construction actually qualify as 'autonomies'. Palley, for example, claims that "[p]olitical autonomy may range from devolution of power to small communities, through regionalism, to federal government" (Palley 1991, 5) and cites the examples of South Tyrol, Swedish-speakers in mainland Finland and the Aaland Islands, the German minority in Denmark and the Danish minority in Germany, Belgium, Switzerland, and the Netherlands all as cases of autonomy. Elazar, in the introduction to his *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements* identifies 91 "functioning examples of autonomy or self-rule, ranging from classic federation to various forms of cultural home-rule" in 52 different states (Elazar 1991), while Benedikter (2007) counts 58 regions across the world with territorial autonomy.

In the context of this chapter, and the volume of which it is part, it is helpful to bear in mind that autonomy is seen here as a tool of statecraft and mechanism to settle self-determination conflicts.[5] Hence, not every form of autonomy—broadly in the sense of Wolff and Weller above—is relevant to this analysis. The German or Austrian federal states, for example, are less significant than the Swiss confederation; home rule in Northern Ireland and regionalization in France have greater relevance than the application of the subsidiarity principle to local municipalities in Finland or Ireland. If the concept of autonomy is limited in such a way that it only applies to cases in which this form of state construction was implemented as part of the settlement of a self-determination conflict, the number

of potential cases diminishes. Moreover, if only territorial autonomies are considered, the number of relevant cases in pre-1990 Europe decreases further (see Table 1).

Table 1: Territorial autonomies in pre-1990 Europe[6]

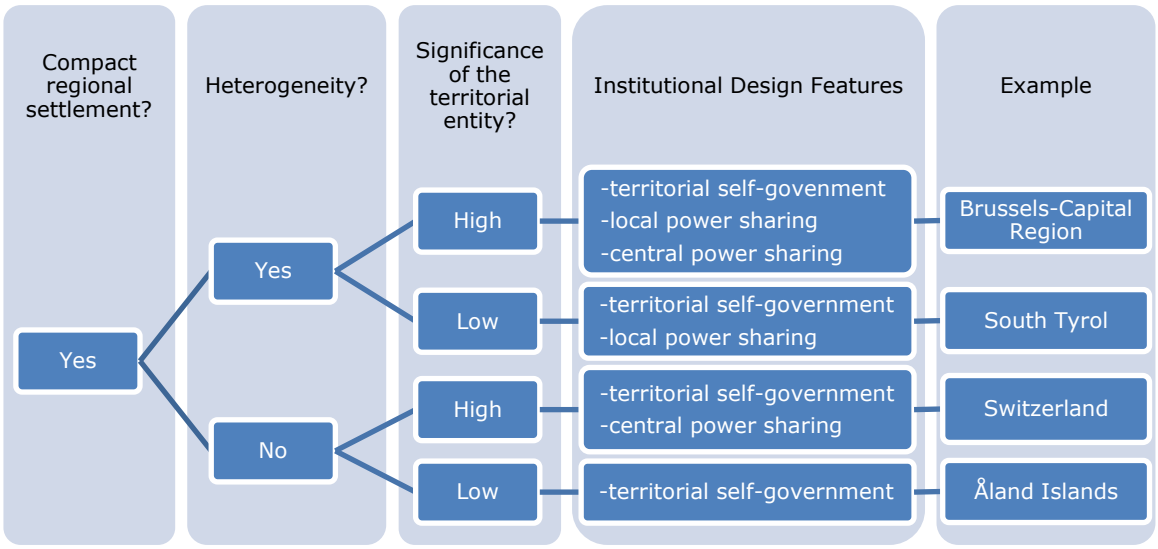
Metropolitan state	**Autonomous territorial entity/entities** (year of establishment)
Belgium	Flemish Region (1980), Walloon Region (1980), Brussels-Capital Region (1989)
Denmark	Faeroe Islands (1948), Greenland (1978)
Finland	Aaland Islands (1920)
Italy	Sicily (1948) Sardinia (1948) Trentino-Alto Adige/Südtirol (1948) Friuli-Venezia Giulia (1948) Aosta Valley (1948)
Portugal	Azores (1976), Madeira (1976)
Spain	17 autonomous communities (established between 1979 and 1983)
Switzerland	23 cantons and 6 half-cantons[7]
United Kingdom	Northern Ireland (1921-1972)
Yugoslavia	Six republics (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Slovenia, Serbia), two autonomous provinces (Kosovo and Vojvodina, both part of Serbia)[8]

Thus, nine countries in pre-1990 Europe included forms of territorial autonomy established in an effort to settle self-determination conflicts. Of these cases, Belgium has undergone further, significant constitutional reforms since 1990 and finds itself in a deep constitutional crisis regarding its federal consociational structure at the time of writing (summer 2008). Yugoslavia no longer exists following its bloody disintegration after 1991, with Kosovo's independence in 2008 the latest, and hopefully last chapter in this process. Territorial autonomy in Northern Ireland was abrogated in 1972 with the institution of direct rule from Westminster, and despite several attempts to restore some form of self-governance, it took until 1998 and a further settlement in 2006 that autonomy regained traction as a mechanism of conflict settlement (cf. McGarry below). Spain continues to see violence in one of its autonomous regions, the Basque country, and in Switzerland some violence preceded the establishment of the canton of Jura in 1979, similar to the violence in South Tyrol that started a process of reform leading to a much improved autonomy statute in 1972. Territorial autonomies in Denmark, Finland, and Portugal, too, have seen significant reforms over the years.

This is, admittedly, a mixed picture of the success of autonomy in Europe before 1990. However, even the failures, offer important insights. Among them, and perhaps trivial, is the observation that all the successful autonomies have seen significant change over time to their framework, highlighting the need to understand autonomy as a dynamic rather than static arrangement. More importantly, however, the successes and failures of the pre-1990 period also indicate that for autonomy to succeed in addressing self-determination conflicts, other mechanisms may need to be present. Territorial autonomy cannot be expected to be sufficient for sustainable conflict settlements in two principal types of situations, which will additionally require power sharing mechanisms.[9] If the self-governing territories are ethnically heterogeneous, arrangements have to be made to accommodate this local population diversity. This can take the form of a regional consociation, such as in Brussels or South Tyrol.[10] If the significance of the territory (territories) in

question relative to the rest of the state is high[11] and necessitates power sharing at the centre, the institutional outcome is a sovereign consociation, such as in Belgium or Switzerland.[12] The Belgian case also indicates that regional and sovereign consociations are not mutually exclusive but can occur together. Three key characteristics, thus, emerge as crucial in determining the precise nature of the institutional design of territorial autonomy for the settlement of self-determination conflicts (see Figure 1): the compactness of the settlement patterns of groups in a given state; the degree of ethnic heterogeneity in the territorial entities to which powers and competences of self-governance are to be assigned; and their significance relative to the rest of the state.

Figure 1: Context and Institutional Design for Conflict Settlement



A fourth situational characteristic – transnational links – also shapes institutional design in a significant way. Such links are often determined by historical and/or ethnic relations between populations and territories divided by contemporary international boundaries.[13] In these instances, formal transnational institutions may be established and/or so-called para-diplomatic powers be granted to territorial autonomies. However, there is also another reason why territorial autonomies should be invested with para-diplomatic powers: the ability to engage in the international arena is increasingly important for them in order to discharge their 'other' powers effectively, for example in relation to economic development and cultural identity maintenance. Thus, the establishment of formal transnational institutions and/or the conferral of para-diplomatic powers to self-governing territorial entities need not happen only in cases in which historic, ethnic or other transnational links necessitate this, but can become a feature of institutional design regardless of the existence of such links.[14]

3. How and why does asymmetry matter?

The academic discussion of autonomy to date has paid relatively attention to the dimension of asymmetry that is inherent in many such conflict settlement arrangements. Of the definitions of autonomy discussed above, only McGarry and O'Leary's touches upon it. This is not to say that asymmetry is being ignored, but it is predominantly taken as a given and not much further analysis is normally devoted to it. Yet, it is important to understand the precise impact that asymmetry has on the nature and functioning of territorial autonomy regimes if these are to provide lasting and stable settlements to self-determination conflicts.

This is not the place for a lengthy discussion of asymmetry—important implications of it have been usefully elaborated by Weller in the introduction to this volume. There are, however, a number of aspects that can, and need to, be specified in the context of the subsequent analysis of the two classical examples of asymmetric territorial autonomy regimes of the Aaland Islands and South Tyrol.

As noted by Weller, for states, asymmetry, offers an opportunity to maintain the overall structure of the state. This can mean, for example, that states can avoid the often-dreaded 'f-word' of federalization. Embracing asymmetry, moreover, endows institutional designers with a significant degree of flexibility to cater towards the very specific situational characteristics that a conflict might bring with it and that need to be addressed in its settlement. Such an approach includes being able, from the state's perspective, minimizing the degree of control it cedes to each self-determination movement in the settlement process, and it allows for sequential, de-coupled settlement processes, i.e., avoiding the need of 'opening' existing deals with each new settlement that might become necessary.

From the perspective of self-determination movements, asymmetry thus also might create a situation in which states are more willing to compromise as concessions to one movement do not need to be replicated in other dispute settlements. This, essentially, assumes that both parties—state and self-determination movement—are motivated by a genuine desire to resolve their conflict within the boundaries of the existing state, and it is important that such an assumption is not always realistic. Asymmetry, while clearly useful in many cases, is thus not a panacea for the resolution of territorial self-determination disputes. The application of asymmetry presupposes that its utility to cater towards the different needs of the state (maintaining sovereignty and territorial integrity) and the self-determination movement (gaining greater control over the destiny of the group it represents). At the same time, however, it also implies that in the case of several self-determination disputes within the boundaries of the same state, asymmetry is able to accommodate different levels of demands made by the various movements. The problem of sequential and de-coupled settlement processes, noted as a potential advantage to the state, however, is just as likely to backfire: movements with initially lesser demands might be encouraged by a prior settlement to raise the stakes and ask for an equally advantageous deal, or alternatively, subsequent settlements that are perceived as 'better' may lead to re-open disputes that had already been settled. Asymmetry thus inevitably raises the specter of comparison, in itself a potential conflict-causing factor (cf. Horowitz 1985).

Asymmetry, thus, is a double-edged sword, and its application requires careful consideration of its potential consequences. As the following two case studies illustrate, its benefits can clearly outweigh any possible costs, but only if asymmetry is embraced equally by all conflict parties as a solution to their dispute; if it is dynamically developed over time, rather than conceived as a one-off static solution; and if it responds to real needs on the ground and can protect past achievements against subsequent erosion of the status and powers of autonomous entities.

4. Standard bearers of autonomy: Aaland Islands and South Tyrol

Of all the pre-1990 cases of territorial autonomy in Europe, two stand out in terms of their longevity and success—the Aaland Islands and South Tyrol. Established in 1920 and 1948, respectively, they are among the oldest such arrangements and are frequently referred to as model cases in both academic and policy debates on the use of territorial autonomy as a mechanism for the settlement of self-determination conflicts. The following detailed examination of both autonomy arrangements serves a dual purpose. First, it is to give an in-depth and up-to-date overview of the specifics of institutional design in two cases of asymmetric territorial autonomy in Europe whose origins lie in

the pre-1990 period. Second, the two case studies are to test the assumptions developed in Section 2 above, namely that it is specific situational characteristics that determine the overall institutional design of territorial autonomies and the extent to which this involves asymmetric forms of state construction, that is, the extent to which autonomy as a conflict settlement mechanism requires further tools, such as power sharing and/or para-diplomatic powers, to succeed in its objective to settle self-determination conflicts.

4.1. The autonomy of the Aaland Islands since 1920

The Aaland Islands are an archipelago of some 6,000 islands spread over almost 7,000 square kilometers off the Swedish coast. Ruled by Sweden for nearly 700 years, the islands' population is linguistically and culturally Swedish, yet fell to Russia in 1809 and was made part of the Grand Duchy of Finland in the Russian Empire. When, in 1917, Finland declared its independence in the wake of the collapse of the Tzarist Empire, it seceded with all territory that was part of the former Grand Duchy, including the Aaland Islands. Yet, before Finland could formally establish its sovereignty over the islands, the Aalanders sought to exercise their right to self-determination qua unification with Sweden, and rejected Finish offers of autonomy. The dispute lasted several years until the Council of the League of Nations adopted a resolution annexing the islands to Finland with the proviso that they be granted autonomy within Finland.

A. The establishment of the autonomy regime in the Aaland Islands after 1920

The establishment of the autonomy regime for the Aaland Islands after the end of the First World War was the result of compromise (Jansson 1998, 3), brokered by the League of Nations between Finland and Sweden, without any direct consultation of the Aalanders or their political representatives but essentially with clear benefits for them. From an international legal perspective, the status of the islands was unresolved following the secession of Finland from the Russian empire. As Finland had physical possession of the islands and demonstrated great resolve in holding on to them in the face of a Swedish-supported movement in Aaland seeking reunification with Sweden, the League of Nations Council awarded the islands to Finland, but demanded additional Finnish guarantees of the autonomy of Aaland beyond what Finland had already offered in the 1920 Aaland Autonomy Act. The final element of the compromise was the restoration of the demilitarization and neutrality regime of the Aaland Islands—a gesture towards Sweden (given the proximity of the islands to the Swedish coastline and the capital, Stockholm) and other great powers concerned about the strategic location of the islands in the Baltic Sea. The nature and substance of the guarantees required by the council were negotiated directly between Finland and Sweden, and in their final approved version included a provision that authorized the Council of the League of Nations to monitor the application of the guarantees. This constituted a form of international legal entrenchment that was exceptionally strong at the time, not least because it related to a guarantee of key elements of a territorial autonomy regime that went beyond most other minority provisions under the League regime.

The guarantees required by the Council and agreed between Sweden and Finland became part of the domestic Finish legislation as a separate act, alongside the existing 1920 Autonomy Act. Several provisions of the guarantee act have remained one of the cornerstones of the autonomy of the Aaland Islands ever since. They include restrictions on the teaching of Finnish in publicly funded schools (changed under the 1991 revised Autonomy Act), restrictions on the sale of real estate to immigrants to Aaland and restrictions on their ability to pursue commercial activity in the islands. Under the guarantee provisions, the right to domicile could be earned after five years of legal residence in the islands and included an entitlement to vote and stand for election. A Governor for

the islands can only be appointed by the President of Finland with the agreement of the President of Aaland's legislative assembly.[15] Finally, there is a financial provision in the Guarantee Act that enables the autonomous region to use 50 percent of all revenues from land tax at its own discretion.

From the outset, thus, elements of asymmetry were present in the Aaland autonomy regime. These related to the implementation of the demilitarization and neutrality regime, the special status of the Islands with regard to the applicability of Finnish legislation, the limitations on the ability of the Finnish government to exercise its functions in the Aaland Islands, and the guarantee of the Islands' status in an international agreement and domestic legislation. The two international dimensions of the Aaland regime in particular must be seen in the context of the post-World War I approach to minority issues. International involvement was the norm rather than the exception, as illustrated in the arrangements adopted for the Saar territory (interim internationalized governance followed by a local referendum on the territory's status), of the Free City of Danzig (an autonomous city state under League of Nations protection, separated from Germany and with special economic relations with Poland) and of the Memel territory (initially administered by a Council of Ambassadors on behalf of the League of Nations, but later annexed by Lithuania and granted autonomy) to name but three. However imperfect, it was this notion of international involvement that established, and to some extent protected, the asymmetrical status of these territories in relation to their metropolitan states.

B. The revised Autonomy Act of 1951

At the end of the Second World War, the international legal situation of the Aaland autonomy was rather unclear. The League of Nations system was effectively functioning by the late 1930s, and the League itself was replaced by the United Nations in 1946. Moreover, Finland was treated as a co-belligerent of Nazi Germany and its allies, and was politically highly dependent on the Soviet Union. Thus, the stability and sustainability of the Aaland autonomy regime was called into question. While Sweden had begun to maintain from the 1940s onwards that the conclusion of the negotiations with Finland in 1921 on the League-stipulated guarantees constituted an international agreement between the two that continued to oblige Finland to protect the Aaland autonomy regime, Finland did not officially accept this interpretation, yet neither did the Finnish government officially dispute it. On the contrary, Finland committed itself to fulfilling its obligations towards Aaland[16] and demonstrated this intention with the revision of the Aaland Autonomy Act of 1951, which expanded Aaland's autonomy and introduced the notion of regional citizenship (the so-called right to domicile). Another novel element of the 1951 Act concerned the application of international treaties to the Aaland Islands. The new provision in this respect stipulated that any elements of such treaties found to be in contravention with existing regulations under the Autonomy Act would only be applied to Aaland subject to the consent of the regional assembly. Moreover, any changes to the 1951 Act required consent of both the Aaland and Finnish parliaments, under procedures similar to the amendment of the Finnish constitution.

The 1951 revisions to the original 1921 Act on the Autonomy of the Aaland Islands were thus important in two ways from the perspective of autonomy as a conflict settlement mechanism. First, they enhanced the already existing autonomy regime. Second, they provided for strong domestic legal entrenchment, ensuring that the autonomous powers and status of the Aaland Islands cannot be changed in any way without the consent of the Aalanders themselves. The 1951 Act, thus, indeed underscored the commitment of the Finnish government to protect the autonomy that Aaland had gained at the end of the Second World War, regardless of the state of affairs concerning the international supervisory mechanism that had been in place throughout the 1920s and 1930s.[17] Conceptually, it is important to see this in the context of asymmetry—the strengthening of the status of Aaland's autonomy went hand-in-hand with an increase in the degree of its asymmetry.

C. *The 1991 Act on the Autonomy of the Aaland Islands*[18]

The Autonomy Act of 1920 had devolved significant executive and legislative powers to the Åland Islands and provided the structure of government for the autonomy with a locally elected assembly of 30 members (*Lagting*) and an executive (*Landskapsstyrelse*) supported by a civil service. Subsequent revisions in 1951 and 1991 expanded the competences of the autonomy further, while leaving the structure of government as such largely intact, including the fact that there remains to this day no separate judicial system for the Aaland Islands, and justice is administered by and within the unitary judicial system of Finland (in a sense, the only symmetrical dimension of the Islands' governance arrangements). A third institution of quite unique character, affirmed by the 1991 Act, is the Aaland Delegation, a joint body of the autonomy and the central government.

According to the 1991 Act in force at present, the law-making powers of the Aaland assembly and the Finnish parliament are divided into two separate lists, detailing individual areas of competence. According to the Act's provisions, the legislative competence of the Aaland assembly extends over 26 different areas, including the organization and duties of the Aaland assembly and government; the flag and coat of arms of Aaland; municipal boundaries, elections, and administration; additional tax on income, trade and amusement taxes, and municipal tax; public order and security; environment; social welfare, including healthcare; education and culture; agriculture, hunting and fishing; postal service and the right to broadcast by radio or cable in Aaland. In all of these areas, the Aaland government enjoys executive powers and is bound by the acts passed by the Aaland assembly. The competences of the autonomous parliament and government are delimited in the sense that the parliament in Helsinki retains competences in 41 separate areas, including: the constitution, fundamental rights and freedoms, foreign relations and foreign trade, shipping and aviation, citizenship, defense, and currency policy. Moreover, the 1991 Act also foresees legislative supervision of the activities of the Aaland assembly. Thus, any act passed by the Aaland assembly has to be notified to the Finnish Ministry of Justice and the Aaland Delegation. The Aaland Delegation is to issue an opinion on the legality of any such act (i.e., whether the act falls into the legislative competence of Aaland) before it is presented to the Finnish President for signature. The President can only annul an act in part or in full in accordance with a Supreme Court decision that the Aaland assembly has either exceeded its legislative powers or that a specific act undermines the internal or external security of Finland. Any annulment has to happen within four months of the notification of the act to the Ministry of Justice.

According to the 1991 Aaland Autonomy Act, the Aaland Delegation is constituted as a joint organ of the autonomous region and the Finnish state, with two members each elected by the Aaland assembly and the Finnish Council of State, and chaired by the Governor of Aaland or another person appointed by the President of Finland with the agreement of the Speaker of the Aaland parliament. The Delegation plays a role in the vetting of Aaland legislation (see above), in the funding of the Aaland autonomy according to the provisions on equalization (essentially, the payment to Aaland of 0.45 percent of Finnish state revenue), tax retribution, and extraordinary grants and advance payments, and in dispute resolution (see below).

There are three other substantive issues that are of interest in relation to the Aaland autonomy regime: the Right to Domicile, provisions for the use of language, and the relation between the autonomy regime and international treaties, especially EU legislation. All three issues also underscore the asymmetrical character of the governance arrangements pertaining to the Aaland Islands, especially in the way in which they apply to individuals' rights and increase the influence of the Islands' government on Finland's foreign, and especially European, policy.

The Right to Domicile is a unique form of regional citizenship available only to legal residents of the Aaland Islands. It was originally introduced in the 1951 Act on the Autonomy of the Aaland Islands, but proficiency in Swedish was made a formal requirement for obtaining regional citizenship only in the 1991 Act. The right of domicile is automatically granted to any children of Finnish citizens resident in Aaland and with at least one parent who has the right of domicile. Citizens of Finland legally resident in Aaland for at least five years and proficient in Swedish can also obtain this regional citizenship on application. Regional citizenship implies the right to participate in elections and stand for elected office, to acquire real estate, exercise a trade or profession in Aaland, and to be exempt from conscription.

As far as the protection of the Swedish language is concerned, the 1991 Act confirms and enhances the existing far-reaching provisions from earlier Acts. The official language in the Aaland Islands is Swedish, used at all levels of administration and in the Aaland Delegation. Personal communication between individual citizens and the organs of the state in Aaland and the courts can also be conducted in Finnish. The language of instruction in all public schools is Swedish,[19] and graduates from Aaland educational institutions are exempt from the Finnish language proficiency requirement for the purposes of admission and graduation from Swedish-language or bilingual Swedish-Finnish educational institutions in Finland. Furthermore, all state officials in the Aaland Islands need to be proficient in Swedish.[20]
Under the provisions of the 1991 Act on the Autonomy of Aaland, the islands are granted significant influence on the negotiations of, and exemptions from the application of, international and European treaties.[21] These include the right to propose negotiations on a treaty or other international obligation, the right to be informed of ongoing negotiations in any area relevant to competences assigned to the autonomy, and the right to participate in such negotiations. Any treaties or other obligations entered into by the Finnish government that affect an area of competence of the autonomy can only be applied to Aaland if the Aaland assembly consents to this. Any provisions contrary to the Act on Autonomy require a two-thirds majority in the Aaland assembly before they can be applied in the islands. As far as EU affairs are concerned,[22] the Aaland government has the right to participate in formulating national Finnish positions in relation to all matters in, or affecting, Aaland's competences. Wherever an EU decision concerns the application of a common policy in Aaland, the Aaland government has the right to formulate the Finnish position on its own. EU decisions are to be implemented by either the autonomy or the state if they relate to separate areas of competence, but in areas of joint competence the state takes priority in policy implementation, subject to consultation with the Aaland government and potential dispute resolution through the Aaland delegation (see below). Moreover, the Aaland government has the right to nominate one of the representatives of Finland to the Committee of the Regions of the European Community.

This particular form of participation of the Aaland Islands in the international and European arenas must also be seen in connection with another dimension of the autonomy's para-diplomatic powers, namely its active participation in the institutions of Nordic cooperation,[23] the Nordic Council and the Nordic Council of Ministers, which, too, adds to the asymmetric character of the Aaland autonomy regime. Following a Danish initiative in 1980 and subsequent revisions to the Helsinki Agreement of 1962, the Aaland Islands (along with Greenland and the Faeroer Islands) were able to send two representatives each (elected from among the members of their assemblies) to the Nordic Council (the parliamentary body of Nordic cooperation) and appoint their own delegations to the Nordic Council of Ministers, initially consisting of all Aaland government ministers, but now primarily comprising officials whose portfolios cover aspects of Nordic cooperation. While this may seem a rather limited manifestation of para-diplomatic competences, it is quite unique in the sense that it affords autonomous entities parity with states in all matters of decision-making, in sharp contrast, for example, to the (non-)status that autonomous entities have in other international organizations,

such as the European Union or the United Nations. In addition, there are numerous arrangements for cross-border cooperation between the Aaland Islands and Sweden, especially in the areas of culture, education, and media.

From a procedural perspective, the relations between the autonomy and the Finnish state foresee both state supervision of the legislative activity of the Aaland assembly (see above), but also a number of mechanisms to resolve disputes over legality and authority between the organs of the Aaland autonomy and the Finnish state. First, any Aaland government decree that conflicts with an act of passed by the Aaland or Finnish parliaments automatically becomes invalid. Conflicts of authority on the execution of administrative functions between the autonomous and state governments are referred to the Supreme Court, which needs to consult with the Aaland Delegation and relevant officials of the Finnish state before issuing a verdict. Finally, the Aaland Delegation itself is competent to resolve disputes between the autonomy and the state when these concern matters of shipping lanes in Aaland or land acquisition by the state in Aaland. The Aaland Delegation may also issue recommendations on how to resolve disputes between the Aaland and Finnish governments over the application of EU policies in areas in which both the autonomy and the state claim competence.

The 1991 Act on the Autonomy of Aaland overall further enhances and consolidates the competences granted to the Aaland Islands and retains their solid entrenchment in Finnish law by continuing to require the consent of the Aaland assembly to any future changes in the Act. In particular in relation to the application of European and international obligations of the Finnish state it introduces a number of measures that seek to protect the autonomy from 'competence leakage' (Nauclér 2005). While it is unclear to what extent it will be possible in future to protect in full an arrangement that has grown organically for almost a century remains to be seen. However, it is important to note the genuine desire of both the Aaland and Finnish governments to immunize Aaland's autonomy as much as possible against unintended erosion. Ironically, the asymmetric status of the Aaland Islands within the Finnish polity requires extra protective measures such as those enshrined in the 1991 Act—measures that in themselves further increase the existing level of asymmetry.

4.2 The evolution of South Tyrol's autonomy 1948-2001[24]

The conflict in South Tyrol arose from historical affinity of the German-speaking population of the area with the Habsburg Empire and later Austria, both in terms of ethnic identity and national belonging and its unwillingness to be incorporated into the Italian state after the end of the First World War. While the conflict saw only sporadic and low-intensity violence, there was nonetheless a high level of political activism among South Tyrol's German-speakers in pursuit of conditions conducive to the expression, maintenance and preservation of their distinct identity. This manifested itself in campaigns against incorporation in Italy after 1919, including an unrecognized referendum in favor of continued membership in the emerging Austrian federation in 1920; for reincorporation into Austria after 1945; and eventually for substantive provincial autonomy within the Italian state.

A. The Autonomy Statute of 1948

The Paris Agreement of 1946 between Austria and Italy, appended to the Allied Peace Treaty with Italy after the Second World War, obliged the Italian government to grant autonomy to South Tyrol. In drafting an autonomy statute on the basis of the Paris Agreement, the government needed to balance the political and economic interests of the two major ethnic groups in the area – Germans

and Italians – against the interests of the Italian Republic and its international commitments. It had to fulfill the Paris Agreement by granting autonomy to South Tyrol and, at the same time, it had to protect the Italian population in South Tyrol, and to satisfy the aspirations of the inhabitants of the neighboring province of Trentino, with which South Tyrol was joined in the autonomous region Trentino-Alto Adige in 1947. In addition, the Italian government also had to bear in mind the effect that the autonomy statute for South Tyrol would have on similar minority situations elsewhere in the country—primarily the French-speaking minority in the Val d'Aosta and the Slovene-speaking minority in the area of Trieste. Thus, it took almost two years until, on 29 January 1948, the Constituent Assembly of Italy approved the autonomy statute. This was followed by a press declaration of the Austrian Foreign Minister on 31 January 1948 in which he characterized the autonomy statute as satisfactory and asked the German-speaking South Tyroleans to be loyal citizens of the Italian state (Stadlmayer 1965, 480).

This new autonomy statute, however, did not contribute to the settlement of the South Tyrol problem. On the contrary, the interpretations the statute was given by the Germans in South Tyrol and by the Austrians gave rise to high expectations on the part of the German minority, expectations that were not subsequently met by the Italian interpretation and implementation of the statute. The view of the German-speaking population was that both the Paris Agreement and the 1948 autonomy statute were legal instruments that would strengthen the German position in South Tyrol in two ways: numerically, by the return of those who had left under the 1939 *Option*;[25] and economically and socially by a redistribution of employment according to ethnic proportions. In contrast, the Italian interpretation was that with these two documents, the state had finally been equipped with internationally recognized instruments to resist further German encroachment and to maintain the existing degree of Italianization.

One of the biggest causes of German South Tyrolean resentment was the insufficient transfer of power from the region to the province as laid down in Articles 13 and 14 of the autonomy statute. In other words, while South Tyrolean German-speakers had hoped for a highly asymmetric interpretation and implementation of the statute, the Italian government sought to minimize asymmetry by limiting the amount of competences actually devolved to the province. The bitterness and disappointment of the South Tyrolean People's Party (SVP) – the predominant German party in the area – at their failure to achieve their economic and social objectives (control of the labor exchanges, control over immigration, language issues, ethnic proportions in the public sector) led them to suspend, in 1959, any cooperation at regional level with the major Italian party at the time, the Christian Democrats (DC), which would have been essential for a more favorable Italian interpretation and administration of the autonomy statute.[26] Nevertheless, official negotiations between the SVP and the Italian government on autonomy were reopened in 1954, but failed to achieve anything. This led to growing opposition within the SVP against the party leadership, which was perceived by many rank and file members as too moderate. The 1957 party congress saw an almost complete transformation of the SVP leadership. From then on, SVP policy aimed at a revision of the 1948 autonomy statute in favor of full provincial – instead of shared regional – autonomy and at the mobilization of the German-speaking South Tyrolean population for this goal. In other words, the SVP recognized the territorial integrity of the Italian state, but sought to establish a full-fledged autonomous unit of South Tyrol instead of a province subordinate to an Italian-dominated region. However, the new policy did not strengthen the SVP position vis-à-vis the Italian government; rather, its powerlessness became increasingly obvious, especially in the light of these ambitious objectives. Dissatisfaction among local party organizations increased and finally erupted in a brief campaign of violence in 1961 (initially confined to the toppling of power pylons as symbols of Italian domination), after several Austrian initiatives, including at UN level, had equally failed to achieve any changes in Italian policy towards South Tyrol.[27]

This violent escalation of the conflict was the clearest indication yet that the autonomy statute of 1948 had failed to provide an institutional framework within which both Italian and German interests could be accommodated in a mutually satisfactory manner. South Tyrolean aspirations for asymmetry were simply not matched by an equal level of Italian enthusiasm to employ asymmetry as a mechanism to settle the conflict. The reasons for this failure did not lie solely within South Tyrol or Italy, as there were also a number of external conditions that limited the chances of success for the 1948 statute from the outset, including Austria's insistence that Italy had not fulfilled the letter and spirit of the Paris Agreement, the failure of several rounds of negotiations between the two countries and the ill-fated attempt to internationalize the South Tyrol question at the UN which raised South Tyrolean hopes without delivering and substantive change in their situation. Similarly, European institutions, still in their infancy, failed to exert sufficient pressure on all parties involved to resolve contentious issues in the framework of the 1948 autonomy statute.

B. The package solution of 1969

Following a brief campaign of violence, which was swiftly contained by the Italian government, it took eight years of negotiations before an agreement was reached between Italy and Austria, which consisted of a substantial revision of the 1948 autonomy statute and a so-called operational calendar in which both governments committed themselves to a certain sequence of events which would eventually lead to the dispute over South Tyrol being brought to an end.

This operational calendar outlined the procedures for the implementation of the *Paket* as well as steps to be taken by both governments to settle the dispute over South Tyrol. In doing so, however, no timeframe was given as to when certain parts of the *Paket* had to be fulfilled and specific steps for the eventual settlement had to be completed. The sequence of events, however, was explicitly stated as the settlement of the dispute requiring prior full implementation of the autonomy statute. Only then was an official settlement of the Austro-Italian dispute to go ahead. This official settlement consisted of two main parts. One included declarations of the heads of both governments before their parliaments about the settlement, parliamentary motions on the issue, official letters to the Secretary General of the UN regarding the fulfillment of UN Resolution 1457 of 1960 and an Austrian declaration that the dispute had been settled. The other, and more far-reaching part, was a bilateral agreement between Austria and Italy that in case of any further disputes the International Court of Justice would be approached. The operational calendar strengthened the Austrian position vis-à-vis the Italian government, and with it that of the German-speaking population in South Tyrol (Zeller 1989, 84).[28]

The substantive part of the settlement upon which the two governments agreed and which found the approval of a marginal majority of 52.4 percent within the SVP at an extraordinary party congress in 1969, contained 137 single measures, 25 detailed provisions, and 31 rules of interpretation (Peterlini 1997, 115f.). Among the most important measures were the substantial changes and additions to the 1948 autonomy statute, which devolved more powers to the province, and the regulations that determined the equal status of the German language as a second official language in the province; the redrawing of constituency boundaries for senate elections, which assigned a third constituency to South Tyrol; and the establishment of a proportionality scheme for the recruitment and appointment of staff according to ethnic proportions in the public sector and of the distribution of public housing. The so-called internal guarantee of the new statute took the form of a standing commission at the office of the Italian Prime Minister, monitoring the implementation of the statute. This indicated a clear shift in Italian policy, now embracing the idea of asymmetric governance arrangements in and for South Tyrol more fully.

The new autonomy statute, which was the central part of the package, passed all parliamentary hurdles in Italy and came into force on 20 January 1972. As a territorial autonomy statute, however, it had the double character of an instrument regulating the decentralized self-government of the province of South Tyrol and the region of Trentino-South Tyrol and providing for the protection of the German and Ladin-speaking minorities. Its official name – "Measures in Favour of the Population of South Tyrol" – emphasized that minority protection was only one part of a whole set of measures and regulations dealing with the distribution of powers between different levels of government and between the two ethnic groups, Germans and Italians. Only fifteen articles were specifically and exclusively aimed at the German-speaking population within the province (and thus, by extension, at interethnic relations), while the rest of the articles strengthened provincial autonomy vis-à-vis the region and the central government as a whole and introduced procedures to mediate between all ethnic groups in South Tyrol.

The substantive competences that South Tyrol has enjoyed since the 1972 statute are wide-ranging, and include primary, secondary and tertiary legislative powers. The areas of legislative competence are distinct in each of these areas, as are the specific boundaries within which they are to be exercised.

South Tyrol enjoys primary legislative competence in virtually all areas of education and culture, economy and economic development, environment, public housing, communication and transport including relevant infrastructure, tourism, welfare, and the provincial political and electoral structures. The most significant change introduced with the 2001 constitutional reforms was the provision that the province enjoys primary legislative competences in *all* areas not specifically reserved for the centre or otherwise designated as secondary or tertiary competences. That is, in addition to the specific primary legislative domains named in the autonomy statute, primary legislative competences now include additional policy areas previously assigned to the centre by default.

The province's secondary legislative competences include teaching arrangements in primary and secondary schools, establishment and oversight of employment agencies, public health, civil aviation, energy production and distribution, foreign trade and foreign and EU relations, science and technology.

Tertiary legislation can be passed by the provincial assembly in some areas of transport and transport infrastructure, public health services, and pay structures in the education system. Apart from these policy areas that were traditionally the domain of central legislation, further competences were delegated to the province from the region, consisting primarily of administrative functions in relation to chambers of industry, trade, commerce, and agriculture, as well as oversight of financial institutions.

The distinction between these three levels of legislative competence has its source in the legal boundaries to which they are confined. The 2001 reforms (of both autonomy statute and Constitutional Law No. 3) generally extended these boundaries, which is particularly obvious in relation to South Tyrol's primary legislative competences. These are now only constrained by the Italian constitution and the country's EU and other international obligations, rather than by the previously more vague notions of 'national interests' and 'basic provisions of the social and economic reforms of the Republic'. Secondary legislation, that is legislation in areas of concurrent competences, is constrained by framework legislation in which the centre determines the basic principles of legislation while the province makes the detailed arrangements as they are to apply in South Tyrol. Tertiary legislative competence is constrained in two ways. First, it is only in specifically 'delegated' policy areas beyond the stipulations of the autonomy statute in which such competence

can be exercised by the province. Second, provincial legislation has to comply with a range of particular constraints specified in individual cases of delegated legislative competence, as well as with the more general constraints imposed on primary and secondary competences.

At the heart of the reorganization of ethnic relations in the province and the region are formalized mechanisms of power sharing, which are unique in the Italian context and thus another dimension of the asymmetry of the South Tyrol autonomy arrangement.[29] Going far beyond the original provisions of the 1948 autonomy statute, these mechanisms can be found in relation to three distinct dimensions at both regional and provincial levels: voting procedures in the two assemblies, rotation of high offices between the ethnic groups, and coalition government.

To begin with the latter, the government of South Tyrol has to reflect the ethnic proportions of the provincial assembly. Therefore, a simple majority of votes in the assembly is not sufficient to establish the government unless this majority consists of votes from both Italian and German representatives, i.e., the autonomy statute, in practice, requires a German-Italian coalition government. This 'implicit' coalition requirement is complemented by a more explicit one deriving from the compulsory equitable distribution of the offices of the two vice-presidents of the provincial government between the German and Italian ethnic groups.

Another feature of power sharing in South Tyrol established by the 1972 autonomy statute is the compulsory rotation of offices in the presidency of the provincial assembly. Elected by the assembly, the presidency consists of one president and one vice-president as well as three deputies, who act as secretaries. In the first half of every five-year legislative period an elected representative of the German-speaking group must be chosen as president, and an Italian as vice-president; in the second half, their roles reverse.

All legislation emanating from the provincial assembly is prepared by legislative commissions. Their members are the president, vice-president and one of the presidency's secretaries, and four and five 'ordinary' members chosen by government and opposition parties in the assembly, again reflecting ethnic proportions in the assembly.

At the regional level, and again unique in the Italian context, similar provisions were made to ensure adequate representation of the German and Italian ethnic group, and thus, by extension, a functioning system of power sharing. The regional assembly, which is made up of the entire cohort of elected deputies from both provincial assemblies (i.e., South Tyrol and Trentino) operates the same principle of rotating offices between president and vice-president; in addition, it also changes the location of its sessions between Bozen/Bolzano (first half) and Trient/Trento (second half). As for the regional government, the same principles operate that are in force at the provincial level.

In order to give each ethnic group additional leverage and incentives, to make the power sharing arrangements work, specific voting procedures and other mechanisms for the adoption of provincial laws were established. If any bills put before parliament were considered to affect the rights of a particular ethnic group in South Tyrol, a majority of the deputies of this ethnic group could request 'separate voting', i.e., a determination of support for the specific bill among each ethnic group. If this request is denied, or the bill is passed against two-thirds of representatives from one ethnic group voting against it, the group opposing the bill could take the matter to the Italian constitutional court in Rome. Thus, there is no formal veto-power enshrined in the arrangements. While defending democratic decision-making procedures against a blockade of the political process, nevertheless a mechanism exists that potentially offers legal redress outside the political process. Only in one respect a more or less formal veto right has been established – in relation to the provincial and regional budgets. Here, separate majorities are required from within both the German and Italian

ethnic groups. If this is not forthcoming, all chapters of the budget are voted on individually. Those failing to receive the required double majority are referred to a special commission of the assembly, and if no agreement is reached there either, the administrative court in Bozen/Bolzano makes a final and binding decision. In this sense, power sharing arrangements do not only add a dimension of asymmetry per se but they also have an impact on the way in which other aspects of asymmetry (in this case legislative powers) operate. This adds a further layer of complexity to the asymmetrical nature of the South Tyrol autonomy regime and underscores the earlier conceptual point that asymmetry arises in response to situational specificity and contributes to the effectiveness of an autonomy arrangement as a conflict settlement mechanism if it is used in a flexible, responsive, and responsible manner of state construction.

The focus on the German-Italian dichotomy in respect of power sharing and in a number of other areas, where the principle of proportional rather than equal representation of all ethnic groups was in force, clearly disadvantaged the Ladin-speaking group. Most of these traditional disadvantages experienced by the Ladins have been formally addressed during the implementation process of the 1972 autonomy statute, and more drastically in its reform in 2001.

Over the years, and in line with the implementation of the 1972 Autonomy Statute and Austria's accession to the European Union in 1995, South Tyrol's para-diplomatic competences increased and found firm institutional expressions in cross-border relations and other activities. Thus, South Tyrol/Italy has maintained very strong relations with Austria throughout the post-1945 period but is also particularly active within various EU-sponsored inter-regional cooperation programs. Moreover, since 1991 there are strong inter-parliamentary ties between the regional assemblies of the *Bundesland* Tyrol in Austria and the two provinces of Trentino and South Tyrol in Italy, as well as cooperation at the executive level to address issues of regional concern, including environmental protection, economic development, and educational exchanges. The three entities also have a joint office in Brussels to represent their individual and common interests at the EU level. Para-diplomacy in the case of South Tyrol, thus, fulfills a dual function, helping to preserve identity-based links with Austria and enabling a more effective discharge of the functions of the autonomy, especially in relation to its economic consequences.

C. The 2001 reform of the autonomy statute

The formal settlement of the South Tyrol conflict between Austria and Italy in 1992 according to the procedures set out in the operational calendar did not mean an end to the further dynamic development of the autonomy and power sharing regulations. Led by the SVP, the provincial government sought to further improve and extend the regulations of the 1972 statute in order to increase the province's autonomy and with it improve the quality of life for all three ethnic groups. From the mid-1990s onwards, the provincial government was granted an extension of its powers, among others, in the sectors of education, employment, transport, finance, privatization of state-owned properties, energy and European integration.

As part of these and other significant changes, a reformed autonomy statute came into effect on 16 February 2001, marking the third autonomy statute for the province since the end of the Second World War. In it, the status and powers of the two provinces Trentino and South Tyrol were greatly enhanced to the extent that South Tyrol and Trentino no longer constituted subordinate units of the region of Trentino-South Tyrol and individually had more legislative and administrative powers than the region itself. In particular, the following new regulations increased the degree of autonomy enjoyed by both provinces:

- In contrast to the previous autonomy statute, the revised version of 2001 explicitly recognizes the internationally guaranteed nature of South Tyrol's autonomy. By virtue of its

being a constitutional law, the new autonomy statute gives an even firmer guarantee of the inviolability of South Tyrol's autonomous status.

- All legislation in relation to elections has become the competence of the provinces, allowing them to determine, for example, whether the president of the provincial government should be elected directly. Respective legislation no longer requires approval of the government commissioner.
- In future, amendments to the autonomy statute can also be developed by the two provinces, without involvement of the region.
- If the Italian parliament intends to change or amend the current statute, it must now consult representatives of the province, as opposed to representatives of the region as was previously the case.
- Members of the provincial government can be appointed with a two-thirds majority in the provincial assembly without having to be its members.
- Representation of the Ladins in the presidency of the regional and provincial assemblies and in the regional government is now part of the power sharing arrangement, and members of the Ladin ethnic group can be co-opted into the South Tyrol provincial government.

In addition, for the first time ever, the term 'South Tyrol' has been officially incorporated in its German version in the Italian constitution as part of the Constitutional Law on Federalism, which was adopted in March 2001.

What this revision of the autonomy statute shows, together with developments since 1972 in general, is that the real strength of the South Tyrol arrangements derives from the flexibility of its implementation process. The particular combination of territorial autonomy and power sharing has also facilitated the increasing identification of all ethnic groups with the arrangements as they have developed over time. With the enhanced and formalized participation of the Ladin ethnic group in the political process in South Tyrol, the 2001 reforms also indicate that the province has moved beyond the traditional Italian-German dichotomy and that institutions are now more than ever fully representative of the ethnic demography of the province while at the same time serving the interests of the population as a whole rather than the particular interests of one or another individual ethnic group. In this sense, asymmetry has provided a basis for a cross-communal identity to emerge that is focused on the particularity of the status of South Tyrol as a distinct territorial entity in Italy and transcends the ethnic identity of individual residents there. This is an important integrative benefit of asymmetry at the local level that has significantly contributed to mitigating local interethnic tensions, and thus made the overall asymmetric settlement more viable.

5. The Continued Relevance of 'Historical' Cases of Territorial Autonomy

Historical cases though they may be, the settlements for the Aaland Islands and South Tyrol should certainly not be assigned to the dustbin of history, nor do they constitute merely a footnote in the history of asymmetric state construction. First of all, they remain important reference points for the wider debate on autonomy as a conflict settlement mechanism because they are among the oldest and most successful examples of such arrangements, and thus are often cited as examples when it comes to discussing possible solutions for similar conflicts elsewhere in the world. While this does not mean that either or both of these settlements can simply be taken as blueprints for state construction elsewhere, they do offer important insights into the specificities generated by asymmetry and how to manage them. The Aaland Delegation and the South Tyrol Standing Commission in the office of the Italian prime minister have certainly proved their worth in dealing with issues related to the implementation and operation of these two autonomy arrangements. Moreover, concrete provisions in the case of the Aaland Islands regarding the right of the

autonomous entity to be involved in international negotiations and limitations on the application of resultant obligations are useful mechanisms to protect autonomy arrangements from being undermined by the forces of globalization and Europeanization. Proper legal entrenchment has, in both cases, also strengthened the autonomy against undue interference by the central state, again contributing another feature to protect asymmetric arrangements from 'equalizing' tendencies on the part of the central state.

A comparison between the Aaland Islands and South Tyrol is also instructive when it comes to the issue mono-dimensional versus complex asymmetry. Aaland is clearly a case of mono-dimensional asymmetry with the islands being the only autonomous entity in Finland, whereas South Tyrol has been one among five entities with a special autonomy statute in Italy since 1948, first in a regionalizing state, and since 2001 in a federalizing one. The acceptance of complex asymmetry, in the case of South Tyrol, has been highly beneficial to the autonomy. Not only has it allowed for an unprecedented number of powers to be devolved to the region but it has also made it possible to establish governance arrangements that are unique among all other Italian regions. On the one hand, the region itself no longer plays a significant role, and the two provinces (Trentino and South Tyrol) are the main loci of power. On the other hand, South Tyrol is a case of a nested consociation: there is effective executive and legislative power sharing both at the level of South Tyrol as a province and at the level of the region of Trentino-South Tyrol. The stability of these arrangements demonstrates two things. First, and in line with the earlier assumptions about the influence of situational characteristics on the institutional design of territorial autonomies, autonomy, as granted in the 1948 statute, was in itself insufficient to deal with the conflict in South Tyrol. Second, no matter how situation-specific the characteristics of one particular conflict are, they can be accommodated in an asymmetric settlement, alongside other situations with similar or dissimilar characteristics without affecting the overall construction of the central state.[30]

Related to this is also the observation that incorporated in both autonomies are mechanisms that allow the two entities to play a limited role in the international arena. These reflect both the identity dimension of the conflict that territorial autonomy was meant to address, as well as the functional dimension of the two autonomies being able to effectively discharge their powers. In the case of the Aaland Islands, close cooperation between the islands and Sweden and within the context of Nordic cooperation addresses the identity dimension, while Nordic cooperation and the role given to the Aaland authorities in the negotiation and implementation of European and other international treaties and obligations reflects the more functional dimension. As far as South Tyrol is concerned, the formal role of the autonomy in relation to European integration is more limited, but the there are similarly comprehensive arrangements in place to enable regional, cross-border cooperation between South Tyrol and Austria and in the broader regional context of the Alpine mountains.

In sum, therefore, the territorial autonomy arrangements adopted and developed in the cases of the Aaland Islands and South Tyrol will continue to be relevant in the future. At the time of their original negotiation and implementation they may rightly have been considered as highly unique, if not idiosyncratic. With the benefit of hindsight, however, and especially in light of the growing political and even wider academic interest in the issue of territorial autonomy as a mechanism to settle self-determination conflicts, their architects may well be considered especially long-sighted. The Aaland Islands and South Tyrol are important examples of the successful settlement of self-determination conflicts qua territorial autonomy, they offer a range of specific mechanisms as part of two distinct complex institutional designs, and they highlight the need for, and possibility of, constant evolution in the face of changing contextual circumstances. In other words, the Aaland Islands and South Tyrol validate the *principle* of resolving self-determination conflicts qua asymmetric territorial autonomy, but caution against its static and unimaginative application.

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[1] Another historical example worth noting is that of Irish Home Rule. Cf. McGarry in this volume.

[2] A former US diplomat put it to me this way: "When we were dealing with Nagorno Karabakh in the early 1990s, we looked for examples. South Tyrol was the only one we found. So we tried to sell that to them." Northern Ireland, post-2006, stands a good chance of being added to this short list.

[3] There have been a number of attempts in the past to conceptualise 'territorial solutions' for ethnic conflicts, especially the use of autonomy arrangements. These include especially Benedikter 2007, Coakley 2003, Dinstein 1981, Ghai 2000, Hannum 1996, Lapidoth 1997, Nordquist 1998, Wehengama 2000, Weller and Wolff 2005.

[4] This distinction is made by a number of scholars, including Heintze 1997, 37-46; Heintze 1998, 18-24; Hechter 2000, 72ff; and Potier, 2001, 55f and 59f.

[5] For broader comparative assessments of the institutional designs of territorial autonomy as a mechanism of conflict settlement, see also Suksi (1998), Wolff (2004b), and Wolff (2008). O'Leary (2005) is an excellent theoretical treatment with application to the case of Iraq. Nordquist uses the term 'seized autonomies' to identify cases in which autonomy was "seized by arms and/or other threats to internal or international security" and counts a total of eleven cases between 1920 and 1995 (Nordquist 1998, 64, 74-77).

[6] Table 1 excludes territorial autonomy arrangements in the former Soviet bloc: Czechoslovakia (Czech Socialist Republic and Slovak Socialist Republic, both established in 1969) and Soviet Union (15 Union Republics, 16 if one counts the short-lived Karelo-Finnish Socialist Soviet Republic that existed from 1940 to 1956 when it was incorporated into the Russian SFSR as the Karelian Autonomous Soviet Socialist Republic, as well as numerous lower-level autonomous republics and districts within them).

[7] The revised constitution of 1999 only mentions 26 equal cantons, thus removing the term half-cantons from the constitutional dictionary. Two half-cantons, Obwalden and Nidwalden, have always existed in the Swiss federation, the other four emerged from the split of the full cantons of Appenzell (1597) and Basel (1833). The separation of Jura from Bern in 1979 resulted in Jura becoming a full canton in its own right.

[8] This refers to the Socialist Federal Republic of Yugoslavia established in 1946, not its forerunners the Kingdom of Serbs, Croats and Slovenes (1918-1929) or the Kingdom of Yugoslavia (1929-1941).

[9] Power sharing is a form of governance whereby representatives of different groups make decisions jointly in one or more branches of government. Power sharing can occur as a result of guaranteed arrangements, e.g., particular parliamentary election (reserved seats, quotas) and/or government appointment procedures (d'Hondt mechanism, guaranteed posts for members of particular groups) in combination with specific decision making procedures in relevant branches of the government (qualified or concurrent majorities) or emerge as a result of the electoral process as part of coalition formation. I am primarily interested in the former, guaranteed type of power sharing, but will note voluntary power sharing coalitions where appropriate.

[10] For an extensive comparison of regional consociations, see Wolff 2004b.

[11] For states, territory possesses certain value in and of itself, including natural resources, the goods and services produced there and the tax revenue generated from them, and military or strategic advantages in terms of natural boundaries, access to the open sea, and control over transport routes and waterways. Additionally, for ethnic groups, territory very often is also important in a different way – as a crucial component of their identity. Territory is then conceptualised more appropriately as place, bearing significance in relation to the group's history, collective memories, and 'character'. Yet, for ethnic groups, too, territory is, or can become, a valuable commodity as it provides resources and a potential power base.

[12] Sovereign consociations are, of course, also possible without provisions for territorial self-governance. The key example here is Lebanon, yet Lebanon, too, underlines the importance of self-governance (or segmental/group autonomy), in this case taking the form of non-territorial, or cultural/personal autonomy extending to individuals as members of a group rather than to individuals living in a specific territory.

[13] In a broader sense, transnational links need not be just with immediately neighbouring countries, but can, as a consequence of past intra-empire migration or emigration, connect population groups across greater distances, too (consider, for example, existing links between Germany and the descendents of ethnic German minorities in Central and Eastern Europe and the former Soviet Union, as far as Kazakhstan, or the relations between Hungary and ethnic Hungarian minorities in Central and Eastern Europe, the Balkans and parts of the former Soviet Union, as well as among those communities and the Hungarian diaspora in the US).

[14] More generally on the potential contribution of para-diplomacy to conflict resolution, see Wolff 2007. The notion of para-diplomacy also ties in well with Weller's criterion viii of 'limited external relations powers'. For a discussion in the European context, see Danspeckgruber 2002 and Danspeckgruber 2005.

[15] Traditionally, the nominee for the position of Governor of the Aaland Islands is selected from the largest party in the Aaland legislative assembly, the *Lagting*. Failing agreement between the President of Finland and the President of the Aaland legislative assembly, a list of five nominees has to be drawn up by the local parliament and submitted to the Finnish president, who can request further nominations if none of the submitted candidates is considered suitable.

[16] According to Hannikainen (1997, 62), Finland even offered to have the fulfilment of its obligations monitored by a new international supervisory system, but this was prevented by the Soviet Union.

[17] It should also be noted that there was no single occasion on which the Aaland Islands felt it necessary to refer any matter to the League Council.

[18] A very detailed analysis of the 1991 Act is Palmgren 1998.

[19] This confirms earlier provisions, but the 1991 Act introduces the possibility of an Act of Aaland introducing further legislation to allow the use of Finnish as language of instruction.
[20] This is a new provision on the 1991 Act.
[21] Finland joined the EU in 1995.
[22] For a more detailed discussion of the impact of EU membership on the Aaland autonomy, see Nauclér 2005.
[23] For a detailed discussion of the participation of the Aaland Islands in Nordic cooperation, see Nauclér 2005.
[24] When South Tyrol was annexed to Italy in 1919, pursuant to the London Agreement of 1915 between the Entente and Italy, the Italian government of the day promised the German-speaking population of the area wide-ranging autonomy. However, a programme of rapid Italianisation was introduced immediately after the fascist take-over of 29 October 1922.
[25] Hitler and Mussolini had agreed in 1938 that Germans in South Tyrol would be given a choice either to accept Italianization or emigrate to Germany (which by then had already annexed Austria). While a large number of South Tyrolean Germans opted for emigration, a considerably smaller number actually executed their choice. On numbers voting for emigration and numbers of émigrés, see Alcock 1970; Cole and Wolf 1974; and cf. Wolff 2002.
[26] On the provincial level, this SVP-DC coalition held until the electoral demise of the DC in the early 1990s.
[27] At the end of the 1960 UN session, a resolution was adopted on 31 October that called for bilateral negotiations between Austria and Italy to resolve the South Tyrol question. In case these would not be successful, it was recommended that the dispute should be referred to other international organisations, including the International Court of Justice. The UN session of 1961 returned to the issue, but merely referred the parties back to the resolution adopted a year earlier.
[28] There are two reasons for this. One is that the calendar qualifies the *Paket* as a 'later practice' of the fulfilment of the Paris Agreement, the other is that it denies the Italian interpretation of the *Paket* as being part of voluntary inner-Italian legislation, but places all legislative measures in connection with the implementation of the *Paket* in the context of the fulfilment of the Paris Agreement (Zeyer 1993, 54).
[29] Detailed discussions of these in Pallaver (2008), Wolff (2003, Ch. 6), and Wolff (2004a, b).
[30] In this context, also note McGarry's important argument that the necessity for asymmetric arrangements arises, in part, from the limits of symmetric ones (McGarry 2007).