

# THE CONCEPT OF AUTONOMY IN INTERNATIONAL LAW

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## I. INTRODUCTION

"Autonomy" is not a term of art or a concept that has a generally accepted definition in international law. Indeed, one surveying either the literature on the subject or the examples brought forth to demonstrate the existence of the concept is apt to conclude, to paraphrase the late jurist John Chipman Gray, that "on no subject of international law has there been so much loose writing and nebulous speculation as on autonomy."<sup>1</sup> Yet the term is very much in vogue today. The Camp David framework, for instance, establishing the context for negotiating peace in the Middle East, seeks to provide "full autonomy to the inhabitants" of the West Bank and Gaza.<sup>2</sup> Regional autonomy has been extended recently to the Basque country and Catalonia by Spain,<sup>3</sup> and to the 34 atolls composing the Marshall Islands by the United States.<sup>4</sup> Currently, demands for greater autonomy have been made by the Shetland Islands against Great Britain,<sup>5</sup> as well as by Quebec against Canada.<sup>6</sup> Greek officials have offered to create "a self-administered and inviolable" area within Greece as a permanent site for the Olympic Games.<sup>7</sup> While conventional wisdom accords regional autonomous entities only limited status under international law,<sup>8</sup> the increasing frequency of claims

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This article is derived from a 2-volume report prepared by the authors for the Procedural Aspects of International Law Institute under Contract No. 1722-920244 with the Department of State to study "The Theory and Practice of Governmental Autonomy." The views expressed herein, however, reflect the personal opinions of the authors and are not necessarily the views of either the Institute or the Department of State.

<sup>1</sup> Cf. J. GRAY, *THE NATURE AND SOURCES OF THE LAW* 122 (1909).

<sup>2</sup> Camp David Framework for Peace in the Middle East (Egypt-Israel), Sept. 17, 1978, para. A(1) (a), DEP'T OF STATE PUB. NO. 8954 (1978), *reprinted in* 17 ILM 1466, 1467 (1978).

<sup>3</sup> Financial Times (London), Oct. 23, 1979, at 17, cols. 1-8.

<sup>4</sup> N.Y. Times, Jan. 15, 1980, at A15, col. 1.

<sup>5</sup> The Times (London), Feb. 11, 1980, at 1, col. 8.

<sup>6</sup> See, e.g., N.Y. Times, May 12, 1980, at A7, cols. 1-6.

<sup>7</sup> *Id.*, May 5, 1980, at A10, cols. 2-4.

<sup>8</sup> See, e.g., J. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 211-12 (1979).

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. For such status to be of present interest, it must be in some way internationally binding upon the central authorities. Given such guarantees, the local entity may have a certain status, although since that does not normally involve any foreign relations capacity, it is necessarily limited. Until a very advanced stage is reached in the progress towards self-government, such areas are not States.

to autonomy and the incremental effect such claims will have upon the international legal order make the concept of autonomy ripe for review.<sup>9</sup>

In an effort to ascertain just what has been considered over the years to constitute autonomy, the authors initially undertook 22 case studies of nonsovereign entities and federal states offering a wide range of examples of varying degrees of governmental autonomy and internal self-government.<sup>10</sup> These studies, from which the data for this article were extracted, fell, albeit somewhat arbitrarily, into the three major categories of federal states,<sup>11</sup> internationalized territories and territories of particular international concern,<sup>12</sup> and associated states,<sup>13</sup> along with a fourth, miscellane-

<sup>9</sup> No treatise or monograph on autonomous entities exists, although a then current comprehensive survey of such entities may be found in W. WILLOUGHBY & C. FENWICK, *TYPES OF RESTRICTED SOVEREIGNTY AND OF COLONIAL AUTONOMY* (1919). Most of the writing on autonomy consists either of individual case studies or scattered general references embedded in works on self-determination, sovereignty, or statehood. For a good cross-section of such writing, see the bibliographies in I. BERNIER, *INTERNATIONAL LEGAL ASPECTS OF FEDERALISM* 275-91 (1973); J. CRAWFORD, *supra* note 8, at 437-79; and C. OKEKE, *CONTROVERSIAL SUBJECTS OF INTERNATIONAL LAW* 228-35 (1974).

<sup>10</sup> These case studies may be found in PAIL Institute, 1 *The Theory and Practice of Governmental Autonomy* 56-237 (Final Report for the Department of State, 1980) [hereinafter cited as PAIL Report]. A second, 335-page companion volume contains basic constituent documents. Copies of the 2-volume report are available in the libraries of the American Society of International Law and the PAIL Institute, Washington, D.C.

<sup>11</sup> The term "federal state" is used here in a broad sense and generally refers to a composite state made up of equal entities or subdivisions, which enjoy some degree of local or home rule, and a central government generally having full authority over foreign affairs. The federal or quasi-federal systems studied were the proposed Turkish Federated State of Cyprus, Eritrea (1952-1962), Catalonia and other autonomous regions under the Second Spanish Republic, the Basque country under its 1979 Autonomy Statute, the United Arab Emirates, Switzerland under the 1848 Federal Constitution, the Greenland-Denmark relationship following the granting of home rule to Greenland in 1978, and the Belgian linguistic communities following the 1971 constitutional reforms. See 1 PAIL Report, *supra* note 10, at 57-118; see generally I. BERNIER, note 9 *supra*; E. ELAZAR, *FEDERALISM AND POLITICAL INTEGRATION* (1979).

<sup>12</sup> An internationalized territory, somewhat analogous to a guaranteed or protected state, is an entity that has been created under international supervision or control in response to a particular political situation. It may or may not be considered a state in international law, although it generally retains full authority over local affairs and is restricted only by its international constituent documents. The internationalized territories surveyed were the Free City of Danzig (1919-1945), the Free Territory of Trieste proposed in 1947, the International Settlement of Shanghai (1845-1944), the Memel Territory (1924-1939), the Saar (1920-1935 and 1945-1956), and the Aland Islands. See 1 PAIL Report, *supra* note 10, at 119-76; see generally M. YDIT, *INTERNATIONALIZED TERRITORIES FROM THE "FREE CITY OF CRACOW" TO THE "FREE CITY OF BERLIN"* (1961).

<sup>13</sup> An associated state, a relatively modern concept that has arisen out of UN discussions with respect to non-self-governing territories, is an entity that has delegated certain competences (particularly in the areas of foreign affairs and defense) to a principal state, although it retains its international status as a state. The associated state systems studied were the non-self-governing territories under the United Nations in general; New Zealand's relationship with the Cook Islands, Niue, and Tokelau; the U.S. territorial relationships, focusing on Puerto Rico and current proposals for the Trust Territory of the Pacific Islands, compared with the non-self-governing "incorporated territories" of Guam and the U.S. Virgin Islands; and the Netherlands Antilles. See 1 PAIL Report, *supra* note 10, at 177-214; see generally R. CHOWDHURI, *INTERNATIONAL MANDATES AND TRUSTEESHIP SYSTEMS* (1955); W. REISMAN, *PUERTO RICO AND THE INTERNATIONAL PROCESS: NEW ROLES IN ASSOCIATION* (1975); Clark,

ous grouping.<sup>14</sup> The entities surveyed were chosen because they represented a wide range of autonomy arrangements which, at least to some extent, have been recognized or seriously considered in international law.<sup>15</sup> In addition, an attempt was made to select subjects whose historical and legal context was not so atypical as to lessen their value as precedents. For this reason, the historical anomalies of Andorra, Liechtenstein, Monaco, and San Marino were omitted, as was the uniquely situated Holy See. The bulk of the present or former members of the British Commonwealth (Empire), whose gradual development (or, in some instances, abrupt independence) generally was tied to a unique complex of cultural, historical, and political ties to Great Britain, rather than being expressed in formal constitutional arrangements, also was omitted. Finally, in the area of federal relationships, the focus was on those states with a relatively high degree of regional autonomy and on contemporary autonomy arrangements, rather than on essentially unitary states or those states where regional autonomy exists more on paper than in practice.

The term "autonomy," as used in this article, should be understood to mean general political or governmental autonomy. More restrictive types of autonomy, *e.g.*, cultural or religious autonomy, also have been considered where appropriate, as in the case of the Aland Islands, the Belgian linguistic communities, Eritrea, Greenland, and the millet system under the Ottoman Empire. Autonomy and self-government are determined primarily by the degree of actual as well as formal independence enjoyed by the autonomous entity in its political decisionmaking process. Generally, autonomy is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defense normally are in the hands of the central or national government,<sup>16</sup> but occasionally power to conclude international agreements concerning cultural or economic matters also may reside with the autonomous entity. In brief, the article's examination of autonomy in theory and practice will provide a description and analysis of the degree of independence and control over its own internal affairs that an autonomous entity generally enjoys, rather than consider the more abstract, if nonetheless interesting, questions of sovereignty or statehood.

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*Self-Determination and Free Association—Should the United Nations Terminate the Pacific Islands Trust?*, 21 HARV. INT'L L.J. 1 (1980); Armstrong, *The Negotiations for the Future Political Status of Micronesia*, 74 AJIL 689 (1980).

<sup>14</sup> Under this category were studied the British proposals for provincial autonomy in Palestine (1946–1947), the millet system under the Ottoman Empire, and the Isle of Man. See 1 PAIL Report, *supra* note 10, at 215–37.

<sup>15</sup> Among those arrangements or proposals not surveyed that might be fruitfully explored are, *inter alia*, the recent devolution plans for Scotland and Wales, the 1972 autonomy arrangements in Italy's South Tyrol region, and the federal system of Malaysia.

<sup>16</sup> In view of the wide variation in the governmental structures surveyed, no single term adequately encompasses the relationships of every entity discussed. The terms "central," "national," "principal," and "sovereign" all describe the superior entity; "autonomous," "local," and "regional" are used to describe the inferior or dependent entity. The use of different terms throughout the article does not imply any difference in the degree or type of autonomy under consideration.

The article is divided into two major sections. Section II, which follows, surveys the general governmental structure of autonomous entities, indicating how executive, legislative, and judicial authority is allocated between the entity and the central government. Section III, a functional analysis of particular issues and powers, considers the degree of international personality, including control over foreign affairs and defense, enjoyed by the autonomous entity: the issues discussed are police and security arrangements; land and natural resources; social services; financial and economic arrangements; and cultural, religious, and minority group concerns. A relatively brief conclusion advances the thesis that, in the Middle East and elsewhere, autonomy remains a useful, if imprecise, concept within which flexible and unique political structures may be developed to respond to the increasing complexity of contemporary world politics.

## II. GENERAL GOVERNMENTAL STRUCTURE

### *Executive Authority*

The great majority of the entities surveyed have an identifiable executive branch of government, headed by a chief executive official (governor, president, prime minister) or by an executive or administrative council. The executive may be independent, as in the United States, or dependent on and responsible to a legislative body, on the British parliamentary model. In either case, the local executive is responsible for the execution and administration of the territory's laws and generally has the authority to issue executive orders or administrative regulations necessary for the enforcement of those laws.

The primary variables in discussing the executive authority of an autonomous or nonsovereign entity are:

- (1) the political character of the local executive: does he or she represent the central government or the local government? how and by whom is the executive selected?
- (2) the responsibilities of the executive: does the local executive administer the laws of the central government? does the central government retain concurrent or separate powers to enforce national laws?
- (3) the authority of the executive within the legislative process: is there a veto or other power over local legislation?
- (4) the extent of local authority over normally national executive branch matters such as foreign relations and national defense; and
- (5) the extent of local police powers and the relation between the local and national security forces.

The last two issues will be considered in greater detail below; one should simply note here that the role of the local executive in foreign relations and national defense is usually minimal, at best, while the extent of local police powers varies greatly.

Within federal states, both local responsibility for and local selection of the chief executive official are common. In each of the federal states there is a national executive official, responsible to the entire country, while in none of the federal examples examined was there direct national influence over the selection of the local governor or other chief executive official.<sup>17</sup> The executive's responsibilities are thus to the local population; the executive does not represent the central government.

In addition to the local selection of their own chief executive, several of the subfederal autonomous regions also are granted the specific authority and responsibility for the enforcement of national laws within the region. For example, both the 1932 Catalonia Autonomy Statute and the 1979 Basque Autonomy Statute provide that, while standard setting or the establishment of basic norms in certain areas (including penal and labor legislation, internal transport, and the communications media) is left to the national government, actual implementation and administration of such national norms are reserved to the regional governments.<sup>18</sup> The manner of ensuring that the national norms are in fact implemented is unclear; for example, the Catalan statute provided that, in areas of shared administrative and legislative competence, the national government retained the right to "inspect" local implementation of social laws in order "to guarantee their strict fulfillment."<sup>19</sup> The governments of the emirate members of the United Arab Emirates undertake "to take the appropriate steps to implement the laws promulgated by the Union . . . , including the promulgation of the

<sup>17</sup> The only exception to this general statement might be the Basque chief executive, whose appointment by the Basque parliament must be confirmed by the Spanish King. 1979 Basque Autonomy Statute, Art. 33.1, unofficial text and translation *reprinted in* U.S. Government telegram Madrid 9189, Aug. 31, 1979, from American Embassy, Madrid, to the Secretary of State, Washington, D.C. [hereinafter cited as 1979 Basque Stat.].

<sup>18</sup> 1979 Basque Stat., Art. 12; 1932 Catalonia Autonomy Statute, Art. 5, *reprinted in Spanish in E. PEERS, THE CATALAN STATUTE AND THE CORTES (1933)* [hereinafter cited as 1932 Catalan Stat.]. (This and other translations are unofficial.)

Both pre-Civil War and post-Franco Spain constitute fertile ground for autonomy studies, as Spain's Basque, Catalan, and Galician ethnic groups have long sought greater autonomy from the Castilian-dominated central Government. The reestablishment of the Spanish Republic in 1931 afforded the first real opportunity for greater regional autonomy, authorized by Article 11 of the 1931 Spanish Constitution. Catalonia was the only region to become formally autonomous during the Second Republic, although its experiment and similar proposals for Basque and Galician autonomy ended with the outbreak of the Civil War in 1936. For texts of these earlier statutes and drafts, see, in addition to E. PEERS, *supra*, J. DE ORUETA, *FUEROS Y AUTONOMÍA, EL PROCESO DEL ESTATUTO VASCO (1934)*; B. CORES TRASMONTA, *EL ESTATUTO DE GALICIA (ACTAS Y DOCUMENTOS) (1976)*; C. MASSO I ESCOFET & R. GAY DE MONTELLA, *L'ESTATUT DE CATALUNYA (1933)*.

With the adoption of the new post-Franco Spanish Constitution in 1978, *reprinted in* 13 *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (eds. Blaustein & Flanz, 1971-) [hereinafter cited as Blaustein & Flanz], autonomy once again became possible. Following approval by the Spanish Parliament, both the Basque country (Euzkadi) and Catalonia adopted their own autonomy statutes in 1979. Similar proposals were narrowly defeated in Andalusia in 1980, in part owing to strong central governmental opposition to Andalusian autonomy, as the proautonomy forces failed to achieve the required approval of 50% of the registered voters in each of Andalusia's 8 provinces. See N.Y. Times, Feb. 29, 1980, at A11, col. 1, and Mar. 1, 1980, at A9, col. 3.

<sup>19</sup> 1932 Catalan Stat., Art. 6.

local laws, regulations, decisions, and decrees necessary for such implementation"; the Union authorities "shall supervise" such implementation.<sup>20</sup> In Eritrea, which had the status of "an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian crown" from 1952 to 1962,<sup>21</sup> there was specific provision for the delegation to the Eritrean government of the assessment and collection of all federal taxes, although there was no general provision for the administration of national laws by local officials.<sup>22</sup>

In other federal states, federal authorities generally are responsible for the enforcement and administration of federal (national) laws within the subfederal regions. The specific reservation of implementation of national laws to regional governments seems to be limited to those situations in which local autonomy is coupled with a certain degree of mistrust of or dislike for the central authorities, *e.g.*, Eritrea, Catalonia, the Basque country, and the individual emirates within the United Arab Emirates.

In nonfederal states, it is difficult to perceive a consistent pattern in the selection of the chief executive or in his or her responsibilities. The "typical" arrangement probably could be represented by a locally selected chief executive, responsible politically to the local electorate or legislature rather than to the central authorities, with separate national or concurrent local/national administration of national laws applicable to the autonomous territory. This description would apply, for example, to the U.S. territories of Guam and the Virgin Islands, Puerto Rico, the Cook Islands and Niue, and the former International Settlement of Shanghai (although late in its history Shanghai did begin to enforce certain Chinese tax laws applicable to Chinese residents of the settlement).

There are several examples in which the chief executive of the autonomous territory or region is appointed by political authorities outside the territory, either by the central government or an international organization. In some instances, this outside appointment requires either formal or de facto local consent, *e.g.*, the Memel Territory (the Directorate was required to receive the confidence of Memel's legislature subsequent to its appointment)<sup>23</sup> and the Aland Islands (prior agreement of the provincial legislature is required before the appointment of the Governor by the Finnish authorities).<sup>24</sup>

In other cases, the chief executive is, in effect, imposed upon the autonomous territory by a higher political authority to which the executive is responsible, *e.g.*, the League of Nations-appointed Governing Commission

<sup>20</sup> CONST. OF THE UNITED ARAB EMIRATES, Art. 125, *reprinted in* 15 Blaustein & Flanz [hereinafter cited as UAE CONST.].

<sup>21</sup> Eritrea Federal Act, set forth in GA Res. 390 (V), 5 UN GAOR, Supp. (No. 20) 20, UN Doc. A/1561 & Add.1 (1950), para. 1.

<sup>22</sup> *Id.*, para. 2.

<sup>23</sup> Convention and Transitory Provision concerning Memel, *signed* May 8, 1924, Art. 17, 29 LNTS 87 [Annex hereinafter cited as Memel Stat.].

<sup>24</sup> Law No. 670 of Dec. 28, 1951, Concerning the Autonomy of the Aland Islands (Finland) [hereinafter cited as Aland Autonomy Law], provisions of which are *summarized in* 5 CONSTITUTIONS OF DEPENDENCIES AND SPECIAL SOVEREIGNTIES (eds. Blaustein & Blaustein, 1976-) [hereinafter cited as Blaustein & Blaustein].

of the Saar.<sup>25</sup> Colonial or colonylike situations generally follow this pattern, *e.g.*, Tokelau,<sup>26</sup> the Netherlands Antilles (where the Governor plays a dual role, representing both the Dutch monarch and the local government),<sup>27</sup> the Isle of Man,<sup>28</sup> pre-1968 Guam<sup>29</sup> and the U.S. Virgin Islands,<sup>30</sup> and the various British proposals for Palestine in 1946 and 1947.<sup>31</sup> Where, as in the situations just cited, the chief executive is appointed by the central government, national laws tend to be implemented or administered by the relevant national authorities, rather than reserved to local administration.

Some distinction also should be drawn between the executive powers available to a centrally (or internationally) appointed executive in a *transitional* government and arrangements that are intended to be permanent or indefinite; indeed, this distinction is relevant to the degree of local control over governmental powers generally, not just the executive branch. There is a much greater concentration of power in the executive and a concomitant lesser degree of local control or autonomy in transitional regimes: *e.g.*, the international administration of the Saar from 1920 to 1935; the proposed provisional government for Trieste, which was to operate prior to the entry into force of the Permanent Statute; and the British Palestine proposals under the Morrison and Bevin Plans.

The Governing Commission of the Saar, appointed by the League of Nations after World War I, had "all the powers of government" that formerly belonged to Germany, although the latter retained formal sovereignty.<sup>32</sup> While local bodies of a purely advisory nature were established, the Commission enjoyed plenary executive and legislative powers.<sup>33</sup> Similar powers, somewhat more restricted, were to be granted to the Governor of Trieste during a brief transitional period to the permanent Trieste regime.<sup>34</sup> The Morrison Plan for Palestine called for initial administration of the central government by a British High Commissioner, who would exercise both executive and legislative functions with the assistance of an appointed Executive Council; a High Commissioner with "supreme" legislative and executive authority was provided for in the Bevin Plan for a 5-year period of British trusteeship over Palestine.<sup>35</sup>

<sup>25</sup> Treaty of Versailles, *signed* June 29, 1919, section IV, Arts. 45–50, 11 Martens Nouveau Recueil 3d, at 323, and Annex [Annex hereinafter cited as Saar Stat.], Arts. 16–19.

<sup>26</sup> Tokelau Islands Act (No. 24, 1948), secs. 4, 9, as amended (New Zealand), *reprinted in* 4 Blaustein & Blaustein.

<sup>27</sup> Charter of the Kingdom of the Netherlands, Arts. 2, 44; Constitution of the Netherlands Antilles, Arts. 11, 12; both *reprinted in* 5 Blaustein & Blaustein.

<sup>28</sup> *Cf.* UK Home Office Memorandum to the MacDermott Commission, para. 13 (1958), *reprinted in* 4 Blaustein & Blaustein.

<sup>29</sup> Organic Act of Guam, ch. 512, sec. 6, 64 Stat. 386 (1950).

<sup>30</sup> Revised Virgin Islands Organic Act of 1954, ch. 558, sec. 11, 68 Stat. 503 (1954).

<sup>31</sup> *See* REPORT OF THE ANGLO-AMERICAN COMMITTEE OF ENQUIRY REGARDING THE PROBLEMS OF EUROPEAN JEWRY AND PALESTINE, Cmd. No. 6808 (1945–46) and Remarks of H. Morrison, M.P., 426 PARL. DEB., H.C. (5th ser.) 962 (1946) [hereinafter cited as the Morrison Plan]; PROPOSALS FOR THE FUTURE OF PALESTINE (PALESTINE NO. 1), Cmd. No. 7044 (1947) [hereinafter cited as the Bevin Plan].

<sup>32</sup> Saar Stat., Art. 19.

<sup>33</sup> *Ibid.*

<sup>34</sup> Treaty of Peace with Italy, *signed* Feb. 10, 1947, 61 Stat. 1245, TIAS No. 1648, 49 UNTS 3, Ann. VII.

<sup>35</sup> *See* note 31 *supra*.

The two Palestine plans and the provisional government of Trieste clearly were intended as temporary measures only, while permanent arrangements were either agreed upon or set in place; elections to draft a Trieste constitution, for example, were to be held within 4 months of the beginning of the provisional government.<sup>36</sup> In the Saar, however, both the length of time of the "transitional" regime (15 years) and the possibility that it would become permanent (although not considered likely) render the Saar structures unique. It is doubtful that an arrangement that provided for so little meaningful local participation would be acceptable today; it should be remembered that the primary purpose of the League regime governing the Saar was to facilitate the exploitation of the Saar's coal mines by France, not to prepare the region for self-government or to grant it autonomy.<sup>37</sup>

Nevertheless, it does appear that, in the past, transitional regimes have been seen as justifying broader derogations from principles of self-government than more permanent structures. Insofar as a transitional regime acts merely as a provisional administration to oversee the creation of agreed-upon permanent institutions, it undoubtedly could be given powers beyond those normally granted to a purely executive authority; however, the present survey offers no examples of the successful implementation of a transitional regime without prior agreement on the general nature of the permanent regime to follow.

### *Legislative Authority*

The great majority of autonomous entities surveyed have a locally elected legislative body as the fundamental source of local governmental power. While the extent of legislative competence varies considerably, as do the designations both for the body itself (legislature, council, parliament) and for the instruments enacted (laws, decrees, regulations), the existence of an elected legislative body is nearly universal.<sup>38</sup> The only exceptions to this proposition among the situations studied are the traditional structures retained by the individual emirates that compose the United Arab Emirates and by the separate atolls of Tokelau; the transitional League of Nations administration of the Saar; the landowners' council in Shanghai, which had delegated, but technically advisory, authority; and the systems of cultural autonomy within the Belgian linguistic communities and under the Ottoman millet system, both of which lack a separate legislative body.

<sup>36</sup> Treaty of Peace with Italy, *supra* note 34, Ann. VI [hereinafter cited as Trieste Stat.], Art. 8. The UN Security Council was unable to agree upon selection of a Governor for Trieste, and neither the transitional nor permanent Free Territory of Trieste was ever established. See generally B. NOVAK, TRIESTE, 1941-1954 (1970). The London Agreement among the United States, the United Kingdom, Italy, and Yugoslavia, signed Oct. 5, 1954, 235 UNTS 99, definitively abandoned the Free Territory proposal and divided the territory between Italy and Yugoslavia. Cf. J. CAMPBELL, SUCCESSFUL NEGOTIATION, TRIESTE 1954 (1976).

<sup>37</sup> For helpful accounts of the Saar under League of Nations administration, see F. RUSSELL, THE SAAR, BATTLEGROUND AND PAWN (1951); L. COWAN, FRANCE AND THE SAAR, 1680-1948 (1950); M. FLORINSKY, THE SAAR STRUGGLE (1934).

<sup>38</sup> The terms "legislature" and "laws" are used in a general sense and do not imply the presence or absence of the ultimate legislative or constitutional authority of the state or entity.

There are three general factors that should be considered when comparing the extent of independence or autonomy enjoyed by local legislative bodies, in addition to comparisons of specific powers in such areas as control over land and natural resources, social services, and fiscal matters.<sup>39</sup> These three points of general comparison are:

(1) residual powers: is the local legislature one of general powers, restricted only by specific grants of authority to the principal entity, or does it enjoy limited, enumerated authority subject to the reserved or residual powers of the principal or sovereign state?

(2) veto powers: does the central or sovereign government retain either a legislative or executive veto over local enactments?

(3) constitutional amendment: may the local entity independently amend its own constitution or basic constituent laws or is the amending process subject to the approval of the ultimate sovereign?

The third factor exhibits the clearest pattern in the cases surveyed, as the great majority of autonomous governments considered do *not* have the unilateral power to alter their own constitutional structure without the approval of the central government or higher sovereign. The exceptions are the proposed Turkish Federated State of Cyprus, which in many respects is organized as an independent sovereign state;<sup>40</sup> Eritrea, except for the unalterable provisions of its Federal Act which defined the basic relationship between Eritrea and Ethiopia;<sup>41</sup> the United Arab Emirates, subject to the supremacy of the Union Constitution;<sup>42</sup> the Cook Islands, which specifically retains the right to alter unilaterally not only its internal structure but also the relationship with New Zealand;<sup>43</sup> and the districts that presently constitute the Trust Territory of the Pacific Islands.<sup>44</sup>

<sup>39</sup> Discussed in text at notes 108–156 *infra*.

<sup>40</sup> CONST. OF THE TURKISH FEDERATED STATE OF CYPRUS [hereinafter cited as TURKISH CYPRIOT CONST.], Art. 138, *reprinted in* 6 Blaustein & Blaustein. The Turkish Federated State of Cyprus was proclaimed by the Turkish Cypriot community in 1975, but to date it has been recognized only by Turkey. While the constitution envisages a future Federal Republic of Cyprus to be comprised of autonomous Greek and Turkish regions, it represents the most extensive grant of autonomy examined. No opinion with respect to the political desirability or practicality of the proposed arrangements should be inferred from their inclusion in the present survey.

<sup>41</sup> CONST. OF ERITREA, Art. 91, *reprinted in* 5 Blaustein & Blaustein.

<sup>42</sup> UAE CONST., Art. 151.

<sup>43</sup> CONST. OF NIUE, Art. 35, *reprinted in* 4 Blaustein & Blaustein.

<sup>44</sup> See Compact of Free Association between the United States and the Governments of Palau, the Marshall Islands, and the Federated States of Micronesia, Jan. 14, 1980 [hereinafter cited as Micronesia Compact] (text on file at the library of the American Society of International Law). The Compact has been initialed by only the Marshall Islands among the 3 Trust Territory districts, but it is anticipated that Palau and the Federated States will adhere to essentially similar agreements. The Compact must be approved by a local plebiscite and by Congress before it enters into force, thus ending U.S. trusteeship over the area (which also includes what is now the Commonwealth of the Northern Mariana Islands) of the Trust Territory of the Pacific Islands. See the comprehensive and current Clark, note 13 *supra*; Armstrong, note 13 *supra*; UN DEP'T OF POLITICAL AFFAIRS, TRUSTEESHIP AND DECOLONIZATION, ISSUE ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS (No. 16, 1980); N.Y. Times, Jan. 15, 1980, at A15, col. 1.

The more common arrangements are typified, for example, by the 1979 Basque Autonomy Statute, amendment of which must be approved by the Spanish Parliament;<sup>45</sup> the approval or veto power of the League of Nations and the United Nations over amendments to the constitutions of, respectively, the Free City of Danzig<sup>46</sup> and the Free Territory of Trieste;<sup>47</sup> the Memel Statute, which required Lithuanian approval of constitutional amendments;<sup>48</sup> and the ultimate authority of the United States to propose changes in the organic acts governing Guam and the U.S. Virgin Islands.<sup>49</sup>

Even those local entities that do have the power to amend their own constitutions are usually subject to the limitations of a federal constitution (*e.g.*, the United Arab Emirates<sup>50</sup>) or to other specific legislative restrictions (*e.g.*, Puerto Rico<sup>51</sup>). These limitations generally prohibit changes in the basic relationship between the local and principal/sovereign entity, while otherwise permitting amendments to local governmental organization or distribution of powers.

Ultimate authority to approve constitutional amendments does not seem to be linked to the question of whether reserved or residual governmental powers rest with the local or central government. Among the situations examined, the autonomous entity retains reserved powers in 11 instances,<sup>52</sup> while such powers lie with the central or sovereign entity in at least 14 cases.<sup>53</sup> If there is a determining factor in many of these cases, it seems to be whether the autonomous entity was an independent state (nation) prior to the creation of the new relationship of autonomy in concert with another state. Thus, the formerly independent, or at least separate, entities of Eritrea, the sheikhdoms within the United Arab Emirates, and the Swiss cantons all retain residual governmental powers; regions that were not independent but that rather gained increased autonomy as a result of constitutional changes in the central government tend to have only limited powers, *e.g.*, Catalonia and the Basque country, Greenland, the Aland Islands, the New Zealand territory of Tokelau, and the U.S. territories.

<sup>45</sup> CONST. OF SPAIN, ART. 147.3; 1979 Basque Stat., Art. 46.1.

<sup>46</sup> CONST. OF THE FREE CITY OF DANZIG, ART. 49, *reprinted in* LEAGUE OF NATIONS O.J., Spec. Supp. 7 (1922).

<sup>47</sup> Trieste Stat., Art. 37.

<sup>48</sup> Memel Stat., Art. 38.

<sup>49</sup> Both Guam and the U.S. Virgin Islands recently adopted draft constitutions pursuant to federal authorization in Pub. L. No. 94-584, 90 Stat. 2899 (1976). However, the electorates in each territory rejected the proposed constitutions, and each remains governed by its respective organic act and other federal laws. *Cf.* Hannum & Gilmore, *The Search for Constitutional Change in the U.S. Virgin Islands*, 4 HARV. J.L. & PUB. POL'Y (1981); Pacific Daily News, Aug. 5, 6, 7, 1979, at 1; Virgin Islands Daily News, Mar. 1, 2, 3, 5, 6, 7, 1979, at 1; Wash. Post, Mar. 8, 1979, at A13, col. 1.

<sup>50</sup> UAE CONST., Art. 151.

<sup>51</sup> CONST. OF THE COMMONWEALTH OF PUERTO RICO, ART. VII, sec. 3, *reprinted in* 1 Blaustein & Blaustein.

<sup>52</sup> The Turkish Federated State of Cyprus, Eritrea, the United Arab Emirates, the Swiss cantons under the 1848 Constitution, Danzig, Trieste, the Saar in 1945, the Cook Islands, Niue, the Netherlands Antilles, and the districts of the Trust Territory of the Pacific Islands.

<sup>53</sup> The Basque country, Catalonia in 1932, Greenland, the Belgian linguistic communities, the International Settlement of Shanghai, the Memel Territory, the Saar from 1920 to 1935, the Aland Islands, Tokelau, Puerto Rico, Guam, the Isle of Man, and the Morrison and Bevin Plans for Palestine.

The internationalized territories follow no pattern, as the extent of their legislative powers is seemingly dictated primarily by immediate political concerns. Thus, Danzig enjoyed plenary legislative authority, as would have Trieste, subject only to the specific restrictions of their governing statutes,<sup>54</sup> while the Memel and Saar territories were granted only limited legislative competence, subject to the reserved powers of Lithuania and the League of Nations, respectively.<sup>55</sup> The powers of the International Territory of Shanghai were specifically enumerated in the Land Regulations approved by the Chinese Emperor, although those powers were considerably expanded as a result of the *de facto* political and military strength of the western powers in Shanghai.<sup>56</sup>

There is some correlation, although it is far from universal, between the reservation of residual powers to the autonomous government and the existence of a veto over local legislation by the central or sovereign government. Where the autonomous government retains such residual powers, the central government generally does not have any veto power over local legislation, *e.g.*, the Swiss cantons, the United Arab Emirates, Danzig (subject to the reservation of some specific powers to the League of Nations), the Cook Islands and Niue, and, within their areas of competence, the Ottoman millets. Where the sovereign government retains residual governmental powers, it is likely to retain the power to veto local legislation (although the enactment of such legislation does not generally require the approval of the central government), *e.g.*, the former Memel Territory,<sup>57</sup> the Aland Islands,<sup>58</sup> Guam,<sup>59</sup> and the Isle of Man.<sup>60</sup>

There are, of course, exceptions. While residual governmental powers remain with the national Spanish Government, neither Catalan nor Basque legislation within local competence is subject to national veto. Eritrea retained residual powers, but the national government (through the representative of the Emperor) had a partial veto over local legislation considered to be incompatible with federal authority.<sup>61</sup> This veto, however, could be overridden by a two-thirds vote of the Eritrean Assembly.<sup>62</sup> The Trieste Assembly was granted the broad authority to consider "any matter affecting

<sup>54</sup> *E.g.*, restrictions on Danzig's authority over the port of Danzig and special rights granted to Poland by the Treaty of Versailles; restrictions on the Free Port of Trieste and on Trieste's capacity to enter into exclusive economic unions or military arrangements.

<sup>55</sup> Memel Stat., Arts. 1, 7; Saar Stat., Art. 19.

<sup>56</sup> This expansion was accomplished primarily through sec. 9 of the Shanghai Land Regulations, which identified the "better order and good government of the Settlement" as one of the objects of the regulations for which bylaws could be adopted. The Land Regulations, as amended through 1925, are *reprinted in* A. KOTENEV, *SHANGHAI: ITS MIXED COURT AND COUNCIL* (1925).

<sup>57</sup> Memel Stat., Art. 16.

<sup>58</sup> Summary of the Aland Autonomy Law, note 24 *supra*.

<sup>59</sup> Guam Organic Act, sec. 19 (codified at 48 U.S.C. §1423i (1980)). Congress has never exercised this veto power.

<sup>60</sup> Home Office, Memorandum to the MacDermott Commission, *supra* note 28, at para. 12; *see also* preambles to Isle of Man statutes, *e.g.*, Isle of Man Constitution Amendment Act, 1919, 9 & 10 Geo. 5; Isle of Man Constitution (Elections to Council) Act, 1971, 20 & 21 Eliz. 2, c. 34. These and other statutes pertaining to the Isle of Man are *reprinted in* 4 Blaustein & Blaustein.

<sup>61</sup> ERITREA CONST., Art. 14.

<sup>62</sup> *Id.*, Art. 58.

the interests of the Free Territory," but it could not have overridden the veto of the UN-appointed Governor.<sup>63</sup>

With the exception of provision for a popularly elected legislative body and the prohibition of unilateral amendment of the basic autonomy statute or constitution defining local-sovereign relations, the structure, competence, and organization of the legislative branch exhibit wide variations depending on the particular political situation. Some of the specific areas of competence that might be relevant to, *e.g.*, the current Middle East situation, are discussed below, but further generalizations about the legislative powers of autonomous or self-governing entities are likely to be incomplete and misleading rather than instructive.

### *Judicial Authority*

A free and independent judiciary forms part of the governmental structure of all the politically autonomous entities surveyed. However, this independence does not necessarily imply total separation from the central or sovereign judicial authorities, as it is common for appeals from local courts to be heard in courts or other fora responsible to the central government. In addition, members of the highest local court often are appointed by or with the consent of the sovereign government, although in a majority of those cases examined members of the local judiciary are appointed by and responsible to only the local government.

Questions of subject matter jurisdiction are notoriously complex, and it is difficult to summarize accurately or adequately the many variations that appear among the jurisdictions examined. The 1979 Basque Autonomy Statute offers an illustrative example of an attempt to distinguish rather precisely between local and national jurisdiction: local original jurisdiction includes all matters of local civil law and all criminal, social, and administrative actions, although the latter three areas are subject to appeal to the national courts.<sup>64</sup> Jurisdictional questions between local courts are to be decided locally, while the national Constitutional Court has exclusive jurisdiction over constitutional challenges to local "normative provisions having the force of law."<sup>65</sup> The structure of the Basque judiciary is to be in accord with a national organic law on judicial authority.<sup>66</sup> The 1848 Swiss Constitution assigned specific cases to the Federal Tribunal, but it could hear appeals from cantonal courts only where there were federal law issues "of considerable importance."<sup>67</sup>

<sup>63</sup> Trieste Stat., Art. 19.

<sup>64</sup> 1979 Basque Stat., Art. 14.1.

<sup>65</sup> *Id.*, Art. 14.1, 14.2; SPAIN CONST., Art. 153.

<sup>66</sup> 1979 Basque Stat., Art. 34.1.

<sup>67</sup> FEDERAL CONST. OF SWITZERLAND (1848), Art. 101, *reprinted in* W. RAPPARD, *LA CONSTITUTION FÉDÉRALE DE LA SUISSE, SES ORIGINES, SON ÉLABORATION, SON ÉVOLUTION* (1948), and *translated in* THE FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION (C.-J. Wyss pub., 1867). The authority of the Federal Tribunal, whose jurisdiction was in some instances dependent on the actions of the collegiate Swiss executive, the Federal Council, was considerably strengthened in Articles 110 through 114 of the 1874 Federal Constitution, *reprinted and translated in* E. JAMES, *THE FEDERAL CONSTITUTION OF SWITZERLAND* (1890).

The nonfederal autonomous areas are less likely to have a system of divided jurisdiction, as many of the laws of the sovereign or associated principal entity are inapplicable to the local entity. This situation prevails in, for example, the Cook Islands, Niue, and the Isle of Man; it also applied to the quasi-independent internationalized territories of Danzig, the Saar from 1920 to 1935, and that proposed for Trieste.

Finally, in many cases the exact relationship between the judiciary of the autonomous region and the central/sovereign government is left to be established by subsequent laws, rather than being set forth in the basic structural documents.<sup>68</sup>

Two areas that do indicate to some extent the degree of local judicial autonomy have been mentioned above: the manner of selection of local judges, particularly the judges of the highest local court; and whether or not local matters may be appealed to a higher tribunal outside the autonomous entity's jurisdiction.

Those federal provinces with high or even moderate degrees of autonomy have total control over the appointment of local judges, *e.g.*, the proposed Turkish Federated State of Cyprus, Eritrea, Catalonia, the Emirates, and the Swiss cantons. In Greenland and Belgium, no special provisions concerning the judiciary are included in the general autonomy documents, although Belgium does permit each parliamentary linguistic group to confer certain quasi-judicial or administrative jurisdiction on regional bodies in the four linguistic regions.<sup>69</sup> While the Basque courts have fairly extensive independent jurisdiction in other respects, as set forth above, the president of the Basque Supreme Court is appointed by the King of Spain rather than by local authorities.<sup>70</sup>

Some appointments involve both the local and the central/sovereign governments, with the latter holding the ultimate power of appointment but, in effect, relying on the advice or recommendations of the local authorities. This system was proposed for Trieste, where the UN-appointed Governor was to appoint judges from among candidates proposed by the Trieste Council of Government or from among other persons after consultation with the Council,<sup>71</sup> and is present in Tokelau, where local "commissioners" with jurisdiction over minor civil and criminal matters are appointed by the New Zealand Administrator after consultation with island elders.<sup>72</sup>

Finally, some appointments are made directly by the central government without formal local participation, *e.g.*, Guam, where a federal district court

<sup>68</sup> *Cf.*, *e.g.*, the complex and changing relationship between France and the Saar in the post-World War II period, summarized in flow chart form in J. FREYMOND, *THE SAAR CONFLICT 1945-1955*, at 324-31 (1960); and the activities of the Mixed Court of the International Settlement of Shanghai, outlined in A. KOTENEV, note 56 *supra*, and M. YDIT, *supra* note 12, at 127-53.

<sup>69</sup> Act of July 3, 1971, relating to the splitting up of the members of the legislative houses into linguistic groups and referring to various provisions concerning the cultural councils for the French cultural community and for the Dutch cultural community (Belgium), *reprinted in* 2 Blaustein & Flanz.

<sup>70</sup> 1979 Basque Stat., Art. 34.2.

<sup>71</sup> Trieste Stat., Art. 16.

<sup>72</sup> Act No. 41 to amend the Tokelau Islands Act 1948 (1970) (NZ), secs. 9-11, *reprinted in* 4 Blaustein & Blaustein.

also serves as the court of appeal on local matters,<sup>73</sup> and the Netherlands Antilles, whose Supreme Court justices are appointed by the Dutch monarch after consultation with the Dutch-appointed Governor.<sup>74</sup> The Saar under the administration of the League of Nations represented a unique situation in which the preexisting local (German) courts were retained but made subject to appeals to a Governing Commission-appointed Supreme Court; in practice, while the Saar Supreme Court reversed some cases, the local courts seem to have remained relatively free from League influence.<sup>75</sup>

Even where local courts are otherwise independent and selected by local authorities, most autonomous entities considered are subject to the ultimate judicial authority of the principal state through appeals from the local courts to the highest court of the national judiciary. In most cases, however, such appeals are appropriate only to consider the constitutionality of local enactments or challenges that local actions are contrary to or beyond the restrictions of the basic constituent documents defining the relationship between the autonomous and principal entities.

Excluding the quasi-independent internationalized territories, only for Eritrea, the Isle of Man, the religious/social status decisions of the Ottoman millets, and, possibly, the Turkish Federated State of Cyprus, does one find immunity from challenges of a constitutional nature in courts outside the local forum; in the case of the Isle of Man and the Ottoman millets, this immunity results from the lack of a relevant constitution or statute to apply. With respect to the internationalized territories of Danzig, Trieste, and Shanghai, the local courts were or would have been supreme in local matters; disputes between Danzig and Poland were referred to the League of Nations Council (and six times to the Permanent Court of International Justice for advisory opinions),<sup>76</sup> and disputes concerning the interpretation of the Permanent Statute of Trieste were to be ultimately referred to an ad hoc "commission" whose neutral member was to be appointed by mutual agreement or by the UN Secretary-General.<sup>77</sup>

The judicial system in Shanghai was unique, dictated primarily by the existing power relationships between the International Settlement and China. Disputes involving nationals of the treaty powers present in Shanghai

<sup>73</sup> Guam Organic Act, secs. 22, 24 (codified at 48 U.S.C. §§1424, 1424b (1980)). An attempt by Guam to divest the federal court of its appellate jurisdiction over local cases through the establishment of a Guam Supreme Court was declared invalid in a much criticized U.S. Supreme Court ruling. *Guam v. Olsen*, 431 U.S. 195 (1977).

<sup>74</sup> NETHERLANDS ANTILLES CONST., Art. 111.

<sup>75</sup> Saar Stat., Art. 25. Cf. L. COWAN AND M. FLORINSKY, note 37 *supra*.

<sup>76</sup> Treaty of Versailles, *supra* note 25, Art. 103; Treaty of Paris, Poland-Danzig, signed Nov. 9, 1920, 6 LNTS 190. Disputes were decided in the first instance by the League's High Commissioner, but 54 of his more than 80 formal decisions were appealed to the Council of the League. The Council requested an advisory opinion from the Permanent Court of International Justice in the following cases: Polish Postal Service in Danzig, [1925] PCIJ, ser. B, No. 15; Jurisdiction of the Courts of Danzig, [1928] PCIJ, ser. B, No. 15; Free City of Danzig and the I.L.O., [1930] PCIJ, ser. B, No. 18; Polish War Vessels in the Port of Danzig, [1931] PCIJ, ser. A/B, No. 43; Treatment of Polish Nationals in Danzig, [1932] PCIJ, ser. A/B, No. 44; and Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City, [1935] PCIJ, ser. A/B, No. 65.

<sup>77</sup> Trieste Stat., Art. 36.

were heard by a totally autonomous, independent Municipal Court which derived its authority from the extraterritorial jurisdiction of the foreign consuls. For other foreigners and Chinese, a "Mixed Court" was established responsible to the Chinese authorities, except for a brief period of de facto foreign control in the early 20th century. While this Mixed Court was integrated into the Chinese judicial system in 1929, it had jurisdiction over only the Chinese residents of Shanghai until the abolition of the Settlement in 1944.<sup>78</sup>

In summary, the scope of subject matter jurisdiction of autonomous courts is seen to depend directly on the extent of legislative and executive competence granted to the autonomous region in its constituent documents. With respect to local issues, most autonomous judicial authorities are supreme; in questions concerning the constitutionality of local actions or the relationship between the autonomous and principal governments, decisions of the local courts (where they can exercise original jurisdiction) are generally appealable to a higher court responsible to the central/sovereign authorities.

Organizationally, most of the autonomous judicial systems enjoy fairly complete independence from outside control. While there are exceptions, local inferior court judges generally are appointed by and responsible to the local government, and the internal administration of the local judiciary is a matter of local responsibility.

### III. PARTICULAR ISSUES AND POWERS

#### *Control Over Foreign Relations and Defense*

The cases surveyed led to the identification of three primary issues that illustrate the relative degree of international personality possessed by the autonomous entities considered: control over (national) defense; control over foreign relations; and competence to enter into international agreements, with or without the consent of the central/sovereign government.

There is an overwhelming consensus that responsibility for and authority over national defense matters rest with the central or sovereign government and that, in general, the autonomous, nonsovereign entity exercises no power in the national defense area. The only exceptions to this practice appear to be the proposed Turkish Federated State of Cyprus, which, although its constitution does not specifically mention "national defense," assigns to its president the responsibility of preserving the integrity of the state and reserves to the state the power "to receive any foreign aid from foreign states and international organisations [presumably including military aid] . . . [without restriction] under any condition or for any reason whatsoever";<sup>79</sup> the quasi-independent International Settlement of Shanghai, which provided for its own defense independent of its nominal

<sup>78</sup> See generally A. KOTENEV, note 56 *supra*; F. POTT, A SHORT HISTORY OF SHANGHAI (1928); M. YDIT, note 12 *supra*.

<sup>79</sup> TURKISH CYPRIOT CONST., Arts. 80, 135.

Chinese sovereign; and the associated states or proposed associated states of Niue, the Cook Islands, and the constituent districts of the Trust Territory of the Pacific Islands, all of which delegate authority over defense of their territory to the former colonial or trusteeship power, but which retain the power unilaterally to rescind that delegation.<sup>80</sup>

In every other example studied, there is either an express or implied reservation of national defense powers to the national government. The extent of these powers is usually not defined in detail; it appears to be assumed that such powers as the declaration of martial law or a state of emergency (assuming such declarations are permissible under national law) and the condemnation or seizure of property are unimpaired by a region's autonomous or self-governing status. Some of these issues, *e.g.*, expropriation of land and relations with local police forces, are discussed further below.

The reservation to the central or sovereign government of general authority to conduct foreign relations on behalf of the autonomous entity is almost as universal as the reservation of national defense powers. These powers, however, are more nuanced, and in some instances either formal or informal consultations on matters of foreign policy between the local and national governments are envisaged.<sup>81</sup> Again, the Turkish Federated State of Cyprus would seem to retain broad foreign affairs authority, although without a national constitution for the proposed Federal Republic of Cyprus one cannot arrive at definitive conclusions. In none of the other federal states are the constituent local governments granted general authority or responsibility in the foreign affairs area.

There are a few instances of separation of foreign relations and defense authority, in situations where security interests are particularly important but where a high degree of autonomy is also desirable. The clearest separation along these lines is found in the Compact of Free Association between the United States and the districts of the Trust Territory of the Pacific Islands, in which it is stated that the districts of the Trust Territory "have the capacity to conduct foreign affairs and shall do so in their own name and right," although it is also provided that there shall be consultation with the United States in the exercise of this authority.<sup>82</sup> The United States, on the other hand, reserves "full authority" over security and defense matters.<sup>83</sup>

The case of the Free City of Danzig also is instructive. While the Treaty of Versailles gave Poland the authority and responsibility to conduct the foreign relations of Danzig, the Permanent Court of International Justice interpreted the arrangement as a kind of agency relationship with mutual

<sup>80</sup> See note 13 *supra*. Associated statehood is seen as a self-governing alternative to emergence as a sovereign independent state or full integration with a sovereign state. *Cf.* GA Res. 742 (VIII), 8 UN GAOR, Supp. (No. 17) 21 (1953); GA Res. 1541 (XV), 15 UN GAOR Supp. (No. 16) 29 (1960); W. REISMAN, note 13 *supra*; Clark, *supra* note 13, at 38–66; Gilmore, *Legal Perspectives on Associated Statehood in the Eastern Caribbean*, 19 VA. J. INT'L L. 490 (1979).

<sup>81</sup> See, *e.g.*, Niue Constitution Act (No. 24, 1974), secs. 6, 8 (NZ), which provide, *inter alia*, for consultation between New Zealand and Niue on foreign affairs matters that require "positive co-operation."

<sup>82</sup> Micronesia Compact, secs. 121, 123.

<sup>83</sup> *Id.*, sec. 311.

veto powers.<sup>84</sup> Thus, Poland could not impose any particular foreign relations policy on Danzig without the latter's consent. The Free Territory of Trieste also would have enjoyed a certain freedom in the area of foreign relations, although the approval of the UN-appointed Governor was required for international agreements, and the Territory was prohibited from entering into agreements that were contrary to its statute or constitution or that would have created exclusive economic associations with any country.<sup>85</sup>

While most nonsovereign autonomous entities thus do not conduct their own foreign relations, several entities have been granted specific authority to enter into international agreements within limited areas of competence. Such treaty-making power is most often restricted to economic, cultural, social, and similar matters (as opposed to political or military agreements), and treaties between the local government and a foreign country usually require the specific approval of the central or sovereign government. In some instances, the local government is given the right to comment upon (although not to veto) proposed treaties that would have a direct effect on it or on matters within its jurisdiction.

Typical examples of such arrangements can be found in, *e.g.*, the 1848 Swiss Constitution, the Greenland autonomy statute, the statutes governing the Netherlands Antilles, the Constitution of the United Arab Emirates, and the recent Basque autonomy arrangements. The 1848 Swiss Constitution prohibits alliances and treaties "of a political character" between cantons, but permits agreements with foreign nations that concern "public economy, neighbourly intercourse, and police."<sup>86</sup> However, any such agreement must be brought to the attention of the federal authorities, who retain the right to veto the agreement if they think it is contrary to the union.<sup>87</sup> This cantonal treaty-making power has been exercised only rarely in recent times.

Greenland's foreign relations are specifically reserved to the central Danish Government, but fairly general provisions do allow Greenland's participation, with central governmental consent, in international negotiations "of special importance for Greenland's commercial life."<sup>88</sup> Greenland may demand that the Danish Government designate specific diplomatic officers to attend to Greenland's special commercial interests abroad, and provision is made for "guidelines" to be developed by the Danish authorities, in consultation with the Greenland authorities, for dealing with EEC matters of particular interest to Greenland.<sup>89</sup>

<sup>84</sup> The Court said:

[T]he rights of Poland as regards the foreign relations of the Free City are not absolute. The Polish Government is not entitled to impose a policy on the Free City nor to take any step in connection with the foreign relations of the Free City against its will. On the other hand, the Free City cannot call upon Poland to take any step in connection with foreign relations of the Free City which are opposed to her own policy. . . .

Free City of Danzig and the I.L.O., [1930] PCIJ, ser. B., No. 18, at 13.

<sup>85</sup> Trieste Stat., Art. 24.

<sup>86</sup> 1848 SWITZERLAND CONST., Art. 9.

<sup>87</sup> *Id.*, Art. 90(7).

<sup>88</sup> Greenland Home Rule Act (Act. No. 577, 1978), sec. 16 (Denmark), *reprinted in* 5 Blaustein & Blaustein.

<sup>89</sup> *Id.*, sec. 15.

The Netherlands Antilles enjoys somewhat wider powers vis-à-vis the central Dutch Government with respect to international economic and financial agreements. Such agreements that are or would be binding on the Netherlands Antilles may not be entered into or denounced without the consent of the Netherlands Antilles;<sup>90</sup> in addition, it is provided that the central Government "shall cooperate" in concluding such agreements on behalf of the Netherlands Antilles alone when the latter requests such cooperation, "unless this would be inconsistent with the partnership of the Country in the Kingdom."<sup>91</sup>

The individual emirates of the United Arab Emirates may enter into "limited agreements of a local and administrative nature with the neighbouring state or regions, provided that such agreements are not inconsistent with the interests of the Union or with Union laws and provided that the Supreme Council of the Union is informed in advance."<sup>92</sup> Specifically reserved to each emirate is the right to join the Organization of Petroleum Exporting Countries.<sup>93</sup>

The Basque treaty-making power is narrower, being limited to the establishment of cultural relations with states having Basque-speaking communities; indeed, such cultural relations apparently can be established only with the approval of the national Spanish Government and the national Parliament.<sup>94</sup> The Basques are given the authority to implement international agreements made by the national Government that affect matters within local jurisdiction, although such agreements may not affect the fundamental attributes or authority of the autonomous community without a local referendum.<sup>95</sup>

Participation by a nonsovereign autonomous entity in international organizations does not seem to be a common attribute, except in the case of associated states. For example, the Netherlands Antilles is a member of the Universal Postal Union and the World Meteorological Organization, and the Saar Territory under League of Nations administration was a member of the Universal Postal Union and the Universal Telegraphic Convention. Under French administration after World War II, the Saar was admitted to the European Coal and Steel Community and as an associate member of the Council of Europe.<sup>96</sup> The Compact between the United States and the districts of the Trust Territory of the Pacific Islands provides that the United States will support "membership or other participation" in international organizations for the districts "as may be mutually agreed."<sup>97</sup>

### *Police and Security Arrangements*

Local police powers, as opposed to security or military forces for national defense, are exercised by the local autonomous government in the great

<sup>90</sup> Charter of the Kingdom of the Netherlands, Art. 25.

<sup>91</sup> *Id.*, Art. 26.

<sup>92</sup> UAE CONST., Art. 123.

<sup>93</sup> *Ibid.*

<sup>94</sup> 1979 Basque Stat., Art. 6.5.

<sup>95</sup> *Id.*, Art. 20.3.

<sup>96</sup> See J. FREYMOND, *supra* note 68, at 70–81, 87–93.

<sup>97</sup> Micronesia Compact, sec. 122.

majority of instances examined. In many cases, local police forces are seen as merely a normal component of the governmental powers of any autonomous, self-governing entity. In Greenland, for example, police powers are not included within the specific powers delegated to the Greenland government, yet it is likely that the establishment of a local police force to enforce local legislation in the delegated areas, *e.g.*, taxation, trade, social welfare, and protection of the environment, would be considered to be within Greenland's authority over the "organization of local government."<sup>98</sup> On the other hand, it does not appear that separate police powers should be inferred in the context of the cultural autonomy of the Belgian linguistic communities established in 1970, although the new authority of the "cultural councils" does not appear to diminish preexisting local or regional police powers.

No local police power would seem to have been within the competence of the Ottoman millets, which depended on the Turkish civil authorities for execution of their decisions within the religious and cultural spheres; nor does it seem to be within the competence granted by New Zealand to the Tokelau Islands, although the traditional social structures on each atoll probably include forms of "police" powers as well. Perhaps the only clear case of the formal exercise of police powers by the central/principal government is found in the administration of the Saar by the League of Nations; the League's Governing Commission assumed plenary governmental powers from both the national and the provincial German authorities.<sup>99</sup>

Detailed provisions concerning the division of police and security powers have been drawn up in several situations, either to protect particular interests of the central or principal entity or to legitimize central intervention in the autonomous territory under certain specified circumstances. The 1979 Basque autonomy provisions, for example, establish an "autonomous police regime," responsible to the Basque government, which has jurisdiction over the maintenance of public order within the province.<sup>100</sup> Reserved to the national security forces are police services of an "extracommunitary or supracommunitary nature," such as guarding ports, airports, and frontiers, and controlling customs and immigration into the national territory.<sup>101</sup> A joint "security council" is established to coordinate the local police and national security forces, and the latter retain the right to intervene unilaterally, with the approval of this security council, if they consider "the general interest of the state to be gravely threatened," or without security council approval but under the direction of the national authorities in cases of "special urgency."<sup>102</sup>

Despite reference to the cantons as "sovereign," the 1848 Swiss Constitution also reserved a right of intervention to the federal Government in order to guarantee the cantons' constitutions;<sup>103</sup> the federal authorities could intervene unilaterally "if the safety of Switzerland be placed in jeopardy,"

<sup>98</sup> Greenland Home Rule Act, *supra* note 88, Schedule, para. 2.

<sup>99</sup> Saar Stat., Art. 19.

<sup>100</sup> 1979 Basque Stat., Art. 17.1.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Id.*, Arts. 17.4–17.6.

<sup>103</sup> 1848 SWITZERLAND CONST., Arts. 6, 90(3).

and these powers were used to put down an insurrection in 1890 that had overthrown a cantonal government.<sup>104</sup>

More complex divisions of authority with respect to local police powers may be seen in the 1924 Statute of the Memel Territory.<sup>105</sup> While primary responsibility over the police was within the competence of the local Memel authorities, special provision was made for (1) the protection of the port of Memel by local Memel police detailed for service under the Lithuanian authorities, and (2) total Lithuanian control over and staffing of the frontier, customs, and railway police.<sup>106</sup> The Free City of Danzig, on the other hand, retained authority over its own police force, including the branch that policed the port, although the port was (like the port of Memel) under joint administration with another state (Poland).<sup>107</sup>

*Land: Ownership and Power of Eminent Domain*

While control over land may be a divisive and complex issue, it has not often been addressed directly in autonomy arrangements. In general, it has been assumed that land ownership will remain as it was before the establishment of such arrangements and that, presumably, the autonomous and central/sovereign governments will both have eminent domain powers within their respective spheres of competence under the autonomy provisions. Where ownership of public lands is mentioned, it is most often in the context of a grant of public land and property formerly owned by the sovereign government to the newly constituted local government. The Basque autonomous community, for example, is granted "all rights and property of the state or other public organisms related to the services and competences assumed by the Basque government."<sup>108</sup>

Where new entities are created, some cession of territory usually is required: Germany renounced all right and title over the territory of Danzig in favor of the Allied and associated powers;<sup>109</sup> Italian sovereignty over Trieste was formally terminated and, in addition, Trieste was to receive without payment all Italian state and "parastatal" property within the territory.<sup>110</sup>

<sup>104</sup> *Id.*, Art. 16. Cf. G. CODDING, *THE FEDERAL GOVERNMENT OF SWITZERLAND* (1961), especially chs. 3 and 4.

<sup>105</sup> The Memel Territory was ceded by Germany to the Allied powers under the terms of the Treaty of Versailles and, following the failure of negotiations to internationalize the territory, was occupied by Lithuania in 1923. Faced with this *fait accompli*, the four powers (the British Empire, France, Italy, and Japan) and Lithuania recognized Memel, "under the sovereignty of Lithuania, [as] a unit enjoying legislative, judicial, administrative and financial autonomy within the limits prescribed by the Statute" annexed to the convention. Convention and Transitory Provision concerning Memel, *supra* note 23, Art. 2. The Memel Territory remained under Lithuanian sovereignty until the German invasion of Poland in 1939, and after the war it became an integral part of Lithuania, the USSR.

<sup>106</sup> Memel Stat., Art. 20.

<sup>107</sup> Treaty of Paris, *supra* note 76, Art. 19.

<sup>108</sup> 1979 Basque Stat., Art. 43.1.

<sup>109</sup> Treaty of Versailles, *supra* note 25, Art. 100.

<sup>110</sup> Treaty of Peace with Italy, *supra* note 34, at 209, Ann. X, Economic and Financial Provisions relating to the Free Territory of Trieste, Art. 1.

Control over land and resources was the moving factor behind the administration of the Saar by the League of Nations during the post-World War I period. While France never acquired sovereignty over the Saar, under the provisions of the Treaty of Versailles, Germany agreed to cede to France for 15 years "in full and absolute possession, with exclusive right of exploitation, unencumbered and free from all debts and charges of any kind, the coal-mines situated in the Saar Basin."<sup>111</sup> France had the right to install necessary communication, transportation, and other facilities incidental to exploitation of the mines;<sup>112</sup> no restriction could be placed on the importation of French workers to the Saar;<sup>113</sup> and the Saar was subject to the French customs regime.<sup>114</sup>

Private ownership of property is most often addressed in the context of guarantees of nondiscrimination between citizens of the autonomous territory and other citizens of the nation. Provisions guaranteeing that there will be no discrimination between citizens of an autonomous territory and other national citizens resident outside the territory are included in the constitutions or constituent documents of, for example, Eritrea,<sup>115</sup> Switzerland,<sup>116</sup> the former Free City of Danzig,<sup>117</sup> and the former Memel Territory.<sup>118</sup> In addition, some of the constituent documents also protect freedom of movement and residency. The 1848 Swiss Constitution specifically protected "the right of free settlement within the whole extent of the Confederation," subject to certain requirements of status documentation.<sup>119</sup> In the acquisition and sale of real estate, settlers and cantonal citizens had to be treated equally, although settlers could be expelled from a canton pursuant to a criminal sentence or by order of the police if the settler had "forfeited the rights and honors of citizenship" or was guilty of "an improper course of conduct."<sup>120</sup>

An annex to the Permanent Statute of Trieste specified in some detail individual property rights and procedures for the disposition of private property once the Free Territory came into being. The property of Italian nationals resident in Trieste was to be protected on a nondiscriminatory basis for a period of 3 years, and those persons who opted for Italian citizenship and moved to Italy were to have the right to take lawfully acquired property with them and to sell real property under the same conditions as Trieste nationals.<sup>121</sup> Italy had agreed to give reciprocal guarantees<sup>122</sup> and also all its state or parastatal property to Trieste, as noted above.<sup>123</sup>

An exception to the general rule of nondiscrimination against non-residents is the Aland Islands, a strategic Swedish-speaking territory that

<sup>111</sup> Treaty of Versailles, *supra* note 25, Art. 45.

<sup>112</sup> Saar Stat., Arts. 8, 14.

<sup>113</sup> *Id.*, Art. 12.

<sup>114</sup> *Id.*, Art. 31. By 1923, the French franc had become the Saar's only official currency, and a customs union with France was established in 1925.

<sup>115</sup> ERITREA CONST., Art. 9.

<sup>116</sup> 1848 SWITZERLAND CONST., Arts. 42, 48.

<sup>117</sup> Treaty of Versailles, *supra* note 25, Art. 104(5).

<sup>118</sup> Memel Stat., Art. 9.

<sup>119</sup> 1848 SWITZERLAND CONST., Art. 41.

<sup>120</sup> *Ibid.*

<sup>121</sup> Treaty of Peace with Italy, Ann. X, *supra* note 110, Arts. 9, 10.

<sup>122</sup> *Id.*, Art. 11.

<sup>123</sup> *Id.*, Art. 1.

has been under Finnish sovereignty since 1920. While Finland retains general legislative authority over the Alands, the islands have maintained their cultural independence through control over education, language, and land.<sup>124</sup> Only persons who possess a special domiciliary right in the Alands may acquire real estate; this right generally requires at least a 5-year period of continuous residency in the islands.<sup>125</sup> If land is conveyed to a person not having a domiciliary right, any private person possessing the right, the local community, or the province itself is entitled to "redeem" the property at an agreed-upon price or at a fair market price determined by the courts.<sup>126</sup>

### *Natural Resources*

Control over natural resources varies greatly in the situations examined in the course of the present survey. Those entities that enjoy greater autonomy tend to control their own natural resources, and most of the autonomous entities control the use of such resources as water, forests, and other nonmining resources within their own territory. In those federal states with a stronger central government, that government generally reserves control over the nation's natural resources, and it will have jurisdiction over resources that affect more than one province or other national subdivision.

Among those autonomous territories with complete control over their own natural resources are Eritrea<sup>127</sup> and the individual emirates of the United Arab Emirates; the latter, not surprisingly, have reserved to themselves the "natural resources and wealth in each Emirate" (including oil) as public property of that emirate, although "society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy."<sup>128</sup>

The importance of natural resources to the development of Greenland led to the establishment of joint control between Greenland and the central Danish authorities over these resources as part of the 1978 home rule arrangements, although in other respects Greenland does not enjoy a wide degree of autonomy. Greenland is delegated the power to protect the environment, and its Home Rule Act specifically recognizes the "fundamental rights" of Greenland with respect to its natural resources.<sup>129</sup> The result is a requirement of approval by both the Greenland and central Danish authorities to any study, prospecting, or exploitation of natural resources in Greenland, although recent reports concerning Greenland's objections to uranium mining by the Danish Atomic Energy Authority suggest that the central Government may be able to override Greenland's veto to protect serious national interests.<sup>130</sup>

<sup>124</sup> Cf. summary of the Aland Autonomy Law, note 24 *supra*. The standard work on the Aland Islands is J. BARROS, *THE ALAND ISLANDS QUESTION: ITS SETTLEMENT BY THE UNITED NATIONS* (1968).

<sup>125</sup> Summary of the Aland Autonomy Law, note 24 *supra*.

<sup>126</sup> *Ibid.*

<sup>127</sup> ERITREA CONST., Art. 5(2) (h).

<sup>128</sup> UAE CONST., Art. 23.

<sup>129</sup> Greenland Home Rule Act, *supra* note 88, sec. 8.

<sup>130</sup> See Financial Times (London), Sept. 14, 1979, at 2, col. 3.

A more typical division of authority over natural resources may be found in the autonomy arrangements recently agreed upon by the Basque country and Spain. The Spanish Constitution reserves to the "exclusive competence" of the national Government "basic legislation" on environmental protection (without prejudice to the establishment of stricter local standards), woodlands, forestry projects, and livestock trails; regulation of maritime fishing (also subject to some concurrent local competence); the regulation and concession of water resources and the authorization of electrical installations where more than one autonomous community is affected; and the bases of the mining and energy system.<sup>131</sup> On the other hand, in its autonomy statute, the Basque autonomous community is given "exclusive jurisdiction" over mountains and forests (subject to the Spanish constitutional provisions mentioned above); agriculture and livestock, "in accordance with the general ordering of the economy"; fishing in interior waters; internal water resources, including canals and irrigation; the internal production, distribution, and transportation of energy, so long as no other autonomous community is affected; and mineral, thermal, and subterranean waters (again subject to the provisions of the Spanish Constitution).<sup>132</sup> The Basque community, like most other autonomous regions, controls urban planning, public works, and the construction of roads and highways.<sup>133</sup>

The proposals for the Free Territory of Trieste contained specific provisions for the continuing supply of water and electricity to Trieste by both Italy and Yugoslavia, including provisions for a mixed commission of Trieste, Italian, and Yugoslav representatives to supervise the execution of agreements concerning the supply of hydroelectricity to the territory.<sup>134</sup>

Control over natural resources, if theoretically vested in an autonomous territory, may be exercised in fact by the central sovereign government under other powers, *e.g.*, national defense requirements. Thus, U.S. military forces control approximately one-third of the land on Guam, including the island's major water supply, and the "Hilo Principles" governing negotiations between the United States and the districts of the Trust Territory of the Pacific Islands grant full authority for security and defense to the United States, "including the establishment of necessary military facilities and the exercise of appropriate operating rights."<sup>135</sup> Specific land arrangements are to be agreed upon prior to termination of the trusteeship.<sup>136</sup> Military control over large land areas obviously may be resented by the local population, particularly in the context of a purported grant of autonomy or self-government.

<sup>131</sup> SPAIN CONST., Art. 149.

<sup>132</sup> 1979 Basque Stat., Art. 10.

<sup>133</sup> *Ibid.*

<sup>134</sup> Treaty of Peace with Italy, *supra* note 34, at 207, Ann. IX, Technical Dispositions Regarding the Free Territory of Trieste.

<sup>135</sup> Statement of Agreed Principles for Free Association ("Hilo Principles"), *reprinted in* 72 AJIL 882-83 (1978).

<sup>136</sup> *Ibid.*

*Social Services*

The situations surveyed indicate that the provision of social services such as health, education, and welfare is generally the responsibility of the local or autonomous community rather than the central/sovereign authority. For example, health, education, public assistance, and social security were within the jurisdiction of Eritrea;<sup>137</sup> social welfare, education, cultural affairs, health services, and housing administration are within the home rule jurisdiction of Greenland;<sup>138</sup> and jurisdiction over social services, health, and education is among those powers reserved to, for example, the Swiss cantons under the 1848 Constitution, the Saar under post-World War II French administration, and the associated states of Niue, the Cook Islands, and the Netherlands Antilles.

Contrary to this general trend is the Constitution of the United Arab Emirates, which delegates to the central Union authorities exclusive legislative and executive jurisdiction over education, public health, and health services, and exclusive legislative or standard-setting jurisdiction over labor relations and social security.<sup>139</sup> This centralization of social welfare powers is undoubtedly explained by the extremely small size of each individual emirate, which would render separate social or education legislation and administration impractical and inefficient. It also enables the less-developed shiekhdoms to take advantage of the more advanced social administration in, for example, Abu Dhabi and Dubai.

Control over education has been a major factor in some communities' desire for greater autonomy. The Aland Islands, for example, have established Swedish as the official language of instruction in all schools, and Finnish cannot be used without the specific consent of the community concerned.<sup>140</sup> The 1932 Catalonia Autonomy Statute established both Catalan and Castilian as official languages,<sup>141</sup> and the Basque autonomy provisions adopt a similar position, recognizing both Basque and Castilian as official languages, guaranteeing the use of both languages, and agreeing to provide the "measures and means necessary to ensure the learning of both languages."<sup>142</sup>

As noted above in the section concerning executive authority, some autonomy arrangements provide for the execution or implementation by the autonomous government of general norms set by the national/sovereign government. For example, national health and social security legislation is implemented by the Basque autonomous community,<sup>143</sup> and the Swiss cantons under the 1874 Constitution have the duty, enforceable by the federal authorities, to provide education.<sup>144</sup> Even where complete local autonomy exists in theory, the local government may in fact tailor its social legislation after that of the central or sovereign entity, *e.g.*, the Isle of Man.

<sup>137</sup> ERITREA CONST., Art. 5.

<sup>138</sup> Greenland Home Rule Act, *supra* note 88, Schedule.

<sup>139</sup> UAE CONST., Arts. 120, 121.

<sup>141</sup> 1932 Catalan Stat., Art. 2.

<sup>143</sup> *Id.*, Art. 18.

<sup>140</sup> Aland Autonomy Law, sec. 35.

<sup>142</sup> 1979 Basque Stat., Art. 6.

<sup>144</sup> 1874 SWITZERLAND CONST., Art. 27.

*Finance and Economy*

The great majority of the nonsovereign entities surveyed, with the exception of the Free Territory of Trieste, the Isle of Man, the associated states, and possibly the proposed Federal Republic of Cyprus, form part of an economic and customs union with the principal or sovereign government. Control over customs and excise duties is therefore generally vested in the central/sovereign government, although the actual collection of such taxes may be delegated to the autonomous entity, *e.g.*, Eritrea.<sup>145</sup> Other financial matters almost universally under the control of the sovereign government include regulation of currency and the coinage of money, regulation of foreign and interstate commerce, and regulation of the banking system.

The authority to impose local taxes, on the other hand, generally has been deemed to be a matter within the jurisdiction of the local or autonomous territory. This power is specifically granted to the autonomous community in the relevant documents concerning, for example, Eritrea,<sup>146</sup> Shanghai,<sup>147</sup> and Memel,<sup>148</sup> and is implicit in the reserved or residual powers retained under their documents by, *e.g.*, the Swiss cantons, Danzig, and the Cook Islands.

Other, more detailed arrangements also have been agreed upon. For example, the 1978 Spanish Constitution provides that the autonomous communities "shall enjoy financial autonomy for the development and exercising of their competencies, in conformity with the principles of coordination with the State National Treasury and solidarity among all Spaniards."<sup>149</sup> The 1979 Basque Autonomy Statute additionally provides that relations in the tax sector between the autonomous community and the central Government will be governed by a traditional form of agreement or accord ("*Concierto Económico o Convenios*") between the two governments.<sup>150</sup> Among the matters to be decided in this manner is the amount of a lump sum payment to be made by the Basque authorities to the central Government as the Basque contribution to national expenses for services provided to the Basque country.<sup>151</sup> The Basques also may be granted funds from the general national budget in payment for services delegated to the autonomous community by the national authorities.<sup>152</sup> Thus, the Basques in principle have a fairly extensive degree of financial autonomy, although it is too early to determine what the scope of this autonomy will be in practice.

The non-self-governing territories of and entities associated with the United States also enjoy special tax status in some cases. Puerto Rico, for example, is exempt from the provisions of the federal income tax law and is free to impose its own local taxes.<sup>153</sup> In Guam, the federal income taxes

<sup>145</sup> Eritrea Federal Act, *supra* note 21, para. 3.

<sup>146</sup> ERITREA CONST., Art. 5(1).

<sup>147</sup> Shanghai Land Regulations, *supra* note 56, sec. 10.

<sup>148</sup> Memel Stat., Art. 5(12).

<sup>149</sup> SPAIN CONST., Art. 156.1.

<sup>150</sup> 1979 Basque Stat., Art. 41.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Id.*, Art. 42; SPAIN CONST., Art. 158.1.

<sup>153</sup> Puerto Rican Federal Relations Act, *as amended*, sec. 9, originally enacted as the Jones Act of Mar. 13, 1917, ch. 145, 39 Stat. 951 (codified at 48 U.S.C. §734 (1980)).

attributable to Guam are covered into the Guam treasury as though they were collected as a territorial income tax and thus provide a significant amount of Guam's revenue.<sup>154</sup> Both Guam and Puerto Rico enjoy certain preferential treatment with respect to customs duties as well.<sup>155</sup>

The public indebtedness of Guam, Puerto Rico, and the U.S. Virgin Islands is restricted by federal laws, which possibly reflects their less than fully autonomous status.<sup>156</sup> Such a limitation is not common with respect to the other entities with local fiscal responsibility that were examined.

### *Cultural, Religious, and Minority Group Autonomy*

This analysis has focused on situations in which the autonomous entities enjoyed, to a greater or lesser degree, a measure of general political or governmental autonomy. Thus, it has covered the extent of such entities' executive, legislative, and judicial authority, besides examining specific areas such as police powers and control over local finances. However, there are several entities that have been granted "autonomy" not as a response to desires for political self-government, but rather as a means of guaranteeing to certain social or ethnic groups a degree of independence from governmental interference in matters of particular concern to these groups, *e.g.*, cultural autonomy or religious freedom. Examples of such limited autonomy include the Belgian linguistic communities, the Aland Islands, the millets under the Ottoman Empire, the provisions for ethnic minorities in Eritrea, and the *de facto* cultural autonomy enjoyed by traditional societies in the Tokelau atolls.

While each of these examples is sufficiently unique to require reference to its particular historical situation, one can observe generally that the effect of the relevant statutory or other provisions in these cases is to protect certain customs, practices, and societal structures from interference on the part of the central or sovereign government. Thus, the religious-based millets established in the Ottoman Empire were independent within the restricted realms of religious practice and law and the regulation of the civil status of members of the millets.<sup>157</sup> They also seem to have enjoyed a degree

<sup>154</sup> Guam Organic Act, sec. 30 (codified at 48 U.S.C. §1421h (1980)).

<sup>155</sup> See, *e.g.*, Puerto Rican Federal Relations Act, sec. 3 (codified at 48 U.S.C. §738 (1980)); Guam Organic Act, sec. 27 (codified at 48 U.S.C. §1421e (1980)); see also the territorial exceptions to the General Tariff Schedule, 19 U.S.C. §1202, headnote 3(a) (1980).

<sup>156</sup> Guam Organic Act, sec. 11 (codified at 48 U.S.C. §1423a (1980)); Puerto Rican Federal Relations Act, sec. 3 (codified at 48 U.S.C. §728 (1980)); Revised Virgin Islands Organic Act of 1954, sec. 8(b) (i) (codified at 48 U.S.C. §1574(b) (i) (1980)).

<sup>157</sup> It is beyond the scope of the present article to discuss the complexities of the Ottoman millet system in depth. The millet concept, which involved the granting of a degree of cultural and civil autonomy to religious communities within the Ottoman Empire, seems to have originated with the establishment of the Greek Orthodox millet in the mid-15th century. Distinctions between the religious authority of the millets and the secular authority of the Ottoman administration are far from clear; they also varied greatly depending on the time frame studied. While the millets' jurisdiction was personal rather than territorial, each millet tended to constitute a geographical community as well. See generally S. SHAW, *HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY* (2 vols., 1976); H. GIBB & H. BOWEN, *ISLAMIC SOCIETY AND THE WEST* (1950); A. LYBYER, *THE GOVERNMENT OF THE OTTOMAN EMPIRE IN THE TIME OF SULEIMAN THE MAGNIFICENT* (1913).

of administrative autonomy, in that the collection of taxes and responsibility for the general behavior of the community could be delegated from the Ottoman rulers to the heads of the various millets. Similar recognition was granted in more formal statutory language to tribal or ethnic groups within Eritrea: all Eritrean nationals were guaranteed "the right to respect for their customs and their own legislation governing personal status and legal capacity, the law of the family, and the law of succession."<sup>158</sup> In addition, customary property rights, including rights to state-owned land, could not be impaired in a discriminatory manner, and ethnic languages were permitted in dealings with governmental authorities, as well as for religious and educational purposes.<sup>159</sup>

The Aland Islands and the linguistic communities in Belgium are concerned more strictly with questions of language, education, and culture than with religious or traditional structures of society. In the Alands, the islanders have been granted independent home rule in these specific areas of concern, *i.e.*, use of language and control over education,<sup>160</sup> while in Belgium the cultural autonomy enjoyed by the linguistic communities in large part stems from their formal political recognition by the national Government, as much as from the establishment of "cultural councils" within each community.<sup>161</sup> These cultural councils may determine by decree matters dealing, *inter alia*, with culture, education, the use and protection of language, museums, leisure facilities and travel, and radio and television broadcasting (subject to central governmental control over governmental communications and commercial advertising).<sup>162</sup>

The jurisdiction of the Ottoman millets and the Eritrean minorities was personal rather than territorial. In the Aland Islands and the New Zealand territory of Tokelau, on the other hand, territory is the basis for jurisdiction; an Alander or Tokelauan who leaves his traditional homeland presumably becomes subject to the general jurisdiction of the state (although it is unclear what effect might be given to, for example, a traditional marriage or divorce in Tokelau were the parties subsequently to leave and reside in New Zealand). The decrees adopted by the Belgian cultural councils are applied in both the French and the Dutch language regions, although there is provision for the exemption of communes technically within one region but linguistically linked to another, as well as for transregional and national institutions.<sup>163</sup> While basically territorial, the Belgian system thus allows for the exercise of some personal jurisdiction.

<sup>158</sup> ERITREA CONST., Art. 36.

<sup>159</sup> *Id.*, Arts. 37, 38.

<sup>160</sup> Aland Autonomy Law, Arts. 35, 37, 38, 39.

<sup>161</sup> *Cf.* CONST. OF BELGIUM, as amended in 1971, Arts. 3c, 59b, 59c, reprinted in 2 Blaustein & Flanz. For a history of the political and legal issues that eventually resulted in the 1971 constitutional changes, see Case Relating to Certain Aspects of the Laws on the Use of Language in Education in Belgium, [1966] Y.B. EUR. CONV. ON HUMAN RIGHTS 644 (Eur. Ct. of Human Rights), and the Report of the European Commission on Human Rights in the same case, "Linguistic Cases," Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, and 2126/63, June 24, 1965.

<sup>162</sup> BELGIUM CONST., Art. 59b; Act of July 1971 relating to the powers and procedures of the cultural councils for the French cultural community and for the Dutch cultural community (Belgium), Art. 2, reprinted in 2 Blaustein & Flanz.

<sup>163</sup> BELGIUM CONST., Art. 59b, sec. 4.

The range of autonomous functions these cultural or religious communities are permitted to exercise is indeed narrow, with the possible exception of the isolated, traditional societies of Tokelau. It might not be inappropriate in some cases to compare such "autonomy" to the scope of freedom from governmental control that might be found within a broadly construed right to freedom of religion or freedom of privacy. At the same time, however, state recognition of the binding nature of religious or cultural norms within particular communities goes beyond the mere noninterference that, in the United States, is generally associated with freedom of religion.

#### IV. CONCLUSION

This article has sought to survey a wide range of intergovernmental relationships in which one of the parties, although not fully independent, enjoys some degree of "autonomy" in the conduct of its own affairs. It is hoped that, in addition to contributing generally to the literature in this somewhat neglected area of public international law, and thus providing some guidance for decisionmakers considering the establishment of regional autonomous entities, the observations made here also may prove helpful to those seeking to define "full autonomy," as that term is used in the Camp David framework, in a historical and legal context.<sup>164</sup>

It must be remembered that autonomy is not a term of art or a concept that has a generally accepted definition in international law. While the degree of autonomy or self-government enjoyed by a territory often has been utilized by international legal scholars to determine in which category of special sovereignty or dependency—protectorate, vassal state, dependent state, colony, associated state, or other category—a territory should be placed, these categories often are overlapping and frequently subject to scholarly disagreement.<sup>165</sup> Thus, autonomy is a relative term that describes the extent or degree of independence of a particular entity rather than defining a particular minimum level of independence that can be designated as the status of "autonomy."

The related principle of self-government has been the subject since 1945 of a developing political "jurisprudence" within the context of the United Nations, although neither the precise definition nor the application of these norms of self-government has been fixed or is wholly consistent.<sup>166</sup> Nevertheless, one undoubtedly may conclude that an essential element in the achievement of self-governing status is the freely and democratically expressed wishes of the people concerned. Given this democratic choice, self-government then may be achieved, according to UN standards, by a territory's emergence as a sovereign independent state, by free association with an independent state, or by full integration with an independent state.<sup>167</sup>

<sup>164</sup> Note 2 *supra*.

<sup>165</sup> See generally I. BROWNIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 60–69 (3d ed. 1979); M. YDIT, *supra* note 12, at 16–21, 319–21; J. BRIERLY, *THE LAW OF NATIONS* 126–37 (6th ed. 1963); C. HYDE, *1 INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 23–51 (1922); W. WILLOUGHBY & C. FENWICK, *supra* note 9, at 5–13, 89–112; C. FENWICK, *WARDSHIP IN INTERNATIONAL LAW* (1919).

<sup>166</sup> See Clark, note 13 *supra*; S. HASAN AHMAD, *THE UNITED NATIONS AND THE COLONIES* 220–82 (1974).

<sup>167</sup> Cf. GA Res. 1541 (XV), note 80 *supra*, and Principles VI–IX annexed thereto.

Autonomy and self-government, however, do not necessarily imply that a territory must be wholly independent and comparable to a sovereign state.<sup>168</sup> Among those kinds of subordination to a higher or principal governmental entity that clearly do *not* detract even from a territory's statehood, and that therefore cannot be said to be inconsistent with its full autonomy, are: common citizenship or nationality; delegation of competence in the area of foreign relations; delegation of competence in the area of defense, including the retention by other states of limited powers of intervention under specific circumstances, *e.g.*, Cyprus;<sup>169</sup> establishment of a common customs union or currency; and subordination to the highest judicial authority of the sovereign or principal state. Even associated statehood, which generally is accepted as a status of full self-government, recognizes the political and economic dependence of one territory on another, although at the same time acknowledging the dependent territory's existence as a discrete entity with at least some degree of international personality.

Full autonomy and self-government refer essentially to the *internal* government of a territory; in the majority of cases, the autonomous territories have no international personality and are not treated as "states" for the purposes of international law.<sup>170</sup> It is true, however, that in some recent instances limited authority has been granted to autonomous territories to join international organizations or to enter into international agreements.<sup>171</sup> An autonomous or self-governing territory, as exemplified by the ones included in the present survey, therefore would enjoy *less* independence than a "state."

Although arriving at a firm definition that is appropriate in all cases is impossible, it is helpful to identify the *minimum* governmental powers that a territory would need to possess if it were to be considered fully autonomous and self-governing. Based on the entities surveyed, it is suggested that the following principles would be applicable to a fully autonomous territory:

- (1) There should exist a locally elected body with some independent legislative power, although the extent of the body's competence will

<sup>168</sup> "Sovereignty" is a rather amorphous, if oft-used, term that may be defined in a somewhat circular manner as the totality of international rights and duties recognized by international law as residing in a state. *Cf.* J. CRAWFORD, note 8 *supra*; M. YDIT, *supra* note 12, at 16–18. A traditional definition would be that sovereign states are "those states which exercise supreme authority over all persons and property within their borders and are completely independent of all control from without." W. WILLOUGHBY & C. FENWICK, *supra* note 9, at 5. *But see* I. BROWNLIE, *supra* note 165, at 80–81; and J. BRIERLY, *supra* note 165, at 7–16.

<sup>169</sup> Greece, Turkey, and the United Kingdom each retained the right to intervene in Cyprus "with the sole aim of re-establishing the state of affairs established by the present Treaty." London-Zurich Accords, Treaty of Guarantee, *signed* Aug. 16, 1960, Art. 4, 382 UNTS 3. Cyprus has nevertheless been universally accepted as a sovereign independent state.

<sup>170</sup> The classic definition of a "state" is found in the Convention on Rights and Duties of States, *signed* at Montevideo on Dec. 26, 1933, 49 Stat. 3097, 165 LNTS 19, Art. 1: "The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States."

<sup>171</sup> *See, e.g.*, Charter of the Kingdom of the Netherlands, Art. 28; Micronesia Compact, sec. 122.

be limited by a constituent document. Within the realm of its competence—which should include authority over local matters such as health, education, social services, local taxation, internal trade and commerce, environmental protection, zoning, and local government structure and organization—the local legislative body should be independent, and its decisions should not be subject to veto by the principal/sovereign government unless those decisions exceed its competence or are otherwise inconsistent with basic constitutional precepts.

(2) There should be a locally chosen chief executive, possibly subject to approval or confirmation by the principal government, who has general responsibility for the administration and execution of local laws or decrees. The local executive may be given the authority to implement appropriate national/federal laws and regulations, although this is not a necessary power to attain autonomy.

(3) There should be an independent local judiciary, some members of which may also be subject to approval or confirmation by the central/principal government, with jurisdiction over purely local matters. Questions involving the scope of local power or the relationship between the autonomous and principal governments may be considered by either local or national courts in the first instance and generally may be appealed to a nonlocal court or a joint commission of some kind for final resolution.

(4) The status of autonomy and at least partial self-government is not inconsistent with the denial of any local authority over specific areas of special concern to the principal/sovereign government, as opposed to the reservation by the sovereign of general discretionary powers. Among the cases surveyed, for example, specific provision has been made for central governmental participation in or control over matters such as foreign relations; national defense; customs; immigration; security of borders and frontiers; airports and ports; inter-provincial water and energy resources; general norms of civil, criminal, corporate, and financial behavior, as expressed in national legislation; restrictions on the taxing or debt-issuing authority of the autonomous entity; monetary, banking, and general economic policy; and inter-provincial or extraprovincial commerce. In addition, the central government has the power of eminent domain for public works and must approve any proposed amendment to the constitution or other basic constituent documents.

(5) Full autonomy and self-government also are consistent with power-sharing arrangements between the central and autonomous governments in such areas as control over ports and other aspects of transportation, police powers, exploitation of natural resources, and implementation of national/central legislation and regulations.

As noted in the introduction, one of the most significant distinctions to be borne in mind when assessing the degree of autonomy that is likely to be possessed by a territory is whether or not the territory forms part of a federal system. While the extent of internal autonomy enjoyed by a subfederal territory may vary considerably, on the international plane the central government will be supreme. If the subfederal entity possesses any degree of international personality, it is likely to be either contingent on

central government approval (*e.g.*, Greenland's participation in international negotiations<sup>172</sup>) or very restricted (*e.g.*, the right of individual emirates in the United Arab Emirates to retain their membership in OPEC<sup>173</sup>).

Federal states also are more likely to provide for joint or concurrent jurisdiction over areas of mutual concern than are nonfederal entities. These areas of shared jurisdiction include local implementation of national/federal laws (*e.g.*, the Basque country<sup>174</sup> and Eritrea<sup>175</sup>) as well as more formal arrangements (*e.g.*, joint Danish-Greenlandic control over Greenland's natural resources<sup>176</sup>).

The status of associated statehood can be rather easily distinguished from the other entities surveyed. In essence, associated states have all the powers and prerogatives of sovereign independent states, except for those powers they unilaterally choose to delegate to the principal government (typically foreign affairs and defense). An associated state's control over its internal affairs is unlimited, and it retains the power not only to alter unilaterally its own constitution, but also to sever its relationship with the principal entity. Thus, the line between full autonomy and statehood in the context of free association essentially disappears, as the associated state retains the potential of achieving full sovereignty and independent statehood at any time it so decides.

The granting of only cultural and religious autonomy, even if coupled with certain administrative responsibilities, would *not* seem to constitute "full" autonomy or self-government. The degree of religious or cultural independence enjoyed by, *e.g.*, the Ottoman millets,<sup>177</sup> or the authority over education granted to the Aland Islands<sup>178</sup> or the linguistic communities in Belgium,<sup>179</sup> simply does not include sufficient political or legal control over internal matters to constitute full autonomy as that term might be applied to, *inter alia*, Eritrea, the Swiss cantons, or the "internationalized territories" of Danzig, Memel, Trieste, Shanghai, and the Saar.

Nor does the distinction between personal and territorial jurisdiction appear to be crucial in attempting to define full autonomy. However, since many governmental powers are by their nature territorial, *e.g.*, control over internal trade, public works, zoning, and the exercise of general police powers, it is unlikely that a regime with purely personal jurisdiction over its members would be considered fully autonomous.

A distinction also should be drawn between transitional and permanent regimes. In practice, the former have granted a much more limited degree of autonomy to the local community during the transitional period; *de facto* government has often been in the hands of an administering authority responsible to the central/principal government. In addition, most transitional regimes have been established in the context of an agreed-upon

<sup>172</sup> Greenland Home Rule Act, *supra* note 88, sec. 16.

<sup>173</sup> UAE CONST., Art. 123.

<sup>174</sup> 1979 Basque Stat., Art. 12.

<sup>175</sup> Eritrea Federal Act, *supra* note 21, para. 3.

<sup>176</sup> Greenland Home Rule Act, *supra* note 88, sec. 8.

<sup>177</sup> See discussion in text at notes 157–163 *supra*.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

future arrangement or at least a fairly well-defined set of options to be made available at the end of the transitional period.<sup>180</sup>

A summary can do little more than note the extreme diversity of the entities surveyed and the wide variations exhibited in the degree of autonomy or internal self-government each one enjoys. Certainly the concept of self-government and the right to participate meaningfully in those decisions that directly affect a local community are of growing importance, as evidenced by the many current proposals for "autonomy" referred to in the introduction. Also worthy of note, however, is what may be the beginning of a trend away from independence and full statehood as the only answer to the problems perceived either by ethnic communities within existing states or by non-self-governing territories that have yet to emerge fully on the international stage.<sup>181</sup> The proliferation of "mini-" or "micro-states," independent in name only, has been the subject of much critical comment; in many instances a form of associated statehood, for example, might reflect political realities more accurately.<sup>182</sup>

In sum, growing demands for regional self-government, the proliferation of small, newly independent states, and the increasingly complex interdependence of contemporary world politics no longer correspond to the sovereign nation-state simplicity of the nineteenth century. Autonomy remains a useful, if imprecise, concept within which flexible and unique political structures may be developed to respond to that complexity.

<sup>180</sup> *E.g.*, the three options available to the Saar at the end of the 15-year period of League administration were set forth in the Treaty of Versailles, Art. 49, note 25 *supra*, and in the Saar Stat., Arts. 34–39; and the permanent regime for Trieste was substantially defined in the Trieste Statute approved prior to the projected entry into force of the transitional regime.

<sup>181</sup> It is practically impossible to estimate the number of non-self-governing territories that might attain independence or self-government in the future, and the likelihood of such change evidently varies greatly from case to case. *Cf.* E. PLISCHKE, *MICROSTATES IN WORLD AFFAIRS*, App. B. (1977); G. PEARCY, *WORLD SOVEREIGNTY*, App. 4 (1977). Independence is anticipated in 1980 for the New Hebrides (*see* letter dated Feb. 26, 1979, from France and the United Kingdom to the UN Secretary-General, UN Doc. A/34/103 (1979)); associated statehood in 1981 for the districts of the Trust Territory of the Pacific Islands (*see* Clark, note 13 *supra*, and sources cited at note 44 *supra*); and full de facto independence for Brunei in 1983, when the United Kingdom's responsibility for Brunei's foreign relations and defense will terminate (*see* letter dated Feb. 23, 1979, from the United Kingdom to the UN Secretary-General, UN Doc A/34/98 (1979), and Note Verbale dated Sept. 26, 1975, from the United Kingdom to the UN Secretary-General, UN Doc. A/10269, Annex (1975)).

<sup>182</sup> Panel, *The Participation of Ministates in International Affairs*, ASIL, 62 Proc. 155–88 (1968). Compare E. PLISCHKE and sources cited therein, note 181 *supra*.