

The Case of South Tyrol: Lessons for Conflict Resolution?

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Conference "Voice or Exit"
Berlin, 16th and 17th June 2001

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1. The Comparative Approach

The great majority of states are inhabited by people with different ethnic allegiances, and the ideals of the single-nation state and of ethnic homogeneity are illusions which have long been shattered. However, with the recent rise in ethnic consciousness¹ the dangers of violent ethnic conflict are increasing. There is thus a growing interest in the subject of autonomy, which can be defined as "a means for diffusion of powers in order to preserve the unity of a state while respecting the diversity of its population" (Lapidoth 1997, 3). Autonomy, successful in some cases and failed in others, is increasingly suggested as a method of resolving ethnic conflicts, and it is not even uncommon for groups or regions to demand it.²

Of course, each demand for self-determination and each case of autonomy is different. It is influenced by a unique mix of various factors such as history, geography, tradition, economics, strategic considerations, the nature of the group that desires autonomy, and the reasons for the establishment of an autonomous regime. Therefore, precedents cannot (and should not) be followed automatically (Lapidoth 1997, 179). A simple "export" of models, their transfer and application to other situations should be generally ruled out.

On the other hand, a comparative perspective often permits a distancing from one's own case and thus provides a clearer view of its features. By studying, or even better, travelling to another, very different situation, we can learn a great deal about our own.³ Furthermore, a more abstract approach is also necessary for conceptualization, which creates the precondition for an overview of the variety of means and possible instruments. Autonomy covers a wide range of possibilities, from cultural autonomy and mere administrative decentralization to near-independence: there is no "one size fits all"-model. In this sense it seems possible – and useful – to identify some lessons to be learned from the "history" of other conflicts, by studying them thoroughly and by analyzing the influence of differences and parallels with respect to one's own situation (Böckler 1999, 87). In this context, a case which exemplifies a mutually beneficial resolution of minority conflict via self-governance rather than secession is of great importance.

Given this context, the autonomy in South Tyrol is often seen as a model for conflict resolution,⁴ but one must ask whether it really represents a "success story" which can be repeated in other cases and contexts, perhaps also in the Balkans?⁵ Despite the autonomous system established and the 30 years of peaceful coexistence, ethnicity and symbols still play a major role in South Tyrolean society. Thus, perhaps the most interesting aspect of the South Tyrolean autonomy – apart from looking at how the current agreement was reached – probably lies in the duration of this same agreement. Because there are only few other cases with such a long practical experience in working autonomy, the experiences of South Tyrol could also

¹ Lapidoth 1997, 171, explains this rise through the recognition of minority rights, then with the right to self-determination of peoples, and finally with the rights of indigenous groups, which was probably prompted by the increase in ethnicity, but has, on the other hand, enhanced ethnic consciousness. Another important factor has been the independence of a number of former colonies.

² Since the Dalai Lama's Strasbourg-proposal in 1989, the Tibetans are asking for "genuine autonomy" rather than for independence. The demands for a change of Corsica's status in France is another example.

³ Very interesting in this regard, the ECMI workshop "Insular Regions and European integration: Corsica and the Åland Islands Compared" in 1998, Loughlin/Daftary (eds.), ECMI Report No. 5, Flensburg 1999.

⁴ For example Alcock 1994, 46, Feiler 1997, 10, Magliana 2000 (esp. 127 ff.), and, critical, Kager 1998, 1.

⁵ See for this question Böckler 1996, Böckler/Grisenti 1996 and Böckler 1999, 87 ff.

prove valuable in answering the question of where minority-protection and autonomy might lead in the future.

2. The Context: History and a Changing Global Environment

South Tyrol, situated in the very north of Italy on the border of Austria, covers only 2,4 % of the Italian territory. Its major valleys form passageways through an overall mountainous terrain. The population of 450.000 inhabitants (corresponding to 0,5 % of Italy's population) consists of two-thirds German speakers, less than one-third Italian speakers and some 20.000 Ladin speakers.⁶ The majority of German speakers live in the valleys and rural areas.⁷

In some way, the conflict in South Tyrol reflects the main historical developments of the 20th century: it dates back to the annexation of the former Austrian territory by Italy in 1919, which was done in spite of Woodrow Wilson's declarations of self-determination as guiding-principle for the Post-War-order. The 1920s saw the repression of the native German speaking group by a totalitarian regime, the Italian fascists, and after the end of WW II (and a period of Nazi-occupation), the political struggles aimed at achieving a satisfying autonomous regime began, reaching their climax with several bombings on power lines in the Sixties and the discussion of the case before the UN General Assembly.

It was only 30 years ago, that after long negotiations a legal framework came into force which put an end to the conflict: it is known as the "Package", consisting of 137 implementation-measures, which "updated" the first and unsatisfactory autonomy and resulted in the actual 2nd Autonomy Statute.⁸ It took another 20 years to have all of its enactment laws adopted and implemented, so that formally the conflict was settled just 8 years ago, in 1992.⁹ Three years later, Austria joined the European Union and in 1997 the Schengen-Treaty was adopted, an event which transformed the border between Italy and Austria, formerly a strict line of division separating cultures, languages and peoples, into a mere administrative boundary.

Since the end of the Cold War, the claim of self-determination has increasingly been used as a justification for demanding independence or secession. Rapid secularization, democratization and urbanization often have a strong impact on ethnic sentiments, which frequently serve as a substitute for religion. Democracy also tends to emphasize the importance of the nation.

⁶ The Ladin population is concentrated in two valleys in the Dolomite mountains, in the southeastern portion of the Province. Although interesting, because of the special regime applied in the Ladin municipalities (e.g. trilingual road signs, a "mixed" school system with German and Italian as languages of instruction), the two valleys are too small and isolated for exercising a major influence on the policy of the Autonomous Province as a whole or on the relations between the two major language groups, this article is focussing on.

⁷ Due to the immigration policies of the past and the attempts at industrialization, the Italian group is concentrated in the three major cities (Bozen/Bolzano, Meran/Merano and Brixen/Bressanone) and in the southern parts of the Province, bordering on the Province of Trento (Trentino) which is almost entirely Italian.

⁸ The "new" Autonomy Statute, although formally adopted for the Region Trentino-South Tyrol (Presidential Decree, d.p.r. 31.8.1972, no. 670), elevated its Provinces, South Tyrol and Trentino, to the rank of Autonomous Provinces, transferring all important powers to them.

⁹ By a formal Declaration of Austria recognizing the fulfillment of all obligations undertaken by Italy in the so-called "Package" of 137 measures (one of which was the adoption of the 2nd Autonomy Statute) in order to create a genuine autonomy on the basis of principles already contained by the De Gasperi-Gruber-Agreement of 1946 (an annex to the Peace Treaty with Italy), the international anchoring of South Tyrol's autonomy. For more details see Pallaver 1990, Alcock 1982 and 1994, and Feiler 1997, 35.

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

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

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

These developments give more room for differentiation and for activities on a regional and sub-state level, both within the state as well as across its borders.¹⁰ Contrary to the situation during the Cold War, where genuine autonomy was sometimes seen as incompatible with state-sovereignty, it now not only represents an attractive alternative to secession, but is also perfectly in line with a pattern of general decentralization and the creation of multilevel governance-structures by integration.

3. The "Model" and its Different Levels

3.1. Point of Departure: Recognition of (Cultural) Differences

Because autonomy often does not correspond to the wishes of any of the parties involved, it is usually a compromise solution, and is often "reluctantly offered and ungratefully received" (Dinstein 1981, 302),

This is also true, at least to some extent, for the basic compromise found in the negotiations between the South Tyrolean People's Party and the Italian State leading to the South Tyrolean "Package". The compromise consisted in the explicit recognition of (cultural) diversity¹¹ and a division of the spheres of influence and powers. As a precondition both sides had to renounce on incompatible positions: the South Tyroleans no longer asked for self-determination (in its external form) and the Italian government formally stepped back from the assimilation politics of its predecessors. The most important objective for the South Tyroleans was their increased protection as a minority; an improvement in their relations with the Italians was a logical consequence of, not the aim of negotiations (Baur/von Guggenberg/Larcher 1998, 25). Italy's aim, on the other hand, was above all to settle the conflict. Thus, neither of the two sides involved had an underlying vision or project for the construction of a multicultural and plurilingual society.

¹⁰ This is well demonstrated by the (lobbying) activities of various European regions in Brussels, their engagement in economic development projects in other countries and by cross-border cooperation activities, including the formation of so-called Euroregions across state-borders.

¹¹ See Marko 1997, 67 ff.

It is for these reasons that the agreement has been compared to a "Concordat" between Church and the State (Langer 1996, 167), i.e. a pact of mutual recognition, respect and non-interference (Baur/von Guggenberg/Larcher 1998, 27 f.). This is reflected exactly by the basic structure of the "Package", a compromise between principles of protection of individuals belonging to the German/Ladin group and the group(s) itself, on the one hand, and of the principle of territoriality, on the other.

3.2. The Process: Negotiation and Special Procedures

A remarkable feature of the South Tyrolean process which is of particular relevance – and usefulness – for other situations is the creation of a framework of institutions and procedures for negotiations, enabling both sides to jointly elaborate solutions for the issues at hand (Böckler 1999, 95). Even though the detailed, pre-established time-frame for enactment of the Autonomy Statute (the so-called Operational Calendar), could only be realized with considerable delay,¹² the adoption of each implementation-decree, worked out in special joint commissions, had the effect of a trust and confidence-building measure (this was particularly felt, when during the 1980s the enactment process temporarily came to a halt).

These special joint commissions, in which the representatives of the State and of the Province had equal number and standing, were formed for the negotiations on the implementation mechanisms.¹³ Although formally part of ordinary law, the enactment decrees, which were the results of the negotiations within these joint commissions, did not need to be discussed (or even adopted) in the national parliament. Therefore their deliberation could be kept outside of normal political business; and experts from both sides could be involved in their elaboration. Due to their special procedure and agreement-character, it is generally recognized that they cannot be changed unilaterally by the State,¹⁴ which is, in addition to the possibility of bringing disputes to the Italian Constitutional Court,¹⁵ an important guarantee of the legal framework of South Tyrol's autonomy.

This special process was embedded in guarantees on the international level: once the negotiations had begun, the "soft" pressure from the "Protecting Power" Austria certainly contributed to keeping Italy's interests in the fulfillment of the obligations alive. The necessity of a formal declaration of conflict-settlement – by both Austria and the South Tyroleans – after the implementation process had been concluded, was an important incentive for Italy to settle the conflict.

This procedure of consensus and collaboration between the various actors – representatives of the minority, the majority and of Austria, a foreign state – upon which the autonomy is based, as well as the resultant possibilities for control, ensured that the process of minority protection with its long-term orientation was not destroyed in the last link of the chain, i.e. in its concrete implementation. In addition, the process also left the possibility of flexible adaptation and does not obstruct a further evolution or development of the autonomy (Feiler 1997, 35 f.).

¹² The two years originally envisaged for its completion were obviously too short a period, given the complexity and the mere number of matters to be dealt with; thus an extension was agreed upon and finally it took 20 years until the adoption of the last measure.

¹³ The so-called Commissions of six and (where powers of the Region were involved) of twelve, art. 107 ASt. See Lampis 1999, 30 ff. and 38 ff.

¹⁴ For the special character of the enactment-decrees as a legal source *sui generis*, see Lampis 1999, 38 ff.

¹⁵ These guarantees do, of course, depend on Italy being a democratic State under the rule of Law, recognizing linguistic minorities in its Constitution, and on the Constitutional Court being an independent authority.

3.3. The Content: A "Mix" of Different, Even Contrasting Principles

In answering the question of which provisions of the South Tyrolean Autonomy Statute could be interesting for a transfer to other situations, at least four different levels should be distinguished.¹⁶ They will be briefly characterized in order to give an idea of the main focus and intentions of conflict resolution in South Tyrol.

3.3.1. Relations between Minority and Kin-State

The Autonomy Statute does not contain any provisions regarding contacts between the German speaking group and its kin-State, Austria. There are, however, some bilateral treaties promoting economic relations and recognizing educational and vocational diplomas. Economic cross border activities with the Austrian *Land* North Tyrol were possible and undertaken even prior to the Austrian EU-membership (Zeyer 1993, 195 ff.), and are now intensified within the framework of a "Euroregion", which includes the Trentino. A number of South Tyroleans study at Austrian universities, especially in Innsbruck.

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

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

3.3.3. Autonomous Powers

The desire to conduct one's own affairs on the basis of independent responsibilities and through independent representatives can generally be regarded as a basic goal of minorities. South Tyrol's autonomy satisfies these aims through its key features: autonomy of legislation and administration, proportional ethnic representation, and a commitment to bilinguality (Feiler 1997, 35). Finally, but certainly fundamental, is the generous financial basis provided for the implementation of these provisions.

South Tyrol's autonomous powers are quite outstanding,¹⁷ not only when compared to other minority-situations, but even with regard to its northern neighbor North Tyrol, a member state of federal Austria. South Tyrol's **legislative powers** are primarily concerned with economic, social, and cultural matters, e.g. place names, local customs and usages, town and country planning powers, environment, mining, agriculture, tourism, communications, and transport (areas in which the province has primary competence) and elementary and secondary

¹⁶ Böckler 1999, 96 ff. examines the South Tyrolean provisions on the various levels under the prospective of their possible application to Kosovo/a and draws the conclusion that some procedural features as well as norms regarding the relationship between the groups could be interesting, by contrast with the provisions on the integration of the entity into the central state, considered problematic due to the different situation.

¹⁷ Of course, only a very brief overview of the most important features can be given, for further information see Hannum 1996, 435 ff. and Magliana 2000, 50 ff.

education, commerce and public health (the Province only has secondary competences). The Assembly (Provincial Council) is the law-making body and elects the Provincial Government which carries out the **executive functions**.

Language: In South Tyrol German and Italian - which is the official language of the State - have equal standing in the Region (articles 99 and 100 ASt), and all regional and provincial laws are thus published in both Italian and German. In order to meet the objective of a bilingual public administration, all public officials in the Province have to pass a compulsory language test to prove their knowledge of both Italian and German,¹⁸ and residents have the right to use either language before all courts and authorities.

Proportional representation of the language groups: For representation in the public service, the Autonomy Statute provides for proportional representation of the language groups in public offices, a principle which has been consistently upheld by the Italian Constitutional Court. At the time of the census, every resident must make a formal declaration as to his or her language group, which is the basis for the right to stand for public office, to be employed in the public administration or as a teacher, and to be given social housing. The principle of ethnic proportions, which has to be applied to all state and semi-state bodies operating in the province (art. 89) as well as to the provincial administration, was introduced to gradually revert the Italian dominance in the public service. The representation of language groups in their respective proportions in all these areas must be achieved within 30 years of the implementation of the second autonomy statute (i.e. by the year 2002).¹⁹

Education: As was already established by the 1946 Paris Agreement, a fundamental principle of today's autonomy is that elementary and secondary education be provided in the mother tongue of the child. Consequently, instruction in South Tyrol is given in separate German and Italian schools (art. 19 ASt) and language instruction in the second language of the province is mandatory. Furthermore, all teachers must be native speakers of the language they teach. (Hannum 1996, 437). In principle, parents are able to choose the school system which they would like their children to attend; a child can be refused only because of insufficient knowledge of the language of instruction in order to guarantee the character of the school and the efficiency of the lessons.²⁰

Finances: The Autonomy Statute also includes detailed provisions on the financial resources available to the province (art. 69 – 86 ASt). Although the province itself has only limited powers to impose taxes, it is entitled to receive – from the State - a substantial portion of certain taxes levied in the province, including 90% of property tax and income tax. The province also receives 1.61 % of the sectoral government expenditures, as well as certain sums for farm modernization measures and for other programs from the European Union.²¹

¹⁸ This does not only guarantee every South Tyrolean the right to communicate with authorities in his own language, but also gives applicants from other Italian provinces fewer chances in comparison with job-seekers resident in South Tyrol when applying for positions in the civil service.

¹⁹ Hannum 1996, 438. Positions which are vacant because of a lack of qualified applicants from an ethnic group can only be filled by members of the other ethnic group for a non-renewable twelve-month period. There are recently some cases, especially in the Public Health service, of a more flexible interpretation and application.

²⁰ For details see Rautz 2000, 76 ff. A number of parents, especially from the Italian group, are sending their children to schools of the other language in order to favor the bilingual education of their children, see Weber/Egli 1992.

²¹ See Lampis 1999, 89; Lapidoth 1997, 110; Hilpold 1996, 138 f.

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

With regard to the relations between the various language groups, two different levels of the conflict must be distinguished: the first deals with the German/Ladin speaking minority in South Tyrol and the Italian nation-state, and the second deals with the relations within the province itself. On the latter level, the German/Ladin speakers are a majority, and the Italian speakers, which also consider South Tyrol to be their homeland, increasingly feel like a minority.²²

In South Tyrol, a complex and highly differentiated legal system has been created which calls for a mix of rotation, parity and proportional representation,²³ and which might be characterized as "**tolerance established by law**". As a result of this system, the conflict was to a certain extent civilized and institutionalized, and transformed into one between politicians over the interpretation of the Autonomy Statute (Kager 1998, 8). The main ingredient of the system is power sharing, or "consociationalism", which includes the diffusion of power from the center to the periphery, and comprises four main-elements,²⁴ all of which are present in South Tyrol:

- (1) Participation of the representatives of all significant groups in the government, through jointly exercising governmental (and particularly executive) power, e.g. grand coalition cabinet:

According to the **power-sharing model**, the composition of the South Tyrolean Government must be proportional to the ethnic groups in the Council;²⁵ the presidency of the Council rotates between members of the different groups (art. 49).

- (2) A high degree of autonomy for the groups (especially for issues which are not of common concern):

The principle of **cultural autonomy** is established by art. 2 ASt, which states that the parity of rights of citizens of all language groups is recognized, and "their ethnic and cultural characteristics are protected". In other words, the differences between the three cultures are recognized and the "value" of this diversity highlighted. The cultural autonomy and the provisions for the protection and promotion of cultural characteristics, including the system of separated schools, are typical expressions of group-protection. All decisions in these fields require a wide consensus within the respective group. (Lampis 1999, 19 ff.)

- (3) Proportionality as the basic standard of political representation, public service, appointments, and allocation of public funds:

As seen, the Autonomy Statute provides for a system of **proportional representation** of the language groups for public employment and for the allocation of funds for cultural activities of the groups, as well as for social welfare and services (i.e. housing).

²² There is hardly any awareness of these two levels in South Tyrol: until the present, German and Ladin speakers did not distinguish between Italians in South Tyrol and Italians in general. Most of the people did not even distinguish between the Italian people and the Italian government; Kager 1998, 5 and 9. On the other hand, being a minority seems in a strange way attractive to the Italian group because of the "victim-status", which generates the idea of need for protection, see Baur/von Guggenberg/Larcher 1998, 42 f..

²³ For an overview see Hilpold 1996, 117 ff.; Palermo 1999, 9 ff. and Lampis 1999 are giving an interpretation of the development of the autonomous regime, which is characterized by a increasing accentuation of functional criteria rather than focussing exclusively on minority-protection.

²⁴ According to Lijphart 1977, and Lijphart, 1991, 492-494.

²⁵ Art. 50 ASt, a similar principle applies to the municipalities, art. 61 ASt.

- (4) Minority veto as the ultimate weapon for the protection of vital interests, however only on issues of fundamental importance:

The principles of **equality** of all residents, regardless of their group affiliation (art. 2 ASt), and the **quasi group-personality** of the language-groups counterbalance the provisions on proportional representation (Lampis 1999, 29 ff.). This is particularly true for the right to request separate voting by the language groups in the Regional or Provincial Council, whenever a draft-law is judged to be in violation of the parity of rights or the cultural characteristics of one group. The ultimate means available to the language groups is an action before the Constitutional Court, founded on the same motivation.²⁶ These are emergency-mechanisms in case the normal means of consultation in the organs should not work.

The **combination** of minority-protection – i.e. the protection of persons and groups - and the principle of territoriality has led to a unique institutional mix and balance of the fundamental principles of segregation and integration under international guarantee (Marko 1999, 257).

Following the Austrian tradition of **minority-protection**, a precondition for the cultural and linguistic protection of minority-members is their declaration of belonging to the group. This practice, namely the interpretation of everything in terms of ethnic categories is favored by the system of ethnic proportion, which, based on the census proportions, makes the organization of the South Tyrolean society dependent on a declaration of affiliation with one of the language groups.²⁷ The emphasis placed on language rights and on the rights of language groups is intended to preserve the status quo. In the name of protection, a strict interpretation of provisions often tends to produce a defensive attitude and resistance of the group to changes or innovations (Baur/von Guggenberg/Larcher 1998, 29).

Thus, the dominant cleavage within the society is ethnicity; other cleavages, such as class, are subordinated to ethnic polarization. Both the German/Ladin and the Italian groups have built up their own organizational structures and societal subsystems: kindergartens, schools, political parties, trade unions, public libraries, youth clubs, sports clubs, media, and churches are mono-ethnic. There is not much contact between the groups, for structural reasons (urban-rural antagonism and divided economic structure) and due to linguistic difficulties (fluency in both languages is still not reached, especially with the elder generations).²⁸ The reality is therefore characterized by "parallel societies" (Langer 1996, 171); often heard is the allusion to different "clubs".

This segregation is, at least in part, counterbalanced by the **territoriality-principle**, which adds a functional dimension, related to the territory as such, and to the application of law in the autonomous entity. Participation, integration and co-responsibility are achieved through

²⁶ There are additional rights which can be made separate use of by the language groups, like articles 19, 54 and 84 ASt.

²⁷ Kager 1998, 1 and Baur/von Guggenberg/Larcher 1998, 29, and, more optimistic, Rautz 2000, 81 ff. After ongoing public discussions before the last census, in 1991 a 4th category, "others" was created, which can be chosen in alternative to the three groups, a possibility especially for EU citizens and foreigners, but also for the increasing number of bilingual people with parents from different groups. In that case, however, in the line below, a "second choice" between the three groups has to be made for the purposes foreseen by the Autonomy Statute. Statistically only the three language groups are considered for the distribution of resources and the allocation of funds. The declaration cannot be changed for ten years (until the next census).

²⁸ Kager 1998, 9, also insists on ethnicity, because of a policy of "voluntary apartheid", which a "majority in both ethnic blocks" still believes in.

the equality and equal standing of all citizens. (Baur/von Guggenberg/Larcher 1998, 29). The territorial dimension also offers the chance of a frequent exchange between majority- and minority-positions: a German-speaking resident of Bozen/Bolzano, for instance, is a member of a minority in Italy, at the same time a member of the majority on provincial level, and again part of a minority in the city of Bozen/Bolzano.²⁹ This should also help to understand the positions of others.

Another example of the dual character of the Statute-framework are the provisions on the use of language: These are in part individual rights, formally reserved to the members of the minority-group, a, for instance in art. 100 ASt: "German-speaking residents of the Province [...] are entitled to use their language [...]". The territorial dimension, on the other hand, is expressed in art. 99 ASt, which prescribes the equal standing of both languages. Consequently the enactment decree on the use of language (d.p.r. 574/1988) does not distinguish between members of the minority and other residents, so that everyone has the choice between German and Italian.³⁰

Regarding the public administration, the combination of both principles is visible even in the system of proportional representation, which was adopted as a repair-mechanism, correcting historical inequalities and disadvantages, in order to reach a higher representation of Germans and Ladins. A higher proportion of German speakers did of course contribute to the objective of a bilingual administration, too. The mandatory language-test for all new public servants is again a clear expression of this functional dimension.

To sum up: a peaceful coexistence (*Nebeneinanderleben*) was established as a basis for the cohabitation of the groups (*Zusammenleben*) by paying particular attention to security and to other sensitive interests of the groups and by following a step-by-step policy. Already from the beginning, however, the Autonomy Statute did require cooperation and contacts between the groups.³¹ Whereas in the past emphasis was above all placed on the aspects of minority-protection, there already is the possibility of a more flexible and functional interpretation for the future, based on the principle of territoriality, or better said, of "normal governance".³²

4. "Dynamic autonomy" and future perspectives

Time is a very important factor for resolving conflicts. Over the past several decades, the province has seen rapid economic development, a significant amelioration of ethnic tensions and conflicts and increased cooperation between local and State authorities. The package of measures for the South Tyrolean population, introduced in 1969 to provide German and Ladin populations with a better protection in the framework of the Italian constitutional system through a larger territorial self-government, can be considered, at least from a legal point of view, fulfilled, a fact which was confirmed by the Austrian declaration of 1992. Nevertheless,

²⁹ The demographic composition of the capital Bozen/Bolzano is opposite to that of the Province in general: it is inhabited by two-thirds Italian speakers and one-third German speakers.

³⁰ The European Court of Justice recently extended this right to German-speaking EU-citizens (judgment of 24/11/1998 in the case Bickl/Franz, 274/96).

³¹ Böckler 1999, 98 f. and Palermo 1999, 14 f.

³² This emphasis on functional criteria might already be visible in a more flexible application of the proportional representation-principle, especially in the Public Health Service (doctors in hospitals), and in a reform of the mandatory language test, which stresses communication skills instead of a mere translation. In general, there is increasing public debate on the census (the next is due in 2001) and the proportion-system.

since the beginning of the enactment of the “Package”-compromise, the legal context has changed radically asking for a new orientation and a change of perspective.

At local level not only a satisfactory standard of minority protection, but also a high level of self-government has been achieved which continues to develop and is sometimes even seen as a model case for further decentralization or federalization of the Italian State as a whole (thus showing that autonomy is not a concept limited to the protection of minority groups, only). At national level, the process of constitutional and ordinary reforms is under way: Italy’s “administrative federalism” (the Italian version of devolution) can hardly be stopped or reversed.³³ In the context of general reform of Italy’s regional system, the Autonomous Region Trentino-South Tyrol - today an empty shell and a mere roof-structure - will most probably soon be reformed: a Constitutional Law amending the 2nd autonomy-statute and adopted in October 2000 by the Italian Parliament (supported by the SVP) confirms the factual reality and at the same time provides for future changes. In the last three years, South Tyrol has also received a number of new powers from the Italian State (e.g. roads, electricity, teachers and school-staff).

But the legal framework has also changed due to the progress of European integration. Since 1995 Austria is a member of the Union participating actively in its cross-border initiatives (such as INTERREG and LACE). But there have also been two recent judgments of the European Court of Justice, interfering with the autonomy-system, dealing with the questions of language rights and the obligation of bilingualism. These judgments did not contradict the autonomy-provisions, but declared their conformity with EC-Law by extending their scope of application (by including EU-citizens) or by generous interpretation (not only the certificate of bilingualism released in the province as exclusive proof of a sufficient knowledge of language, but admitting also other language-certificates).³⁴ Nevertheless, they were intensively discussed and there are certain worries for other instruments which might be in contrast with the free movement of persons and services in the common market. These are also due to the fact that there is still no provision in the Treaties expressly protecting minorities.

European integration, however, does also provide for new opportunities, shown by the increasing interest in cross-border cooperation between the three Alpine neighbours North Tyrol, South Tyrol and Trentino. The experience in this field can be subdivided into three phases. Already foreseen by the Gruber-De Gasperi agreement and finalized in a bilateral agreement, the so-called “Accordino” from 1948, the “soft” cooperation in the working groups Arge Alp and Alpe Adria, embedded in a greater Alpine regional context, stood at the origins of this cooperation. It was followed by the idea of an institutionalized form of CBC across the Brenner, widely known as “Euregio Tyrol”, which was controversially discussed because of its high degree of institutionalisation and the clear reference made (even by name) to the historical entity of Tyrol. This experience, and the resistance it created, finally led to a third phase, currently under way, characterized by concrete projects with a functional dimension without a “hard” institutional design. In this context, also the successful, but initially contested, experience of a joint representation of the three entities at European level, by means of a Bureau in Brussels, should be mentioned.³⁵

³³ Cf. for an overview on the reform-process: Woelk, 2000 108.

³⁴ ECJ Judgments *Bickel/Franz* (see Toggenburg, 2000, 242), *Angonese* (see Palermo, 2000, 969).

³⁵ The opening of this Bureau in 1995 created suspicion and resistance by both Central States, led to a judgment of the Italian Constitutional Court and was finally “legalised” by a change in Italian legislation which from 1997 allows all Italian regions to establish such contact-offices in Brussels.

Thus, the formal declaration of conflict-settlement in 1992 marks the beginning of a period which requires new orientation and new objectives. After reaching a balance and subsequent to the establishment of a satisfactory standard of protection, there have been a growing number of indications of a period of opening up and of (increasing) normality.

There are new developments in the cultural sphere, too: there are some experiments taking place in the (Italian) kindergartens and schools regarding second language acquisition, the first signs of asymmetry in a separate, but parallel education system. The European Academy Bozen/Bolzano, a research institute founded in 1992, is the first publicly financed institution which operates in the sphere of culture and which caters to all language groups. It also served as the foundation of the Free University of Bolzano (Teacher formation and Economics), founded in 1997, which offers courses in three languages, not only aiming at local students.³⁶

Only recently, some clouds have appeared on this bright picture, though. The actual debate on toponyms (place names) demonstrates very clearly that a return to ethnically polarized political policies is still possible: The German place names in use, which have been substituted by Italian translations during fascism, are still not official. A provincial law would be sufficient to officially reintroduce them and to legalise them, given the respective power in the Autonomy Statute (art. 8 no. 2). Because Italian place names had been imposed (and sometimes invented) by the Fascists, to simply uphold the actual bilingual denomination everywhere, is unacceptable for a number of German-speakers, which would see such a move as an explicit recognition of historical injustice. The dilemma is that a number of local Italians would feel deprived of their (young) roots and their rights of identification, if the territory would legally become (mostly) monolingual and thus react quite harsh.³⁷

But overall, in the political field ethnic tensions seem to be on the decline. Related to the question of how much local Italians "may" feel at home in South Tyrol, is a discussion within the South Tyrolean People's Party (SVP): Due to the fact that already a small number of Italians is voting for it and due to demographic factors, which might make it attractive to directly address Italian voters in some areas, in the summer of 1999 the question was raised, whether an Italian resident of South Tyrol might not also be considered (in future) a "South Tyrolese", as in the statute of the People's Party, and thus become a party member. Of course this term has been historically reserved for South Tyrolese of German mother-tongue, but what about bilingual people? The discussion might be a starting-point for transforming the party from an ethnic representation to a regional party, open to all residents of South Tyrol.³⁸

5. Conclusions

5.1. Case-Specific Factors of Success

In order to determine which of the institutions could potentially be applied or transferred to other situations, the specific framework conditions of an ethnic conflict must be considered,

³⁶ See Palermo 1999, 15, Baur/von Guggenberg/Larcher 1999 and Zappe 1996. For the feelings of identity Wakenhut 1995, p. 139 – 154.

³⁷ Two compromises are actually discussed: one approach is to have official bilingualism for the 600 names (out of 7000), which are most frequently used and to leave the decision about the rest to the municipalities. another is distinguishing between official (always bilingual) and private toponyms (monolingual possible).

³⁸ It is, therefore, quite remarkable that in this year's general election the SVP has agreed upon a common electoral platform with the Center-left coalition ("*Ulivo*/Olive Tree") which supports German speakers as well as Italian candidates.

as they differ from country to country. In particular, the social segregation of ethnic groups, the level of democratization and the elite's willingness to compromise are important criteria when selecting a suitable model of comparison.

Among the most important factors requiring analysis in a given situation, is the **historical development** of the conflict. Especially in Eastern Europe, historical experiences still have a great influence on public discussions about ethno-national problems. Traumatic historical experiences and antagonistic interpretations of historical events block the understanding between the different ethnic groups. This is also true, at least to some extent, for South Tyrol, where the actual separated school system is still justified through historical experiences, namely the prohibition of the use of German in public, and the consequent secret underground-schools set up during the period of forced assimilation by the Italian fascist regime.

The **importance of language**, which becomes the criterion for establishing ethnic identity and the line of demarcation determining the socio-cultural identity of the individual must also be acknowledged. Language is held to be both a sign of the desire of the individual who speaks it to identify himself or herself with a particular culture and a means of determining individual membership of a specific social group (Cavagnoli/Nardin 1999, 19, Pizzorusso 1993, 188). Although the Autonomy Statute refers to the ethnic and cultural characteristics of the various sections of the South Tyrolean population (art. 2), it also refers to "language groups" in order to indicate the Italian-speaking, German-speaking and Ladin groups living in South Tyrol.

The **geographical and demographic situation** also needs to be taken into account, especially the question of compact-settlement areas of a minority, as decisive criteria for determining which form of autonomy to apply. In the case of South Tyrol both factors certainly favoured the establishment of a territorial autonomy.

In the **case of South Tyrol**, the following factors proved to be of special importance in achieving a resolution of the conflict. (Böckler 1999, 92 f.):

- (a) the **political conditions**: Italy was a democratic country under the rule of law, politically seeking internal stability. In addition, it had already adopted a regional structure into which territorial autonomy could be fit in. Indeed, during the 1970s the regional system was implemented throughout the entire country, parallel to the implementation of the South Tyrolean autonomy. The general atmosphere was in favor of finally realizing regional structures. The South Tyrolean People's Party (SVP) represented - and still represents - the overwhelming majority of the German-speaking group, making it a natural and legitimate partner in the negotiations with the Italian government. Both Austria and Italy were interested in good relations and European integration was already under way.
- (b) the **economic situation**: due to low unemployment and inflation it appears to be ideal. A stimulated and trade based economy, cross-border (international) cooperation, and extensive tourism potential are all in part benefits of the geography and geopolitical placement.³⁹ Even though the fortunate economic conditions given in South Tyrol can not easily (if at all) be replicated, economic stability and growing prosperity are essential: for regional development, for granting the minority within the larger state a sense of independence and self-worth, and also for creating an environment more conducive to collaboration between the groups (Magliana 2000, 105).

³⁹ For details, see Magliana 2000, 93 ff., who also highlights possible negative effects of this thriving economy in the future, in particular more immigration and the negative consequences of the steadily increasing lorry traffic crossing the Alps.

- (c) the **international anchoring** and stability resulting from the international dimension of the problem: Italy's obligations to South Tyrol were clearly defined in the De Gasperi-Gruber-Agreement of 1946 (signed by the Foreign Ministers of Italy and Austria and forming annex IV to the Peace-Treaty of Paris, 1947). Because of Austria's involvement, particularly as a signatory of this internationally recognized treaty, the Austrians were able to assume the role of a Protecting Power ("Schutzmacht") and support the South Tyrolean cause on an international level.
- (d) the **dimension of time**: in the end, it took 30 years for the de-escalation, and the establishment and gradual implementation of the complex system of rules foreseen by the 2nd Autonomy Statute. Despite the delays, this gradual approach was already agreed upon in advance, during the negotiations leading to the "Package", and punctually enlisted in the so-called "Operational Calendar".

5.2. Lessons to learn?

The general problem of the "export" of models has already been addressed. The exact terms of a compromise as well as its specific conditions and content have to be found and determined for each individual case. Being aware of these limits and the risks of a simple transfer, nevertheless, some lessons can be learned from the South Tyrolean case:

- Of fundamental importance is certainly the basic compromise achieved through the negotiations leading to the "Package": the explicit recognition of (cultural) diversity and the renouncement of incompatible positions by both sides.
- What is particularly relevant for other minority-conflicts is the successful process of internationalized conflict de-escalation, and the conjoint transformation of a conflict, whose course was by and large negative, into a positive process with peace and stability as direct and sustainable results (Feiler 1997, 35). The single procedures can also offer interesting examples for other conflicts: the operational calendar with its detailed, pre-established time-frame, the institutionalized negotiations in special joint commissions of the State and of the Province, a special procedure for the enactment decrees, which cannot be changed unilaterally by the State, and, finally, the guarantees, in particular the possibility of bringing disputes to the Italian Constitutional Court.
- Of course, the possibility of applying single provisions regarding the autonomous powers and the relations between the different groups depends on the existence of the same or at least similar prerequisites, in particular on the presence of a self-contained settlement area and on the distinct language of the minority. Important seems to be the "mix" of (sometimes even contrasting) principles which, in the case of South Tyrol, do not only guarantee the protection of a minority, but, by means of stressing functional criteria (such as bilingualism of the single public servant in order to create a bilingual administration), serve the governance of the territory as a whole.

But there are also certain dangers which are to some extent inherent consequences of the compromise between the minority and the State: statutes of territorial autonomy anchor ethnic differences in the State, they tend to weaken the principle of democratic equality and can, at worst, further aggravate a conflict by stressing ethnic cleavages.⁴⁰ As a result, the future development of the South Tyrolean solution can also be questioned.

⁴⁰ Bertelsmann Foundation, 14, is advocating a minority-protection for Eastern Europe by an effective protection of the basic rights and by a working democracy.

Despite its exemplary character, improvements in individual areas are not only possible, they seem almost necessary in view of the growing international standards in this context (Feiler 1997, 35) – after all, the Autonomy Statute is nearly 30 years old. The transfer of new powers in the prospective of a general decentralization of the Italian State, the recent signs of more flexibility and "openness" in the interpretation and application of some principles, and the new possibilities of cross-border cooperation seem to confirm the vision of autonomy as a dynamic process, not limited to the restoration and preservation of a status quo.

There is no doubt that the settlement of the conflict by the 2nd Autonomy Statute was a first and necessary step. Italy's German and Ladin minorities were no longer threatened by assimilation. Achieving a compromise solution accepted by the majority of all those concerned – Italy, Austria and the South Tyroleans – was certainly due to tolerance and goodwill on all sides (Kager 1998, 1). The same should be true for the preservation of the achieved results and their gradual development towards a society more characterized by interethnic interaction and cooperation. After 30 years the time seems to be ripe for a second step to resolve the ethnic division of the society in order to reach an even higher level of peace.⁴¹

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

The South Tyrolean version of the English saying "good fences make good neighbors" has been: "The more we are separated, the better we will understand each other"; it has justified segregation, above all in the fields of education and culture. Perhaps we are quite close to the moment of turning it around into: "the better we understand each other, the less we need to divide". This would be a hopeful example and perspective for all those working on the resolution of other conflicts.

⁴¹ A policy for the final resolution of the conflict is suggested by Kager 1998, 9 ff., who underlines the importance of interethnic social movements by concentrating on the youth.

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