Special Territorial Autonomy Arrangements

A number of countries have developed special or asymmetric autonomy arrangements for certain parts of their territory. This has been done in response to political pressures from the population of a particular area, in settlement of a violent conflict, and as a result of how the territory was integrated into the country. A careful review of such experiences can be suggestive for those considering such special arrangements in relation to current conflicts or pressures, such as the Western Sahara, Eastern Ukraine, and Bangsamoro in the Philippines to mention only three.

This paper reviews in some detail experience in the following territories, which, with the exception of New Caledonia, are all contiguous with or near the sovereign country:

- Aland Islands, Finland
- Aceh, Indonesia
- Papua, Indonesia
- Kurdistan, Iraq
- New Caledonia, France
- Northern Ireland, United Kingdom
- Kosovo and North Kosovo, Serbia
- Puerto Rico, United States of America
- Zanzibar, Tanzania[1]

Posssible additions: Moldova 2.9M (Gaugazia 160k and Transnistria—not controlled); PNG 7M, Bouganville 175K; Ukraine 43M, Crimea 2.3M, Donbass and ; Philippines 100M, Bangsamoro 3.7M; Macedonia 2M, 25% Alb;

What follows is a summary of some major conclusions from this review, which could prove relevant in designing settlements in other cases where territorial autonomy is being.

1. *Special autonomy arrangements are most appropriate when the autonomous unit is not too populous relative to the rest of the country*.

In most of the cases examined, the unit getting special autonomy represents between 0.5 and 3 per cent of the population of the country. The major exception is Kurdistan in Iraq

[1] There are many other examples of special autonomy arrangements. One major group is overseas territories that used to be colonies but have been integrated into the metropolitan political system; these include Greenland and the Faroes (Denmark), Aruba and Curaçao (Netherlands), the Azores and Madeira (Portugal). These overseas cases tend to be quite distinct from special autonomy arrangements for contiguous territories, which are, with the exception of New Caledonia, the focus of this paper. There are also special arrangements in some federations (e.g. Kashmir in India) and in some other European countries (notably Italy with the Tyrol and Aosta). And there are also "micro-states" such as Andorra, Monaco, Lichtenstein, and San Marino, which are technically sovereign but have some characteristics of special autonomy.

(25 per cent of the country's population), where constitutional arrangements are highly unstable and nominally federal. Scotland represents 8 per cent of the UK's population and the extensive devolution of powers to its parliament (and the lesser devolutions to Northern Ireland and Wales, which together represent another 7 per cent of the UK's population) is posing major questions about the role of MPs from the devolved jurisdictions in Westminster in voting on laws that do not affect their constituents. If the population of a territory seeking autonomy is a significant part of the national population, there is a strong case for considering symmetrical devolution to the different regions, as in a federal structure.

2. *Arrangements to give special autonomy units enhanced representation or powers in central institutions are the exception*.

Some political settlements based on territorial devolution also involve power-sharing or special representative arrangements within central government institutions. This is especially so when the minority is relatively large compared to the majority, as in Bosnia-Herzegovina, but it is less common when the minority is very small, as in asymmetric autonomy arrangements.

- Of the cases reviewed, the Kurdish population is the largest relative to the national population. Even so, there are no formal provisions for special Kurdish representation in Iraq's central government, which is nominally federal and works on a majoritarian basis; however, there is a convention that the President (who is largely ceremonial) is a Kurd, while the Prime Minister is a Shia Arab and the Speaker a Sunni Arab.
- The Aland Islands, Aceh, Papua, New Caledonia and Northern Ireland are represented in their national parliament on the same basis as other parts of the country (sometimes over-represented because of their small size). There may be a special right to be consulted on national legislation that impinges on territorial prerogatives (as for Aland in Finland), but without a right of veto. [2]
- Puerto Rico stands out because of its clearly disadvantaged position in that it is disenfranchised in national institutions, merely having a representative without a vote in the House of Representatives.
- The opposite extreme is Zanzibar, which has extra representation in the national legislature (five members elected indirectly by the Zanzibar parliament), the vice-presidency, and extra representation in Cabinet (including a place for the President of Zanzibar); there is also provision (never activated) for a constitutional court constituted equally of representatives from the two parts of the country. Despite these provisions, Zanzibar has no veto in national affairs.

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[2] There is a growing question in the UK whether MPs from the devolved jurisdictions should be restricted in their participation in the national parliament and not able to vote on matters that do not affect their constituents. The Dutch and Danes have some arrangements for representatives of their overseas territories to participate in Cabinet discussions directly relevant to their interests.

- The Kosovo agreements provide for guaranteed representation of the Serb minority in the national legislature, double-majority voting on issues directly affecting the interests of the Serb minority, and fair representation of the minority in the civil service and courts.

3. *Special autonomy arrangements may be set out in an international agreement, a constitution, a special law or laws, or some combination of the above.*

- The Aland Islands' status is established, in part, through international guarantees, which go back to the League of Nations; for the rest, the Finnish constitution recognizes their special status, which has been developed through a special law.
- The Northern Ireland arrangements include bilateral agreements with the force of international law between the British and Irish governments, as well as political agreements amongst the political parties in Northern Ireland, and legislation both by the UK parliament and the Northern Ireland Assembly.
- The arrangements for Aceh in Indonesia took the initial form of a political agreement (MOU) between the government of Indonesia and the Free Aceh Movement, witnessed by an international mediator, and these were implemented through Indonesian legislation; Papua's status is simply determined by law.
- The status of Kurdistan and Zanzibar are largely established in the national constitutions, while New Caledonia's status is established by a combination of constitutional and statutory provisions. Puerto Rico's status flows from the Supreme Court's interpretation of the Property Clause of the constitution, as well as laws of the US Congress.

4. *Special autonomy arrangements may be agreed amongst the parties, imposed by the sovereign power or a combination of these. Imposed settlements may not resolve the underlying political issues.*

- The arrangements for the Aland Islands, New Caledonia, Northern Ireland, and Zanzibar have essentially been agreed at every step.
- The Kurdish arrangements were agreed during a flawed constitutional process but have been the source of disagreement since.
- The original Aceh agreement was agreed, but the Government of Indonesia largely imposed the terms of implementation, which has caused some resentment. The Government of Indonesia imposed the arrangements on Papua
- The arrangements for Puerto Rico have been largely imposed, without agreement by the local population—in Puerto Rico's case, its preferred option, statehood, has been foreclosed, though the United States would permit independence.
- The arrangements for North Kosovo were negotiated first as part of the Ahtisaari plan, which was referred to the UN but never formally ratified, and secondly as part of the Brussels Agreement between Kosovo and Serbia, but in neither case

did the population of North Kosovo participate directly in the talks or agree to the outcome.

5. *Enforcement and overview mechanisms vary with the types of political and legal instruments establishing special autonomy.*

- In some cases (Aland Islands, Northern Ireland, North Kosovo—Brussels Agreement) a foreign government may have some rights to monitor the implementation of the agreement and to seek satisfaction should there be a problem. These rights may have legal standing in international law.
- In other cases (Aceh, Kosovo—Ahtisaari Agreement) there may be an international arbiter who can rule on implementation of the agreement. In Kosovo, during an extended transitional period, there was a resident International Civil Representative who oversaw implementation of the agreement, with assistance from the OSCE; he could make recommendations to the resident UN mission to ensure compliance.
- When autonomy arrangements are established through domestic measures (constitutional, statutory), the courts are the normal arbiters regarding implementation—Zanzibar is unusual in that it has the right to a court made up equally of judges appointed by it and by the national government (though this process has never been used).

6. *Contiguous or nearby territories with autonomous status are typically deemed to be an integral part of the sovereign country, while those at a distance may have a special status.*

In cases of contiguity or near contiguity (Finland, Indonesia, Iraq, Tanzania, United Kingdom, Serbia), the autonomous territory is deemed to be an integral part of the sovereign country by that country. Overseas territories can have special status: Puerto Rico "belongs to" but is not "part of" the US; New Caledonia's status is "sui generis" within the French constitution, notably with the right to secede (while France's other overseas territories are integral parts of the republic).[3]

7. *The right of secession is rare for contiguous territories with special autonomy. Overseas territories that were colonies are more likely to have this right.*

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[3] The Danish system is referred to as the "Danish realm" made up of three "constituent countries" (Denmark, Greenland and the Faroes), each with "home rule". The most recent agreement recognizes the Greenlanders as a "separate people" under international law. The Dutch system is referred to as the "Kingdom of the Netherlands", made up of four autonomous countries, including the "three separate, non-independent, autonomous countries" in the Caribbean.

International law makes a strong distinction between the right of "self determination" in colonial versus non-colonial circumstances. It accords colonies or former colonies a right to "self-determination", i.e. to assume full international sovereignty, whereas territorial minorities within sovereign states normally have no such right, except in cases of severe abuse of their human rights. Thus, prima facie, autonomous territories that are former colonies have a very much stronger right in international law to "self determination" than do autonomous territories that are established, integral parts of sovereign states.

- New Caledonia has held a referendum on independence and has the right, recognized in French law, to hold another before 2018; this is at variance with the general provision that the Republic, including overseas territories, is "indivisible".
- The Belfast Agreement recognized the "legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland" whether to stay in the UK or join the Republic of Ireland. (And more recently the UK extended this right to Scotland, which held a referendum on independence in 2014.)
- The United States has accepted that Puerto Rico has the right to become independent.
- Under the New York Agreement assigning Papua to Indonesia, Indonesia was to hold a consultation involving all adults in an "act of self-determination" to determine whether they wish to remain in or sever ties with Indonesia; however, the "Act of Free Choice" conducted by the Indonesia government in 1969 limited participation to a few score hand-picked delegates, thus denying the population a referendum; the UN took note of this Act without pronouncing on its merits.[4]

In the other cases under review (Aceh, Kurdistan, Zanzibar), there is no recognition of a right to secede in the domestic law of the country of origin or in any agreement. Even Kosovo, which is effectively independent of Serbia and now recognized by over half of the member states of the UN, has no right to independence in Serbian law. (By contrast, the 2003 constitution of the Federal Republic of Yugoslavia, which was made up of Serbia and Montenegro, gave each the right to secede three years after the constitution was promulgated; Montenegro voted to secede in 2006, just exceeding the threshold

[4] By contrast, Indonesia did agree to a UN sponsored referendum on the independence of East Timor in 1999; the vote led to the end of Indonesia's 25 year occupation of East Timor, which resulted from an invasion shortly after East Timor declared independence following its abandonment by the Portuguese, who had been the colonial power.)

necessary of 55 per cent of votes established by the EU.)[5] Views within the international community are sharply divided on whether—or when—the right to secede should be extended to non-colonial territories.

8. *There may be restrictions on the voting, property and other rights of citizens who have not been fully established in an autonomous territory. As well, citizens domiciled in an autonomous territory may have some special privileges.*

When an indigenous population may feel threatened by settlers or recent arrivals, there may be sensitivity around and restrictions on the rights of recent arrivals, even if they are citizens of the country. In all cases, the established occupants of the autonomous territory are deemed to be citizens of the sovereign country, with full rights of mobility and full voting rights nationally, but they may have some special privileges, not available to other citizens.

- In Aland the right to vote in local elections requires at least five years residency, and the local government may control real property ownership by those not domiciled there and the practice of certain professions by those not resident there. Alanders may opt to serve in designated civilian roles, rather than be conscripted into the military. Their passports incorporate the word "Aland".
- In New Caledonia, the voters list for the prospective referendum on independence has been "frozen" to include only those eligible to vote in 1998 or citizens who have been resident for at least 20 years, as of 2014; while all citizens may vote in national (French) elections, voting rights are restricted for provincial elections.
- By contrast, Indonesia provides for equal rights for all Indonesian citizens in Aceh and Papua. However, this is controversial in Papua because of the significant in-migration sponsored by the government (there is a special assembly for indigenous Papuans, but it has little power).
- UK citizens domiciled in Northern Ireland have the right to citizenship in the Irish Republic as well as the UK.

9. *In some cases, there are special protections for one or more minorities within an autonomous territory.*

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[5] In the famous "secession reference" the Canadian Supreme Court in 1998 found that Quebec had no right to secede but a "right to negotiate" secession, should a clear majority vote in favour of secession on a clear question; however, this right was subject to various caveats such as democratic principles. The court left open the possibly legitimate claim of certain territorial populations within Quebec to secede from Quebec should they wish to remain part of Canada. Canada and the UK are outliers in their openness to the possibility of secession from the core state.

In most special autonomy arrangements the population of the relevant territory is relatively homogenous (and distinct from that in the rest of the country), so minority rights within the territory are not a pressing issues. However, there are exceptions.

- The most striking is Northern Ireland, where relations between the loyalist and nationalist communities are central to the arrangements. These include elaborate power-sharing in the province's executive (presided over jointly by a First Minister and Deputy First Minister and with an Attorney General agreed by both communities' representatives), voting procedures in the Assembly requiring double majorities, and special independent commissions on human rights, equality and victims.
- The rights of the Serb minority in Kosovo were also central to the Brussels Agreement—which from a Serbian perspective is an agreement with an autonomous territory. It provides for a community of Serb municipalities that is effectively a territorial government with significant autonomy.

10. *There is a great variety in terms of the actual powers devolved to autonomous territories, though a core group of powers typically stays with the sovereign government.*

While autonomous units, by definition, have greater powers than do other regions of their country, the importance of autonomy is not simply tied to powers but often has an important symbolic aspect. It can also be strongly related to language, as is the case of Aland, whose greatest distinction is its functioning in Swedish, or religion, as in the case of Aceh, which wanted to have a system of Sharia law (within Indonesia, a Muslim majority country).

The powers devolved to territorial units can be very extensive or relatively limited, but national governments almost always reserve defence, foreign affairs, some areas of taxation and monetary affairs. They usually control citizenship (at least at the national level) and immigration. (Defence can sometimes involve a transitional period during which a territorial militia might still exist—as in Iraq.) While territorial units typically have no final say on foreign affairs, they might have the right to be consulted (or even represented on the national delegation) on international agreements that bear on its responsibilities, but this falls short of a veto (as with Aland, Zanzibar).

The powers most frequently devolved to territorial units relate to local matters, including: delivery of some services relating to education (especially primary and sometimes secondary or even post-secondary), employment, and health care, local government (but legislative authority in these cases may be limited by national norms); some regulatory powers over the environment, traffic, markets, etc; local infrastructure.

Policing and local security arrangements can be particularly sensitive, especially if there has been conflict between the territorial population and the national government.

- Aceh has the right to approve the chief of policeand prosecutors; the recruitment and training of police shall be done in consultation with and the agreement of Aceh; crimes by military personnel in Aceh are tried in civilian courts (and Aceh has the right to an independent court system within the Indonesian system);
- Northern Ireland had a commission that studied policing and justice matters during an initial transitional phase before moving to local responsibility for justice and policing, which was perhaps the most difficult issue for devolution. The Department of Justice has a minister elected by consent of the two communities. There are elaborate provisions to promote the impartiality, representativeness, professionalism and accountability of the police, with a heavy emphasis on community involvement in policing. There has also been a review of the criminal justice system, including the judiciary.

In New Caledonia and Northern Ireland, the transfer of devolved responsibilities has been phased. In New Caledonia, each step had to meet established criteria, while in Northern Ireland important steps required political consent of the two communities as well as of the UK government.

11. *Fiscal arrangements are important and distinct from the devolution of legislative or administrative powers.*

Access to adequate (or at least equitable) financial resources is obviously critical if devolution to a territorial unit is to have much meaning. In many cases, the national government retains control of most of the important revenue sources, so that the fiscal undertakings with the autonomous territory involve a commitment to certain principles of finance—and occasionally to a specific formula.

- Petroleum resources were a major issue for Aceh and the agreement guarantees the province a 70 per cent share of petroleum revenues, even though the national government determines the fiscal imposts on the industry. Papua too received similar special fiscal treatment, including 70 per cent of petroleum revenues and 89 per cent of non-tax revenues from other resources; however, Papua's control over these revenues has been constrained.
- Petroleum revenues are also central in Iraq. The constitution provided that Kurdistan would receive a share of central revenues equivalent to its population (minus a levy for central expenses), but disputes around petroleum—the issuance of licences, its development and sale—gave rise to serious conflict, with Baghdad accusing Erbil of illegally exporting oil and therefore suspending fiscal transfers until the dispute was settled. A fragile agreement was reached.
- The Aland arrangements include extensive provisions for fiscal equalization as well as some limited areas of devolved taxation.
- Northern Ireland is basically financed by transfers from London, based on a complex formula which provides substantially more revenue than London raises

locally. In addition, the provincial government has some very limited taxing powers.

Case Studies

1. Aland Islands, Finland

Brief History

These Swedish-speaking islands in SW Finland were the subject of a dispute between Sweden and Finland in 1920. Finland had initially claimed they were strictly an internal matter, but a committee of jurists of the League of Nations found that their status was one of international interest, while recognizing Finland's right to them. Sweden and Finland negotiated a text that with many specific provisions that were to be guaranteed; this text was tabled before the League, which undertook to watch over these guarantees. The Parliament of Aland was given the right to bring complaints to the Council of the League. The UN, as successor to the League, had no great eagerness to continue with most of the protections the latter had provided minorities, but in a publication by the Secretary General, it found that Finland's obligations to Sweden with regard to the Aland Islands continue to exist. In 1951 Finland passed a new autonomy act, which was further revised in 1991, with the consent of the Aland Parliament.

Population and territory

The islands have a population of 29,000 and comprise 1,580 square kilometers—or 0.5% of the population and 0.5% of the territory of Finland. Over 90% of the people speak Swedish as a first language.

Legal instruments

Internationally, in addition to the text originally tabled with the League of Nations, there is a further international protection provided as a term of Finland's accession to the European Union.

Within Finland, almost all the legal provisions specific to the Aland Islands are set out in the Act of Autonomy of Aland of 1991, to which the Constitution of Finland has three references (Articles 58, 75 and 120) that effectively constitutionalize the provisions of the Act.

Devolved Powers and Provisions

The Parliament of Aland has extensive authority to determine many issues, including:

- The right of domicile, though this shall normally be granted to a Finnish citizen who resided there for at least five years and speaks Swedish satisfactorily. Only those with the right of domicile may participation in elections for the parliament.
- The right to acquire real property, though limitations shall not apply to persons with the right of domicile
- The right of a person to exercise a trade or profession, though normally there cannot be restrictions on those residing there and operating as individuals or within a family context.
- Its own procedures and method of election.
- Collective agreements for the employees of Aland
- The flag and coat of arms of Aland
- Municipal affairs
- An additional tax on income, trade and amusements taxes, municipal tax
- Public order and security; firefighting and rescue.
- Building and planning
- Appropriation of real property
- Tenancy and rent regulation
- Protection of nature, the environment, recreation, water law
- Protection of cultural and historic assets
- Health care
- Social welfare
- Alcohol licences
- Education, apprenticeship, culture, sport, youth work, libraries, museums
- Farming and forestry (subject to consultation with the State re regulation of production)
- Hunting and fishing
- Prevention of cruelty to animals; veterinary care
- Mineral prospecting and development
- Postal service and broadcasting
- Roads, canals, road, rail and boat traffic
- Trade
- Promotion of employment
- Statistics on conditions in Aland
- Creation of offences and penalties relating to authorities of Aland

The Act also lists in detail the legislative authorities of the national parliament, some of which may constrain the extent of related powers of the Aland Parliament.

In addition to the legislative powers above, there are extensive provisions for the Government of Aland to administer various national laws by delegation. The Government of Aland shall be vested with the administration of Aland.

The Governor shall represent the Finnish Government in Aland. The Governor will normally be agreed by consensus between the President and Speaker of the Aland Parliament; otherwise by the President from a list of five candidates nominated by the Aland Parliament.

The official language of Aland is Swedish, which shall be used in all governmental agencies in Aland. Decisions of the Supreme Court affecting Aland shall be translated in Swedish, and letters and other documents between the two governments shall be in Swedish. Education shall be in Swedish unless otherwise provided by the Aland Parliament. But in a matter concerning himself as a citizen of Finland, a citizen shall have the right to use Finnish before a court and with other national state officials in Aland.

The Act contains extensive provisions providing for the fiscal equalization to cover the costs of autonomy.

Special rights of Alanders

Those with the right of domicile:

- In place of military conscription may serve in designated civilian roles
- Their passports shall incorporate the word "Aland"

Representation and role within national institutions

An amendment of the national constitution or another national act shall not enter into force in Aland with the consent of the Aland Parliament insofar as it relates to rights of private persons to own real or business property in Aland.

The Aland Islands shall form a constituency for the purpose of elections to the national parliament of Finland, which constituency shall elect one representative (Article 25 of the Constitution).

An opinion shall be obtained from Aland before the enactment of an Act of special importance to it.

The Government of Aland may submit initiatives on matters within the legislative power of the national parliament, which the Finnish government shall submit to the Parliament for consideration.

While international relations are the competence of the national government, the Government of Aland may propose negotiations of interest to it and shall be informed of negotiations if a matter is subject to its competence and it may have the opportunity to participate in negotiations if there is a special reason.

On matters relating to its competence or special interests, the Government of Aland shall have the right to participate in national Cabinet meetings dealing with Finland's positions re forthcoming issues within the European Union. Failing agreement, Finland shall declare Aland's views when presenting its position within the EU.

Monitoring and Dispute Resolution Mechanisms

The "Aland Delegation" shall be composed equally of members (two each, with alternates) from the national government and the Aland Parliament, presided over by the Aland Governor.

Prior to an act being presented to the President of Finland for adoption, there shall be an opinion of the Aland Delegation and the Ministry of Justice. After an opinion of the Supreme Court that finds the Aland Parliament has exceeded its powers, the President may annul a law in whole or part.

Upon request, it shall give opinions on matters referred to it by either government or the courts. As well, it shall make various determinations on fiscal matters for submission to the President; however, if the decision is not confirmed the matter shall be returned to the Delegation.

Sweden as a party to the original agreement has the right to make direct representations to Sweden and could, with Finnish consent, have a question referred to the International Court of Justice. In principle, it could also take a matter to the General Assembly of the UN or even to the Security Council should it affect prospects for peace.

2. Aceh, Indonesia

Brief History

Located on the northern end of Sumatra, Aceh has a distinct identity, notably since the Sultanate of Aceh established in 1511. After the sultan was driven out by local leaders, the Dutch colonial government of Indonesia fought a thirty year war (1873-1904) to bring the area under their control and by the 1920s a major guerilla war had resumed. The Acehnese fought both the Dutch and Japanese during World War II, but were supportive of a united, independent Indonesia. However, local leaders were quickly alienated from the Soekarno regime, that imposed a highly centralized regime, with none of the local self-rule that had been promised. A first rebellion was fought in the 1950s and conflict resumed under the separatist Free Aceh Movement in 1976, following the discovery of petroleum offshore and continued until 2005. The political situation in Indonesia changed dramatically in 1998, with the collapse of the authoritarian regime of Suharto. The next few years saw the beginnings of the transition to democracy, including

constitutional amendments that broke from the highly centralist regime and provided for wide-ranging autonomy for directly elected governments in the 292 regions and municipalities (largely bypassing the 26 provinces). The Acehnese resented the government's resistance to allowing a referendum, and its imposition in 2002 of a special autonomy law for Aceh (as a province, which was a concession). Both the insurgency and the repression worsened, and the new regime was never implemented.
Peace negotiations finally became possible early in 2005 because of battle fatigue and a change of policy in Jakarta; they were greatly helped by the role of former President Artisaari of Finland as a mediator and by the catalyst of the devasting tsunami, which focused both parties on the need to rebuild. These negotiations led to the Helsinki Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement (GAM) had detailed provisions relating to governance, political participation, the economy, the rule of law, human rights, amnesty and reintegration, security, monitoring, and dispute settlement. Aceh is distinct from other parts of Indonesia in that: the main unit of government is at the provincial, not district level (Papua is the other exception); local political parties are permitted; and, Sharia law applies. The Government undertook to prepare a new Law on the Governing of Aceh (LoGA), by 31 March, 2006. In the event, the LoGA was promulgated in August 2006 and the GAM was concerned that some elements deviated significantly from the Helsinki Agreement.

Population and territory

Aceh has a population of 4.7 million, which is slightly less than 2% of Indonesia's 250 million. While there are various ethnic and language groups, the Acehnese language is widely spoken and the population is overwhelmingly Muslim and strongly attached to its religion. It is 59,000 square kilometers in extent, which represents about 3% of Indonesia's 1.9 million square kilometers.

Legal Instruments

The Special autonomy law of 2002 was never implemented for Aceh. The Helsinki MOU was a political agreement with no legal standing. It is a short document of only seven pages. The legal instruments dealing with Aceh are the Law on the Governing of Aceh (LoGA), 2006, and its regulations, which is far more detailed and lengthy. After the MOU, the Acehnese went through a very elaborate process to prepare a draft law, which they eventually submitted to the Government of Indonesia, which had a team of experts who prepare a revised version, using the Acehnese draft as a reference. This revised version was designed to comply with existing laws and the Constitution and then submitted to the national parliament, which made its own changes. The need to comply with existing laws and the Constitution was not explicit in the MOU and became a major lever by the national government and parliament for constraining the extent of Aceh's powers. The two sides had different interpretations of some important provisions in the MOU and there are others where the Government of Indonesia simply imposed its views

in the LoGA. The law provides for regulations and once again these became a source of negotiation and dispute.

Devolved Powers and Provisions

The MOU had sections on the future law on Aceh, political participation, the economy, the rule of law, human rights, amnesty and reintegration, security, monitoring and dispute resolution.

Its key provisions relating to the powers devolved to Aceh were:

- That "Aceh will exercise authority within all sectors of public affairs… except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong" to the Government of Indonesia;
- International agreements of special interest to Aceh will be made in consultation with and the consent of the legislature of Aceh, as will decisions by the legislature of Indonesia;
- Aceh shall have
    - the right to raise external debt
    - the right to set taxes to fund internal activities
    - jurisdiction over living natural resources in its territorial sea
    - jurisdiction over sea and airports in its territory
- An independent court system, including a court of appeals, will be established within the Indonesia court system. A Human Rights Court shall be established for Aceh;
- Aceh shall approve the chief of police and prosecutors and the recruitment and training of police shall be done in consultation and with the consent of Aceh; crimes by military personnel in Aceh shall be tried in civilian court;
- Aceh is entitled to 70% of revenues from hydrocarbons and other natural resources in its territory and territorial sea.

In the event, the LoGA had a number of provisions that seemed at odds with the MOU, notably an expansive definition of central responsibilities as "governmental affairs *having the characteristics of national affairs*, foreign affairs, defence, security, judicial, monetary, national fiscal, and certain affairs in the religious sector" (emphasis added). More generally, the LoGA requires the laws of Aceh to act in harmony with the Constitution of Indonesia and its laws and regulations, suggesting that "there is actually very little autonomy in the arrangement"[6]

Special Rights of Acehnese

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[6] Suksi, op.cit., p.655

Amnesty was granted to all who had participated in GAM activities. Prisoners held due to the conflict were released within 15 days at the latest. Former GAM combatants were to receive appropriate allocations of farmland, employment or social security, as were civilians suffering losses due to the conflict.
Local political parties in Aceh were to be permitted, which they are not elsewhere in Indonesia.

Representation and Role within National Institutions

There are no special provisions for Acehnese representation in national institutions, but the GAM was permitted to form a political party contrary to the general interdiction on regional parties. The MOU had provided that decisions with regard to Aceh by the national legislature would be taken in consultation with and the consent of the legislature of Aceh, but in the LoGA "consent of" has been replaced by "with the consideration of".

Monitoring and Dispute Resolution Mechanisms

An Aceh Monitoring Mission was established by the European Union and relevant ASEAN countries with an extensive mandate to monitor demobilization and reintegration of GAM, human rights, the process of legislative change, disputed amnesty cases, etc.

Disputes were to be resolved by the Head of the Monitoring Mission, with binding authority. Should this not prove possible, the Head will report to the national and GAM authorities and the Chair of the Board of Directors of the Crisis Management Initiative (the mediator, former President Ahtisaari), who, after due process, will make a binding ruling.

3. Papua, Indonesia

Brief History

West New Guinea or Papua was retained as a colony by the Dutch when the rest of its East Indian colony became independent as Indonesia in 1949. President Soekarno made claims to Papua from the earliest days of independence, while the Dutch were preparing the colony to become a separate country. As tensions rose with Indonesia, the United Nations mediated an agreement in 1962 between Indonesia and the Netherlands to cede Papua to Indonesia on the understanding there was to be a referendum on its future, its timing to be one year after the arrival of the UN representative. However, the Indonesian government repressed Papuans and introduced assimilationist policies. Finally, in 1969, it short-circuited the plebiscite by holding instead what it called the "Act of Free Choice", which was a series of regional, open votes by only 1,025 Papuans, who had been selected by the military; the vote favoured integration into Indonesia. The UNGA noted this vote without commenting on whether it met the terms of the 1962 agreement. This rigged

process became a major grievance within Papua and led to the creation of the Free Papua Movement, an umbrella group of local resistance groups; however, the resistance was weak and largely ineffective because of the diversity of the Papuan population and the coopting of many leaders. The military regime became ever more repressive until the demise of the Suharto regime in 1998, when the transition to democracy in Indonesia commenced. A key part of democratization was a major decentralization initiative, which focused on districts and municipalities, by-passing the larger provinces. This did not satisfy Papuan leaders, whose primary aim was to revisit the Act of Free Choice of 1969. The Indonesia government was not prepared to consider this and shut off any negotiations. In reaction, a broad coalition of Papuans came together and formulated demands. The Indonesian government moved to repress this coalition and instead held broad consultations leading to the adoption in 2001 a Special Autonomy Law for the province (similar to that for Aceh). This law provided very substantial new powers and resources to Papua, with a provincial legislature, and it also created a largely consultative assembly to represent *indigenous* Papuan people. Despite the devolution of important new powers to Papua, the law was not the product of negotiations or an agreement with Papuan leaders and it did not provide some key concessions sought by the Papuans. As a result, the law had little political support in Papua and Papuans remain divided. Nothing comparable to the negotiations with Aceh has happened since, so the level of discontent remains high and there are occasional outbreaks of violence.

Population and territory

Papua has 3.5 million inhabitants or about 1.8% of Indonesia's 250 million. The population is highly diverse, with many indigenous ethnic groups and languages. The indigenous population is heavily Christian, in contrast with the rest of Indonesia. Roughly half the population is settlers from elsewhere in Indonesia, who have come through the government's transmigration program, which was designed to secure Papua's adhesion to Indonesia. Papua's area of 319,000 square kilometers represents about 15% of Indonesia's 1.9 million square kilometers.

Legal Instruments

The Special Autonomy Law of 2002 remains the framework for devolved government in the province.

Devolved Powers and Provisions

The autonomy law retains national authority over foreign policy, defence, monetary and fiscal policy, religion, and justice, while giving the province jurisdiction in all other areas (though subject to constraints of the Constitution and national legislation). The province also received large new fiscal resources, including 89% of non-tax revenues from mining, forestry and fisheries, 70% from petroleum revenues, an enhanced share of other taxes

and special autonomy funds. In practice, however, the national government has been able to significantly dilute aspects of local autonomy, including the powers of the provincial legislature and its management of fiscal resources.

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Special Rights of Representation and Role within National Institutions

There are none.

Monitoring and Dispute Resolution Mechanisms

There are no special mechanisms in that there was no agreement. The application of the Special Autonomy Law is subject to the courts.

4. Kurdish Regional Government, Iraq

Brief History

When modern Iraq emerged from the post-World War I settlement as a British mandated territory, there were attempts by Mahmud Barzani, a Kurdish leader, to establish a separate kingdom of Kurdistan. The British suppressed this, but over the coming years there was a series of Kurdish revolts. Iraq became an independent monarchy in 1932, but a coup d'état overthrew the monarchy in 1958. The new regime reached an agreement with Barzani on regional autonomy for the Kurds, but a bloody civil war broke out in 1961 because the deal was not honoured. The war concluded with an agreement in 1970 that established the Kurdish Autonomous Region, but once again Kurdish expectations were frustrated so the Kurds launched a second war in 1974, only to be quickly and decisively defeated. The Baathist Party had seized power in Baghdad 1968 and by 1979 Saddam Hussein had emerged as the regime's strong man. The government embarked on an aggressive Arabization program in Northern Iraq, bringing in Arabs and moving Kurds out. In 1980 Saddam started an eight-year long war with Iran, which spilled over into attacks on Kurds, whom he saw as allied with Iran; these attacks included notorious bombing of civilians with sarin and mustard gas. In 1990 Sadam invaded Kuwait, which he held briefly until a US-led force push him out and inflicted huge damage on Iraq's military and infrastructure. Saddam's defeat led to uprisings by many Shia Iraqis and Kurds, which Iraqi forces brutally attacked. The US intervened in declaring a no fly zone in Northern Iraq (and another in the South), and the Iraqi government withdrew from most of Kurdistan, which was then able to establish what was effectively an independent government.

The presence of a government in Kurdistan with its own army, currency, and foreign and trade relations with surrounding countries was a major reality that shaped the constitution-making following the US-led invasion that toppled Saddam's regime. The Kurds entered the constitutional negotiations with the aims of achieving as much

independence as possible and of extending their domain to disputed territories, such as Kirkuk, that they considered Kurdish. The Constitution-drafting Committee of the Transitional National Assembly was given an incredibly compressed timetable and eventually usurped by a so-called Leadership Council, created and heavily influenced by American and British diplomats; this very much favoured the Kurdistan Alliance. The constitution that emerged was nominally federal but in practice it was highly asymmetric in that the Kurdish Regional Government retained most of its powers while no other regional governments were established. Federal powers were weak and uncertain and such fundamental issues as the management of petroleum were unresolved. While the constitution received the necessary approval in a national referendum (though largely opposed by the Sunni community), it in no way represented a deep understanding between the major political forces in the country, so it was not respected in implementation. The national government refused to permit regions other than Kurdistan to federalize, and it and Kurdistan failed to resolve such major issues as the integration of the armies, the fate of Kirkuk as well as the management, marketing and revenue arrangements for petroleum. In effect, Kurdistan remains highly autonomous while the rest of the country is centralized under the government in Baghdad.

Population and Territory

The area under control of the Kurdish Region Government is some 40,000 square kilometers, which is about 10 per cent of the area of Iraq. The population of around 9 million represents 25 per cent of the population of Iraq; Kurds form the majority with this territory but there are significant numbers of Arabs and other minorities.

Legal Instruments

The central legal instrument is the federal constitution of 2005, but some of its key provisions, notably regarding the federalization of the Arab parts of the country, are not respected by the federal government and others are disputed between the Kurdish Regional Government and the federal government..

Devolved Powers and Provisions

The Constitution provides for a short list of federal powers (foreign policy, national security, fiscal policy, citizenship, major cultural assets, telecommunications, mail, census) and an even shorter list of shared powers (customs, energy, environmental policy, planning, health policy, educational policy, water policy—but it is unclear how sharing is to operate). All other powers are assigned to regional governments (only Kurdistan to date) and provinces—though provinces were to come together to form regions (which has been blocked). Some federal powers, such as "formulating" fiscal policy, do not include an authority to execute such policy.

In a country whose economy and fiscal revenues depend overwhelmingly on the petroleum sector, the Constitution provided for the federal government "with the producing provinces and regional governments" to manage "current fields", which effectively gave Kurdistan control over most areas of undeveloped potential because the regions have the residual power. This arrangement, which is unprecedented within federations and has no underlying logic, has never been accepted by the federal government and so for the last ten years it has proven impossible to negotiate a Petroleum Law for Iraq and relations between Baghdad and the KRG have been strained. The KRG entered aggressively into contracts with foreign oil companies and the federal government refused to recognize these, but it also refused to take the matter before the courts. At one stage, the federal government of Prime Minister Malaki withheld the KRG's share of the national budget to protest Kurdistan's direct marketing of oil internationally. This fiscal pressure caused an economic crisis in Kurdistan until resolved by a temporary—and fragile—agreement on oil marketing and revenue sharing.

Special Rights of Representation and Role within National Institutions

While there are no formal power-sharing arrangements in the Iraqi constitution, there is an understanding that the Prime Minister is a Shia, the Speaker an Arab Sunni, and the President a Kurd.

Monitoring and Dispute Resolution Mechanisms

The Supreme Court is the highest authority on the Constitution. In 2014 it found that the KRG has the right to export oil, contrary to a claim of the federal oil minister, but the federal government continues to contest this.

5. New Caledonia, France

Brief History

New Caledonia has been a French possession since 1853 and was a colony until 1946. Nickel had been discovered there in 1864, which led the French to recruit foreign and French workers; the indigenous Kanaks were severely discriminated against. In 1946 New Caledonia became an overseas territory of France, with its population becoming French citizens in 1953. Since then, it has had five different acts governing its status, all of which have been resented by at least some of the population.

The status of New Caledonia became highly divisive during the 1980s, when there were numerous outbreaks of violence, mostly between factions opposed to one another. An agreement in 1988 set the terms for ten years and this was followed by the Nouméa Accord of 1998, which set the framework for the next twenty years, subject to being confirmed in a referendum (which it was, by 72%). Politics within the archipelago remains very polarized between two camps--one more left-wing and favouring

independence; the other conservative and favouring association with France. The Nouméa Accord provided for the progressive transfer of competences to New Caledonia, which has a federal structure within the larger unitary structure of the French state. In the final years of this Accord, by 2018 at the latest, there is to be another referendum on the future status of New Caledonia, which could become an independent country.

Population and Territory

New Caledonia is an archipelago of 7,172 square miles in extent which represents just over 1% of the total territory of France. It is located in the Southwest Pacific Ocean, some 10,000 miles from metropolitan France. It has a population of 280,000, which represents about 0.4% of the population of the French republic, including its overseas territories. The principal population groups are Kanaks (40%) and Europeans (30-35%), with a number of other non-indigenous populations, largely of Asian and Polynesian origins.

Legal Instruments

Article 76 of the Constitution of France provided for the population of New Caledonia to vote by 31 December, 1998, on the provisions of the agreement signed at Nouméa earlier that year. Article 77 provides for an Institutional Act, passed after consultation with the Deliberative Assembly of New Caledonia, to implement the agreement upon its approval; this has been done by an organic law (99-209) and subsequent amendments.

Devolved Powers and Provisions

New Caledonia has a unique status within the French system in that it is not an overseas territory or *département.* The organic law of 1999 assigned specified powers to the state government of France and to the government of New Caledonia; in addition, it assigns any residual responsibilities to the provinces and communes of New Caledonia. It also set out a timetable according to which the Government of New Caledonia could demand specified additional powers over time. Thus, for example, initially New Caledonia was given competence for primary education, but it had the right at specified dates subsequently to demand competence for secondary (which it did in 2009) and for post-secondary education (which it has not yet done). Responsibilities already transferred include local taxation, economic regulation (including most aspects of the vital mineral sector), international trade, air traffic, postal service, public health, and labour law. There are additional transferable responsibilities for most policing and security, civil and commercial law, public works, local government, and audiovisual communications. This legal framework would permit New Caledonia to assume most responsibilities relating to internal matters towards the end of the twenty-year transition. The French state is to retain responsibility for justice, public order, defence, money, and foreign affairs

New Caledonia receives extensive financial support—about 16% of the local GNP—from the French government, about two-thirds of which goes directly to individuals or expenses of the French government, and one-third to the national and provincial governments. As responsibilities are transferred, funding is as well. The European Union also provides major financial aid.

The possibility of New Caledonia becoming a fully independent state was provided for in the Nouméa Accord. This is exceptional given that the French constitution states that France is "indivisible". The Accord gives the New Caledonian Congress the authority to decide on the timing of a referendum on independence between 2014 and 2018 (though if it fails to do so by 2018, the French government may determine the date). The referendum question will be decided by the French government, after consultation with the New Caledonian government. The electoral list for this future referendum has been "frozen" to include those who had the right to vote in 1998 as well as those who have lived in the archipelago for at least 20 years as of 2014. (All voters may participate in national elections. The electorate for provincial elections falls between those for national elections and the eventual referendum.)

Special Rights of Representation and Role within National Institutions

Like other French overseas territories, New Caledonia has the right to be represented in both the National Assembly and the Senate of France.

Monitoring and Dispute Resolution Mechanisms

There is no special mechanism to monitor the Accord or resolve disputes. Legal provisions are subject to the French courts. The staged transfer of responsibilities and other matters regarding the implementation of the Accord are subject to regular discussions between the French and New Caledonian governments; in some cases such consultations are formally required.

6. **Northern Ireland, United Kingdom**

Brief History

Northern Ireland emerged as a political unit in the United Kingdom following the creation of the Irish Free State in 1922, when the Parliament of the six counties of Northern Ireland, four of which had clear Protestant majorities, voted to exercise its right to opt out of the new Dominion. Irish republican on both sides of the border always resented the division of the island and their hostility only increased given the discrimination against Catholics by the governments of the province. In the late 1960s leaders within the Catholic community started a civil resistance campaign against discrimination and this was soon followed by a campaign of violence by the Irish

Republican Army—the beginning of the so-called Troubles which lasted for 30 years and 3,000 deaths. The British government suspended the provincial government and conducted a major campaign with the British Army.

The fundamental problem in Northern Ireland was a deeply divided society, where one community felt deeply discriminated against. Eventually, a peace process involving the British and Irish governments and eight political parties from Northern Ireland led, in 1998, to the Good Friday or Belfast Agreement, which included one document signed by most of Northern Ireland's political parties and another signed by the British and Irish governments. The negotiations had been conducted according to the "Mitchell Principles", named after US Senator George Mitchell who served as a mediator; under these principles all parties committed to peaceful and democratic means of resolving political issues, to total and verifiable disarmament of paramilitary organizations, and to abide by the terms of any agreement. The Agreement has three strands: the status and system of government of Northern Ireland within the UK; relations between the province and the Republic of Ireland; and, relations between the UK and the Republic of Ireland. There were also sections on: rights, safeguards and equality of opportunity; decommissioning of weapons; security; policing and justice; prisoners; and, validation, implementation and review. When put to referendums, the Agreement was endorsed by 71% of the population in the North and by 94% in the Republic.

The Belfast Agreement did not solve everything. It was intended to end direct rule by Westminster in Northern Ireland, but the restoration of the Northern Ireland Assembly was initially short-lived, with substantial periods of suspension and return to direct rule. However, by 2006 the UK and Irish governments and Northern Irish political parties concluded the St. Andrews Agreement, which called for the restoration of the Northern Ireland Assembly with significant devolved powers and the creation of a new Northern Ireland Executive, which was to be based on a consociational or power-sharing government composed of the five main political parties. (Progress towards this agreement was helped by offers of over 600 million pounds sterling in aid from the international community; and, civil society groups played an important role in mediation and focusing on broader inclusion.) Policing and justice matters had been a particular volatile issues within Northern Ireland and so these were retained by Westminster at the time of the St. Andrew's Agreement. Finally, in 2010, the Hillsborough Agreement provided for the devolution of policing and justice powers to the Northern Ireland Assembly. The new arrangements have brought peace and permitted the functioning of devolved government in Northern Ireland, but the situation remains politically fragile.

Population and Territory

The province has a population of 1.85 million, which is about 3% of that of the United Kingdom. Those of Protestant background are slightly more numerous than those of Catholic background. Its territory comprises 5,456 square miles, or about 2% of the

United Kingdom. It is non-contiguous with the rest of the UK and shares a border with the Republic of Ireland.

Legal Instruments

The British-Irish Agreement references the Multi-Party Agreement and the two combined form the Belfast Agreement, which is a legal text with the form of an international agreement between the UK and the Irish Republic and this has consequences before UK or Irish courts. Despite the reference to the multi-party agreement in the British-Irish agreement, the former is best viewed as a political agreement amongst political parties. Thus the Belfast Agreement has provisions that are enforceable in international law and other provisions that are political undertakings between political parties.[7]

Both the Belfast Agreement and the subsequent St. Andrews Agreement required statutory implementation in the UK, which was done by the Northern Ireland Act 1998 and then subsequently by the Northern Ireland (St. Andrews Agreement) Acts of 2006 and 2007.

The Belfast Agreement also bound the Irish Government to submit Articles 2 and 3 to amendment by referendum, which it did. The referendum overwhelming approved a revised Article 2, which dropped the reference to national territory being the whole island and instead identified the Irish nation in terms of those born in the island, who thus are entitled to Irish citizenship, and a revised Article 3, which dropped the claim that Irish law applies throughout the island and instead expressed the "firm will of the Irish Nation" for an Ireland united peacefully by consent of the majority in both jurisdictions on the island.

The set of agreements also required certain legal enactments by the Northern Ireland Assembly. For example,

Devolved Powers and Provisions

The agreements around Northern Ireland have produced a complex architecture:

- A North-South Ministerial Council, bringing together the governments of the Republic of Ireland and Northern Ireland to deal with matters of cooperation within the island of Ireland;
- A British-Irish Council, bringing together the governments of the UK and Ireland, along with the government of Northern Ireland and the other devolved governments in the UK (Scotland, Wales, and potential the Channel Islands and Isle of Man;

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[7] Austen Morgan, *The Belfast Agreement: a practical legal analysis,* (London: Belfast Press, 2000)

- Extensive provisions regarding the composition and functioning of the Northern Ireland Assembly and Executive. Their essential feature is to provide for the participation of both the unionist and nationalist communities in decision-making, some of which must be done on a cross-community basis. The executive is headed jointly by a First Minister and Deputy First Minister, who represent the parties with the first and second largest number of members of the legislature; ministerial portfolios are allocated to parties in order of their electoral strength. The Justice minister is elected on a cross-community basis.
- Special commissions and safeguards in Northern Ireland. These include a Human Rights Commission, an Equality Commission, a Northern Ireland Victims Commission, and, during the transitional phase a commission to study and make recommendations on policing matters. There was also an Independent International Commission on Decommissioning. Safeguards included obligations to respect relevant British and European human rights law.

The Northern Ireland Assembly has extensive devolved legislative powers, including health and social services, education, employment and skills, agriculture and fisheries, social security, pensions and child support, housing, environmental issues, transport, the northern Ireland civil service, and justice and policing. The UK government has retained authority over the constitution, international relations, defence, nationality and immigration, elections, national security, nuclear energy, UK-wide taxation, and currency. There are also "reserved maters" where the Northern Ireland Assembly can legislate with the consent of the UK Minister responsible for Northern Ireland affairs; these include: firearms, financial services, broadcasting, navigation, telecommunications and postage, the foreshore and seabed, intellectual property.

While Northern Ireland has extensive legislative powers, it has very limited independent revenue raising authority and so it depends overwhelmingly on transfers from the UK government to finance its expenditures. Some of these transfers are unconditional, while others are ring-fenced for specific purposes. The province also receives some funds for specific programs from the European Union. Almost half its expenditures go to health and a quarter to education.

Special Rights of Representation and Role within National Institutions

There is no provision for special representation of Northern Ireland in UK institutions. There is a Secretary of State for Northern Ireland within the Cabinet, but the incumbent in recent years has not been from Northern Ireland in that the Conservative and Labour parties elect no members there. Northern Ireland has 18 members of Parliament at Westminster, in a house of 650 MPs. This makes it slightly over-represented relative to its population. Its MPs vote on all matters, included those which have been devolved to the Northern Ireland Assembly. As devolution to Scotland, Northern Ireland and Wales

has become more extensive, there is increasing discussion as to whether the MPs from these parts of the UK should have a vote on matters that do not affect their constituents—this is the so-called East Lothian Question or the issue of "English votes for English laws". Following the recent commitment to devolve yet more responsibility to the Scottish Parliament, the UK government has indicated it is considering measures to address this issue, but it has not yet presented proposals.

Monitoring and Dispute Resolution Mechanisms

UK courts decide on disputes relating to the legislative competence of the Northern Ireland Assembly. The British-Irish Council provides a forum for the two governments to review issues relating to the implementation of the Belfast Agreement; the Irish government was a signatory to the St. Andrews Agreement. The structure of the agreements is such that many issues are to be settled within the Northern Ireland Assembly and Executive. The UK's Secretary of State for Northern Ireland has a residence in the province and is engaged in constant overview and discussions regarding respect for and disputes around the agreements, as well as day-to-day matters such as UK government budgetary support.

7. Kosovo and North Kosovo

Brief History

The territory now known as Kosovo found its current territorial definition in 1945 as an autonomous area within the Serbian province of Yugoslavia. From 1911 until 1942, the governments in Belgrade had tried to change the ethnic composition of the area through large-scale resettlement and suppression of the Albanian language and oppression resumed after the war. This policy shifted in the late 1960s and by 1974 Kosovo was granted significant autonomy through a change in the Yugoslav constitution. However, Albanian nationalists considered their status inferior to that of the "nations" of Yugoslavia and they led protests, which in turn led to a crackdown and the rescinding of important local rights. Tensions worsened in the 1980s, notably with the rise of Serbian nationalism, and they passed a breaking point in 1989 when Slobodan Milosevic drastically reduced Kosovo's autonomy and further constrained Albanian rights. Kosovo Albanians responded with a separatist movement and eventually with a declaration of an independent Republic of Kosova in 1992. This situation deteriorated into civil war, which ended in 1999 after military intervention by NATO. In June of that year the UN Security Council passed resolution 1244 which placed Kosovo under transitional UN administration (UNMIK) and authorized a peacekeeping force. The resolution provided that Kosovo would have autonomy within Yugoslavia, whose territorial integrity was reaffirmed.

Negotiations over the final status of Kosovo started in 2006, led by UN envoy Martti Ahtisaari. In 2007 he submitted a comprehensive proposal was for "supervised independence" for Kosovo, which was strongly focused on the principles of internal governance in Kosovo, including protection for the Serbian minority, which is concentrated in the northern area. It also proposed that Kosovo become independent after a transitional period of international supervision. While the Western powers were supportive, the plan was opposed in the Security Council by Russia, which insisted any arrangement needed to be agreed by both Belgrade and Pristina. The stumbling block was independence—a must for the Kosovars and a red line for the Serbians. So, the Ahtisaari Plan never received formal blessing. Nonetheless, after fresh elections, Kosovo in February 2008 declared independence and made a binding commitment to implement the Plan. It also moved to make the necessary constitutional and legislative changes. Over 100 countries came to recognize Kosovo's independence, but many did not—including Russia and China. While it was accepted into some international organizations, such as the World Bank, the IMF, the OSCE, it was not admitted to the UN.

A major issue dividing Belgrade and Pristina, in addition to the status of Kosovo, related to the Serbian minority in Kosovo. This had been a major focus of the Ahtisaari Plan, which provided for the protection of the Serbian minority's rights, including the creation of Serbian majority municipalities, which would have important responsibilities and the right to form an association and to cooperate internationally with municipalities elsewhere (Serbia) and to receive aid from Serbia. The treatment of this minority was at the centre of the important Brussels agreement between Serbia and Kosovo, reached with EU mediation in 2013. The agreement provides for an association of Serb-majority communities within Kosovo that will have important responsibilities, including representing these communities within the government of Kosovo. The agreement also dealt with pressing issues relating to telecommunications and energy as well as freedom of movement on a bridge, but both parties registered disclaimers reserving their positions on whether Kosovo is independent or an autonomous part of Serbia. While Serbia has not recognized Kosovo's independence, the agreement does establish a framework for bilateral relations and it opens the way for Serbia to proceed with its application for membership in the EU. It is worth noting that the writ of the Kosovo government still does not extend fully into areas with Serb majorities and that the Serb population in Kosovo has been hostile to the Brussels Agreement.

Population and Territory

Kosovo has a population of about 1.9 million, while Serbia without Kosovo has a population of 7.2 million. Within Kosovo, over 90 per cent are Albanian and perhaps 4 per cent are Serbs. There has been significant outmigration of Serbs since the 1990s. Serbia without Kosovo is 29,913 square miles, while Kosovo is

Legal Instruments

The Ahtissari Plan never achieved any legal status nor is it a formal agreement. However, it provided for a new Constitution, which was to be certified by the International Civilian Representative, and these provisions have been implemented. In addition, the Kosovo Assembly was required to approve various laws necessary to implement the Plan, e.g. on local government, elections, protective zones. The more recent Brussels Agreement is probably best viewed as a political agreement, not a legal agreement in international law, though some argue that in signing this high level Agreement Serbia has given de facto recognition to Kosovo. Serbia would argue against this, both because of the reservation it attached to the Agreement and because it would be unconstitutional for Serbia to enter an international treaty with Kosovo.[8] (This has some parallels with the complex relations between the Federal Republic of Germany and the German Democratic Republic prior to 1990 in that the FRG always maintained that the GDR was within its territory and not an independent state, but it accommodated an arrangement that permitted the GDR to function as if it were a state (which the GDR insisted it was), including membership in the United Nations). Very recently, Kosovo's constitutional court frozen any further action to implement the provisions relating to enhanced autonomy for the Serb minority while it considers whether these are constitutional. There have also been legal challenges in Serbia.

The UN General Assembly, acting on a resolution put forward by Serbia, asked the International Court of Justice to rule on the legality of the unilateral declaration of independence by Kosovo. In its ruling of 22 July, 2010, the court found (by a vote of 10 to 4) that there is no prohibition on declarations of independence in international law and while the declaration may not have been illegal, the issue of recognition was political so the court did not feel it necessary to determine whether Kosovo had achieved statehood or 'whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence". As of 2015, 108 of the United Nation's 193 member states have recognized Kosovo.

Devolved Powers and Provisions

The Serbian position is that Kosovo is part of Serbia with a high degree of autonomy. However, there is no constitutional recognition of this and the Brussels Agreement is not a statement of the powers of the government of Kosovo. In practice, Kosovo exercises full internal sovereignty, though it has accepted the constraints of the Ahtisaari Plan and the Brussels Agreement.

The more complex issues relating to devolution are internal to Kosovo, notably the provisions for the Serb minority there. The Ahtisari Plan provided for six new or

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[8] Ivan Petrovic and Natasa Perovic, "Brussels Agreement in the Light of International Law and the Constitution of Serbia" *Journal of Law and Administrative Sciences,* No.2, 2014

enhanced municipalities with Serb majorities and extensive devolution to all municipalities as well as some enhanced responsibilities for Serb municipalities. Municipalities were also given the right to form cooperative associations. The Brussels Agreement shifted the focus of devolution for the Serb population from the municipalities to the Community or Association of Serb majority municipalities. This Association will have "full overview" of local economic development, education, health and social care, urban and rural planning. It will provide public services and represent its population with the central authorities. It is effectively a subnational government, with a president, a council, an executive and an administrative structure.

The judicial system is to ensure ethnic diversity. Municipalities have the right to form cooperative associations and to cooperate with municipalities and institutions in Serbia, including the right to receive financial and technical assistance.

Special Rights of Representation and Role within National Institutions

The Ahtisaari Plan provided that non-majority communities would be represented in Kosovo's Assembly with guaranteed seats and that legislation dealing with areas of special interest to these communities would require a "double majority". The Government and its civil service is to reflect the diversity of the population. Similarly, the courts and judicial system are to reflect the multi-ethnic character of Kosovo, with positions reserved for non-Albanian judges. The Government of Kosovo remains committed to these provisions.

Monitoring and Dispute Resolution Mechanisms

During the transitional period UNMIK continued within its mandate. The International Civil Representative had authority to oversee implementation of the Ahtisaari Plan, including making recommendations to UNMIK regarding actions needed to ensure compliance and the OSCE was to assist in monitoring implementation of the Plan. The international supervision ended in September, 2012. A Constitutional Court was to be established.

8. Puerto Rico, United States of America

Brief History

Puerto Rico was acquired by the United States from Spain in 1898, following the Spainish American War. Its political and legal status has evolved over time, e.g with the establishment of civilian government in 1900, the extension of US citizenship to those born in Puerto Rico in 1917, provision for an elected Governor in 1947 and authorization to draft its own constitution in 1950. The move to the current arrangements came after

World War II in response to pressures from the Puerto Rican population for greater self-governance and to the new international context, which was delegitimizing colonialism.

Puerto Rico's status is essentially one of political subordination, rather than autonomy. It is subject to federal laws on which it cannot vote. This has led to a continuing debate about a new status for the island: full independence; statehood within the Union; sovereignty but in close association with the US; and, enhanced autonomy that addresses the major deficiencies of the current arrangement. There have been four status referendums over time, the most recent being in 2012, when statehood received over 61 per cent of the votes. However, the Republican party is likely to block statehood because it would affect the partisan balance in Congress and Presidential elections.

The most urgent issue in Puerto Rico is the island's crisis over its debt, which its governor has declared is not payable. While the island has some tax advantages, e.g. in not paying US income taxes, it receives substantially less than it would as a state for such programs as Medicaid and social security. It is forced to use US ships to transport goods to the mainland, which undermines its manufacturing industry, which is also suffering because federal tax credits for investing in the island have been terminated. The island's population is declining and aging. And the island government has been inefficient and fiscally imprudent. These and other issues are focusing attention on what the Government of Puerto Rico needs to do to improve its own performance and what Congress might do to permit debt relief and restructuring. The larger status issues are unlikely to be addressed soon.

Population and Territory

Puerto Rico has about 3.5 million inhabitants, which is slightly less than one per cent of the population of the United States. It is an island of 3,500 square miles, which is a little more than one per cent of the area of the United States. It is 1,000 miles from the US mainland (compared with 2,500 miles for the state of Hawaii).

Legal Instruments

The US Supreme Court in a series of cases known as the Insular Cases from 1901 to 1922 found that Puerto Rico (and other US territories) was "belonging to, but not a part" of the US. Congress has plenary powers over the territories under Article IV.3.2 of the Constitution; its Public Law 600 authorized a constitutional assembly in Puerto Rico, which led to the Puerto Rican Constitution of 1952. The provisions regarding the basic relationship between Puerto Rice and the US are set out in the Puerto Rico Federal Relations Act.

Devolved Powers and Provisions

The Puerto Rican government has general powers relating to local taxes, the organization of its own and local government and elections, the Puerto Rican judiciary, education, health, security, welfare, the environment, family law, criminal law, contracts, the regulation of internal commerce, transportation, corportations and other local matters. However, in many of these areas the US federal government may also act given its large powers relative to the states as well as its "plenary powers" relative to the territories. The federal government has exclusive competence regarding foreign affairs, defence, currency, postage, maritime jurisdiction, intellectual property and bankruptcies. As in the states, the judicial system is divided, with federal and commonwealth courts; the former may rule on any matter relating to the US Constitution, laws or treaties.

Special Rights of Representation and Role within National Institutions

Puerto Rican residents do not vote for the US President nor do they elect representatives in either house of Congress. Puerto Rico is represented in Congress by a Resident Commissioner, who sits in the House of Representatives and may serve on committees, but who has no vote in the full House, even on matters directly affecting Puerto Rico.

Monitoring and Dispute Resolution Mechanisms

There are no special mechanisms for monitoring and dispute resolution. The courts rule on matters of law.

9. Zanzibar, Tanzania

Brief History

Zanzibar came under the control of the Sultanate of Oman in 1698, but gained a separate status in 1856 when the then Sultan divided his domains into two separate units—Oman and Zanzibar—each of which was assigned to a different son. Imperial Britain became increasingly involved in Zanzibar's affairs through the nineteenth century and in 1890 it made the island a protectorate, which took the form of indirect rule through the Sultan, who remained nominally sovereign. In December 1963, the UK ended the protectorate and provided for Zanzibar to have full self-government as a monarchy under the Sultan within the Commonwealth. However, a month later, January 1964, the Sultan and his mainly Arab government were deposed by a revolution led by African insurgents. After some internal struggles amongst the revolutionary group, Abeid Amani Karume consolidated his position as President and by April he had negotiated a union with neighbouring Tanganyika to form the new country of Tanzania.

The new country was based on an asymmetric or "federacy" model, in which there is one executive and parliament for the union, with full authority over what had been Tanganyika and specified authority over Zanzibar, and a separate executive and

parliament for Zanzibar. Initially, the President of Zanzibar served as Vice-President of the union. Both Tanganyika and Zanzibar were one-party systems at the time and a constitutional change in 1975 actually made all organs of government subordinate to the governing party's executive committee. (The national and Zanzibar parties were planning to merge, which they did in 1977.) In the 1990s, the regime started to liberalize, with constitutional amendments permitting other parties and the impeachment of the president.

The asymmetric form of government in Tanzania has become a source of dispute between the government and opposition parties. The government had proposed various constitutional amendments (an independent electoral commission, limit on the number of ministers, gender equality in the National Assembly and re land ownership). The opposition walked out, objecting on procedural grounds but more importantly on substantive grounds—principally the failure to move to a federal system of government. Because of this, the government postponed the referendum planned for April 2015.

Population and Territory

Zanzibar is an island archipelago of 950 square miles (0.3 per cent of Tanzania's territory), which lies about 30 miles off the coast of mainland Tanyanika. It has a population of 1.3 million, which represents about 2.5 per cent of the population of Tanzania. Its people are overwhelmingly Muslim, mostly of African origin, but with a significant number of Arab origin.

Legal Instruments

The basic legal instrument is the Constitution of Tanzania.

Devolved Powers and Provisions

Chapter 4 of the constitution establishes the executive and legislative institutions of Zanzibar. There are separate articles establishing the court system for Zanzibar. The Constitution lists 22 Union matters that are under the authority of the national government and these relate mainly to foreign affairs, defense, higher education, statistics, currency, petroleum resources, harbours and civil aviation, political parties, and financial issues; Zanzibar has the residual powers, which are extensive and include information, agriculture, national resources, environment, internal trade, industry, marketing, tourism, education, culture and sports, health and social welfare, water construction, energy and land, communication and transport, youth, employment and women and children's development. In addition, Zanzibar may impose taxes in areas outside income tax, customs duty and excise duty designated for the Union. There are no areas of shared responsibility, but in practice overlaps have occurred, notably with

Zanzibar maintaining militarily organized security and border forces, which seems at odds with the exclusive Union responsibility for security.[9]

Special Rights of Representation and Role within National Institutions

The Constitution establishes the Vice-President as "the principal assistant to the President", with his duties being decided by the President. The Vice-President is to come from the "other part of the Union" than the President—in effect from Zanzibar—and is to be elected on a shared party ticket with the President. The Cabinet includes the Vice-President as well as the President of Zanzibar, along with the Prime Minister and Ministers.

Monitoring and Dispute Resolution Mechanisms

The Constitution provides for a Special Constitutional Court whose sole function is "to hear and give a conciliatory decision" over a matter of constitutional interpretation in dispute between the governments of Tanzania and Zanzibar. The court is to be composed of equal numbers of judges named by both governments and its decisions require the assent of 2/3 of the judges from each jurisdiction. Its decisions are binding and final. However, the court has never been formed because the governments have chosen not to refer disputes to it, despite differing interpretations of the Constitution.

[9] Suksi, op.cit. pp. 344-355