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The Sovereignty Continuum and Conflict Resolution

BY DENNIS CUSACK*

Introduction

Good morning. I'm very pleased and honored to be back at my alma mater to participate in today's symposium on the subject of changing notions of sovereignty. My path to this subject has been a little bit different than my very distinguished panelists. I have come to the subject as a human rights lawyer specializing in the problems faced by the people of Tibet. The history of Tibet's relations with China is itself an interesting study in notions of sovereignty, autonomy and "suzerainty," the label the British gave to their view of Tibet's status at the turn of the last century. In that historical approach, one would be challenged in trying to apply more current and largely Western-bred notions of state relations to the very foreign context of Tibet-China relations.

My more immediate interest arises out of the effort on the Tibetan side to look at the range of very practical solutions to the question of who shall control the Tibetan land and people. For the Tibetans, those solutions include the possibility of something less than sovereignty. In 1988, the Dalai Lama delivered an address in Strasbourg, France to the European Parliament in which he offered to negotiate a status for Tibet under which Tibet would become "a self-governing democratic political entity . . . in association with the People's Republic of China." This offer by the Tibetan Government-in-Exile has since become known as the "Strasbourg Proposal." In broad terms, the Tibetans offered to give up their right to formal sovereignty, defer to China on matters of foreign relations and defense, but retain control over all domestic affairs—political,

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economic and cultural—including international relationships relevant to matters within their domestic jurisdiction.

Our organization, Tibet Justice Center (formerly International Committee of Lawyers for Tibet), set out to study existing autonomy arrangements around the world—places where some degree of local control has been devolved from a sovereign power to a people or region. These kinds of power-sharing relationships have existed historically in many different forms. Our study, *Forms of Autonomy*, to be published later this year, examined thirty-three existing examples, each with its own historical antecedents. Our selection is not complete by any means, but it is hopefully representative of most of the features one finds. The study is intended to serve as a reference manual, to provide a rich source of ideas about power sharing as a tool for the Tibetans to use, or for any other people or government to use, who are interested in resolving through nonviolent means “liberation struggles,” claims for “self-determination,” minority or indigenous rights campaigns, whatever label a particular conflict happens to have. In the examples and patterns the study reveals, we hope to offer food to nourish thoughts of nonviolent conflict resolution.

Current examples run the gamut from Liechtenstein, which enjoys formal sovereign status despite managing its foreign affairs through Switzerland, to Quebec, which exists uncomfortably within the federation of Canadian provinces, to Tibet and East Turkestan, which are entirely powerless within the Chinese state despite “autonomous” status on paper. The study shows that once sovereignty and autonomy are viewed as pieces of a continuum, only human imagination places a limit on crafting consensual allocations of power that will satisfy the legitimate interests of peoples and states.

The flexibility of autonomy opens doors to conflict resolution that might appear closed if the parties remained stuck in either/or assumptions of sovereignty or subjugation. Also, the full landscape poses some challenge to the relevance of sovereignty (the name states give to their “right” to control) and independence (the name unliberated peoples give to their “right” to rule themselves) in a world increasingly politically, economically and culturally interdependent. Today, I’m going to outline briefly some of the major themes that emerge from a look at these autonomy arrangements regarding: (1) the allocation of power in different

spheres¹ (e.g., foreign affairs, education, law and order, economy and natural resources, social services, etc.); (2) the capacity of autonomous governments for international relationships; (3) the responsibilities, not just the freedoms, that accompany power; and (4) mechanisms for enforcing the allocation of power and responsibility.

I. Patterns in the Allocation of Power

First, let me describe how we structured these studies. We crafted a uniform model, or prism, through which we looked at the allocation of power in each situation. After describing the historical development of the arrangement, we looked at the institutional structure of the autonomous government and how it fits into the state structure. Is the relationship documented in a constitution or piece of legislation? Most are. Is the autonomous government a democracy? Again, most are. What is the relationship between the executive, legislative and judicial branches of government? What are the formal institutional connections between the state and autonomous governments? For example, do people in the autonomous region have the right to vote in state elections? Does the state executive or legislature have the power to appoint, or veto, officials in the autonomous government? What right does the autonomous government have to change its relationship with the state government?

Next, we listed twenty-two different areas in which power could be exercised by one of the governments, and looked at how power is shared between them. The areas include foreign affairs, which includes foreign policy, defense, passports and visas, border controls, and participation in international organizations. The other areas we looked at include postal and telecommunications systems, currency and monetary policy, taxation, economic policy, natural resources, language, education, administration of justice, law and order, etc.

A. *Foreign Versus Domestic Affairs*

The most obvious and unsurprising theme that emerges from autonomy arrangements is that “domestic” or “internal” affairs tend to be allocated to the autonomous government, and “foreign” and “national security” matters to the state government. Almost all state

1. For each arrangement, the study examined twenty-eight different areas in which power was allocated.

governments control defense, foreign affairs, customs, and immigration. On the other hand, matters almost always reserved to the autonomous government include cultural affairs, language, and education.² Economic matters (monetary policy, taxation, control of land and natural resources, environment, and trade relations) can present more mixed results. Efficiency, and perhaps national security perceptions, sometimes demand that the state government retain control (e.g., monetary policy,³ telecommunications⁴). But relative economic strength⁵ and perceptions of “national security” and “strategic” concerns often dictate where power lies. For example, in some places the autonomous government controls natural resources with the exception of the “strategic” resources of oil and gas reserves, as in Scotland and Chittagong Hill Tracts. Taxation powers vary widely.⁶

B. The Burdens of Power

In areas such as social services, healthcare, and welfare benefits, the autonomous government often can exercise control but may defer to the state government because of the burdens involved. Examples include Quebec and the Faroe Islands, both of which have the right to control health and social services, but rely on the state government to provide them. Zanzibar, under the union with Tanganyika (now known as Tanzania), controls these functions, but has been largely unable to provide them. In the Chittagong Hill Tracts, the state provides most social services other than health care, but this remains a source of friction because of perceptions that the state is not meeting local needs.

2. Belgium, however, has a unique system of overlapping cultural and regional autonomous governing bodies.

3. Several autonomous governments, however, issue separate currencies: Holy See, Scotland, Liechtenstein, Gibraltar, Cook Islands, Faroe Islands, Netherlands Antilles.

4. Some autonomous governments control their own telecommunications systems: Hong Kong, Holy See, Cook Islands, Netherlands Antilles, Greenland, Faroe Islands. Others control their own postal systems: San Marino (jointly with Italy), Aland Islands.

5. Hong Kong, Tatarstan, Liechtenstein and Andorra are examples of autonomous governments whose economies help support greater levels of relative power.

6. The following autonomous governments exercise exclusive taxing powers: Hong Kong, Gibraltar, Micronesia, Liechtenstein, Greenland, Palestine, Puerto Rico, Cook Islands, Netherlands Antilles. In Chittagong, Quebec, Aland Islands, and Belgium, taxing power is shared.

C. The Autonomous Government's Capacity for International Relationships

These arrangements also show that a division of power between “domestic” and “foreign” spheres need not preclude the autonomous government from maintaining international relationships in its own right. Many autonomous governments participate in international organizations dealing with regional and cultural matters (e.g., Saami,⁷ South Tyrol,⁸ Tatarstan, Quebec,⁹ Catalonia¹⁰). Some also maintain a presence in international trade organizations (Hong Kong), or may negotiate separate trade or other agreements as they affect matters within the autonomous government's jurisdiction (e.g., Faroe Islands,¹¹ Greenland,¹² Belgian regions and communities).

D. Enforcement of Autonomy Agreements

Enforcement of any proposed autonomy agreement will remain a concern of peoples and states involved in as yet unresolved disputes. Many existing arrangements evolved over a long time, so that historical, cultural and institutional mechanisms exist to check attempts on either side to deviate from the agreement. Constitutional and legislative frameworks, along with established independent judiciaries, can provide comfort in some situations.¹³ In others, sheer economic leverage may be the only limiting force (e.g., Tatarstan or Hong Kong). Another state (or the international community) may also play a mediating or counterbalancing role (e.g., Sweden and the international community with respect to Aland Islands, the Republic of Ireland and the United States with respect to Northern Ireland, Austria with respect to South Tyrol).

7. The Saami government is a member of the Nordic Council and the Circumpolar Conference. It also has “non-governmental organization” status at the United Nations and the International Labor Organization.

8. South Tyrol maintains relations with other states on regional economic development matters.

9. Quebec maintains special relations with France, and also has negotiated some separate trade relations with the United States.

10. Catalonia maintains relations with the European Union and UNESCO.

11. Faroe Islands has negotiated bilateral trade agreements with European Union members.

12. Greenland has negotiated separate fishing agreements.

13. The Navajo and other Native American tribes, on the other hand, have seen U.S. courts whittle away at their power.

II. A Few Concluding Observations

The array of solutions to the autonomy question underscores the reality that control over a land and people does not exist in a vacuum, but within a regional and international community. Treaties, customary international law, military threats and a globalizing economy already increasingly constrain how sovereign states may govern. States must engage in relationship building, incrementally divesting themselves of some power, in order to manage affairs to optimize the mutual benefits of coexistence. These relationships can create models for sharing control internally. The increasing range and complexity of international relationships also create opportunities to give an autonomous people some international status or presence, which may provide important psychological if not practical benefits and protections.

On the other side of the coin, with freedom comes responsibility. Limits on natural and human resources prevent many peoples from capably managing the full benefits and burdens of "independence." Relationships need to be bargained for based on a careful assessment of what a people and state truly need and want. It is becoming increasingly possible and necessary to manage relationships (people to people, people to state, and state to state) through consensual arrangements rather than through predefined notions of international "status." In this regard, "sovereignty" may be evolving away from a declaration about "rights" and towards a more fluid assessment of practical capability to manage the benefits and burdens of governance through a system of agreements. Such a conceptual shift should help in resolving disputes peacefully between peoples and states.