Is Autonomy a Principle of International Law?

By Professor Douglas Sanders*

In the Camp David Agreement on the middle East, Israel agreed to »autonomy« for the Palestinians on the West Bank. In the controversies over the implementation of the Camp David Agreement, it became clear that the parties had no clear understanding of what the term »autonomy« meant. An earlier speaker in this seminar stated there was no single pattern for autonomy and discusses his examples on a purely comparative basis. The Report of the Sami Rights Committee commented on the wide variety of state arrangements for indigenous populations. While the Report suggests that a few common principles have developed as customary international law, in general the framework accepted by the Committee is particularistic or comparative. The Report supports a right to »cultural autonomy« on the basis of Article 27 of the international Covenant on Civil and Political Rights, but concludes that »political autonomy« has no basis in international law.

In contrast Madame Erica Daes, the chairwoman of the United Nations Working Group on indigenous populations, has stated that, in her view, the international law principle of the self-determination of peoples applies to indigenous populations, but without any right of secession. The Report of the Special Rapporteur, Mr. Martiney Cobo, on Discrimination against Indigenous Populations also concludes that the principle applies, stating it does not »necessarily« include the right of separation. There is a general agreement among international law scholars that the principle of self-determination does not apply to »minorities«, with the result that proponents of autonomy for indigenous populations or other groups must assert that they should be classified as »peoples« and not simply as minorities. But it must be understood that the international law on the rights of minorities is not static or fixed at the moment. Perhaps minorities, or at least territorial minorities, have rights of autonomy within the existing structures of states.

Is autonomy a principle of international law? There are three possible arguments for such a principle. The first would be that autonomy for specific populations is a principle of customary international law, based on an assertion of a common practice of leading states. The second argument would assert autonomy as a distinctive right of minorities. The third argument is based on the principle of the self-determination of peoples.

Let me deal with the customary international law arguments first. The positions of Professor Brams and the Sami Rights Committee Report take what I have called a »particularist« approach. They say that the examples of autonomy vary. No common pattern exist. No general principles can be discerned. To place this approach in its most unfavourable light, the fact that the Azores have their own coins but Portuguese bills, and the Faroes have their own bills but Danish coins proves the lack of any common model or common principles for political autonomy. In order to do justice to the arguments one must look to current examples of political autonomy. Inevitably any list will seem to be solid support for particularism.

1. Federal states: the Swiss cantons are examples of the constituent units of a federal state representing cultural and linguistic groupings. The same is true for Quebec and Canada. As well, the state boundaries in India were reorganized to reflect cultural and linguistic divisions.

* Professor of Law, University of British Columbia.
2. The classic examples of the autonomous islands - Aaland, the Faroes, the Isle of Mann, the Channel Islands, Greenland.

3. The nationalities' policies in the Soviet Union and China. The significance of these policies is often ignored in the West. Any brief description of state structure for either the Soviet Union or China will include a description of the minority autonomous political arrangements - Yugoslavia and East Germany are additional eastern block examples.

4. Current regional autonomy innovations. The most dramatic current innovations have been in Spain. France has also adopted a policy of decentralization and has established a regional assembly for Corsica. The arrangement for Hong Kong is the most dramatic example of regional autonomy in our time. The agitation by the Tamils in Sri Lanka, the Sikhs India, and the Miskitos in Nicaragua fundamentally concern political autonomy.

5. The compacts of free association. The trust territories of Micronesia have now largely worked out treaties with the United States which technically recognize their independence within a framework of association. Similar arrangements were developed earlier between New Zealand and certain South Pacific islands such as the Cook Islands.

6. The classic dependent states of Europe, the mini-states of Monaco, Andorra, Lichtenstein, San Marino and the Vatican are technically recognized as independent but in each case, are dependent upon one or two larger nation states.

7. Indigenous autonomous arrangements. In the past there have been very few examples of what could be honestly described as political autonomy for indigenous populations. Cuna Yala, the Cuna Indian «commarca» in Panama was a little known exception which has now emerged as a positive model in the Central American region. Indian reserves in North America have not been as real examples of political autonomy. Some reserves now have substantial natural resources revenues an recent judicial decisions in the United States have broadened the powers of tribal governments in commercial and economic matters. Some innovations in self-government have taken place in the context of the land claims settlements in the James Bay area of Northern Quebec, in Australia, and in the North Slope Borough in Alaska.

8. Miscellaneous examples. There are other examples which are either not well known or difficult to categorize. In Scotland retains a degree of autonomy within the United Kingdom, retaining much of its distinctive legal system, but has no separate legislature. There are tribal areas in Pakistan, on the border with Afghanistan, which have almost complete autonomy and pay no taxes to the national government.

9. Negative examples. There are examples where autonomy has been grossly abused by a state. This has been the history of Indian reserves in North America and of the tribal homelands in South Africa.

My task at this point is to try to pull order out of chaos, to suggest patterns in the apparently very particular phenomenon of autonomous arrangements. Two approaches are necessary. The first is a historical approach, which in part derives from pioneering work done by Tomas Cramer. At the end of the nineteenth century there was a rejection of earlier patterns of recognition of territorial and political rights of