Federated and Other Partly Self-governing States and Mini-states in Foreign Affairs and in International Organizations

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I. General position of partly autonomous states in international law
All states have regional sub-divisions: provinces, municipalities etc., which have been established by statute. These are not sovereign entities - their self-government can at any time be amended or revoked unilaterally by the national state authorities through a new statute. Such entities are not considered self-governing communities for the purposes of international law.

However, in some states regional self-government has been established by treaty or constitutional provisions and can only be revoked by another treaty or constitutional provision. This is the case of federal states - like the United States and the Soviet Union - and of what has been referred to as "vassal" states - i.e. a specific territory which enjoys partial self-government within a mother or "suzerain" state pursuant to treaty or constitutional provision, whereas other parts of the "suzerain" state come under the full authority of the central government in the same manner as a unitary state. In both these cases the members of the federation or the autonomous territory enjoy self-government (of which they cannot be deprived by mere statutory provision of the central government) in certain fields, whereas the federal government or the government of the national state concerned (the "suzerain" state) exercises the powers in other fields.

In these cases, as pointed out by the far-sighted Danish professor of international law Alf Ross in his "Laerebog i Folkeret" - and "Textbook of International Law", it would be logical that the states members of the federation or vassal state should also themselves be direct subjects of international law externally in those fields where they have internal autonomy - i.e. in those fields where they themselves are the highest authority or sovereign. Only in this way could one avoid the difficulties that have arisen in practice where one party - the federation or the suzerain state - is the bearer of international rights and duties, whereas another sovereign body, which it cannot legally direct, is alone able to implement the rights and fulfill the duties.

However, in actual practice most federations ans suzerain relationships are not organized in this logical way. The normal situation is that only the federal government or the suzerain state acts externally, undertakes external commitments and is considered as the bearer of international rights and duties. This is for example the case of the United States of America under Art. I § 10 of its constitution. This has of course led to difficult situations where the federation enters into a treaty which defines rights and duties the execution of which falls under the prerogatives of the member states, as the federal government has no constitutional means of forcing the member states to comply with the treaty obligations. This was well demonstrated e.g. in the Abagnato case, where the

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U.S. federal government could – and did – pay compensation to Italy for the lynching of imprisoned Italian nationals, but was unable to prosecute the lynchers, as this fell under the competence of the State of Louisiana. Also the Federal Republic of Germany has exclusive power externally and has for example transferred to the European Communities parts, not only of its own powers, but also of those of its Länder. (In return, the latter are given rights to be heard and to send representatives to relevant EC-committees.)

There are exceptions to this practice, for example in respect of Canada. Nevertheless, the traditional concept of the sole external responsibility of the federal government has been so firm that when, many years ago, an agreement was concluded on reciprocal enforcement of maintenance orders with respect to Norway and the Province of British Columbia, Norway insisted that the agreement be concluded with the Canadian Federal Government, despite the Canadian explanation that all relevant powers in the field were vested in the Provincial Government of British Columbia. In the end, the Canadian Federal Government gave in, but had it specified in the treaty that it was understood that recognition and enforcement of maintenance orders was a matter which fell solely within provincial jurisdiction. In other words: No federal responsibility.

Another example of external powers for partly self-governing units are the additional provisions of 17 July 1980 and 1 June 1983 to the Belgian Constitution which provide for self-government for each of the three linguistic “communautés” of the country in cultural and “personnalisables” matters and in respect of international co-operation in these matters. The central government does not consider itself responsible for the fulfilment of treaties entered into by the “communautés” on such matters. If a treaty concerns both such matters and matters under the competence of the central government, it has to be approved by all four authorities. This question is presently under discussion.

Austria, too, is presently preparing a new constitutional provision to enable the “Länder” to act externally. However, the intention appears to be to confine the provision to transborder co-operation agreements with local entities of the neighbouring country, with the approval of the federal government.

In this context reference may be made to Hurst Hannum’s paper entitled “The Foreign Affairs Powers of Autonomous Regions”. He describes the external powers conferred upon the several member states of the Soviet Union, the United Arab Emirates and Switzerland, as well as upon the Dutch Antilles and upon Spanish regions, both of which are partly presented as federal states, as well as upon the autonomous area of South Tyrol, the former autonomous area of Eritrea and the former internationalized areas of Danzig and Memel. Hannum demonstrates that many of these entities have had some powers even externally, notably for local trans-border co-operation between regions, but also more generally in economic fields or where the entity is geographically separated from the mother state. However, they have no external powers in political and military matters.

As for the small nations of the North, I refer first to Christer Janson’s, Göran Lindholm’s and my own presentation of the autonomy of Åland at the first seminar on the small nations of the North in Mariehamn 1980, as printed in Nordisk Tidsskrift for International Ret, Vol. 51 (1982) pp. 15-28 and 88-125. As the Åland self-government act (1) has the status of a constitution, cannot be altered without the consent of the Åland Lagting, and (3) is based upon and